

**SPECIAL MEETING
OF THE SPECIAL MAGISTRATE
TOWN OF LADY LAKE, FLORIDA**

October 25, 2016

The regular meeting of the Special Magistrate was held in the Town Hall Commission Chambers at 409 Fennell Blvd., Lady Lake, Florida. The meeting convened at 10:30 a.m.

TOWN STAFF PRESENT: Michelle Bilbrey, Code Enforcement Officer; Thad Carroll, Growth Management Director; and Carol Osborne, Staff Assistant to Town Clerk.

CALL TO ORDER: Valerie Fuchs, Special Magistrate, called the meeting to order at 10:30 a.m.

PLEDGE OF ALLEGIANCE

Approval of September 27, 2016 Minutes

The Special Magistrate signed and accepted the September 27, 2016 meeting minutes into the record as presented.

SWEARING IN: The Special Magistrate requested that anyone present who planned to speak at today's meeting stand and be sworn in.

Special Magistrate Valerie Fuchs explained to the public that this is a quasi-judicial hearing, which means that she has not seen or heard any evidence or testimony from staff or outside parties, other than cases that have been continued from a public meeting, as this would be a violation of ex-parte rules. She explained that staff will present their case and testimony, and she will ask any questions she deems necessary. At that time the owner or interested party will be able to present their testimony or evidence, and staff will have an opportunity to rebut. The case will be closed for public comment and she will render her decision on each of the cases.

The Special Magistrate asked if there are any changes to the agenda.

Code Enforcement Officer Michelle Bilbrey stated Cases #2, #3, and #4 under New Business have come into compliance.

Code Enforcement Officer presented documentation and photographs of the first case to the Special Magistrate.

OLD BUSINESS:

- 1. Case No. 16-6092 – 609 Hwy 466 – Lady Lake, Inc. c/o Grant Gore - Town of Lady Lake Land Development Regulations Chapter 3-1(a) - Development Order; and Chapter 10-5(a) - Tree Removal Permit Required.**

Code Enforcement Officer Michelle Bilbrey presented the background summary for this case as follows:

- April 26, 2016 – The Town was made aware that land was being cleared at the northeast corner of the subject property. Later that day, a sight inspection of the property found large equipment on the property actively removing trees. A photo was taken.
- April 26, 2016 – Growth Management Director Thad Carroll contacted the registered owner of the property, Grant Gore, via telephone and spoke with him regarding the need to obtain a tree clearing permit, and that a Development Order must be approved prior to any work commencing on the property.
- April 27, 2016 – In an email correspondence from Mr. Gore’s attorney, Alison Strange, to the Town of Lady Lake’s attorney, Derek Schroth, Ms. Strange stated the following: “Please note that Paragraph 3 (Design Standards) of the Memorandum of Agreement calls for a 20’ vegetative buffer and allows unlimited RV storage up to that buffer. Based on this language, I read the resolution to allow Lady Lake, Inc. to clear trees and vegetation up to the 20’ vegetative buffer, subject, of course, to whatever procedures and permits the Town required for clearing trees from property”. This same email goes on to further state: “all of the trees were planted by Mr. Gore in the past 20 years.” However, permits and Development Orders are required for removal of trees in excess of six inches DBH regardless of who originally planted the trees (i.e.: because he claims to have planted them does not give him the right or remove them without a permit).
- A copy of the referenced Resolution No. 2009-125, which contains the Memorandum of Agreement (Exhibit B), has been included in this meeting packet for reference. Page 8 of 8 shows the 20-foot “vegetative buffer”.
- A 1984 color aerial infrared photograph contradicts the statement that Mr. Gore planted all of the trees in the past 20 years.
- A black and white imagery from Google Earth dated January 4, 1994 shows trees were existing on the east portion of the property, which is now cleared.
- A color imagery from Google Earth dated January 24, 2016 shows the trees prior to the land clearing activities.
- April 27, 2016 – The Town of Lady Lake’s attorney, Derek Schroth, responded with an email correspondence stating, “...Any site clearing or site preparation outside the buffer requires a Development Order from the Town. How many trees and what sizes are the trees (he) wants to remove? Large historic trees would require a special permit.”
- April 28, 2016 – The following day a voicemail message from Alison Strange to Derek Schroth was transcribed by the Town’s Deputy Town Clerk. Within it, Ms. Strange stated the following: “...I am not familiar with Lady Lake’s Ordinances, but basically, Mr. Gore is looking to, uh, clear out some overgrowth that he’s had. It’s all new growth. Everything, he said, is three inches or less across, and it’s all stuff that either he’s just kind of let grow over the years, or that he’s actually planted.”
- Subsequent site inspections were conducted on the following dates: May 2, 2016, May 10, 2016, May 19, 2016, May 26, 2016, and June 6, 2016. Photographs were taken at each visit and it was noted that land clearing was still active and underway during each of the site inspections.
- June 2, 2016 – Mr. Carroll sent an email correspondence to Alison Strange stating the following: “Mr. Gore is conducting significant clearing on the property.” An additional email correspondence on June 2, 2016 from Mr. Carroll to Ms. Strange stated the following: “The property owner has not called in locates for the utility, which is a prerequisite for the development activity to ensure that electric, water, sewer, utility, etc., lines are not severed or ruptured.” Included in that email, Mr. Gore was given directions to “cease activity on the property immediately”.

- June 6, 2016 – Ms. Strange sent an email correspondence to Mr. Carroll in response to the aforementioned email. Within it, Ms. Strange stated the following: “The only action he (Mr. Gore) has been taking is to clear the brush, which we previously confirmed with the Town does not require a permit.”
- August 10, 2016 – A site inspection of the property was conducted and it was noted that land clearing continued. A photograph was taken of an excavator with what appears to be a large tree in its grapple bucket. Based on this photograph and proportion values, it is believed that the tree in the grapple bucket was in excess of the allowable six inch DBH and, therefore, not underbrush in nature; as were many of the other trees being removed from the land.
- August 15, 2016 and August 17, 2016 – Additional site inspections were conducted and photographs were taken showing the absence of a 20-foot buffer along the north side of the project along Oak Street.
- August 17, 2016 – A Notice of Hearing was prepared citing violations of the Town of Lady Lake Land Development Regulations Chapter 3-1(a) - Development Order, and Chapter 10-5(a) - Tree Removal Permit Required; stating the violations are irreversible or irreparable in nature.
- A copy of the Notice of Hearing was mailed via certified mail return receipt to Lady Lake, Inc. This notice was signed for by C. Hanhon on August 19, 2016.
- A copy of the Notice of Hearing was hand delivered to the place of business. The front office was closed at the time and signage directed Ms. Bilbrey to the night manager at Lot #232, where Ms. Bilbrey hand delivered the Notice of Hearing to Bryan Zippin. An Affidavit of Hand Delivery was completed.
- August 18, 2016 – A site inspection was conducted and photographs were taken showing less than a 20-foot buffer was remaining along the east side of the project along Clay Boulevard.
- August 24, 2016 – A site inspection was conducted and a photograph was taken showing the majority of the property has been completely cleared, a buffer of less than 20-feet remains.

Ms. Bilbrey stated this case was originally scheduled to be heard by the Special Magistrate on September 27, 2016. At that hearing, and at the request of the Town’s Growth Management Director, this case was tabled until October 25, 2016. She stated there is no Land Development Order or tree removal permits in place for the subject property as of this date.

Ms. Bilbrey stated staff’s recommendation is to find the owner/agent in violation of the Town of Lady Lake Land Development Regulations Chapter 3-1(a) - Development Order, and Chapter 10-5(a) - Tree Removal Permit Required and, due to the nature of the violations being irreversible and irreparable in nature, to impose a \$5,000.00 fine, along with an \$87.00 administrative fee, and afford the property owner or his agent ten days to pay the aforementioned fine or a lien will be placed on the property.

The Special Magistrate confirmed with staff that the only reason this case was under old business was because it was continued. She stated she has not seen any information on this case before today, and reviewed the documents and photos introduced into evidence. The Special Magistrate asked if there was anyone present who would like to speak on this case.

Allison Strange introduced herself as an attorney representing Lady Lake, Inc., with Grant Gore as the principal. She asked if today’s hearing was being recorded.

The Special Magistrate confirmed this and stated there will be minutes transcribed; that special arrangements would need to be arranged for a verbatim transcript, but a copy of the audio could be easily obtained. She quickly reviewed the Memorandum of Agreement dated 2009.

After reviewing the Memorandum of Agreement, the Special Magistrate stated there is a requirement in the agreement that the property must have a 20-foot buffer, and it seems that the property owner has done clearing and there is a dispute regarding not having permits for clearing trees in excess of six inches and no longer having the proper buffer.

Ms. Strange stated her and her client's understanding is that the citation is for development without a Development Order and improper tree removal. She stated they believe one of the issues is the 20-foot buffer and the other issue is in regard to removal of some of the trees inside the buffer where the RV storage would normally be located.

The Special Magistrate stated she does not recall any information regarding RV storage, and asked for a summation of the property.

Thad Carroll, Growth Management Director, stated the Town executed a Memorandum of Agreement with Mr. Gore in 2009 to grandfather uses that were existing on the property. At that time, those uses were documented and one of those uses was storage on this area of the property. The MOA also required Mr. Gore to maintain a 20-foot buffer.

Mr. Carroll stated several email correspondences are included in today's meeting packet. He stated there is some discrepancy, and according to Ms. Strange, her interpretation was that her client was allowed to clear land up to that 20-foot buffer. However, in one of the emails, Town Attorney Derek Schroth states his understanding is a Development Order is required to clear any portion of land. Mr. Carroll stated that even though Mr. Gore has use of the storage area portion of the property, a Development Order and a tree removal permit is still required to clear land within it. He stated an MOA precedes a site plan in the development process and, once the site plan is approved, the Town executes the Development Order. He believes this is the discrepancy.

Referring to the repeated mention of the 20-foot buffer, Mr. Carroll stated that even under the most liberal translation of how this document was executed and, even if it had been agreed that Mr. Gore could clear land up to the buffer, Mr. Gore has completely removed the buffer area, disregarding the MOA agreement, along with the area that Ms. Strange believes her client was entitled to clear. He stated he believed one of Ms. Strange's emails stated that "if he goes up to the 20-foot buffer then he's ok". He stated it is evident by the photographs that the buffer has been cleared as well.

Mr. Carroll stated it is the Town's case that the Development Order and individual tree removal permits were not obtained. A Development Order would include full grading; without a Development Order, tree permits are required to remove any trees over six inches in diameter.

The Special Magistrate clarified the Town's position is that a tree removal permit is required for all of the trees outside the buffer area, in addition to any tree removal permits for clearing inside the buffer.

Mr. Carroll confirmed this is correct. He stated Mr. Schroth has submitted text messages and email correspondence referencing this.

The Special Magistrate asked Mr. Carroll to explain the difference between the need for a Development Order and a tree removal permit.

Mr. Carroll explained if trees are removed individually, a tree removal permit is required. However, a large project goes through the site plan approval process. Tree removal is included as part of the Development Order, and should indicate on the landscaping plan which trees will be removed, their sizes and diameters, and their location on the property. He stated Mr. Gore does not have a tree removal permit or a Development Order.

Ms. Strange stated her client's business, Recreation Plantation (Lady Lake, Inc), is one of the largest RV parks in Lake County. There are two phases to this park: the first phase is the RV park with approximately 850 RV units, and the second phase has been used historically for RV storage. She stated that in 2015, Mr. Gore met with Town staff to discuss expansion of the park by adding approximately 230 additional lots. At that meeting in April 2015, Mr. Gore expressed his concern with moving forward with the rezoning and development process for the RV storage lot as his understanding was that the grandfathered use in the MOA gave him permission to store unlimited RVs, vehicles, and sheds on the property. He did not want to move forward with the rezoning until he had cleared the land because he believed that was his right. She stated Mr. Gore was not told anything different at that meeting.

Ms. Strange stated Mr. Gore cleared the property almost entirely in 2004, and has the dates and the amounts he paid for that. Since that time, Mr. Gore has annually performed minor land clearing projects within that area.

Ms. Strange stated the Memorandum of Agreement adopted in 2009 was in furtherance of his understanding of what he was allowed to do on this property based on his historical use and his agreement with the Town. She referenced the minutes in which the Town notes 'a discrepancy, but we are ok with what he has been doing'. She stated what he had been doing was clearing trees as needed for RV storage.

Ms. Strange stated the Town adopted the tree clearing permit ordinance in 2010. In 2015, when Mr. Gore approached the Town in regards to rezoning and the expansion of the park, one of his main concerns was the RV park is at capacity; he had to put additional storage on the property, and he wanted to be able to do that.

Ms. Strange stated the application for rezoning and the comprehensive plan amendment was submitted in February 2016, and that process is underway. She stated until recently Lady Lake, Inc. did not have approval to do rezoning to develop the land, and it is their position that Lady Lake, Inc. has not developed the land. Ms. Strange recommended that the issues of a Development Order and tree permits be addressed separately.

The Special Magistrate reviewed the 2009 Memorandum of Agreement.

Ms. Strange referred to Exhibit B of the Memorandum of Agreement, paragraphs 3, 4, 5, and 6, stating these show the discrepancy, the understanding, and the Town's acceptance, effectively, of what Mr. Gore had been doing on his property.

The Special Magistrate stated that in the express written terms of the agreement, the owner of the property is allowed to continue the non-conforming uses that were currently occurring at that time (storage), prohibited uses are listed, and the owner must maintain a 20-foot vegetative buffer. She stated she does not read anything that leaves room for the interpretation that Mr. Gore can clear the property to maintain those uses. The document states that he can continue to utilize his property for the items listed in the agreement. The Special Magistrate stated the document does not excuse Mr. Gore from complying with the Town's zoning code changes as that is the responsibility of all property owners.

Ms. Strange stated she understands this; however, the 2010 code at issue did not exist at the time of the 2009 MOA.

The Special Magistrate stated codes and laws change continually, and it is the responsibility of the property owner to do their due diligence by researching which rules apply to them.

Ms. Strange stated she fully understands this. She clarified for the Special Magistrate that the trees in the aerial photograph showing her client's property in 1984 are orange trees planted in rows and not historic trees. She stated her client has the original photograph of the property, and under the Land Development Regulations, orange/citrus trees are not protected by the tree clearing code.

The Special Magistrate stated she cannot identify what kind of trees are in 1984 color aerial photograph.

Ms. Strange stated that her client purchased the property then and he can testify to that.

Ms. Strange stated the permit violation penalty is \$250.00 per tree. The Town is asking for the maximum penalty of \$5,000.00 against Lady Lake, Inc., based on the assumption that the photograph shows trees that were six inches in diameter, or at least 20 trees that were six inches in diameter at the DBH. She stated that the bottom line of this case is the Town does not have the evidence to demonstrate that the maximum trees for the maximum penalty were actually cut down. She stated the Town is seeking the maximum penalty because staff believes the trees that were taken down were protected. She and her client believe that they have the right to store unlimited RV's on this property; they believe Mr. Gore has been clearing the necessary space for the past 28 years to store RV's on this property, and they believe the Town approved that in 2009.

The Special Magistrate stated the 2009 MOA states that Lady Lake, Inc. can use that property to store RV's. It does not sanction continual clearing of land, even though Mr. Gore may have done this in the past. There is no language in the agreement that allows Lady Lake, Inc. to store or build on that property without obtaining a building permit.

Ms. Strange stated she fully agrees.

The Special Magistrate stated it seems that Ms. Strange's interpretation of the agreement is 'since it says you can do that, then you can always do whatever you want to without getting any more permits.' The Special Magistrate stated she does not read that in the agreement. She stated the agreement allows Lady Lake, Inc. to continue to use the property for the RV purposes listed.

There is no language in the agreement regarding how the land was cleared in the past, even if it was overlooked before the Memorandum of Agreement. However, after the Memorandum of Agreement became effective, Lady Lake Inc. was permitted to use the property for the purposes in the agreement. The agreement does not address clearing of land.

Ms. Strange stated she believes the timeline is important because her client completed a full clearing of land in 2004 without any issues. She stated the Special Magistrate made a good point that the land owner must make a reasonable effort.

The Special Magistrate stated Ms. Strange mentions this incident occurred in 2004; the Memorandum of Agreement occurred in 2009. Therefore, anything that happened prior to 2009 is not relevant to the current land clearing.

Ms. Strange stated she understands this; however, it has been done in the past and acknowledged that it does not excuse anything. She stated what she is referring to is the history and the relationship between Lady Lake, Inc. and the Town, what has been done, what has not been done, and how it has been handled. In this case, looking closely at the timeline of what happened, Mr. Gore was doing what he has been doing for 28 years. When it became known on April 26, 2016 that he may need a tree clearing permit, Mr. Gore contacted Ms. Strange because she is working with him on the land development, rezoning, and development project. Ms. Strange stated she then contacted Mr. Schroth.

Ms. Strange stated there are several items that the Town has offered as evidence, one of which is a voicemail. She stated she was not under oath and, quite frankly, did not expect a voicemail to be part of evidence or she would have written a letter to ensure that she was checking her facts. Ms. Strange stated since the Town is offering her conversations with Mr. Schroth, it is worth noting on April 29, 2016 responsive to her voicemail where she stated, "...I'm not familiar with Lady Lake's ordinances...", and she requested Mr. Schroth to telephone her.

At this time, Ms. Strange stated she was testifying under oath.

Ms. Strange stated Mr. Schroth shared with her that a gentleman named Moe had gone to the Town to inform staff that they were clearing trees. Per Ms. Strange, Mr. Schroth stated "if Moe hadn't gone to the Town, there probably never would have been an issue", because this has been done in the past.

The Special Magistrate stated Ms. Strange mentions this has happened in the past, yet this is the first time she is hearing anything of it. She stated even though someone has done something in the past and done so without incident, it does not mean they were not in violation.

Ms. Strange agreed.

The Special Magistrate stated once it is presented to her in a public hearing as a violation, that is all she is looking at. She stated she is not the Town, she is not the resident, she is the trier of the fact and it is irrelevant what happened in the past. The Special Magistrate stated what she is looking at is whether there is currently a violation.

Ms. Strange stated, according to Mr. Schroth in that conversation, that the only trees at issue would be historical trees. She stated she asked Mr. Schroth for clarification and, per Ms.

Strange, Mr. Schroth stated they were 22 inches. Ms. Strange stated this number has to be made up from somewhere.

The Special Magistrate stated, again, that she is not looking at what anyone says. She is looking at what the Town ordinance stipulates and a permit is required when a tree is six inches DBH. She stated she understands Ms. Strange's position in questioning the number of trees. However, there are photographs that show several trees have been cut down that are definitely bigger than six inches.

The Special Magistrate read a portion of an email from Ms. Strange dated June 6, 2016 that stated "the only action he has been taking is to clear the brush, which we confirmed...", and stated brush is different than the six-inch caliber of trees being removed. She stated there may be other things that Ms. Strange has been told that could be correct or incorrect. The Special Magistrate stated she is looking at whether a tree is over six-inches, and whether a tree removal permit or a Development Order is required, depending on what is being removed.

Ms. Strange stated the instruction of 22 inches came from the Town Attorney, and that she is not suggesting that he is correct.

The Special Magistrate stated that information is not before her, nor is the Town Attorney present to testify to that.

Ms. Strange stated that she is testifying to it. She stated that she had asked Mr. Schroth if he would be here and he told her he would not.

The Special Magistrate stated that Ms. Strange is an attorney and is acting on another attorney's verbal information rather than the Town's books of codes and ordinances.

Ms. Strange stated she did not know where this came from. When she called Mr. Schroth and questioned him about the historical tree issue, he did not reference an ordinance. Ms. Strange stated Mr. Schroth said he would send them to her, as stated in the email, and she never received them. She stated Mr. Schroth told her 22 inches and that her client made a caliper measuring 21 inches that they used around trees to ensure they did not violate this. She stated this occurred on April 29th; and on June 2nd, her understanding is brush is under 22 inches. It was not until August 19th that a notice was received stating what ordinance her client was violating, what is at issue, and to cease action.

Ms. Strange stated she was unaware that this was an ordinance that had been adopted. She stated all she knew was there was some tree clearing permit issue and was told 22 inches from an attorney that she is working with on another project. Ms. Strange acknowledged there is a misunderstanding; she stated the Town is holding her client responsible for a maximum fine on something that according to its own testimony, it was aware of on April 26, 2016. Town staff visited the property on May 2nd, May 10th, May 19th, May 26th, June 6th, August 10th, and August 15th, and never issued the Notice of Violation until the work was done. She stated if Town staff had issued that Notice of Violation in a reasonable period of time after they made a reasonable investigation to find out what this apparent violation is, they could have acted on it. She stressed that once the Notice of Violation was received, they did nothing with the trees. She questioned how they can go back and correct something that they investigated via telephone and email correspondence. She argued she does not feel this is the process by which a citizen is punished

to the tune of a maximum penalty of \$5,000.00 because the Town did not take immediate action. She stated action, when it comes to enforcement, is notice of the exact violation and opportunity for hearing.

Ms. Strange stated what was also going on at the same time of the tree permit issue is email from Mr. Carroll in reference to gopher tortoises, and the need for building permits for pouring slabs for RV's.

The Special Magistrate stated she does not have that information before her.

Ms. Strange stated the FWD (meaning Florida Wildlife Commission) was called out to the property on two separate occasions, and both times, the gopher tortoises were determined by FWD to not be at issue. She stated her client has been paying for building permits for slabs for years. The Land Development Regulations do not address building permits for slabs for RV's; it is a mobile vehicle.

The Special Magistrate reiterated she is only concerned with the tree issue.

Ms. Strange stated these are the other situations in which her client has had experience of the Town either with not being familiar with its own ordinances or not enforcing them in a way that is appropriate under the ordinances. She stated that this case in point, development without a Development Order, if you look at the exceptions.

Ms. Strange presented the Special Magistrate with a copy of the Development Order.

Referencing Section 3-1, Subsection (b) Exceptions to the Requirement for a Development Order, Ms. Strange read, "a Development Order is not required for the following activities when the proposed development conforms to the standards and permitting requirements of the Town of Lady Lake Land Development Regulations". Ms. Strange read from Subsection 6 "clearing of trees or vegetation, changing of grade or alteration of wetlands when independent of other development activity". She stated the definition of development per the Land Development Regulations is "any significant manmade change to improve an unimproved real estate including but not limited to buildings or other structures, mining or drudging, filling or grading, paving or excavating, permanent storage of materials, or dividing of land into two parcels". She emphasized none of these were being done.

The Special Magistrate requested to see Ms. Strange's portion of the Land Development Regulations. The section included in her meeting packet is 3-1 Development Order, and read "no development shall be undertaken unless the activity is authorized by a Development Order reflecting conformance with the requirements of the Code" and "a Development Order shall be issued by the Town only after the approval of conceptual or final development plans or a Memorandum of Agreement, as required by the Land Development Regulations. A Development Order allows for the initiation of development activities, including land clearing".

Ms. Strange clarified that is if this is done in conjunction with another kind of development; stating it is accepted under Subsection B of that same regulation.

The Special Magistrate stated it does not say it has to be "in connection". The regulations states, "including land clearing, site preparation, utility construction, road construction, building

construction or for the rezoning of land". The regulations do not say, "in connection with development". She stated the Land Development Regulations specifies a Development Order is required if you are doing land clearing.

The Special Magistrate read from Chapter 10-5 - Tree Protection, "it shall be unlawful and subject to the penalties provided herein to remove, relocate, destroy or damage any protected tree without first obtaining a permit".

Ms. Strange stated, again, there are two violations cited; one is development without a Development Order and the other is removing the trees. She argued that regarding the development without a Development Order, the Town is ignoring the exception under Subsection B(6).

The Special Magistrate stated the exception is in a Development Order, therefore, the broad Development Order is not required when you are in compliance with the code. She stated it may be Ms. Strange's interpretation that her client does not need a Development Order, but then he would still be required to obtain a tree permit. She stressed there is no way the Town codes are going to decree it is always accepted to clear trees. Mr. Gore must in compliance with the tree permit which is Section 10-5.

Ms. Strange reminded the Special Magistrate that she mentioned at the beginning of her testimony that this is going to come back to the tree permit because all these other issues are not applicable. She stated she shared the gopher issue and the slab issue so the Special Magistrate understands her client's experience of the Town handling its Land Development Regulations. She argued she contacted the Town's attorney to address this phone call and it "dies on the vine"; he calls me stating '22 inches', 'I'll send you the ordinance', which he does not, and her client is measuring trees so he does not violate what we believe to be what the Town is concerned about.

Ms. Strange stated if the Town was taking this violation seriously, the notice should have come the first week of May, which she believes at that point, there would not have any trees that would have been in violation and they would have known what ordinance to review. She stated their concern is the four-month delay and the communications that happened between both parties.

Ms. Strange stated her client loves this town he will tell you all of the things he does with the town and the people in it and he is not here making an effort to be a bad guy. She stated in this case, their biggest issue is the delay put them at a \$5,000.00 fine for something that her client genuinely believed, right or wrong, he had the right to do and did not get notice of the exact violation until four months later.

Ms. Strange stated the emails refer to development, and maintained her client was not developing. There is a question of where the utilities are going. There are no utilities. None of this is going on. The gopher tortoises...we are chasing tortoises on our property. We were told we could not put up a nylon net knee wall so the tortoises do not migrate onto the property because it would be considered development. These are things that are all going on in the development process that apparently put us on the radar of clearing that we have done in the past.

The Special Magistrate requested clarification from staff.

The Special Magistrate reminded all in attendance that she looks at the current codes and if property owners are in compliance with the current codes. What has been raised regarding the allegation of the violation of the Development Order Chapter 3-1(b) there has been information presented calling into question that violation 3.1 does provide that after the memorandum agreement is done you get your Development Order for clearing of trees. She read, "...It does not apply to independent development activity..."

Mr. Carroll referred to page 5 of 8 of Resolution 2009-125, specifically the portion regarding grandfathering the property, and stated the term "grandfathering" is interpreted to accept the uses that are presently on the property. He stated Mr. Gore's property was zoned MX-8 in 2009 and the Town Commission grandfathered the RV storage and the other uses that were occurring on the property prior to this Memorandum of Agreement. However, when property is grandfathered, those uses are not expanded.

Mr. Carroll stated staff's interpretation coincides with what the Special Magistrate eluded to earlier in that Mr. Gore is permitted to store vehicles on that area, that he is permitted to use the 26 acres. He emphasized that the Memorandum of Agreement does not permit Mr. Gore to expand and perform additional clearing to expand the storage of those uses. Mr. Carroll acknowledged that a gentleman, Moe, came to staff earlier in the year and inquired about land clearing; this was prior to the zoning hearing regarding the land use and rezoning case that Mr. Gore and Ms. Strange were engaged in at that time. He stated that staff told this gentleman that no trees greater than six inches can be cleared, per the Town ordinance, and this gentleman said that Mr. Gore would like to get some clearing done for the storage. Mr. Carroll stated he told this gentleman that after the zoning hearing, potentially we can come to an agreement to get something done prior to the zoning approval. He stated there was no further communication from this gentleman.

Mr. Carroll stated that Mr. Gore was concerned that if the zoning went through and the land use went through that he might potentially lose some of the uses that he was vested to in this Memorandum of Agreement. He stated he did confirm with Mr. Gore that he would not lose any of his uses, that Mr. Gore was entitled to all of the uses in this agreement and those have been incorporated into the current proposal of the current rezoning and land use. The Memorandum of Agreement was executed and those uses were acknowledged in the document.

Mr. Carroll stressed as follow up to the Memorandum of Agreement the proper procedure from Mr. Gore was to notify staff of his desire to perform additional clearing up to the buffers. Staff needed to be informed that the sizes of the trees are unknown although they are well aware that many of them do exceed the six-inch requirement. He stated the Development Order ensures that no endangered species are present and other environmental concerns. None the less the clearing took place.

Mr. Carroll clarified the landscaping code was approved prior to 2010. He stated the Town has had mitigation for trees as early as 2007 for historic trees; historic is defined as 36 inches or greater.

Mr. Carroll stated he cannot confirm there were historic trees on this property. However, we do know that many trees were six inches DBH or greater.

Mr. Carroll stated his concern is that not knowing the code, he is puzzled by the emails stating they are only clearing shrubs, yet they have confirmed that only trees three inches or less are being cleared. He stated this point is stressed; he does not understand why that point is stressed if the understanding is 22 inches or less. He stated he cannot confirm what conversation Ms. Strange had with Mr. Schroth.

The Special Magistrate asked Mr. Carroll if he is aware of any 22 inches in the codes.

Mr. Carroll stated he is not.

The Special Magistrate clarified the code stipulates six inches to 36 inches.

Mr. Carroll stated the Town has redefined the codes recently; six inches or less are exempt with the tiers being 6-20 inches, 21-36 inches, and 36 inches and greater is considered historic. He stated if trees are being removed individually, any tree greater than six inches requires a tree removal permit or it would be addressed with a Development Order. In the case of a Development Order, a landscaping plan is presented and trees are identified by diameter and it is indicated which trees are to be removed.

Mr. Carroll stated the Town is not opposed to Mr. Gore utilizing the property for storage. However, Mr. Gore did not approach Town staff with a Development Order to clear out those remaining trees. As far as what occurred in 2004 and 1998, staff's interpretation is just as the Special Magistrate stated, what happened in the past does not mean that going forward from the execution of the Memorandum of Agreement allows Mr. Gore to clear trees while other parties would be subject to permit requirements. Mr. Carroll stated Mr. Gore has clearly expanded a grandfathered use. He stated the tree inventory needs to be assessed and Mr. Gore needs to obtain a Development Order for it.

The Special Magistrate clarified under Section 3.1, the charge of not having a Development Order is based on Section B(6) exception does not apply because they are not independent of development activity because they are expanding their use; therefore it is a development activity.

Mr. Carroll stated the Special Magistrate is correct; they are expanding the storage area. He stated although that in itself is acceptable, the footprint of the use is being expanded, which is in contrast to what a grandfathered use is. Therefore, the proper procedure is to come to the Town to convey his desire to clear the remaining trees in order to utilize the additional area as he is entitled to under the Memorandum of Agreement.

Regarding the issue of notification, Mr. Carroll confirmed Mr. Gore was not notified through the code enforcement process until August, although he stated there is an earlier email correspondence from himself to Ms. Strange telling them to cease activity immediately.

The Special Magistrate asked when was the first communication telling them to stop until compliance with the codes were met.

Mr. Carroll replied it was the email correspondence earlier in the year on June 2nd. He stated the Town could not assess the size of the trees that he was clearing, and it became evident that the area was getting thinner and thinner, and gopher tortoises, which are not a part of this. There were issues on the property and subsequent to that email, clearing continued to the point that

even the landscaping buffer has been eradicated, and it was understood by both parties that it needed to remain in place.

The Special Magistrate read a portion of an email correspondence from Derek Schroth to Alison Strange on April 27, 2016 that stated: "Thank you for your email. He can maintain the buffer by removing any new trees growing within the buffer. However, any site clearing or site preparation outside the buffer requires a Development Order", and then Mr. Schroth requests the sizes of those trees.

Regarding the orange trees, the Special Magistrate stated the photographs she has do not show orange trees. These photographs are dated May 2016, May 19th and May 26th.

Ms. Strange stated the aerial photographs show orange trees.

The Special Magistrate stated she is not certain those are relevant because the trees in the photographs she is looking at are not orange trees. She stated she cannot identify the trees in the aerial photographs. She stated the trees that are in question that are being alleged to being removed without a Development Order or a permit are not orange trees.

The Special Magistrate read a portion of an email correspondence dated June 2, 2016 addressed to Alison Strange from Thad Carroll, Growth Management Director: "Please advise Mr. Gore to cease activity on the property immediately. I will be contacting the Florida Fish and Wildlife Commission to conduct an inspection ...(regarding) tortoises...significant fines...".

The Special Magistrate continued reading a prior portion of the June 2nd email that stated: "Alison, Good afternoon, As noted by the photo, Mr. Gore is conducting significant clearing on the property. Two days ago, our Code Enforcement Officer obtained a photo...of (the)...tortoises. In addition, the removal of trees and utilization of heavy equipment on the property has been noted by our Public Works Department. The property owner has not called in locates for the utility...". The Special Magistrate stated this was presented earlier by staff. She continued reading from the June 2nd email correspondence: "...which is a prerequisite of a development activity to ensure that electric, water, sewer, etc. lines are not severed or ruptured, and Mr. Gore was advised to cease activity on the property.

Ms. Strange spoke from the audience, but it was inaudible on the recording.

The Special Magistrate stated Mr. Carroll raised several issues as to what was taking place on Mr. Gore's property and advised Mr. Gore to cease activity.

Ms. Strange again spoke from the audience and it was inaudible on the recording.

The Special Magistrate emphasized her responsibility is to review the code and the Memorandum of Agreement before her. She stated, per the MOA, if Mr. Gore is going to clear land, the next step is to obtain a Development Order; or if Mr. Gore is removing single trees, a tree removal permit is required. She stated there is an exception to these stipulations if you are independent of other development activity, and staff has stated this exception does not apply because Mr. Gore is expanding the grandfathered use to clear that land to for additional RV storage.

Ms. Strange stated that is Town staff's position, and included in the Memorandum of Agreement is a drawing of the property. She stated Mr. Gore did not expand the use; it is the same property that had the same use.

Ms. Strange stated in her conversation with Attorney Schroth, he stated if you are developing *within* the buffer, you do not need a permit. If you are *outside* of the buffer, then you do need a Development Order. She stated everything that was done was within the buffer.

Ms. Strange stated by looking at it from their perspective, the same way as looking at it from the Town's perspective, it appears they are being told that the only issue within the buffer is historical trees which they understood to be 22 inches. She stated then they get notices that they have gopher tortoises.

The Special Magistrate stated she was not given any evidence regarding 22 inches inside the buffer; it is not in the codes.

Ms. Strange stated she was not aware the evidence for this hearing had to be in writing.

The Special Magistrate stated she is looking at what the code is.

Ms. Strange stated she did not mean it was not the code.

The Special Magistrate stressed if the code stipulates six inches or 36 inches, that is the rule. She stated even if you received incorrect information from an attorney, you must follow the rules.

Ms. Strange clarified owners of Lady Lake should read the entire Lady Lake Land Development Regulations to figure out what they might be doing.

The Special Magistrate stated this is correct.

Ms. Strange continued by stating that when staff does not direct them to it, the Town Attorney cannot direct them to it and staff does not notify her client for four months. She speculated that she and her client are supposed to read between the lines on an email from June 2nd that references land clearing and gopher tortoises. She stated the issue for months was tortoises.

Ms. Strange stated now that the Special Magistrate has the benefit of the Notice of Violation, all of this is clear. She argued that this goes back to communication, and asked if the Town intended to penalize Lady Lake, Inc. for clearing trees, why did staff visit the property five times, after she had an exchange with Derek Schroth, after a phone call between Grant Gore and Thad Carroll, and then wait four months to issue a Notice of Violation.

Ms. Strange stated the 'cease and desist' email stated there are gopher tortoises on the property and that there are penalties if Mr. Gore continued to do this with gopher tortoises on his property. She stated the clearing was stopped and was sorted out with FWD, and for it to be offered now as evidence that they knew all along that they were violating the tree clearing permit requirement is not appropriate in her opinion.

Ms. Strange stated that regarding communication between the parties, again in April of 2015, Mr. Gore stated he did not want to rezone his property because it would not allow him to clear

his trees. Per Ms. Strange, Derek Schroth stated in April 2016 that the Town is only concerned about historical trees within the buffer. She stressed these things all happened and affected Mr. Gore in how he perceived what he was doing; he is not out there 'flipping the proverbial bird' at the town. She stated Mr. Gore was genuinely asking questions and he was not receiving complete information. She stated if the Town would have informed them six months ago, the clearing would have stopped.

The Special Magistrate stated if they believe Town staff gave them incorrect information and they have grounds for estoppel or for declaratory action or some other legal based on that good faith reliance, that is outside her realm. She reiterated that she looks at the code.

Ms. Strange stated she disagrees.

The Special Magistrate stated her jurisdiction is whether the facts indicate that there is a violation the code.

Ms. Strange stated the Special Magistrate weighs the facts and looks at how this was applied. She agreed the next step would be an appeal, but they would probably not spend money on an appeal. She stated an appeal would be Mr. Gore's decision, but it is ludicrous. Ms. Strange argued that the Special Magistrate cannot prove that the town has demonstrated that twenty trees were cut down that were six inches or more; she stated it is impossible; it is not in the record.

The Special Magistrate reiterated that she looks at the portions of the code relative to the violation; tree permits are required, and everyone agrees no tree permit was obtained. The Special Magistrate confirmed that she cannot determine the number of trees that were removed, yet she has photographs showing trees being removed in excess of the parameters.

Ms. Strange stated the photographs show some trees, perhaps many.

Mr. Carroll referred back to the email correspondence dated April 28, 2016, where in the voicemail Ms. Strange states, "I am not familiar with Lady Lake ordinances, but basically, Mr. Gore is looking to clear out some overgrowth he's had. It's all new growth. Everything he said is three inches or less across."

Mr. Carroll pointed out that Ms. Strange mentions "three inches or less", which seems to imply that there is an understanding that six inches or more would require a permit. Also, if someone is not familiar with Lady Lake's ordinances and is assessing a violation of the Town's ordinances, at that time, it should be up to the client or the client's attorney to do their due diligence to ensure that they are in compliance with the code.

Ms. Strange made a comment from the audience which was inaudible on the recording.

The Special Magistrate stated she agrees with Mr. Carroll. She stated a property owner has the obligation to be familiar with the codes or hire an attorney. In this case, the owner did his due diligence and hired an attorney; and that attorney has to become familiar with the codes. The Special Magistrate stated she is a land-use attorney as well.

Ms. Strange again commented from the audience, which was mostly inaudible on the recording, although she argued that they were not given a Notice of Violation.

The Special Magistrate restated that her jurisdiction is to look at the codes to determine if there is proof that the codes have been violated. The Special Magistrate stated all of the codes are public record and it was her due diligence.

Ms. Strange argued again from the audience that the Town did not give them a violation notice

The Special Magistrate informed Ms. Strange she needed to be on the record for whatever she is saying (by speaking at the podium).

Mr. Carroll stated he informed them the land clearing required a permit or a D.O. If there was question at that point why a D.O. was required, it could have been contested at that time.

The Special Magistrate asked when the written notice was given.

Ms. Strange stated it was August 19, 2016.

The Special Magistrate stated this is undisputed.

Ms. Strange stated her comment about “isn’t this America” ...

Ms. Bilbrey stated the correct date of the Notice of Violation is August 17, 2016.

Ms. Strange stated it was signed for August 19th.

The Special Magistrate clarified the Notice of Violation was written August 17th; signed for on August 19th, and stated she is not getting into the “America” argument.

Ms. Strange asked who has the burden.

The Special Magistrate stated that the burden is on the Town to show that there is a violation of a code.

Ms. Strange stated that the Special Magistrate will take evidence that Ms. Strange said they were three-inch trees, but she will not take evidence that Derek said they were 22 inches. She stated that is completely ignoring evidence; that was a voice mail.

The Special Magistrate directed Ms. Strange to come into order immediately. She stated Ms. Strange does not know what she is taking into consideration. She stated she has a lot of information in front of her; in particular, as previously stated many times, are the photographs. She emphasized that no one has disputed the photographs. The Special Magistrate stated she has not heard Ms. Strange dispute the photographs, nor has Ms. Strange stated these photographs are not correct depictions of the property. She stated these photographs show several trees that have been removed that are larger than six inches. She stated they are not exempted trees; they are not orange trees; there are photographs dated August 17th, August 18th, and August 24th, showing that there are several trees being removed with a diameter that is larger than what is allowed to be removed without a permit.

Ms. Strange asked the Special Magistrate how she knows this.

The Special Magistrate stated the photographs presented are undisputed. She stated she has not heard testimony from Ms. Strange or her client stating those photographs are not from his property.

Ms. Strange stated she has disputed the diameter of the trees by saying there is no way to know how many of those trees were six inches DBH.

Ms. Strange stated since the Special Magistrate addressed her responsibility as the attorney, that certainly they could have investigated the violation if they had known what it was. She stated they did not have Notice of the Violation until August 19th. She does not believe anyone would agree a phone call is sufficient notice.

The Special Magistrate stated when the written notice was delivered stating the land was cleared, is it her testimony under oath that there were no trees removed that were larger than six inches.

Ms. Strange asked her client, Grant Gore, to answer.

Mr. Gore answered from the audience by asking, "Once I got noticed?"

The Special Magistrate asked Mr. Gore to come up and state his name for the record. She stated it really does not matter when he received notice because the question is whether trees were removed without a permit.

Grant Gore introduced himself as owner of the subject property, and stated he had a meeting with the Town Manager, Mr. Carroll, the Town Attorney, and C.T, Eagle over a year ago. He stated Mr. Carroll brought up the opportunity of expanding the RV park to him, and that they talk all the time, and that he does not understand all the legal stuff.

The Special Magistrate questioned if Mr. Gore is inferring the Town can verbally give him the right to expand something without even following any of the expansions in the codes. She stated he cannot do that.

Ms. Strange stated Mr. Gore did not expand anything.

Mr. Gore stated again that he does not know a lot of the legal stuff. He stated that he and Mr. Carroll talk frequently and he asks him a variety of questions, and relies on Mr. Carroll's answers, as well as the Town Commissioners' answers. Mr. Gore stated that at the 2015 meeting, Mr. Carroll stated in order for Mr. Gore to get his RV park going, he needed to change the zoning. He stated his reply to that was that he did not want to change the zoning because he did not want to lose his right to remove trees.

Mr. Gore stated when the grandfathering ordinance was discussed with the Commissioners, one of the issues discussed was Mr. Gore removing trees. He stated the Commissioners suggested he store unlimited RV's on the property and maintain a twenty-foot buffer. Mr. Gore stated this was acceptable to him because the property will be grandfathered and the trees were a big issue at the Commission meeting when the MOA was written. He stated he did not complain about the twenty-foot buffer because the Town Manager at the time, Bill Vance, was telling Mr. Gore to shut down his property. Mr. Gore stated Mr. Vance found him in violation of sixty different

building codes in the park and told him to shut down the RV park; found him in violation with his storage lot and told him to shut everything down.

Mr. Gore stated they worked through all of the different issues; one of which was the grandfathering of his property. He stated he had been clearing trees and did a major tree removal in 2004, and when he approached the town regarding RV storage, they said they had no problem with it and that he needed to maintain a twenty-foot buffer. Mr. Gore asked why would they tell him a 20-foot buffer instead of language that said you can only store RV's where there is not a tree. He stated it was his belief that because he had an agreement with the Commission and it was written in an ordinance, and now he is told they wrote a rule that he was not aware of. Mr. Gore stated no one told him he could not remove trees at the 2015 meeting, and he specifically brought up that issue.

Mr. Gore stated because he believed he could remove trees, and prior to tree removal on his property, he had a representative inform the Town that trees are going to be removed. Town staff informed his representative that they could not do that; only trees three inches or less can be removed, so trees three inches or less were removed during the first two weeks.

Mr. Gore stated also during this time, Alison is talking to Derek and Thad, and he and Thad had a conversation. Per Mr. Gore, Thad stated it was kind of a gray area; he did not say they could not do it, and he did not say they could do it. Mr. Gore stated he read into the document and all the previous conversations with the Town that he has the right to do this. He stated Mr. Carroll advised him to wait for a Development Order. Mr. Gore stated he could not wait for a Development Order due to the amount of money and machinery, and he needed to prepare the storage lot. He stated building an RV park was secondary and that he still does not have the ERU's worked out for the RV park. Mr. Gore stated he can utilize the property for storage even if the plans for the RV park are not worked out regarding the ERUs.

Mr. Gore stated in order to prepare for this season, he needed to clear the property and plant grass as this prevents the RVs from sinking. Therefore, he moved forward with clearing the land. He stated, meanwhile, discussions were taking place back and forth. He stated Ms. Strange telephoned him saying Derek (Mr. Schroth) told her he can take anything up to 22 inches. He stated he made a caliper that is 21 inches, measured trees and removed trees that were 21 inches and smaller. Mr. Gore stated he did not remove any trees once the Notice of Violation was received.

Mr. Gore stated that all he can do is rely on the Town to tell him what is right and if the Special Magistrate is saying the Town can tell him one thing, then later on he finds out it is not true and he cannot rely on their words, then that is a new education for him.

The Special Magistrate stated she does not have the jurisdiction to waive or do away with the codes that are in place and adopted by elected officials based on a misunderstanding, based on a misrepresentation, or based on an out and out lie. She stressed those instances do not give her the right to say she believes his word over their word.

The Special Magistrate stated she only looks at whether there is a violation of the rules. She stated if there is something beyond that, Mr. Gore may have other rights that his attorney can look into for declaratory action or something else with the Town. She stated that is outside her purview.

The Special Magistrate stated even if she whole-heartily believed what Mr. Gore and his attorney have said, and believed that this history is convoluted and that someone is out to get him or was out to get rid of your grandfathering; even if all of that was taken as truth, she emphasized that she does not have the right to not enforce the codes. She stated she is here to enforce the Town's codes as they are; any other matters are outside of her jurisdiction.

Ms. Strange stated the Special Magistrate can determine an appropriate fine.

The Special Magistrate agreed. She emphasized the other issues raised by Ms. Strange suggesting the Special Magistrate not impose the code, or because Ms. Strange was told trees measuring 22 inches can be removed and they cannot be held to the six-inch requirement are irrelevant.

Ms. Strange stated she apologizes if that is how it came across.

The Special Magistrate stated that is how it came across.

Ms. Strange stated her intent was to effect the listener, meaning the Special Magistrate, on why they are here because she will make the decision on what this fine will be. She stated if the Special Magistrate can hear all of the facts, the emotion, and the conversation from their perspective. She stated they wanted to know if the Special Magistrate felt like the grandfathering provision exempted and allowed the clearing, and if not, to take into consideration all of this history, all of these relationships and the circumstances; and if she is going to determine that Lady Lake, Inc. acted outside the scope, to please consider all the facts when determining what the fine should be and what is appropriate under the circumstances.

Ms. Strange apologized if her testimony came across in any way other than that. She stated when the time comes for the Special Magistrate's discretion on what is an appropriate penalty, all of these facts in the story matter. She agreed with the Special Magistrate that code is the code. Ms. Strange stated the only question is whether the Memorandum of Agreement applies, and if not, then what is an appropriate fine under these circumstances.

The Special Magistrate stated that is how it should have been presented, without all the "he said, she said". She stated once all of the facts have been presented, she weighs them with credibility and she specifically told Ms. Strange that she was looking at the pictures presented by staff, not some phone call, not the emails. She stressed that the code provides a tree permit or a Development Order is required in some cases.

The Special Magistrate informed all in attendance that it is her discretion when determining the fine. She stated, in fact, Chapter 162 stipulates how limited her discretion is in that capacity; it is not unbridled discretion. Chapter 162 instructs that when determining the fine, the Special Magistrate is permitted to only take into consideration the gravity of the violation, any actions taken by the violator to correct the violation, and the previous violations committed. She asked staff if this property owner has been found guilty of previous violations on this property. Using the tree removal in this case as an example of the gravity of the violation, the Special Magistrate stated staff is stating this is very grave because the trees cannot be grown back, and there are no actions taken to correct the violation.

Mr. Carroll replied that the clearing has been done and this is the violation that staff is citing. He stated there have been no previous violations.

The Special Magistrate stated in regard to the Memorandum of Agreement she read the expressed language of it and did not read any language allowing Mr. Gore to forever clear trees without making sure there are not any current codes in place regarding that. She stated she is not going outside the expressed written agreement. The Special Magistrate stated current codes state a tree permit or a Development Order is required.

The Special Magistrate stated based on all of the testimony and evidence, it is clear there has been tree removal on this property. She stressed it is not clear how many, it is not clear what all of the diameters of each of them are, and no one has refuted the fact that trees have been cleared within the buffer and outside the buffer.

Mr. Gore stated the reason he did not fight the buffer and kept it to himself this entire time is that the buffer that the Town drew is actually Clay Street and Oak Street. He stated he has touched nothing in the buffer because the buffers are the roads.

The Special Magistrate replied that if it is a landscape buffer, it would not be roads because there is no landscaping in the roads.

The Special Magistrate deliberated that what is being requested is that there is a violation of Land Development Regulations Chapter 3-1 for not having a Development Order to clear the trees, and violation of LDR Chapter 10-5(a) - tree removal permit required. She stated she is not inclined to address both of these because if Mr. Gore had a Development Order it would cover all of these violations; they are basically the same. Therefore, since there are questions regarding the Development Order, she is leaning toward the tree removal permit. She stated there is a request for a fine to be paid; other clients and cities request a fine and/or replacement of trees and that option is not presented. The Special Magistrate stated that staff is requesting the maximum fine of \$5,000 because of the irreparable harm and the nature of removal of trees; that they are gone and nothing can be done about it. She stated that testimony from the owner and the owner's representative is that they would not have taken down as many trees had they been notified earlier to stop.

The Special Magistrate verified this is not a repeat case.

The Special Magistrate asked for the record if there was anyone else in attendance who wished to speak on this matter. There were none.

The Special Magistrate stated initially that based on all of the testimony and evidence, which includes the photographs, she did not want to find for both violations for the Development Order and tree permits required in Case No. 16-6092, Town of Lady Lake vs. Lady Lake, Inc., regarding the property situated at 609 Highway 466, Alternate Key 1120829. She then stated Lady Lake, Inc. is in violation of Chapter 3-1 for not having a Development Order as required by the current Land Development Regulations and for Land Development Regulations Chapter 10-5 regarding the tree permit being required; that there is evidence and testimony to support those two violations, they do exist. She stated the proposed order will need to be revised.

The Special Magistrate asked if there is any corrective action being proposed by staff, and if so, what it would be.

Mr. Carroll replied any corrective action would come as a result of a site plan should one be submitted in the future.

The Special Magistrate questioned that both parties indicated they were both working on a site plan.

Mr. Carroll stated no site plan application has been submitted at this time; currently they are at the end of the zoning and the land use entitlement process, although they anticipate a site plan submittal.

The Special Magistrate reviewed the proposed order, and stated if the property owner is found in violation of both, then the Development Order would have to be obtained and the tree permit would have to be obtained. She asked how long it would take if they were able to do that.

Mr. Carroll replied the Development Order would be some time off. The tree permit would not on the table at this point and would probably have to be stricken from the recommendation because staff does not know what sizes those trees were to assess the appropriate fines.

The Special Magistrate stated that her dilemma with the Development Order being required; because trees were removed and there are photographs to indicate there were some removed in excess of six inches.

Mr. Gore commented that he has planted over 3,000 trees in the existing RV park that did not exist when he built the property. He stated if they are able to work things out with the ERU's with the Town, then he will go forward with the RV park and he guarantees he will plant a lot of trees.

The Special Magistrate stated even if a homeowner plants trees, once a tree grows to a certain size, a tree permit is required to remove it. She stated once Mr. Gore gets his Development Order, he will be in compliance with that.

The Special Magistrate apologized for her deliberations, stating this is rather a convoluted case. She stated that based on the recommendation of staff, she will not make a finding of guilt regarding Chapter 10-5 - Tree Protection. She stated she will now deliberate on the finding of guilt regarding Chapter 3-1, requiring the Development Order to be obtained from the Town. She asked staff what a reasonable amount of time would be to obtain that; what the process is.

Ms. Strange spoke from the audience again, but it was inaudible on the recording.

Mr. Carroll stated the irreparable, irreversible harm is what was cited for the \$5,000 fine, and a corrective action could be replanting of the trees if it is the Special Magistrate's opinion that it negates the irreparable harm. He stated that trees will be planted as part of the site plan process should the Development Order be approved, although the timing is hard to estimate. He advised the zoning period is currently in process; and it will be approximately another 30 days before the Department of Economic Opportunity renders their opinion regarding the land use amendment. Subsequent to that, permits need to be obtained from St. John's and DEP, obtain staff approvals,

and negotiate utility with Mr. Gore. He stated this process could be completed as soon as nine months or take as long as three years.

Ms. Strange stated that looking at the corrective action possibilities, they are already in the final stages of the final site plan and have a proposed agreement that is ready to go. She suggested that it be written that Mr. Gore does not do any additional clearing without a permit or takes no further action without a permit, but submits a plan within a certain number of days. She stated they could do that immediately.

The Special Magistrate stated the corrective action recommendation comes from staff, which is a Development Order. The two parties will need to meet the corrective action within the time frame imposed by the Special Magistrate.

Mr. Carroll stated if the Development Order is obtained, that does not negate the fact that all of the trees have been removed and there is no way to conduct an inventory at this point as to what trees were removed and their sizes.

The Special Magistrate asked if there is a corrective action in this regard; or if it is irreparable.

Mr. Carroll replied if Mr. Gore had a Development Order and continued the tree removal, that would be a corrective action. However, given that everything is complete, there is no corrective action at this point. He stated that over time there will be a site plan and replanting will occur; but at this point, staff deems the actions as irreparable.

The Special Magistrate stated in summation for the record that the findings of fact are there is a violation of LDR Chapter 3-1(a) for not having a Development Order prior to the clearing of the trees, and that in light of the fact that the number of trees removed in excess of the allowed diameters is unknown, a finding based on the testimony and evidence including everything discussed is that the violations are irreparable or irreversible in nature. A fine of \$1,500.00 will be imposed to be paid within 30 days since no corrective action can be taken at this time.

The Special Magistrate requested staff draft a revised Order of Enforcement citing a violation of Chapter 3-1 - Development Order.

Special Magistrate Valerie Fuchs stated that based on the testimony and evidence presented on Case No. 16-6092, she did find the owner in violation of the Town of Lady Lake's Land Development Regulations Chapter 3-1(a) - Development Order, and imposed a fine of \$1,500.00 to be paid within thirty days of today's hearing date. No corrective action will be taken at this time based on the finding by the Special Magistrate that it is irreparable and irreversible in nature. If the owner fails to pay the fine within thirty days, it will be recorded as a lien against the property. The Special Magistrate stated the property owner will get a copy of this order.

NEW BUSINESS:

2. Case No. 16-6123 – 134 Shenandoah Ave. – Kristal Pratt – Town of Lady Lake Code of Ordinances Chapter 7-46 - Unlawful Storage of Junk/ Debris

This case came into compliance prior to the meeting.

3. Case No. 16-6133 – 127 Griffin View Dr. – Darby Trail Investment, LLC – Town of Lady Lake Code of Ordinances Chapter 20-52 - Property Maintenance; Exterior Appearance

This case came into compliance prior to the meeting.

4. Case No. 16-5930 – 608 Tarrson Blvd. – Branch Banking and Trust Company c/o Robert Coplen, P.A. – Town of Lady Lake Code of Ordinances Chapter 20-78 - Abandoned Property Registration.

This case came into compliance prior to the meeting.

OTHER BUSINESS:

5. Selection of Alternate Meeting Dates for November & December 2016

Ms. Bilbrey stated the following alternative dates for the next two months have been scheduled: November 15, 2016 at 1:00 p.m. and December 15, 2016 at 10:30 a.m.

The Special Magistrate requested an alternate date for the December meeting. Ms. Bilbrey will notify the Special Magistrate of the alternate date.

The dates for the 2017 Special Magistrate Calendar were presented as follows:

Tuesday, January 24
Tuesday, February 28
Tuesday, March 28
Tuesday, April 25
Tuesday, May 23
Tuesday, June 27
Tuesday, July 25
Tuesday, August 22
Tuesday, September 26
Tuesday, October 24
Tuesday, November 28, alternate date to be determined
Tuesday, December 26, alternate date to be determined

ADJOURN: *With no further business to discuss, the meeting was adjourned at 12:11 p.m.*

Carol Osborne, Staff Assistant to Town Clerk

Valerie Fuchs, Special Magistrate

Transcribed by Carol Osborne, Staff Assistant to Town Clerk