

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

**November 28, 2017**

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; Wendy Then, Senior Planner; C.T. Eagle, Public Works Director; Chief McKinstry and Captain Jason Brough, Police Department; Pam Winegardner, Finance Director; Kris Kollgaard, Town Manager; 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 October 24, 2017 Minutes:** The Special Magistrate signed and accepted the October 24, 2017 meeting minutes into the record as presented.

**EXPLANATION OF PROCEDURE:** 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 as this would be a violation of ex-parte rules, other than cases that have been continued from a public meeting. She explained that staff will present their case and testimony, which may include photographs that defendants have a right to see if it pertains to their case, 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. The Special Magistrate will ask any questions if need be 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.

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

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

Code Enforcement Officer Michelle Bilbrey stated the following agenda item is now compliant: Item #1 – Case No. 17-6426.

**NEW BUSINESS:**

**1. Case No. 17-6504 – 458 Winners Circle – Terri s. Crouse – Town of Lady Lake Code of Ordinances Chapter 20-17(a) Property Maintenance – Light/Window Requirement; Town of Lady Lake Land Development Regulations Chapter 9-2(h)(1) – Outside Storage; and Town of Lady Lake Code of Ordinances Chapter 7-67 – High Grass, Garbage, Trash**

This case is now in compliance.

**2. 17-6562 – 103, 108 & 107 Neil Ct. – Lake County Citrus Sales – Town of Lady Lake Code of Ordinances Chapter 20-18(e) - Property Maintenance-Plumbing/Septic Requirement; Town of Lady Lake Code of Ordinances Chapter 20-21(i) – Property Maintenance-Sanitary**

**System Maintenance; Town of Lady Lake Code of Ordinances Chapter 20-19(a) 1&2 –  
Property Maintenance – General Maintenance**

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

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

- On October 9<sup>th</sup>, 2017 Gail Seymour came into the Lady Lake Building Department and filled out a Code Enforcement Complainant form.
- Ms. Bilbrey stated that she contacted Gail at the phone number provided; Ms. Seymour advised that her son was living in the unit at 103 Neil Ct. and that he only lived there for a short period of time. Ms. Seymour stated that he wasn't there all week most days so he was not initially aware of any problems, until after the storm (Hurricane Irma). Ms. Seymour stated to Ms. Bilbrey that the toilets were backing up and the landlord had the excuse that the city was going to put in sewers and that next door at 105 Neil Ct had problems with the toilet, too. Ms. Seymour stated that the toilets were overflowing onto the floors and that "stuff" was coming up from the sewer. She went on to say that the septic tank outside had overflowed into the parking lot where kids play. Ms. Seymour stated that her son was afraid to flush the toilets anymore and that he moved out on October 4<sup>th</sup> because of the septic issues. Ms. Seymour stated that she is still awaiting the return of her deposit.
- Ms. Bilbrey stated that she telephoned the son of Gail Seymour, Brian Anderson, who was the former tenant at unit #103; he stated he currently resides in Maine. Ms. Bilbrey stated that she asked him why he moved from the apartment at 103 Neil Ct., and he provided Ms. Bilbrey with the following statement:
  - "Our toilets were backed up from the time I moved in; every time we went to use the toilet, it wouldn't flush. The landlord didn't do anything until it start affecting the whole building. They called someone to drain it; they said the roots had grown through the pipes and they needed a new pipe. It worked the rest of the day, but once a shower was taken in the building, we couldn't flush the toilets again from that point on. We would have to manually plunge it down; it took 20 minutes. Raw sewage back-flowed into the outside; it was visible on the outside of the building. It was atrocious. The landlord said she knew there was a problem, but that she was waiting on the city to put in sewer. Others in the apartment complex told me it was an ongoing problem as well. A neighbor told me that two years ago there was a same problem where the septic backed up into homes and they were removing garbage in bags of waste."
- Ms. Bilbrey stated the day after Gail Seymour came in and filed a complaint (October 10, 2017), she received a voicemail message from Tammy Steadman, who was the resident in 105 Neil Ct., the apartment next to #103 in the same triplex unit. Ms. Bilbrey reported the voicemail message was transcribed by Town of Lady Lake Deputy Clerk, Nancy Slaton:
  - "I used to reside at 105 Neil Court in Lady Lake. There are three units connected to one building. If you pull in to Neil Court, it's the first unit on the left-hand side. I resided at 105. The owner has a serious a septic issue; those three units are on one septic; it's built for the size of a single-wide mobile home. She has to have it cleaned out probably once a month when it needs to be cleaned out every other week. Sewers backed up in all three units; when one takes a shower, no one can flush their toilets. Also, it comes back up in the bathroom, and then on the outside of the building closest to the road, behind a tree you can see the overflow. And what happens is the sewer comes out and it leaks all over the area. You can definitely see feces, so I wanted to report that. I relocated over the weekend so I'm

no longer there. If you have any further questions, you're welcome to give me a call. Thank you so much and have a great day."

- Ms. Bilbrey stated that she called Tammy Steadman back to ask her about 105 Neil Ct. She advised there are leaks in the roof and water was coming through the ceiling. Ms. Steadman stated that she had five buckets in the living room to catch water. She said the landlord had someone come in who patched it and painted the ceiling. She said the landlord had a tarp put on the roof before the hurricane. In addition, the master bedroom closet has a hole in the ceiling, it was patched, but after the rain, the hole came back again. In regards to the septic, Ms. Steadman stated the septic man told her the system was too small and should only accommodate a unit the size of a single-wide home. She went on to say that they opened the overflow release and "poop went all over the yard". Ms. Steadman said if someone is taking a shower, you cannot flush at the same time; that she would have to coordinate the timing of showers with the neighboring unit at 103. She stated that the landlord said she was waiting on the city to make a decision on the sewer connection. Ms. Steadman went on to say that the landlord has the system drained once a month. Ms. Steadman advised that she was behind on rent, but that the landlord was difficult to work with. Ms. Bilbrey stated that when she asked Ms. Steadman if she could come to the hearing today, Ms. Steadman advised that she lives at least an hour away now. Ms. Bilbrey stated that she did not subpoena Ms. Steadman to come in and speak today as to not create a financial hardship to her based on the distance of her current residence.
- Ms. Bilbrey stated that this triplex was familiar to her as she had visited it in 2016 with a similar complaint from another tenant. A case was opened at that time, case #16-5939. The prior case file from 2016 was pulled and reviewed again. Based on the type of complaint, the previous case has relevancy. Ms. Bilbrey provided a brief overview of that case file:
  - March 31, 2016 - Ms. Bilbrey received a complaint from a tenant about an ongoing issue of raw sewage on the ground in the area of the triplex's septic tank, and raw sewage backing up inside the home. Ms. Bilbrey reported that she visited the site and met with the complainant, Ms. Smith. Ms. Smith pointed out the area where raw sewage was on the ground. Ms. Bilbrey stated it appeared that an attempt had been made to de-sanitize the area; no lime or disinfectant was readily observed, however. Ms. Smith advised the septic tank was sucked out late yesterday (March 30, 2016) and that leaves were spread over the area where raw sewage was present. Ms. Bilbrey stated that Ms. Smith provided her with before and after photos that are included in this case file and bear the date of March 30, 2016.
  - Ms. Bilbrey stated that she contacted Lake County Health Department on March 30, 2016; information was passed on in reference to the complaint that raw sewage was on the ground and that it was backing up in the adjacent living spaces.
  - April 5, 2016 – Ms. Bilbrey spoke with the property owner, Kathleen Floyd. Ms. Floyd explained that she is aware that the system is not functioning as it should and attributed some of the troubles to an increase in hair and water as her tenant, the complainant, is running a hair business out of the apartment. Ms. Bilbrey stated that Ms. Floyd went on to say that she is willing to do whatever was necessary to comply; a phone number for our public works department was passed on to Ms. Floyd so she may inquire as to when sewer may be available on her street. Ms. Floyd stated that she would like to hook up to all public utilities; she was also informed that a certified mail letter was on its way to her, and that the health department was contacted in regards to possible health and safety issues. Ms. Floyd stated that she was going to contact her septic company and find out what measures needed to be used to treat the surrounding soil in the event the overflow occurs again. Ms. Floyd advised that they had removed the top layers of soil from the site and transported it to a large vacant parcel. Ms. Bilbrey stated she received an email update from Ms. Floyd later in the day:
    - "I wanted to give you an update in regards to the issues we discussed at the property on Neil Court. As we discussed if there were plans to install a sewer line on our property in the near future, it made sense to continue our pumping the septic tank monthly as

needed rather than putting in a new drain field and put the cost of the drain field into converting to Lady Lake sewer system. This is what I've learned and the action that I've taken: I spoke with C.T. Eagle, Director of Public Works in Lady Lake. Although running sewer lines to our property is part of the master plan in Lady Lake, there is no set date or immediate plan to complete this work. Hence, it now makes sense to proceed with installing a new drain field. We spoke with the building department with Lady Lake in Lake County in reference to what is required to install a new drain field. We are also obtaining quotes for the new drain field. Addressing your immediate concern about the appropriate treatment of any spilled refuse, I called our septic service provider, All Out Septic, and was told that applying a thin layer of lime powder was all that was needed. I've attached a copy of the receipt."

- Ms. Bilbrey stated that she thanked Ms. Floyd for her prompt attention to the matter and, based on the fact that she that they were going to be replacing the drain field, Ms. Bilbrey closed the case that that time, but continued to follow-up on the case.
- April 6, 2016 – Ms. Bilbrey conducted a site visit to verify that lime had been spread over the contaminated area; a white powder was present, visible on the ground. A photo was taken and is included in this file.
- May 26, 2016 – The complainant and tenant no longer resided at 105 Neil Court. Ms. Bilbrey stated she conducted a site visit and no sewage or spillage was noted at the time of the inspection. Based on the property owner's statement that they would be putting in a new drain field and their efforts towards actively working to obtain quotes and permits, this case was closed.

The Special Magistrate clarified that all of the statements in connection with the septic issue in 2016 were that the owners claimed they were going to fix it with a new drain field because there was no timeframe on the city's connection requirements.

Ms. Bilbrey replied the Special Magistrate is correct. She reported that a search of old case files revealed a similar code enforcement case at this same location was opened in 2013. The basis of the complaint was there was sewage present in the yard alongside 103 Neil Court and that the septic system was malfunctioning. In conjunction with this case, the Lake County Health Department was contacted. The case notes for the 2013 case were printed and are included in this case file. Ms. Bilbrey stated the 2013 complaint originally came in as a citizen complaint for sewage present in the yard at 103 Neil Court.

The Special Magistrate asked if the current owner of this property was also the owner in 2013.

Ms. Bilbrey confirmed this. She read the case notes from the 2013 case for 103 Neil Court as follows:

- Based on the citizen complaint, Donald Hoos went to the site and found a maintenance worker, Dustin, working on the septic system. He indicated the tank was pumped recently and they had found problems with the piping from the house to the tank. Code Enforcement Officer Hoos advised him that he needs to have the leech field evaluated by a qualified plumber or septic tank company. He called Lake County Health Department and notified Diane of the problems who advised they would investigate.
- October 10, 2017 – Ms. Bilbrey stated she conducted a site visit based on the recent complaints and history of this property in past case files. During the site visit, there was no raw sewage that could be seen on the ground; however, the area around the septic vent pipe appeared to have been recently disturbed. There was a green tarp attached to the roof over Unit #105. Units #103, #105 and #107 are in the same building, with Unit #107 being the furthest from the septic tank. Units #103 and #105 both appeared to be vacant; photos were taken.

- Based the new complaints coupled with the history at this location, a code enforcement case was opened on October 12, 2017.
- **Violations for the following LDR's & Ordinances were cited:**
  - Town of Lady Lake Code of Ordinances Chapter 20-18(e) - Property Maintenance, Plumbing Septic, with the violation for plumbing/septic specified: requirements for basic sanitary facilities and equipment shall be as follows: "all plumbing fixtures shall be properly connected to an approved water and sewer system. Where the sewer system is not available drain lines shall be connected to an approved fully functioning septic tank and drain field". Ms. Bilbrey stated the notice further specified for the owner to "Make repairs to drain lines to ensure that connections to water and sewer system or septic tank and drain field system are in good repair and fully functional".
  - Town of Lady Lake Code of Ordinances Chapter 20-21(i) Property Maintenance - Sanitary System Maintenance, which specifically states: "Unsafe dwellings, hotels or rooming houses; an unsanitary condition exists by reason of inadequate or malfunctioning sanitary facilities or waste disposal systems". Ms. Bilbrey stated the notice further specified for the owner to "Repair/replace the sanitary facilities/waste disposal system (septic, drain field or waste disposal) to an adequate functioning system.
  - Town of Lady Lake Code of Ordinances Chapter 20-19 (a) 1 & 2 - Property Maintenance-General Maintenance, which specifically states general structures specifications, "General requirements for all dwellings, units, hotels, hotel units, rooming houses and rooming units shall be as follows: foundations, floors, walls, ceilings, roofs, shall be structurally sound; weatherproof, watertight and shall be kept in a good state of repair. Roof surfaces shall be watertight". Ms. Bilbrey stated the notice further specified for the owner to "Make necessary repairs to alleviate leaks in roof. A building permit may be required based on the amount of shingles that need to be replaced. Contact the Building Department for additional information".
- October 12, 2017 - A Statement of Violation was created and mailed out via certified mail to the registered owner, Lake County Citrus Sales, Inc., as indicated on the Lake County Property Record card. It was returned unopened, marked, unclaimed, unable to forward.
- A copy of this same notice was mailed via regular USPS mail to the register agent of the corporation, William P Floyd, Jr., as indicated by the corporation filing on Sunbiz.org.
- October 18, 2017 – Ms. Bilbrey stated Mr. Floyd, representing Lake County Citrus Sales, Inc. called her office phone and he left two voicemail messages. Ms. Bilbrey stated based on the relevancy of the information contained in the voicemail messages, she had the voicemail messages transcribed by Town of Lady Lake Deputy Town Clerk, Nancy Slaton.
  - "Now 103 and 105 Neil Court, disgruntled renters both of them are now gone owing reasonably substantial amounts of money. Have we had a sewer problem there? Absolutely; we've had it for years. The problem is your town won't put in sewage for whatever reason. Given the amount of taxes I pay you'd think I'd have these sewage lines installed in golden pipes. This sewage thing, yes, we have to pump it every six months to a year. Now we had some blacks in there that knew how to screw up a system and they would put enough oil in it to absolutely stop it up, and then we pumped it every week and until they were gone. We're trying some chemicals in the septic tank that may or may not be the answer; but if they're not, anytime anyone tells us the toilet's running slowly we go out there and pump it. We had a year, it was last year, and we had all the water in the world and it was...we stayed busy pumping. But this year not as bad. And when it gets to the point with your septic, when y'all install sewer lines like any other normal town would, then we'll look into it. In the meantime, we'll pump it; and we'll never remiss in pumping; we have

- never been remiss in pumping; we have never failed to pump. We have been the same day. Never, ever, ever; I've owned it between seven and ten years we have never failed to pump.”
- (voicemail received 2:57 p.m.) – But anyway the bottom line is in 103 and 105 I notice there is nothing said about 107, and let me make you aware 107 is on the same septic tank. And we these people were evicted in 103 and 105 so I think that's what you're dealing with. You're dealing with a “get even” deal; and the problem with the septic tank is #1, y'all won't put in sewer lines like you should and that's the problem. And also I got that big oak tree; but in pumping it, we have pumped it a few times as much as every six months and as often when I had some really classy black people in there every week. But the normal pumping thing is once every six months and the problem is there's a big tree. I asked my wife, ‘haven't we always pumped it every time there was ever a complaint?’ She said, ‘one time I had to wait until the next day for the company to come in.’ But you can figure within 36 hours every time for as many years as I've owned the place, when there was a need it got pumped. And that's just what we've done; and these people that were in there they were mentally ill and 2, they were evicted. But 3, they're using you and I'm sure you've had it happen before. So anyway I'd be happy to talk with you. I like to get along with code enforcement; I really like it. But we'll do the things that need to be done absolutely; you don't have to twist my arm.

The Special Magistrate asked if these messages were from the registered agent, and if he is the same registered agent from 2013.

Ms. Bilbrey replied affirmatively.

- Ms. Bilbrey stated that Mr. Floyd called again on October 23 at 2:09 p.m. and again on October 24<sup>th</sup> at 1:30 p.m., leaving voicemail messages that were transcribed by Town of Lady Lake Deputy Town Clerk, Nancy Slaton.
  - October 23 at 2:09 p.m. – “Oh boy, um, bottom line is we supposedly have a problem. I've been researching. First, we had it pumped so that's done. But I've been researching...how in the (expletive) this guy just absolutely...he got it to where we had to pump it weekly. We did it for two to three weeks and then finally got him out of there and then we thought we had cleaned up. But I think we still have it cleaned up. As recently, oh I guess it's been a couple years now when one of your citizens decided he needed to kill me and did his very best I survived it. But, he's the one that ruined the drain field, but I think we can fix it. We'll find something that neutralizes the salt, we'll be 90% of the way there.”
  - October 24 at 1:30 p.m. – “Now um there's a question in our deal about our excuse me about our septic tank. Which we have no problems with right now, and when we do have a problem with it, which we do, it seems like the most frequent its ever been regularly, was every six months. And what we have there, Ma'am is people who we evicted who are trying to create a problem. One of the favorite ways of dealing with these issues between owner and tenant is for the tenant to screw up the place. Black people do it one way, brown people do it another way, white people do it yet another. Ah yeah, I've had black people who caused us to have to pump the thing every six day because of the things that ruin a septic system: fat and salt. I got the paper notification and it was unbelievable. Unbelievably, I don't know what you have to call it but it was repetitive and it didn't really say anything.”
- Ms. Bilbrey noted that during the times of Mr. Floyd's calls (in the early afternoon); she is typically out of the office doing field inspections. The messages contained information in regards to the functionality of the septic system at the subject property.
- On October 25, 2017 at 8:31 a.m., Ms. Bilbrey stated that Mr. Floyd called her office and they spoke on the phone. Ms. Bilbrey stated that she made a narrative of their conversation and read it as follows:

- “I spoke with a male named Bill Floyd who is the owner/agent of the triplex on Neil Court. He called me to discuss the septic system at this location. He started by saying how nice the previous male Code Enforcement Officer was and how well they worked together. Mr. Floyd went on to say that he pays a lot in taxes and the Town should provide sewer hook-up. I let him know that I spoke with Public Works Director last week and that there are no plans to provide sewer to this location any time in the next five years. I explained to him that I don’t have anything to do with the taxes and my concern is the failing septic system at this location. Mr. Floyd went on to say that the troubles he had with the septic backing up at this location were due to the renters who were in the units. He proceeded to tell me about the tenants and how they were late on rent and had criminal histories. I directed the conversation at hand – the failing septic system. Mr. Floyd put his wife, Kathleen, on the phone because she had detailed information in regards to the system as she dealt directly with the septic companies who have done the work on the triplex. Kathleen advised that All Out Septic and Warren Septic have both been out there to pump the system out. She stated last year when they had an issue with a complaint at 105 Neil Court that All Out Septic ran a camera through the system and determined there was a blockage that appeared to be “Vaseline-like”. Kathleen stated it was a 3,000-gallon septic system; they used to pump it every six months, then it was every four months, then every three months, now it’s been every month. She stated there’s a large oak tree in the area of the drain field whose roots may be damaging the system. She talked about the option of putting in a new system in a different location on the property away from the trees. I provided her a phone number for the Florida Department of Health in Lake County who issues permits for the septic system replacements. Kathleen stated if the new septic went in, it would have to be her husband’s decision to do so. She advised the tenant who was recently in Unit #103 moved out abruptly without proper notification. When asked why he was moving, he advised he could not flush even on the first day. I heard Mr. Floyd talking in the background; he stated he was going over there today to put chemicals in the system to clear out the drain field, advising that he’d been researching drain fields and how to fix them. I explained to Mrs. Floyd that it wasn’t right for them to renting out these units to people who were in good faith putting money down to move in when there’s a known issue with the septic. I told her they system needed to be replaced and that I would grant them 30-60 days to do so. When Kathleen conveyed to Mr. Floyd that I gave the timeframe of 30-60 to replace the system, Mr. Floyd got back on the phone. I reiterated to him, he has a known issue with the failing septic system and drain field and that he needs to replace it. Mr. Floyd said that instead of replacing the system, he’d replace the renters advising they were “crazies”. I explained, ‘I don’t see how the mental health of the tenants in his units can have anything to do with the septic system failing.’ I, again, stated that something would need to be done and that I would give 30-60 days if they wanted to in fact replace the drain field, but otherwise the situation was out of my hands and this case would go to the Special Magistrate. Mr. Floyd became angry and began talking over me. The conversation ended with me letting him know that he’d be getting a notice for the Special Magistrate hearing.”

The Special Magistrate verified that Ms. Bilbrey sent the notice by certified mail, but it was not received.

Ms. Bilbrey stated this is correct; they did not sign for it. She stated that she also sent the notice via regular USPS mail delivery, which was not returned.

The Special Magistrate asked if all of Ms. Bilbrey’s notices were done according to Chapter 162.

Ms. Bilbrey confirmed this.

- Ms. Bilbrey stated that she called All Out Septic and inquired about the location of 103 and 105 Neil Court in Lady Lake. She stated that she was told that, yes, they have been out there to work on the system. Ms. Bilbrey emphasized that she was specifically told they had been out in May, July and August of the same year, stating they pumped the system each time, and that a properly functioning system needs only be pumped once every 3-5 years. Ms. Bilbrey stated that she asked if they specified the tank size during any of the visits, and was told that the paperwork from the May visit indicated it was a 1,500-gallon tank. This same ticket also advised that the system was “not working properly”.

The Special Magistrate asked which septic company was contacted.

Ms. Bilbrey stated she contacted All Out Septic, who is the septic company used by Mr. Floyd.

The Special Magistrate clarified this company indicated the septic tank is a 1,500-gallon tank.

Ms. Bilbrey replied the Special Magistrate is correct.

The Special Magistrate asked what size tank is required for a one-unit dwelling.

Ms. Bilbrey stated she did not get that information. She stated she included copies of the receipts from All Out Septic, and on the May 1, 2017 receipt it indicates “drain field not working”.

- Ms. Bilbrey stated that on November 6, 2017, she contacted Warren Septic (352-793-4794) and spoke with Keith, who stated he was the company owner and license holder. Per Ms. Bilbrey, he stated that he was familiar with this location and he advised he knows of a tree that is causing problems and went on to state they are not in violation unless raw sewage is on the ground. Ms. Bilbrey stated that she explained the complaints that have been filed regarding this location, and he advised that he did not know it was backing up inside the units. When asked about the service his company has provided, he advised the last time they were out there was in September, and that was the only time they have been out. He said the property owners have asked for a quote for replacement of the system; he went on to say that a commercial system should be pumped every 2-3 years, and residential systems every 4-5 years at the most.
- Ms. Bilbrey stated that on November 7, 2017 she contacted Elias Christ who is an Environmental Supervisor at the Florida Department of Health in Lake County, and requested that he send her any recent case files for 103 and 105 Neil Court. He provided dates with case notes stemming back to 2013. His email and case notes are included in the case documents. Ms. Bilbrey read the case notes provided by Mr. Christ:
  - April 4, 2013 - Lake County Code Enforcement called to report sewage on the ground on the site of the first apartment. His case notes indicate that he visited the site, the tank area was disturbed; “must have been pumped out before I arrived; no signs of drain field repair. Property manager, Dusty, spoke to me and said they will be applying for a permit ASAP, system failing per Dusty”.
  - September 10, 2014 – Sewage was backing up inside through the toilet; sewage is on the outside, too.
  - March 2016 – Tenant called to report she had septic issues for the past year. The landlady keeps getting the tank pumped and doesn’t fix the issue. Roots in drain field (question mark next to it). She states the sewage is on the ground and also frequently backs up into her apartment. The case notes indicate Elias Christ went to the site and visited; obvious signs of backup; cap is not on cleanout; area needs to be limed and capped replaced. This is the second or third time we’ve investigated this site. Drain field needs to be repaired obviously.



- April 11, 2016 – Mr. Christ stated that he spoke with Ms. Floyd, the property owner, and they are having a contractor look at the job and getting bids to replace the field.
- November 9, 2017 - A Notice of Hearing was mailed out to the registered owner of the property. An additional copy was also mailed to the registered agent of the business, William P Floyd, Jr.; both pieces of mail went out certified.
- The Notice of Hearing was sent via certified mail to the 1030 N Shore Acres Drive location and was signed for on November 13, 2017 by John (last name unreadable).
- The Notice of Hearing was sent via certified mail to the PO Box 490778, Leesburg, FL address and was signed for on November 17, 2017 by W. P. Floyd.
- A copy of the Notice of Hearing was posted to the door at 105 Neil Court on November 9, 2017 at 1:38 p.m. An affidavit of posting was completed and a photo was taken.
- November 9, 2017 - An additional copy of this same Notice of Hearing was posted at The Town of Lady Lake Town Hall.
- On this same day of the posting, Mr. Floyd called the Lady Lake Growth Management Department. Initially he spoke with Christie in the Building Department and stated he wanted a call back. During the conversation with Christie, Mr. Floyd referred to Ms. Bilbrey as a retard, and asked if there was a “man here that he could talk to instead” of Ms. Bilbrey. Christie relayed that Ms. Bilbrey was the code enforcement officer, and that Mr. Floyd would need to speak with her about this case. Mr. Floyd was transferred to Ms. Bilbrey’s phone and he left a voicemail message at 4:13 pm. Ms. Bilbrey stated the entire message was transcribed, but portions of the message state:
  - “Uh, we got this message from you guys. Of course you hadn’t checked it, but somebody told you something so it became gospel. And we, of course, checked it and we checked it and there’s nothing wrong. We been through All Out Septic, we been through one in Sumter County; ah, there’s no issue right now, but I’m thinking there might be one sometime in the future. All Out Septic is gone to a material; what seems to happen is the stuff turns into concrete then it won’t permeate the ground around it, and that’s not a good thing so I believe treatment with this new material should solve the problem. If there ever was a problem; and there was a year ago but what we can’t have anymore, Ma’am, ever, is somebody coming to you and telling you something and you not checking it out then checking me out. It’s aggravating me.”
- Ms. Bilbrey stated that she attempted to call Mr. Floyd back this same day at 5:29 p.m., but he was unavailable. She stated that Mr. Floyd returned her call at 5:41pm. Mr. Floyd stated that he received the Notice of Hearing that was posted to the door of at 105 Neil Court earlier in the day. Mr. Floyd once again stated there was nothing wrong with the system as it had been pumped out. Ms. Bilbrey stated that she asked Mr. Floyd if he had recently replaced the drain field. He advised that, no, he had not. She stated that she made reference to the invoice dated May 1, 2017 from All Out Septic that indicated the “drain field is not working”. She also informed Mr. Floyd that she had contacted Lake County Health Department about this location and that they were familiar with it based on past reports of sewage and spillage. Mr. Floyd said that he is working with John at All Out Septic to fix the problem, short of replacing the drain field. Ms. Bilbrey stated that she ended the call stating that this case will be heard before the Special Magistrate and recommended that Mr. Floyd attend the hearing.
- To date, no attempts have been made to pull a permit for a new septic or drain field at this location, and no attempts have been made to pull a permit for the needed roof repairs at this location.
- Ms. Bilbrey reported that there are four triplex units located on this property. A search of Lady Lake’s recent Code Enforcement records found 13 Code Enforcement cases had been opened on this property between 2011 and 2017. She noted that none of the other units on the property were cited for septic system issues.
- The property is currently assessed at \$486,651 per the Lake County Property Appraiser.

The Special Magistrate clarified this assessment is for one triplex area.

Ms. Bilbrey confirmed this; she stated there are four units on that parcel of property and the alternate key encompasses all four of them.

Staff's recommendation is to find the owner/agent in violation of Town of Lady Lake Town of Lady Lake Code of Ordinances Chapter 20-18(e) - Property Maintenance, Plumbing Septic; Town of Lady Lake Code of Ordinances Chapter 20-21(i) - Property Maintenance-Sanitary System Maintenance; Town of Lady Lake Code of Ordinances Chapter 20-19 (a) 1 & 2 - Property Maintenance-General Maintenance; impose an \$87 administrative fee and afford the property owner or their agent 30 days to successfully bring the property into compliance or a fine of \$250 per day be assessed thereafter for each day the violation continues to exist.

The Special Magistrate clarified this is not a repeat case because the original case was not brought for a final hearing.

Ms. Bilbrey confirmed this.

An audience member (Attorney Susan Balmer) spoke from her chair regarding copies of Ms. Bilbrey's evidence.

The Special Magistrate stated everything that is being presented today is a public record. She stated anyone may request copies and there may be a fee for copying services. Also, voicemails are public record as well, which is the reason they are part of the record.

The Special Magistrate reviewed the documents and asked if there was anyone present to speak regarding this case.

Attorney Susan Balmer introduced herself as representing the owners of the property. She requested the Special Magistrate grant a continuance of this matter due to the fact that she was hired very recently to represent the owners.

The Special Magistrate stated even though it is Ms. Balmer's right to request a continuance, she is hesitant to grant it, and asked when Ms. Balmer was hired.

Ms. Balmer stated she was hired the previous evening (November 27, 2017).

The Special Magistrate stated again that she is hesitant to continue this case due to the Code Enforcement Officer's testimony and the property owner's knowledge of this issue. She stated regardless of the prior cases from 2011 and 2013, it still has been going on for several months.

Ms. Balmer stated that she understands this and if there was actually raw sewage on the ground, she assumes someone would have immediately contacted the Department of Health, as has happened in the past. She stated she wants to come back with some witnesses, including the septic company that has come out and given the property owners advise on how to resolve the problems. Ms. Balmer stated there were two tenants that had been evicted from the property, and according to the septic company, they believe that someone actually put something down this drain. She stated the owners have been putting very expensive chemicals into the system that have resolved the problem.

The Special Magistrate stated she will remain open to hearing all of the evidence, although there appears to have been on-going issues with the septic system since 2011.

Ms. Balmer reminded the Special Magistrate that there are a total of 12 units, and this is the only building that has a problem.

The Special Magistrate stated this building appears to be affected by several problems that include the ground, the trees, and the septic tank capacity.

Ms. Balmer stated she wants the gentleman from Warren Septic to provide expert testimony. She stated he is the most recent contractor to examine this issue. Ms. Balmer stated she has heard today a lot of “he said, she said”, and took some information off of an invoice that said there is a problem with the drainage.

The Special Magistrate stated Ms. Balmer may request copies of the Code Enforcement Officer’s documented evidence.

In light of due process, the Special Magistrate granted the extension of this case until the December 19, 2017 Special Magistrate hearing, at 10:30 a.m. She cautioned that the burden of proof will be on Ms. Balmer due to the evidence presented thus far and that the evidence presented today is part of the hearing.

Ms. Balmer asked if she could have the hearing transcribed.

The Special Magistrate stated it is Ms. Balmer’s responsibility to have her own transcription done. She stated Ms. Balmer could request an audio copy of this hearing and have it transcribed.

The Special Magistrate confirmed for the record that no one else was present to speak on this case.

### **ABATEMENT/LIEN REDUCTION**

#### **3. Case No. 14-4786 – 552 S. Hwy 27/441 – BBC Investments II, LLC - Request to Invalidate Lien**

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

The Special Magistrate stated she has heard evidence on this case before, but will need her memory refreshed. She asked if the reason these violations are being heard again is because they were not recorded as a lien.

Ms. Bilbrey replied that the first request is to invalidate the lien, and if that request is not granted, the property owner/representative is then asking to reduce the amount of the lien.

The Special Magistrate informed the property owner/representative present today that because this is a lien, she does not have final decision on this case as that is the responsibility of the Town Commission. She stated that she will make a recommendation to the Town Commission and they will make the final decision.

Ms. Bilbrey stated that Case No. 14-4786 involves property at 552 S. Hwy 27/441 owned by BBC Investments II, LLC, with the registered agent listed as Brandy Sailer, and Mr. Hanratty is their attorney. She stated the property includes four Alternate Key numbers: 1121094, 1698928, 3842065 and 1698936.

Ms. Bilbrey stated this case was originally heard before the Town of Lady Lake Special Magistrate on August 26, 2014. It resulted in a lien being filed against the aforementioned properties and property owner. A copy of the official minutes from the August 26, 2014 hearing are included in this case file.

- November 16, 2017 – An email was received by the Town of Lady Lake attorney, Derek Schroth. It was sent from Mr. Hanratty, the attorney representing the defendant/property owners in this case. The email provided a written request asking to be placed on the next Special Magistrate agenda to dispute the validity of the lien associated with this case. A copy of the correspondence is included in this case file, along with referenced attachments.

Ms. Bilbrey began to give a brief summary of this case and all notifications and correspondences associated with it.

- The properties with the four aforementioned corresponding alternative keys in this case are owned by BBC Investments, LLC. A copy of the property record card for AK #1121094 was printed on March 26, 2014. The record card indicated the corporation's mailing address was 27296 SE Hwy 42, Umatilla, FL.
- On this same date, the Sunbiz.org corporation filing was printed. It indicated a principal address for BBC Investments II, LLC as 552 S. US Hwy 441, Lady Lake, which is the business address for Lady Lake Auto Salvage. The registered agent's address on the Sunbiz filing was indicated as Brandy Sailer at 412 Cierra Oaks Circle, Lady Lake, FL.

From the audience, Mr. Hanratty stated there is a simple legal argument; they are not contesting any of the facts.

The Special Magistrate asked Mr. Hanratty to introduce himself, who he represents, and explain his interests to expedite the hearing. She excused Ms. Bilbrey from testifying at this time because she has the information before her, although she stated that she may call on Ms. Bilbrey if needed.

Attorney Joseph Hanratty of 723 E. Fort King, Ocala, FL 34471, introduced himself as representing BBC Investments, LLC, and presented four documents to the Special Magistrate.

Mr. Hanratty stated the first document presented is the Order of Enforcement from the August 26, 2014 hearing. He stated there are no objections to this document.

The Special Magistrate clarified that Mr. Hanratty and his client were present at the August 26, 2017 hearing.

Mr. Hanratty replied that they were. He stated the second document is the agenda for the October 28, 2017 Special Magistrate meeting, with his client's case listed as the first item under Old Business. He stated that the previous Code Enforcement Officer, Cindy Diemer, notified him of this meeting via email and he stipulated that he did receive that notification of the hearing.

The Special Magistrate questioned why there were two hearings on the 2014 case.

Mr. Hanratty replied there was no second order. He referred to third document, which were the minutes of the October 28, 2014 Special Magistrate meeting, where it stated under Old Business, "This case was removed". Mr. Hanratty stated he and his client did not attend this hearing.

The Special Magistrate stated she believes this item was pulled from the agenda because the case was previously heard.

Mr. Hanratty stated he believes it was pulled for purposes of enforcement of the lien or fine. He stipulated for purposes of his argument today, that he was notified of the hearing via email. He stated the Order of Enforcement was certified as a true and accurate copy dated October 20, 2014, and it was recorded on November 3, 2014.

Mr. Hanratty asserts the Order from August 26, 2014 falls under Florida Statute 162.07, noting the following: “The order may include a notice that it be complied with by a specific date and that a fine may be imposed under the conditions set for in 162.09(1).”

Mr. Hanratty then referred to Statute 162.09, which states, “An enforcement board, upon notification by the code inspector that an order of the enforcement has not been complied with by the time set or upon finding that a repeat violation has been committed, may order the violator to pay a fine.” He stated it is not only his opinion that this means a separate order is required for paying the fine. Mr. Hanratty stated the Florida Attorney General rendered an opinion, AG 9726, which states at the end, “I’m of the opinion that while a municipal code enforcement board at its hearing to determine noncompliance may establish a specified deadline for compliance and may notice the violator of the amount of the fine that may be imposed for noncompliance, a second order of the board is required to impose the fine.” He stated that is the order that is required under FL Statute 162.09. He also referred to the Massey vs. Charlotte County case, in which the facts are similar, where it was ruled that without the second order, the fine is not valid.

The Special Magistrate stated this issue has been raised by local government attorneys, which is the reason the orders were amended years ago to state that the violator has a right to request a hearing on the fine imposition within 20 days of the commencement of the fine, and if the violator does not request a hearing, then the fine is imposed. She stated she would like time to review the information presented by Mr. Hanratty’s reference to the requirement of a second order to impose the fine, and to review recent case law.

Mr. Hanratty stated the gist of his argument is that a second order is required by the AGO opinion of the statute and case law of 2003 before a fine is imposed. He stated that the Town’s attorney cited two cases to him: Kirby vs. City of Archer – 790 So.2d 1214 (2001), and City of Tampa vs. Brown 711 So.2d 1188 (1988). He stated the Massey case was in 2003.

The Special Magistrate asked in which districts the cases were heard, as this is the Fifth District.

Mr. Hanratty replied that Kirby was in the First District and City of Tampa was in the Second District. He stated Massey vs. Charlotte County is also in the Second District, although it cites a 5<sup>th</sup> DCA case (Baker vs. Simpson, 773So.2d 637) at the end of the opinion in 2000. Mr. Hanratty stated that both the cases cited by the Town’s attorney were discussing a 162.09 order, and supports his argument.

The Special Magistrate stated for the sake of argument, if Mr. Hanratty is correct regarding the second order requirement, a second order could be issued now to remedy that error because there is no time limit in the statute.

Mr. Hanratty stated his client is now in compliance.

The Special Magistrate reiterated that even if it is determined that a second order is required, and if staff confirms the property owner is in compliance, then evidence could be presented showing how

long it took for the property to come into compliance. She asked the property owner would agree to a recommendation to reduce the fine to \$500 if that was approved by the Town Commission, as everyone is in agreement that there was a violation and it did take staff's time. She stated the other option would be to table this decision so that she could review all of the evidence and case law so that she could render an opinion and recommendation. She stated she would still review the case law to be sure future processes regarding second orders are done correctly.

The Special Magistrate confirmed that there was no one else present who wished to speak regarding this case.

Mr. Hanratty asked to confer with his client regarding the reduction in the fine.

The Special Magistrate stated there will be no discussion in chambers while Mr. Hanratty and his client are conferring.

Mr. Hanratty stated his client would like to settle for a lien reduction to \$500.

The Special Magistrate asked staff if the property is in compliance at this time. She clarified that she has not rendered an opinion on this case and there is no offer of a settlement.

Code Enforcement Officer Bilbrey replied that the property is not entirely in compliance.

Thad Carroll, Growth Management Director stated for the record that on October 20, 2014, an email was sent to Mr. Hanratty and Mr. Sailer at the Embarq email address, stating:

*“To date the only compliance is the window permit and the painting of the building. The fence maintenance and expired permit for concrete slab have not been corrected. To date, the Town has not received any building permit applications for the construction of the masonry wall, which the property owner had discussed, as an alternative to repairing/replacing/painting the existing wooden fence. There has been no permit application submitted with regards to the expired permit and concrete slab violation either. The alternative here would be to cut the excess slab to the size previously permitted and take the necessary steps to obtain a new permit. As soon as the violations are in compliance, please have the property owners contact code enforcement to verify compliance and the lien accrual with be stopped.”*

Mr. Carroll stated the compliance date was October 16, 2014. He stated this is for the record to show that staff notified Mr. Hanratty on October 20, 2014 that his client was not in compliance at that time. He explained the reason the case was placed on the October 28, 2014 Special Magistrate agenda and not heard was that the Special Magistrate agendas go out ten days in advance of the hearing date. He stated this allowed time for staff to be contacted by Mr. Hanratty or the Sailer's to see if they wanted to be placed on the agenda. The order states that the onus of responsibility is for the property owner to contact Town staff to be placed on the agenda. There was no second hearing.

The Special Magistrate clarified that this case was placed on the October 28, 2014 agenda because staff assumed the property would be in compliance so the property owners could ask for a reduction at that time.

Mr. Carroll stated he cannot comment on that as Ms. Diemer was managing the case at the time. He stated that there was a period of six days that they could have contacted Ms. Diemer; therefore, Ms. Diemer placed them on the agenda in order for the agenda to be posted in the proper manner.

The Special Magistrate asked if the property is now in compliance.

Mr. Carroll stated all items have come into compliance, with one exception. They have obtained their major site plan modification and the after-the-fact building permit which has not been finalized. He clarified that the order stipulated that they obtain the building permit. The only outstanding item at this time is the exterior fence along the front of the property that has some sections that are in disrepair. He stated that at the November 4, 2017 Commission meeting, Mr. Sailer brought forth a major site plan application showing a concrete masonry wall along the front of the property. At this time, staff's position is to remove that item based on the timeframe it will take to construct the wall. Mr. Carroll stated the Commission wants to review a rendering of the wall prior to its approval. Therefore, by removing the fence from the order, and based on the submittal of their new site plan, all other items are in compliance.

The Special Magistrate clarified that if staff was in agreement with a recommendation of reduction of the fine even with the outstanding compliance issue of the fence, if there is an issue with the new fence in the future, a new case would need to be opened.

Mr. Carroll stated that is correct. He stated if the Special Magistrate recommends a lien reduction to the Commission, as far as the next item is concerned, staff would re-cite them, confer with them to obtain a timeframe to correct the fence violation, and if it did not occur, they would be placed on the Special Magistrate hearing agenda.

The Special Magistrate stated because Mr. Hanratty raised the issue of the second order, she will research the process as this is the first time it has been raised in this district and ensure the Town is proceeding in accordance with the least challengeable way. She stated she cannot discuss it until this case is closed because she will not have any ex-parte information with the other attorney on the case.

From his chair, Mr. Hanratty suggested tabling item #1 – the request to invalidate the lien, assuming there is a recommendation on item #2 – for the lien reduction.

The Special Magistrate stated she is looking at both cases together. She asked staff if there were more costs involved in this case, because typically she recommends a reduction to \$500 to cover the cost of notices and staff's time.

Mr. Carroll clarified the typical lien reduction is not \$500. He stated it is either 25% of the value of the property or \$5000 (the lesser of the two). He stated there has also been legal fees incurred in this case due to correspondence with the Town attorney.

The Special Magistrate stated that legal fees should not be considered in this case because they are due to processes and the system, not particularly connected solely to this case.

Mr. Hanratty stated that assuming there is an agreement with regards to the reduction of the lien amount, he and his client would be willing to withdraw the request to invalidate the lien.

The Special Magistrate stated regardless of her recommendation to the Town Commission, staff and the Town attorney can dispute it.

Discussion was held with staff regarding the amount of reduction for residential properties and commercial properties. The Special Magistrate stated the reduction cost is typically higher for a commercial property versus a residential property. Mr. Carroll advised that last lien reduction for a residential property was in the amount of \$5000.

The Special Magistrate asked Mr. Hanratty if his client would consider reducing the lien to \$5000, keeping in mind that they are in agreement that there is a violation and the only question is whether the second order should have been imposed, which can be done, especially in light of the fact that the property is still noncompliant.

Mr. Hanratty explained that he and his client believed they only needed to secure a water management permit to be in compliance, which was done in December 2014. He stated that he sent an email to Mr. Carroll in February 2015 requesting further direction, and did not receive a reply. He stated in calculating the \$25 per day fine up to when the water management permit was received, it would be substantially less - approximately \$1,500. Mr. Hanratty admitted that staff did not agree that this was not all that was required to be in compliance.

The Special Magistrate stated she is leaning toward denying the request to invalidate the lien because if Mr. Hanratty challenged it, the Town attorney would be the one representing the Town. She stated it appears from reviewing the emails from the Town Attorney that he is confident the process was done correctly regardless of her opinion. The other option is for the Special Magistrate to recommend a lien reduction to \$5000 and Mr. Hanratty could present his arguments to the Town Commission.

Mr. Hanratty stated in regards to invalidating the lien, in the emails from the Town Attorney, he suggested presenting his position to the Special Magistrate for her opinion, then to the Town Commission with the Town Attorney present. He stated he presented his position to the Town Commission at their November 20<sup>th</sup> regular meeting.

In response to this, the Special Magistrate then stated the case will be tabled until the December 19, 2017 Special Magistrate hearing to give her time to review all of the information so she can render her decision.

From his chair, Mr. Hanratty asked if the Special Magistrate needed to hear his testimony regarding the lien reduction.

The Special Magistrate stated that there is no reason to hear testimony on the lien reduction request until the request to invalidate the lien is resolved. She stated it is an ex-parte issue; she cannot contact staff and tell them her decision as that must be done at a public meeting.

Mr. Carroll clarified that the lien reduction request is also tabled until the December 19, 2017 Special Magistrate hearing.

The Special Magistrate replied that is correct.

Mr. Hanratty asked to confer with his client in private.

Mr. Hanratty returned to chambers with his client and announced that they will wait for the Special Magistrate's decision at the December 19<sup>th</sup> Special Magistrate hearing.

The Special Magistrate stated for the record that she will only review the copies of documents that were presented to her at today's open public hearing from Mr. Hanratty and from staff. She reminded Mr. Hanratty that he can obtain copies of staff's documents.

The Special Magistrate reiterated the request to invalidate the lien and the request for a lien reduction for Case No. 14-4786 are tabled until December 19, 2017. She stated her decision regarding the request to invalidate the lien must be announced at a public meeting. If she disagrees



with Mr. Hanratty, and believes that Town followed proper procedure and is willing to risk it upon challenge, then she will hear the request for a lien reduction.

**4. Case No. 14-4786 – 552 S. Hwy 27/441 – BBC Investments II, LLC – Town of Lady Lake Land Development Regulations Chapter 16-52 – Building Permit Required; Town of Lady Lake Code of Ordinances Chapter 20-52 – Commercial Property Maintenance-Exterior Appearance; and Town of Lady Lake Code of Ordinances Chapter 20-51(b) – Commercial Property Maintenance-Exterior/Interior Maintenance**

This case is tabled until December 19, 2017 at 10:30 a.m.

**OTHER BUSINESS**

**ADJOURN:** There being no further matters to discuss, the meeting was adjourned at 11:57 a.m.

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Carol Osborne, Staff Assistant to Town Clerk

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Valerie Fuchs, Special Magistrate

Minutes transcribed by Carol Osborne, Staff Assistant to Town Clerk