

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

December 15, 2015

The special 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: Aaron Graulau, Code Enforcement Officer; Thad Carroll, Growth Management Director; and Beverly Lemay Staff Assistant

Also Present: Commissioner Dan Vincent and Commissioner Paul Hannan

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

PLEDGE OF ALLEGIANCE

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 staff if there were any changes to today's agenda.

Code Enforcement Officer Aaron Graulau reported that one case on this morning's agenda has come into compliance prior to the meeting: Item #1, Case No. 15-5715.

Explanation of Procedure: The Special Magistrate 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 stated that if any pictures or other evidence is presented this morning, the interested party will be able to review it in order to accept or refute it and be able to present their own evidence and testimony prior to the Special Magistrate making her ruling.

The Special Magistrate also explained that Code Enforcement staff will present their case and testimony, then the owner or interested party will be able to present their testimony or evidence. After that, staff will have the opportunity to rebut or refute any evidence that is presented. The Special Magistrate will then ask any questions that she deems appropriate and relevant during the testimony of each party before making her ruling. The order will be entered and the interested party will receive a copy of the order whether it is dismissed, or time granted in order to come into compliance, and whether a fine or lien will be imposed.

Approval of October 27, 2015 Minutes

The Special Magistrate signed and accepted the October 27, 2015 meeting minutes into the record as presented.

New Business:

1. Case No. 15-5715 – 416 S. Old Dixie Hwy – De Beaubien, Knight, Simmons et al – Town of Lady Lake Code of Ordinances Sec. 7-67 – High Grass, Garbage, and Trash

This case has come into compliance.

Mr. Graulau called the next agenda item out of order as there were members in the audience present to speak on this case.

4. Case No.15-5774 – 101 West Pine Dr. – Sun Communities Finance LP – Town of Lady Lake Code of Ordinances Sec. 7-67 – High Grass, Garbage, and Trash

Code Enforcement Officer Aaron Graulau presented the background on this case and notes and photographs of the property were passed to the Special Magistrate as evidence. He stated that this property is in violation of the Town of Lady Lake Code of Ordinances Sec. 7-67 for high grass, garbage and trash. He reported that a courtesy notice was sent to the property owner of record on November 27, 2015 detailing the concerns. He stated that several subsequent inspections have been performed and the property remains in violation. Mr. Graulau stated a Notice of Hearing was sent to the registered agent by certified mail on December 1, 2015 and was claimed on December 4, 2015.

Mr. Graulau reported that there are several damaged trees on the property that pose an imminent threat to an occupied dwelling. He stated he has asked for management to provide a report from an ISA certified arborist as to the condition of the trees so that a safe appraisal could be done, although this has not been furnished to date.

Mr. Graulau stated that he met with the manager on site, Laura, and she referred to Florida Statute 723, explaining that the tenants were responsible for the removal of diseased or damaged trees according to the prospectus that was signed per each tenant (copy of pertinent sections attached).

The Special Magistrate stated that Chapter 162 provides that through the Town's Land Development Regulations (LDRs), the property owner is ultimately responsible.

Mr. Graulau agreed and stated that in this circumstance, the tenant leases space in a park for their home, and the manager has conveyed that the tenant is responsible for maintaining the landscaping of the space to include the significant removal of trees.

The Special Magistrate clarified that Mr. Graulau gave notice to the property owner, which is the park, and the park owner is stating that they are not legally responsible for the trees on the leased property under FS 723, which could result in a civil action against the homeowner. She asked if Mr. Graulau is going by the Town's LDRs and Chapter 162.

Mr. Graulau replied affirmatively; that his deduction is that the park owner is responsible under Chapter 162, and there could be a civil action as a result, but this would not be the venue for that.

The Special Magistrate stated she is aware that the property owner was noticed by mail, but asked whether the property was posted as well.

Mr. Graulau stated he had spoken with the property manager directly and advised her when the hearing was. He stated she advised him to be ready for a significant discussion on the matter, although she does not appear to be present.

Mr. Graulau stated that staff's recommendation is to find the land owner in violation of the Town of Lady Lake Code of Ordinances Sec. 7-67 for high grass, garbage, and trash as the nuisance tree falls under that ordinance, and to afford the property owner ten days to cure the violation or a fine of \$250.00 per day be assessed thereafter for each day the violation exists based on the danger posed by the tree.

The Special Magistrate confirmed that the tenants are present, although the manager of the park is not. She reviewed the photos presented in evidence and FS 723, and stated it provides under Section 723.024 that: *"compliance by mobile home park owners and mobile home owners notwithstanding any other provision of this chapter, that if any local law, code or ordinance, that a unit of any local government finds that a violation of a local code ordinance has occurred, the unit of local government shall cite the responsible party for the violation and enforce citation under its local enforcement authority"*.

The Special Magistrate stated that the Town's attorney is welcome to attend hearings such as this in order to legally interpret the statutes as she is not able to review any documents relating to cases in advance, and anyone being cited would also have the right to bring their attorney, as she is acting in a quasi-judicial manner in this matter. She stated it would be helpful in the future.

Mr. Graulau reported that he has highlighted some sections of the mobile home lot agreement whereby Section 723.031 states that *"The homeowner shall have no financial obligation to the park owner as a condition of occupancy in the park except the lot rental amount. The parties agree otherwise as to user fees which the homeowner chooses to occur. No user fee shall be charged by the park owner to the mobile home owner for any services which are previously provided by the park owner and included in the lot rent amount unless the corresponding decrease is in the lot rent amount."* He stated that it appears clear to him that the Town's Chapter 162 shows who the responsible party is.

The Special Magistrate continued reviewing FS 723, and stated that per 723.024, her interpretation is that the responsible party is the property owner according to the Chapter 162.

Mr. Graulau stated it is his position that violations can emanate from the tenant such as the tenant attaching something to their structure without a permit. However, the question here would be that if these tenants were to move their dwelling from the property, would the violation still remain; in this situation, it would.

The Special Magistrate stated she will use Chapter 162 and find the property owner responsible for the violation. She asked if anyone in the audience would like to speak on this matter.

- Donna McGlone of 820 Sutton St., Lady Lake, stated she has known Joe Nessim, the tenant of 101 W. Pine Drive, for some time. She stated as history that Mr. Nessim went to the prior manager six years ago who would not let him trim the trees on the property although some had overhanging limbs, and one of the trees was lifting the driveway. She stated that Mr. Nessim has recently been served with papers stating he is subject to eviction because he cannot grow grass on one side of his property where the tree in question is involved. Ms.

McGlone stated she has asked the manager to have an arborist look at the tree on Mr. Nessim's behalf as he is financially unable to hire one on his own. She stated the park has an arborist they use, but they have not provided one in this case. Ms. McGlone reported that he has now received another letter from attorneys in Tallahassee stating that since he is out of compliance, he will be subject to the property owners coming in and assessing a fine for upgrading the grass. She stated that the trees in question are dropping leaves, resulting in tannic acid on the lawn, and not allowing the grass to grow.

The Special Magistrate noted for the record that Mr. Nessim is present. She stated that anything other than the matter brought forth today is out of her jurisdiction. She asked Mr. Graulau if it is just two trees involved.

Mr. Graulau replied that it is, but that if a certified arborist performs an inspection, he may find that a disease on one tree may be contaminating other trees. He stated that the Town is asking for an assessment of the condition of the trees by an arborist to clarify the issues needing corrective action on this property.

The Special Magistrate clarified that staff is not stating that this is a health, safety or welfare concern at this time, and Mr. Graulau confirmed that staff is not stating that, but may find it so in the future.

- Ms. McGlone stated that when she dropped by to check on Mr. Nessim after his surgery, she found that a tree branch had fallen through his carport roof and landed on a table and chairs where he sits occasionally. She stated he lives there alone and has mobility issues, and is concerned about imminent danger.

The Special Magistrate stated the mobile home owner may have a right to go ahead and clean up the trees himself if it is a safety issue, but that she cannot give legal advice.

- Mr. Joseph Nessim stated that when he bought his house, he wanted to trim the trees around it, but was told he could not. He stated that he spent \$3,000 on topsoil, seeds and sod, but that the trees are not allowing him to grow grass, and that he would like to have a nice garden and yard.

Special Magistrate Valerie Fuchs stated that based on the testimony and evidence presented on Case No. 15-5774, she did find that the property owner is in violation of the Town of Lady Lake's Code of Ordinances Sec. 7-67 for high grass, garbage and trash.

The owner has ten days to come into compliance for the 2015 violation or a fine of \$250.00 per day will begin to accrue on the 11th day. This order will be recorded as a lien on the property if not paid. In addition, an administrative fee of \$87 is imposed to be paid within 10 days of today's hearing date. The violator shall contact Code Enforcement to confirm compliance. The violator has a right to request a hearing on the fine imposition by written request to the Town of Lady Lake within twenty (20) days of the commencement of the fine. When requested, such a hearing will be heard by the Special Magistrate. The property owner will get a copy of this order.

The original agenda order was then resumed.

2. Case No. 15-5788 – 226 Lake Griffin Rd. – Edwards S. Rojewski & Susan Booker – Town of Lady Lake Code of Ordinances Sec. 7-67 – High Grass, Garbage, and Trash

Code Enforcement Officer Aaron Graulau presented the background on this case. He stated that this property is in violation of the Town of Lady Lake Code of Ordinances Sec. 7-67 for high grass, garbage and trash. He reported that a courtesy notice was sent to the property owner on November 12, 2015 and that several subsequent inspections have been performed and the property remains in violation.

Mr. Graulau stated a Notice of Hearing was sent to the registered agent by certified mail on December 1, 2015; the certified mail remains unclaimed, and the notice was posted on December 7, 2015. He stated the property remains in violation and is across the street from a house of worship and is visible to a number of people.

Mr. Graulau stated that staff's recommendation is to afford the property owner ten days to comply or a fine of \$25.00 per day be assessed thereafter for each day the violation exists.

The Special Magistrate reviewed the evidence and confirmed for the record that there was no one present in the audience regarding this case.

Special Magistrate Valerie Fuchs stated that based on the testimony and evidence presented on Case No. 15-5788, she did find that the owner was in violation of the Town of Lady Lake's Code of Ordinances Sec. 7-67 for high grass, garbage and trash.

The owner has ten days to come into compliance for the 2015 violation or a fine of \$25.00 per day will begin to accrue on the 11th day. This order will be recorded as a lien on the property if not paid. In addition, an administrative fee of \$87 is imposed to be paid within 10 days of today's hearing date. The violator shall contact Code Enforcement to confirm compliance. The violator has a right to request a hearing on the fine imposition by written request to the Town of Lady Lake within twenty (20) days of the commencement of the fine. When requested, such a hearing will be heard by the Special Magistrate. The property owner will get a copy of this order.

3. Case No. 15-5768 – 106 Mark Ave. – LP & Tax Lien Strategies – Town of Lady Lake Code of Ordinances Sec. 7-67 – High Grass, Garbage, and Trash

Code Enforcement Officer Aaron Graulau presented the background on this case. He stated that this property is in violation of the Town of Lady Lake Code of Ordinances Sec. 7-67 for high grass, garbage and trash.

Mr. Graulau reported that certified mail was sent to the registered agent on October 27, 2015, and was claimed on November 7, 2015. He stated that several subsequent inspections have been performed and the property remains in violation. He stated that he has phoned the number listed on the property for sale sign to no avail.

Mr. Graulau stated a Notice of Hearing was sent by certified mail to the registered agent on December 1, 2015, and was claimed on December 8, 2015. He stated the property remains in violation and is adjacent to occupied dwellings whose residents have raised concerns over vermin and snakes.

Mr. Graulau stated that staff's recommendation is to find the owner in violation and to afford the property owners ten days to cure the violation or a fine of \$25.00 per day be assessed thereafter for each day the violation exists.

The Special Magistrate reviewed the evidence and confirmed for the record that there was no one present in the audience regarding this case.

Special Magistrate Valerie Fuchs stated that based on the testimony and evidence presented on Case No. 15-5768, she did find that the owner was in violation of the Town of Lady Lake's Code of Ordinances Sec. 7-67 for high grass, garbage and trash.

The owner has ten days to come into compliance for the 2015 violation or a fine of \$25.00 per day will begin to accrue on the 11th day. This order will be recorded as a lien on the property if not paid. In addition, an administrative fee of \$87 is imposed to be paid within 10 days of today's hearing date. The violator shall contact Code Enforcement to confirm compliance. The violator has a right to request a hearing on the fine imposition by written request to the Town of Lady Lake within twenty (20) days of the commencement of the fine. When requested, such a hearing will be heard by the Special Magistrate. The property owner will get a copy of this order.

OTHER BUSINESS:

Mr. Graulau asked to open discussion on the 2016 Special Magistrate calendar.

The Special Magistrate stated that the Clerk's Office sent her a copy of the proposed dates for 2016. She stated that she may have a conflict with the date of the meeting in either June or July, and that when it gets closer to the time and she confirms the date of her event, she will give at least two months' notice in advance if a change is necessary. She stated that the calendar looks good otherwise.

ADJOURN: With no further business to discuss, the meeting was adjourned at 11:06 a.m.

Nancy Slaton, Deputy Town Clerk

Valerie Fuchs, Special Magistrate

Transcribed by Nancy Slaton, Deputy Town Clerk