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## **BASIS FOR INVOKING JURISDICTION**

This Court has original jurisdiction over this matter pursuant to Article V, Section 5(b) of the Florida Constitution and Fla. R. App. P. 9.030(c)(2) & (3).

## **STATEMENT OF THE FACTS AND OF THE CASE**

1. Plaintiff Donald Watson is a citizen of Lake County, Florida.
2. Plaintiff owns vacant Lot 13 in the Crown Pointe Subdivision, a platted single-family residential subdivision in Lake County.
3. Plaintiff placed dirt on Lot 13 in the spring of 2007 to grade the lot level in order to build a dwelling on the lot.
4. Lake County cited Watson for violation of §14.00.02 (Development Without A Development Order) as a consequence of grading Lot 13.
5. Respondent ordered Watson to attend a Lake County Code Enforcement Special Master hearing on September 12, 2007.
6. Subsequent to the hearing, the Lake County Code Enforcement Special Master found Watson in violation of §14.00.02.
7. Subsequent to Watson's appeal of the Special Master's Order of Enforcement, this Court reversed and remanded the Order of Enforcement on the basis of a procedural due process violation.
8. On remand, the Special Master again found Watson in violation of §14.00.02 (Development Without a Development Order) and entered an Order of

Enforcement on May 12, 2008.

9. Lake County agreed to an abatement of fines subsequent to entry of the Order of Enforcement. (Appendix, Pp. 29-30) The express purpose of the abatement was for Lake County to inspect the grading of Lot 13 so Watson would not have to remove the dirt from lot 13. (*Id.*)
10. Lake County refused to approve the grading of Lot 13 in the summer of 2008.
11. The Lake County Code Enforcement Special Master entered an Order of Fine in Code Enforcement Special Master Case No. 20070800086 in the amount of \$35,250 against Watson on May 10, 2010, for alleged failure to comply with the alternative requirements of the May 12, 2008 Order of Enforcement. (Appendix, pp. 1-2, Order of Fine.) The fine amount of \$35,250 is the sum of a non-daily \$500 fine and the product of 695 days times a daily fine of \$50 per day. (*Id.*, P. 2)
12. The Order of Fine did not account for the abatement period. (*Id.*)
13. Section 8-10 (Orders of Fine; liens) (2004) of the Lake County Code authorizes the Special Master to impose only daily fines for failure to comply with the requirements of an Order of Enforcement.<sup>1</sup>
14. Section 8-2 (Appendix, p. 3) of the Lake County Code states, in pertinent part, that:

The Special Master shall have all powers granted by statute, ordinance, or by law.

---

<sup>1</sup> Alternatively, upon a finding by the Special Master that a violation is irreparable or irreversible in nature, the Special Master is authorized to impose a fine up to \$15,000 per violation. (Appendix, p. 7 – Section 8-10 of the Lake County Code.)

15. Chapter 8 (Special Master) of the Lake County Code was enacted pursuant to Lake County Ordinance Nos. 1999-74, 2001-24, 2004-15, 2007-40, & 2009-48.
16. Petitioner challenged the Order of Fine pursuant to Chapter 8-10(b) of the Lake County Code.
17. Section 120(7), Fla. Stat., authorizes the DOAH to provide administrative law judges on a contract basis to any government entity.
18. On May 11, 2011, Lake County requested, pursuant to its contract (Appendix, pp. 10-15) with Florida's Division of Administrative Hearings (DOAH) that an Administrative Law Judge (ALJ) be assigned to preside over Watson's challenge to the Order of Fine. (Appendix, pp. 16-17 – Letter from Lake County Requesting DOAH ALJ Services.) The DOAH assigned ALJ Bram Canter to be the presiding officer.
19. The ALJ ruled that the challenge of the Order of Fine proceeding would be conducted pursuant to the same procedures applicable to the DOAH's review of state agency action, unless Chapter 8 of the Lake County Code establishes different procedures. (Appendix, p. 19 – ALJ July 26, 2011 Order.)
20. Chapter 28-106, Fla. Stat. (Decisions Determining Substantial Interests) applies to all proceedings under Chapter 120, Fla. Stat.<sup>2</sup>
21. Florida Administrative Code 28-106.204(5) states, in pertinent part, as follows:

In cases in which the Division of Administrative Hearings has recommended order authority, a party may file a motion to relinquish jurisdiction whenever there is no genuine issue as to a material fact.

---

<sup>2</sup> Three exceptions are identified, but none are applicable to this case.

F.A.C. 28-106.204(5)

22. Lake County approved a grading plan for Lot 13 in January 2012 . The grading plan was based on the exact same grading of lot 13 when the Special Master entered the Order of Enforcement in May 2008.(Appendix, P. 26)
23. On January 19, 2012, Watson filed a motion (“Motion”) for the ALJ to relinquish jurisdiction back to Lake County. (Appendix, pp. 21-28.) One of the bases for the “Motion” was that there was no genuine issue as to the material fact that the Special Master acted ultra vires by including a non-daily fine of \$500 in the Order of Fine amount, thus rendering the Order of Fine void. (Appendix, P. 22.)
24. Another basis for the Motion was that there was no factual basis for the fine amount because the Order of Fine failed to account for the abatement, thereby rendering the Order of Fine void. (Appendix Pp. 2-5).
25. The third basis was that the requirement of the order of enforcement had already been complied with in principle prior to commencement of the fine. (Appendix Pp. 2-5)
26. The ALJ denied the motion to relinquish jurisdiction without elaboration on January 27, 2012. (Appendix, P. 31)

### **NATURE OF RELIEF REQUESTED**

The nature of the relief requested by this petition is twofold: one is a writ of certiorari quashing the ALJ’s Order denying Watson’s motion to relinquish jurisdiction. The second is a writ of prohibition barring the ALJ from continuing to

assume jurisdiction over Watson's challenge of the Order of Fine.

## ARGUMENT

### Writ of Certiorari

Certiorari is the proper remedy, in limited circumstances, to review a non-final order that is not subject to appeal under Florida Rule of Appellate Procedure 9.130. *See Avco Corp. v. Neff*, 30 So.3d 597, 601 (Fla. 1st DCA 2010) and Fla.R.App.P. 9.030(c)(2) .

Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence.

(emphasis added)

*City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982)

Florida has consistently held that an adverse judgment reached in the face of a total lack of evidence constitutes a deviation from the essential requirements of the law.

*Dresner v. City of Tallahassee*, 164 So. 2d 208, 211 (Fla. 1964).

### **The ALJ's Denial of Watsons' Motion to Relinquish Jurisdiction was Not Supported by Competent Substantial Evidence**

Watsons presented three bases for why the Order of Fine was void, each of

which is a sufficient independent basis for the ALJ to relinquish jurisdiction:

1. The Order of Fine was void due to the Special Master's ultra vires inclusion of a \$500 non-daily fine in the Order of Fine;
2. The Order of Fine was void because the fine amount lacked a factual basis by failing to account for the abatement agreed to by Lake County, and;
3. The Order of Fine was void because the grading of Lot 13 was already in compliance in principle with the requirements of the Order of Enforcement prior to commencement of the fine.

In the order denying Watsons' motion, the ALJ did not reference any evidence supporting his decision. (Appendix, P. 31.) In its response in opposition to the motion, Lake County failed to present any competent substantial evidence controverting any of the three bases for why the Order of Fine is void. Rather, Lake County made the red herring argument that the \$500 fine included in the Order of Fine was not a civil penalty, but was a fine. The distinction between a civil penalty and a non-daily fine in this case, however, is a distinction without relevance because the Special Master has no authority to impose either a \$500 non-daily fine or a \$500 civil penalty. Lake County's response argument that Watsons had waived their right to challenge the \$500 non-daily fine in the Order of Fine is frivolous because the defense of lack of subject matter jurisdiction is a non-

waivable defense that can be raised at any time. *See* Fla. R. Civ.P. 1.140(b) and (h)(2).

Subject matter jurisdiction is conferred upon a court by a constitution or statute, and cannot be created by waiver, acquiescence or agreement of the parties.

*Snider v. Snider*, 686 So.2d 802, 804 (Fla. 4th DCA 1997).

Lake County did not dispute the existence of the abatement agreement, which necessarily means there was no factual basis for the Order of Fine dollar amount. Rather, Lake County made yet another red herring argument that it had not agreed to a permanent abatement of the fines. The difference between a temporary abatement and a permanent abatement is a distinction without significance in this case because the Order of Fine failed to account for any abatement. Consequently, the lack of a factual basis for the dollar amount of the fine necessarily rendered the Order of Fine void<sup>3</sup>. The only remedy for an order of fine lacking a factual basis is reversal. *See Deluca Properties, Inc. v. City of Wildwood*, 830 So. 2d 206 (Fla. 5th DCA 2002).

Lake County failed to present, in its response, any competent substantial evidence to controvert Watsons' claim that the Order of Fine was void on the basis that the Order of Enforcement had been complied with in principle before the fine

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<sup>3</sup> The fine amount also lacks a factual basis due to the Special Master's ultra vires inclusion of a \$500 non-daily fine in the Order of Fine.

period even began. Rather, Lake County presented the red herring argument that the Order of Fine is valid because Watsons had neither removed the dirt from Lot 13 nor had they obtained a “proper permit”.<sup>4</sup> Lake County’s misleading and frivolous argument cannot be squared with the fact that the requirements of the Order of Enforcement were **alternative** requirements. Compliance with either one of the requirements would have therefore necessarily meant compliance with the Order of Enforcement. The express purpose of the 2008 abatement was for Lake County to approve the Lot 13 grading of so that the dirt could remain thereon. (see Appendix , Pp. 29-30, wherein Lake County references Ms. Strange’s May 22, 2008 correspondence on precisely this issue.)

No rational reason existed for Lake County to withhold approval of the grading of Lot 13 in the summer of 2008 because the grading then was precisely the same as the grading that Lake County approved in January 2012.

The ALJ’s denial of the motion to relinquish was reached in the face of a total lack of competent, substantial evidence supporting the decision, and was therefore a departure from the essential requirements of law, pursuant to *Dresner, supra*.

---

<sup>4</sup> It was also misleading for Lake County to argue that the Order of Fine is valid on the basis that Watsons have not obtained a permit because, to this day, Lake County cannot (or will not) explain with specificity what constitutes the “proper permit” referenced in the Special Master’s Order of Enforcement, nor has Lake County identified what department would issue such a permit.

The ALJ's refusal to relinquish jurisdiction over Watson's challenge of a facially void Order of Fine will cause irreparable harm to Petitioner in the form of forced litigation. see *Service Experts, LLC v. Northside Air Conditioning & Electrical Service, Inc.*, 56 So.3d 26, 29 (Fla.App. 2 Dist. 2010) (finding that forced litigation after the plaintiff's notice of voluntary dismissal was filed constituted impending injury with no adequate remedy.) The *Service Experts, LLC* trial court lost jurisdiction once the voluntary dismissal was filed. Petitioner herein contends that the ALJ lost jurisdiction over the challenge to the Order of Fine when presented with undisputed evidence showing the Order of Fine to be void. Forced participation in a void proceeding is a useless act that one need not do. *Carol City Utilities, Inc. v. Dade County*, 143 So. 2d, 828 (Fla. 3d DCA 1962).

### **WRIT OF PROHIBITION**

A petition for a writ of prohibition is "the appropriate remedy to prevent an inferior tribunal from acting in excess of jurisdiction". *City of Ocala v. Gard*, 988 So.2d 1281, 1283 (Fla. 5th DCA 2008). A petition for a writ of prohibition is appropriate where, as here, "...there are no disputed issues of fact and the lower tribunal is poised to proceed without subject matter jurisdiction." *DHL Express (USA), Inc v. State ex rel. Grupp*, 60 So. 3f 426, 428 (Fla. 1st DCA 2011).

There are no issues of disputed fact in regards to any of the three bases presented in the motion to relinquish jurisdiction showing why the Order of Fine is

void. The Special Master's inclusion of a \$500 non-daily fine in the Order of Fine is undisputed. (Appendix, P. 2) As previously addressed herein, it is undisputed that the Special Master has no authority to include the \$500 non-daily fine in the Order of Fine.

It is undisputed that Lake County agreed to abatement, as Lake County acknowledged precisely this in its response to the motion to relinquish jurisdiction. (Appendix, Pp. 29-30) It is undisputed that the Order of Fine failed to account for the abatement acknowledged by Lake County. (Appendix, P. 1-2) Consequently, it is undisputed that there was no factual basis for the Order of Fine amount.

It is undisputed that the purpose of the abatement in the summer of 2008 was for Lake County to inspect and approve the grading of Lot 13. It is undisputed that Lake County's approval of the grading of lot 13 in the summer of 2008 would have permitted Watson to retain the dirt on lot 13. It is undisputed that the grading of Lot 13 in the summer of 2008 was the same as the grading shown in the grading plan approved by Lake County in January 2012. It is undisputed that Lake County lacked a rational basis for refusing to approve the grading of lot 13 in the summer of 2008.

Petitioner contends that the ALJ refused to relinquish jurisdiction because he intends to account for the Special Master's ultra vires inclusion of a \$500 non-daily fine and the lack of a factual basis for the fine amount by modifying the Order of

Fine. It is precisely this expected action by the ALJ that Petitioner contends is beyond the ALJ's jurisdiction and is therefore the expected action warranting a Writ of Prohibition.

**Nothing** within Chapter 8 of the Lake County Code (Appendix, pp.3-9), the contract between Lake County and the DOAH (Appendix, pp.10-15), or the May 11, 2011 Lake County referral letter (Appendix, pp. 16-17) authorizes the ALJ to modify the Order of Fine to account for the Special Master's ultra vires inclusion of a \$500 non-daily fine or for the lack of a factual basis for the Order of Fine amount. Furthermore, the ALJ has expressly excluded other evidence that would justify a reduction of the fine pursuant to Section 8-10(a)(2) &(3) of the Lake County Code. (Appendix, p. 24.)

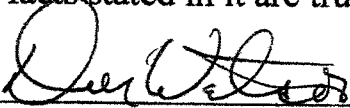
The Special Master's ultra vires inclusion of a \$500 non-daily fine, the lack of a factual basis for the fine amount, and the fact that the grading of lot 13 complied in principal with the Order of Enforcement necessarily rendered the May 10, 2010 Order of Fine void *ab initio*. Consequently, that Order of Fine cannot be resurrected by any subsequent modification by the ALJ.

The ALJ's continued assumption of jurisdiction over Watson's challenge to the Order of Fine will cause irreparable injury to Petitioner from forced litigation of a facially void Order of Fine. see *Service Experts, LLC supra*.

**WHEREFORE**, Petitioner respectfully requests this Honorable Court to grant the writ of certiorari to quash the ALJ's denial of Watson's motion to relinquish jurisdiction and the writ of prohibition barring the ALJ's continued assumption of jurisdiction over Watson's challenge of a void order of fine in Lake County Code Enforcement Special Master Case No. 20070800086.

Respectfully submitted this 27<sup>th</sup> day of February, 2012.

Under penalties of perjury, I declare that I have read the foregoing petition and that the facts stated in it are true.



Donald P. Watson, Petitioner, pro se  
12555 Crown Point Circle  
Clermont, FL 34711  
Telephone No. 352-242-7135  
Facsimile No. 866-855-0487  
donwatson02@gmail.com

## CERTIFICATE OF SERVICE and COMPLIANCE

I HEREBY CERTIFY that, pursuant to Fla. R. App. P. 9.420(b) & (c), a true and correct copy of the foregoing was furnished by hand delivery to the Lake County Attorney's Office at 315 W. Main Street, Tavares, FL and by U.S. Mail to ALJ Bram Canter at The Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Fl 32399-3060 on this 27<sup>th</sup> day of February, 2012.

I also certify that this petition complies with the page limitation of Fla. R. App. P. 9.100(g) and with the font requirements of Fla. R. App. P. 9.100(l).



Donald P. Watson, Petitioner, pro se  
12555 Crown Point Circle  
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donwatson02@gmail.com

## APPENDIX INDEX

	Page
MAY 10, 2010 ORDER OF FINE -----	1-2
CHAPTER 8, LAKE COUNTY CODE -----	3-9
CONTRACT FOR ADMINISTRATIVE LAW JUDGE SERVICES -----	10-15
LAKE COUNTY REFERRAL LETTER REQUESTING THE DOAH ----- TO ASSIGN AN ADMINISTRATIVE LAW JUDGE TO PRESIDE OVER WATSON'S CHALLENGE TO THE ORDER OF FINE	16-17
JULY 26, 2011 ORDER CLARIFYING JURISDICTION-----	18-20
WATSON'S AMENDED SECOND MOTION TO RELINQUISH ----- JURISDICTION AND MEMORANDUM OF LAW	21-28
LAKE COUNTY'S RESPONSE TO THE MOTION TO ----- RELINQUISH JURISDICTION, PAGES 4-5	29-30
JANUARY 27, 2012 ORDER DENYING MOTION TO ----- RELINQUISH JURISDICTION	31

BEFORE THE CODE ENFORCEMENT SPECIAL MASTER  
LAKE COUNTY, STATE OF FLORIDA

FILED

2011 MAY 13 A 12:14  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

LAKE COUNTY,

Petitioner,

vs.

11-2448  
Case No. SM 2007-08-0086

DONALD P. & CHRISTINE H. WATSON

Respondents,

ORDER OF FINE

This cause was heard on September 12, 2007 before the Code Enforcement Special Master of Lake County, Florida. Based upon the testimony and evidence presented, the following Findings of Fact and Conclusions of Law are made:

FINDINGS OF FACT

1. An Order of Enforcement was entered in this cause on May 12, 2008 after a hearing held on September 12, 2007 requiring that the Respondent shall: Have fourteen (14) days to comply by obtaining the proper permit, or removing the fill from the property and pay the associated fine in the amount of \$500.00, and if respondent fails to comply, then an additional fine of \$50.00 per day to begin on the fifteenth (15<sup>th</sup>) day.
2. The violation which is the subject of this proceeding was cited on real property located in Lake County, Florida, described as: Lot 13, Crown Pointe, according to the plat thereof, as recorded in plat book 41, pages 77 and 78 Public Records of Lake County, Florida.
3. On April 22, 2010 the property was inspected and an Affidavit entered into the file indicating that the property was not in compliance.

CONCLUSIONS OF LAW

1. The Respondent is still in violation of the provisions of Section(s) 14.00.02, of the Lake County Land Development Regulations/Code, and has not complied with the Special Master's Order of Enforcement previously entered herein.

**ORDER**

It is, therefore, ORDERED that the Respondent shall pay a fine in the amount of thirty five thousand two hundred fifty dollars (\$35,250.00) for the period of May 27, 2008 through April 22, 2010 (695 days) at \$50.00 per day, with the fine continuing to accrue at \$50.00 per day for each day of non-compliance. This fine is to be paid within thirty (30) days from the date that this Order is entered. DONE and ORDERED at Tavares, Lake County, Florida, this 12 day of May, 2010.

**THE CODE ENFORCEMENT SPECIAL MASTER  
OF LAKE COUNTY, FLORIDA**

  
Charles D. Johnson, Special Master

PLEASE CONTACT CODE ENFORCEMENT SERVICES AT (352) 343-9639 WHEN THE VIOLATION IS CLEARED SO THAT AN INSPECTION CAN BE MADE TO CONFIRM COMPLIANCE.

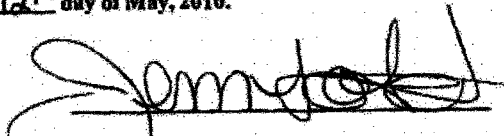
Pursuant to Section 8-10 (b), Lake County Code, if any person desires to challenge the Order of Fine at a hearing in front of the Code Enforcement Special Master, a request shall be made within twenty (20) days of the date of issuance of the Order. If such person fails to make a timely request for hearing, the Order of Fine shall be recorded in the Public Records of Lake County, Florida. Requesting a hearing shall not toll the time for appeal to the Circuit Court sitting in Lake County, Florida.

Pursuant to Section 286.0105, Florida Statutes, if any person desires to appeal any decision with respect to a matter considered at a public meeting or hearing of the Code Enforcement Special Master of Lake County, Florida, such person will need a record of the proceedings, and such person may need to ensure that a verbatim record for such purpose is made, which record includes the testimony and evidence upon which the appeal is based.

Pursuant to Section 162.11, Florida Statutes, either Lake County or a Respondent may appeal a final administrative order of the Code Enforcement Special Master to the Circuit Court in Lake County, Florida. Such an appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Order of Fine was forwarded by certified United States Mail, return receipt requested, to DONALD P. & CHRISTINE H. WATSON, 12555 CROWN POINTE CIR, CLERMONT, FL 34711, this 12<sup>th</sup> day of May, 2010.

  
Jennifer E. Lobato, Clerk  
Code Enforcement Special Master  
PO Box 7800, Tavares, FL 32778-7800

**Lake County, Florida, Code of Ordinances >> - LAKE COUNTY CODIFICATION >>  
Chapter 8 - CODE ENFORCEMENT SPECIAL MASTER >>**

**Chapter 8 - CODE ENFORCEMENT SPECIAL MASTER [24]**

Sec. 8-1. - Lake County Code Enforcement Special Master.

Sec. 8-2. - Jurisdiction and powers.

Sec. 8-3. - Reserved.

Sec. 8-4. - Enforcement procedure.

Sec. 8-5. - Written notice.

Sec. 8-6. - Public hearings.

Sec. 8-7. - Reserved.

Sec. 8-8. - Subpoena powers.

Sec. 8-9. - Decisions and orders.

Sec. 8-10. - Orders of fine; liens.

Sec. 8-11. - Alternate enforcement procedure.

Sec. 8-12. - Civil infraction; authority to issue citations.

Sec. 8-13. - Penalties.

Sec. 8-14. - Violations procedure.

**Sec. 8-1. - Lake County Code Enforcement Special Master.**

- (a) The board of county commissioners shall appoint one (1) or more persons to act in the capacity of a special master to hear cases involving violations of the Lake County Code and Land Development Regulations.
- (b) In order to serve as a code enforcement special master, a person must be either a lawyer in good standing with the Florida Bar or a Florida Supreme Court certified mediator.
- (c) The county shall include within the statement of violation and notice of hearing the name of the code enforcement special master assigned to hear the case. The respondent shall notify the county no later than ten (10) calendar days before the date of the hearing that the respondent objects to the special master. If the respondent objects, the county and the respondent shall mutually agree on an impartial third party who meets all the requirements of subsection (b) above to serve as the code enforcement special master. If the parties cannot agree on an impartial third party, an administrative law judge from the department of administrative hearings shall be brought in to hear the case.

(Ord. No. 2004-15, § 2, 3-16-04)

**Sec. 8-2. - Jurisdiction and powers.**

The code enforcement special master shall have jurisdiction to hear and decide cases involving alleged violations of any provision of the Lake County Code, the Land Development Regulations, or any resolution duly enacted by the board of county commissioners. The special master shall have all powers granted by statute, ordinance or by law.

(Ord. No. 2004-15, § 2, 3-16-04)

**Sec. 8-3. - Reserved.****Sec. 8-4. - Enforcement procedure.**

- (a) The code enforcement manager or designee shall have the duty of enforcing the various codes pursuant to this chapter. The code enforcement manager or designee shall utilize the procedures of this section or the alternative enforcement procedure outlined in sections 8-11 through 8-14. The special master shall not have the power to initiate enforcement proceedings pursuant to this chapter. The code enforcement manager and designee shall accept anonymous code violation complaints.
- (b) If a violation of a code provision is found, the code enforcement manager or designee shall notify the alleged violator of the violation and give the alleged violator a reasonable time, in light of the nature of the violation, to correct the violation. Should the violation continue beyond the time specified for correction, the code enforcement manager or designee shall schedule a hearing in front of the special master, and provide written notice to the alleged violator of a scheduled hearing in the manner prescribed in section 8-5. If the violation is not corrected by the time specified for correction by the code enforcement manager or designee, the case may be presented to the special master even if the violation has been corrected prior to the hearing, and the notice shall so state. If the Lake County Code specifies a recommended penalty for such violation, the code enforcement manager or designee may, at his or her option, include a written stipulation along with the required notice. Such stipulation shall provide that if it is signed and returned along with any monetary penalty prior to the scheduled special master hearing, that the code enforcement manager or designee will recommend approval of such stipulation to the special master and that attendance by the violator will not be necessary at such hearing. If the special master refuses to accept such stipulation, the matter will be reset for hearing and notice given to the alleged violator.
- (c) If a repeat violation is found, the code enforcement manager or designee shall notify the alleged violator, but shall not be required to give the alleged violator a reasonable time to correct the violation. The code enforcement manager or designee, upon notifying the alleged violator of a repeat violation, shall schedule a hearing, and shall provide written notice to the alleged violator of a scheduled hearing in the manner prescribed in section 8-5. The case may be presented to the special master even if the repeat violation has been corrected prior to the hearing, and the notice shall so state. If the repeat violation has been corrected, the special master shall retain the right to hold a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. For purposes of this chapter, a repeat violation means a violation of a provision of a code or ordinance by a person who has been previously found to have violated or who has admitted violating the same provision within five (5) years prior to the violation, notwithstanding the violations occur at different locations. If the violation is a repeat violation, and if the Lake County Code specifies a recommended penalty for such violation, the code enforcement manager or designee may, at his or her option, include a written stipulation along with the required notice. Such stipulation shall provide that if it is signed and returned along with any monetary penalty prior to the scheduled special master hearing, that the code enforcement manager or designee will recommend approval of such stipulation to the special master and that attendance by the violator will not be necessary at such hearing. If the special master refuses to accept such stipulation, the matter will be reset for hearing and notice given to the alleged violator.
- (d) Notwithstanding the provisions of paragraphs (a), (b), and (c), if the code enforcement manager or designee has reason to believe a violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the code enforcement manager or designee shall make a reasonable effort to

notify the alleged violator and may immediately schedule a hearing in front of the special master. If the violation is a violation which is irreparable or irreversible in nature, and if the Lake County Code specifies a recommended penalty for such violation, the code enforcement manager or designee may, at his or her option, include a written stipulation along with the required notice. Such stipulation shall provide that if it is signed and returned along with any monetary penalty prior to the scheduled special master hearing, that the code enforcement manager or designee will recommend approval of such stipulation to the special master and that attendance by the violator will not be necessary at such hearing. If the special master refuses to accept such stipulation, the matter will be reset for hearing and notice given to the alleged violator.

(Ord. No. 2004-15, § 2, 3-16-04; Ord. No. 2007-40, § 3, 8-21-07; Ord. No. 2009-48, § 2, 9-1-09)

#### **Sec. 8-5. - Written notice.**

- (a) All written notices required by this section shall be provided to the alleged violator by certified mail, return receipt requested, provided if such notice is sent to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the county by such owner and is returned as unclaimed or refused, notice may be provided by posting and by first class mail directed to the addresses furnished to the county with a properly executed proof of mailing or affidavit confirming the first class mailing; hand delivery by the sheriff or other law enforcement officer, or by the code enforcement manager or designee; or by leaving the notice at the alleged violator's usual place of residence with some person of his or her family above fifteen (15) years of age, and informing such person of the contents of the written notice; or in the case of commercial premises, leaving the notice with the manager or other person in charge.
- (b) In addition to providing written notice as set forth in subsection (a), written notice may also be served by publication or posting as provided in section 162.12(2), Florida Statutes.
- (c) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection (b), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

(Ord. No. 2004-15, § 2, 3-16-04)

#### **Sec. 8-6. - Public hearings.**

- (a) Upon request of the code enforcement manager, a hearing in front of the special master may be scheduled. Minutes shall be kept of all hearings before the special master and proceedings shall be open to the public. The alleged violator shall be given at least ten (10) days' written notice of the hearing, pursuant to the provisions of section 8-5. The special master shall comply with the quasi-judicial and ex parte requirements as set forth in Chapter XIV, Land Development Regulations.
- (b) Each case before the special master shall be presented by the county.
- (c) The special master shall proceed to hear cases on the agenda for the day of the scheduled hearing. All testimony shall be under oath or affirmation, and shall be recorded. The special master and clerk shall have power to administer oaths and affirmations. The county and the alleged violator shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence. All persons appearing before the special master shall be sworn in prior to giving any testimony relevant to the case. However, hearings shall be informal and need not be conducted according to technical rules of evidence.
- (d) Any relevant evidence shall be admitted if determined by the special master to be the sort of evidence upon which reasonable and prudent persons are accustomed to rely in the conduct of their affairs, regardless of the existence of any common law or statutory

rule which, might make such evidence inadmissible in civil actions. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding of fact unless it would be admissible over objection in a civil action. The special master may exclude irrelevant or unduly repetitious evidence.

- (e) After the conclusion of the hearing, if enforcement action is necessary, the special master shall issue findings of fact and conclusions of law in the form of an order of enforcement, which shall command whatever steps are necessary to bring a violation into compliance by the time set in the order. The order of enforcement may include a notice that it shall be complied with by a specified date, and that a fine may be imposed if the order is not complied with by such date. A certified copy of such order of enforcement may be recorded in the public records of the county, and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator, and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order of enforcement is recorded in the public records pursuant to this section, and the order is complied with by the date specified in the order, the special master shall issue an order acknowledging compliance, which shall be recorded in the public records of the county.
- (f) The recording secretary for the special master shall serve as clerk to the special master, and shall maintain all official records and orders of the special master.

(Ord. No. 2004-15, § 2, 3-16-04; Ord. No. 2009-48, § 3, 9-1-09)

#### **Sec. 8-7. - Reserved.**

#### **Sec. 8-8. - Subpoena powers.**

The special master, the code enforcement manager or designee, or the alleged violator, may request that witnesses and evidence, including records, surveys, plats, and other materials, be subpoenaed for any code enforcement hearing. Subpoenas shall be signed by the special master, and shall be signed in blank to be provided to the code enforcement manager or designee, or to the alleged violator. Subpoenas may be served by the sheriff, or in any other manner provided by law. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so.

(Ord. No. 2004-15, § 2, 3-16-04)

#### **Sec. 8-9. - Decisions and orders.**

- (a) The code enforcement manager or designee, or the violator, may appeal a final administrative order of the special master to the Circuit Court of the Fifth Judicial Circuit in Lake County. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the special master. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.
- (b) Every order of enforcement or order of fine entered by the special master shall be in writing, and shall include findings of fact and conclusions of law.
- (c) Every order of enforcement or order of fine entered by the special master shall be filed in the office of the clerk for the special master. A copy of the executed order shall be sent by certified mail, return receipt requested, to the violator.
- (d) The special master shall, in every proceeding, reach a decision without unreasonable or unnecessary delay, and shall, in all instances, reach a decision within twenty (20) calendar days from the date of the final hearing at which receipt of all evidence has been concluded.

(Ord. No. 2004-15, § 2, 3-16-04)

**Sec. 8-10. - Orders of fine; liens.**

- (a) The special master, upon notification by the code enforcement manager or designee that an order of enforcement has not been complied with by the time set out in the order, or upon finding that a repeat violation has been committed, may enter an order of fine ordering the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the special master in the order of enforcement for compliance, or, in the case of a repeat violation, for each day the repeat violation continues past the date of notice to the violator of the repeat violation which has been provided by the code enforcement manager or designee. If a finding of a violation or a repeat violation has been made by the special master pursuant to this chapter, a hearing shall not be necessary for issuance of the order of fine.
- (1) A fine imposed pursuant to this section shall not exceed one thousand dollars (\$1,000.00) per day for a first violation, and shall not exceed five thousand dollars (\$5,000.00) per day for a repeat violation. However, if the special master finds the violation to be irreparable or irreversible in nature, the special master may impose a fine not to exceed fifteen thousand dollars (\$15,000.00) per violation.
- (2) In determining the amount of the fine, if any, the special master shall consider the following factors:
- a. The gravity of the violation;
  - b. Any actions taken by the violator to correct the violation;
  - c. Any previous violations committed by the violator.
- (3) The special master may recommend a reduction of a fine imposed pursuant to this section. In addition to the factors contained in subsection (2) above, the special master shall consider the following mitigating factors when reducing the amount of a fine:
- a. The transfer of the property to a new owner who subsequently brings the property into compliance with the Lake County Code;
  - b. The ability of the violator to bring the property into compliance; and
  - c. The amount of money and other resources expended to bring the property into compliance.
- (b) The violator shall have the right to request a hearing in front of the special master to challenge the order of fine, provided such hearing is requested within twenty (20) days of the date of issuance of the order of fine. If the hearing is timely requested, it shall be scheduled as soon as practicable in front of the special master. The hearing shall be limited to consideration of only those new findings necessary to imposing the order of fine, and shall in no event be a complete re-hearing of the case. If the violator fails to make a timely request for hearing on the order of fine, the order shall be recorded in the public records of Lake County, Florida. Requesting a hearing on the order of fine shall not toll the time for appeal to the Circuit Court sitting in Lake County, Florida.
- (c) A certified copy of an order of fine shall be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists, and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this section shall continue to accrue until the violator comes into compliance, or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever shall first occur. After three (3) months from the filing of any such lien which remains unpaid, the special master may authorize the county attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest, pursuant to the provisions of section 162.09, Florida Statutes.
- (d) No lien created pursuant to this chapter shall continue for a period longer than twenty

(20) years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

- (e) Upon complying with the order of enforcement as executed by the special master, the violator may request a hearing to ask for a reduction in the order of fine. Such request shall be made in writing addressed to the code enforcement manager or designee. Upon receipt of such request, the code enforcement manager or designee shall verify that the violator has complied with the order of enforcement, and if in compliance, shall schedule the matter to be heard by the special master. A request for reduction of fine does not toll the time for filing an appeal of the order of fine to the circuit court.

(Ord. No. 2004-15, § 2, 3-16-04)

### **Sec. 8-11. - Alternate enforcement procedure.**

The code enforcement manager or designee shall have the enforcement powers set out in sections 8-11 through 8-14 herein, inclusive.

(Ord. No. 1999-74, § 2, 7-6-99; Ord. No. 2007-40, § 4, 8-21-07)

*Note—Former App. E, § 12.07.20.*

### **Sec. 8-12. - Civil infraction; authority to issue citations.**

A violation of a code or ordinance is a civil infraction. As such, the code enforcement manager or designee shall have the power to issue a citation to a person when, based upon personal investigation, the code enforcement manager or designee has reasonable cause to believe that the person has committed a civil infraction in violation of the provisions of the Lake County Code or Lake County Land Development Regulations.

(Ord. No. 1999-74, § 2, 7-6-99; Ord. No. 2001-24, § 2, 3-6-01)

*Note—Former App. E, § 12.07.21.*

### **Sec. 8-13. - Penalties.**

- (a) A citation for initial violation of a code provision or ordinance which is not contested shall carry a reduced civil penalty of one hundred fifty dollars (\$150.00), provided that such reduced civil penalty shall be paid to the clerk of the county court within thirty (30) days of the alleged violator's receipt of the citation.
- (b) A citation for a repeat violation which is a second violation of a code provision or ordinance, and which is not contested, shall carry a reduced civil penalty of three hundred dollars (\$300.00), provided that such reduced civil penalty shall be paid to the clerk of the county court within thirty (30) days of the alleged violator's receipt of the citation.
- (c) A citation for a repeat violation of a code provision or ordinance, other than a second violation, and which is not contested, shall carry a civil penalty of four hundred fifty dollars (\$450.00), provided that such reduced civil penalty shall be paid to the clerk of the county court within thirty (30) days of the alleged violator's receipt of the citation.
- (d) An alleged violator may contest the citation by requesting a hearing date from the clerk of the county court within thirty (30) days of the alleged violator's receipt of the citation.
- (e) If a citation for a violation of a code or ordinance is contested, the civil penalty imposed by the county court shall not exceed five hundred dollars (\$500.00).

(Ord. No. 1999-74, § 2, 7-6-99; Ord. No. 2001-24, § 2, 3-6-01; Ord. No. 2007-40, § 5, 8-21-07)

*Note—Former App. E, § 12.07.22.*

**Sec. 8-14. - Violations procedure.**

- (a) The code enforcement manager or designee shall be authorized to issue a citation to a person when, based upon personal investigation, the code enforcement manager or designee has reasonable cause to believe that the person has committed a civil infraction in violation of a Lake County Code provision or an ordinance. Prior to issuing a citation, the code enforcement manager or designee shall provide notice to the person that the person has committed a violation of the applicable code provision or ordinance, and shall establish a reasonable period of time of thirty (30) days or less within which the person shall correct the violation. If, upon personal investigation, the code enforcement manager or designee finds that the person has not corrected the violation within the designated time period, he or she may issue a citation to the person who has committed the violation. The code enforcement manager or designee shall not be required to provide the person with a reasonable period of time to correct the violation prior to issuing the citation, and may immediately issue a citation, if the code enforcement manager or designee has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.
- (b) The code enforcement manager or designee shall issue a citation in a form prescribed by resolution of the board of county commissioners, and meeting the requirements of F.S. § 162.21(3)(c).
- (c) Any person who willfully refuses to sign and accept a citation issued by the code enforcement manager or designee shall be guilty of a misdemeanor of the second degree, punishable as provided for in F.S. § 775.082 or 775.083.
- (d) After issuing a citation to an alleged violator, the code enforcement manager or designee shall deposit the original citation and one (1) copy of the citation with the Clerk of the County Court in Lake County.
- (e) An alleged violator shall have thirty (30) days from the date of receipt of the citation to pay the reduced civil penalty indicated on the citation, either by mail or in person, or contest the citation by requesting a hearing date in the county court. An alleged violator electing to contest the citation and choosing to appear in county court shall be deemed to have waived the right to pay the reduced civil penalty provided for in section 8-13.
- (f) The county court, after a hearing, shall determine whether the alleged violator has committed an infraction. If the commission of an infraction by the alleged violator has been proven by the greater weight of the evidence, the county court may impose a civil penalty not to exceed five hundred dollars (\$500.00).
- (g) An alleged violator who fails, within thirty (30) days from the date of receipt of the citation, to pay the reduced civil penalty appearing on the citation, or to request a hearing to contest the citation, or who requests a hearing but does not appear, shall be deemed to have waived the right to contest the citation, and the county court may enter judgment against the alleged violator for an amount up to the maximum civil penalty of five hundred dollars (\$500.00).

(Ord. No. 1999-74, § 2, 7-6-99; Ord. No. 2007-40, § 6, 8-21-07)

Note—Former App. E, § 12.07.23.

**FOOTNOTE(S):**

<sup>(24)</sup> **Editor's note**— Ord. No. 2004-15, § 2, adopted March 16, 2004, amended the title of Ch. 8, and §§ 8-1—8-10 to read as herein set out. Prior to inclusion of said ordinance, Ch. 8 was entitled, "Code Enforcement Board." See also the Code Comparative Table. [\(Back\)](#)

<sup>(24)</sup> **Cross reference**— Administration, Ch. 2. [\(Back\)](#)

State of Florida  
Division of Administrative Hearings

Charlie Crist  
Governor

Robert S. Cohen  
Director and Chief Judge

Claudia Lladó  
Clerk of the Division



Charles A. Stampelos  
Deputy Chief  
Administrative Law Judge

David W. Langham  
Deputy Chief Judge  
Judges of Compensation Claims

December 10, 2010

County Attorney  
RECEIVED  
DEC 13 2010

Lake County  
County Attorney's Office  
Attn: Melanie Marsh, Acting County Attorney  
P.O. Box 7800  
Tavares, Florida 32778

Dear Ms. Marsh:

Enclosed is your executed copy of the Administrative Law  
Judge Services Contract between the Division of  
Administrative Hearings and Lake County, Florida.

If you need further assistance, you may contact me at (850)  
488-9675.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa M. Mustain".

Lisa M. Mustain  
Administrative Services Director

LMM/da

Enclosure

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

This CONTRACT is between LAKE COUNTY, FLORIDA, a political subdivision of the State of Florida, whose principal address is 315 West Main Street, Suite 335, P.O. Box 7800, Tavares, Florida 32778, hereinafter "LAKE COUNTY," and the State of Florida, Division of Administrative Hearings (DOAH).

WHEREAS, Section 120.65, Florida Statutes, authorizes DOAH to provide Administrative Law Judges (ALJs) on a contract basis to any governmental entity;

WHEREAS, desires to use the services of DOAH's ALJs to conduct hearings involving code enforcement issues on an as-needed basis when a conflict of interest prevents the Lake County Code Enforcement Special Master from hearing a case; and

NOW, THEREFORE, the parties, for valuable consideration and the mutual promises between them, agree as follows:

1. Scope of Services. DOAH agrees to make ALJs available to LAKE COUNTY. The ALJs to be provided will be full-time judges employed by the State of Florida, Division of Administrative Hearings. The ALJs to be provided are experts in the adjudication of administrative disputes and

such ALJs shall, where possible, be persons familiar with cases involving the issues at hand.

2. Compensation. The fiscal year 2003-2004 General Appropriations Act, Chapter 2003-397, Laws of Florida, requires DOAH to renegotiate its contracts for ALJ services annually so that the hourly rate charged is based on a total-cost recovery methodology. The rate has been determined to be \$142.00 per hour beginning October 1, 2009. DOAH will notify LAKE COUNTY of the amended hourly rate on or about the first day of September of each year. That rate will become effective on the first day of October of that same year. LAKE COUNTY agrees to compensate DOAH for each hour actually worked, and subsequently, at the hourly rate determined in accordance with the Florida Legislature's directive. This rate will apply for ALJ services in preparing for hearings, traveling to hearings, conducting hearings, and preparing Recommended Orders. In the event a hearing is being conducted by video teleconferencing, LAKE COUNTY will reimburse DOAH at the current video teleconferencing rate for the time the equipment is used.

3. Expenses. LAKE COUNTY agrees to pay the actual travel expenses of the assigned ALJ in the amount provided pursuant to Chapter 112, Florida Statutes. DOAH agrees,

whenever possible, to arrange the travel schedule of such ALJ so that the ALJ can accomplish other work during a trip, and, in such instances, travel expenses and hourly compensation will be prorated for services to LAKE COUNTY. DOAH will submit invoices monthly and LAKE COUNTY agrees to remit payment monthly in accordance with Chapter 218, Part VII, Florida Statutes. DOAH agrees to provide LAKE COUNTY an itemized statement of the charges and costs in the invoice.

4. Contract Management. Deputy Chief Judge Charles A. Stampelos or Administrative Services Director Lisa M. Mustain, shall provide contract management services under this Contract.

5. Term. This contract is for a term of one (1) year and will automatically renew for succeeding yearly periods one year from the date last signed. This Contract may be amended from time to time by mutual agreement of the parties, and may be terminated by either party for the convenience of that party upon thirty (30) days' written notice.

6. Request for Services. LAKE COUNTY, in order to obtain the services for an ALJ, shall send a letter to the Chief Judge, Division of Administrative Hearings, requesting the services of an ALJ and shall include with

such request a copy of any materials relevant to the request. DOAH shall provide an ALJ within thirty (30) days of its receipt of the letter.

7. Effective Date. This Contract will become effective on the date the last signature is made.

8. Notices. All notices required or permitted by this Contract shall be in writing, and shall be deemed to have been duly given if mailed first-class, certified postage prepaid, addressed as follows:

To LAKE COUNTY, FLORIDA:

County Attorney's Office  
Attn: Melanie Marsh, Acting County Attorney  
P.O. Box 7800  
Tavares, Florida 32778  
Facsimile: (352)343-9646

To DOAH:

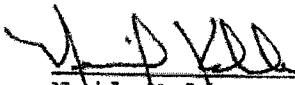
State of Florida, Division of Administrative Hearings  
Attn: Lisa M. Mustain, Administrative Services Director  
1230 Apalachee Parkway  
Tallahassee, Florida 32399

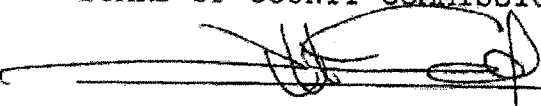
850-488-9675

COUNTY

ATTEST:

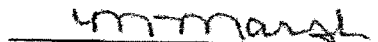
LAKE COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

  
Neil Kelly, Clerk of  
the Board of County  
Commissioners of Lake  
County, Florida

  
Chairman

This 1<sup>st</sup> day of December 2010.

Approved as to form  
and legality:

  
Melanie N. Marsh  
Acting County Attorney

DIVISION OF ADMINISTRATIVE HEARINGS

By: 

Date: 12/10/10

Charles A. Stampelos  
Deputy Chief Judge



**FILED**  
2011 MAY 13 A 12:13  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

11-2448

May 11, 2011

State of Florida, Division of Administrative Hearings  
Attn: Chief Judge Robert Cohen  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

**RE: Request for Hearing with an Administrative Law Judge  
Lake County vs. WATSON, Donald P. and Christine H.  
Code Enforcement Case No.: 2007-08-0086**

Dear Judge Cohen,

Pursuant to the Administrative Law Judge Services Contract between Lake County and the State of Florida, Division of Administrative Hearings, this letter serves as a Request for Hearing with an Administrative Law Judge.

This request involves an Appeal of an Order of Fine of the Lake County Code Enforcement Special Master in the above-referenced case. Attached to this letter for your reference is a Notice of Appeal, a copy of the Order of Fine dated May 10, 2010, a copy of the Order dated May 12, 2008, Lake County Code Section 8-10 entitled Orders of fine; liens, and Lake County Land Development Regulations Section 14.00.02 entitled Prohibition. As the parties were unable to decide on a mutually-agreed upon hearing officer, Lake County entered into a contract with the Division to have an Administrative Law Judge hear the appeal. Any timeframes related to the appeal were stayed pending scheduling of a hearing with an Administrative Law Judge.

The attorney representing Lake County will be Joshua Frick, Esquire, Rissman, Barrett, Hurt, Donahue & McLain, P.A., 201 East Pine Street, Orlando, Florida 32801. His number is (407) 839-0120, or for scheduling purposes, his assistant, Elaine Santana, can be reached at (407) 517-3004.

The Petitioners, Donald and Christine Watson, will be representing themselves. Their address is 12555 Crown Point Drive, Clermont, FL 34711, and their phone number is (352) 242-9665, or (352) 242-7135 (cell).

CODE ENFORCEMENT SERVICES | A division of the Department of Conservation & Compliance  
P.O. BOX 7800 ♦ 315 W. MAIN ST. ♦ TAVARES, FLORIDA 32778-7800 ♦ P 352.343.9639 ♦ F 352.343.9106  
Board of County Commissioners ♦ [www.lakecountyfl.gov](http://www.lakecountyfl.gov)

Request for Hearing  
Watson vs. LC  
Case No. 2010-CA-2725

The County will call approximately two (2) witnesses. The Petitioners will call approximately six (6) witnesses.

Please feel free to contact this office if you need further information.

Sincerely,



Ron Collodi  
Lake County Code Enforcement Services Director

RC/ak  
1842.008

**Attachments**

cc: Joshua Frick, Esquire, Rissman, Barrett, Hurt, Donahue & McLain (via email only)  
Donald and Christine Watson

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LAKE COUNTY, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 11-2448  
 )  
 DONALD P. AND CHRISTINE H. )  
 WATSON, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

ORDER

By Order dated June 21, 2011, Respondents were ordered to show cause why their appeal should not be dismissed for failing to identify any grounds appropriate for review. Respondents did not directly respond to the Order, but instead filed a Motion for Clarification of Orders on June 22, 2011, and a Motion for Determination of Jurisdiction on June 23, 2011. In their Motion for Clarification of Orders, Respondents stated one issue as whether there was a "factual basis for the dollar amount of the Order of Fine." That is the only issue ever articulated by Respondents that the Special Master has jurisdiction to hear.

Petitioner then moved to set the hearing in this case and requested that Respondents be prohibited from conducting discovery. Respondents responded to the motion, contending that the motion failed to conform to certain procedural requirements and that Petitioner's request to prohibit discovery was frivolous. Respondents' argument that Petitioner's motion should be denied on procedural grounds is rejected. A notice of appearance is satisfied by an attorney's filing of an initial or responsive pleading. Neither Petitioner's failure to file electronically nor Petitioner's failure to include a statement as to whether its motion was opposed by Respondents (something Respondents have also failed to do) caused prejudice to Respondents and, therefore, the Special Master exercises his discretion to excuse these omissions by Petitioner.

The jurisdiction of the Division of Administrative Hearings (DOAH) to conduct proceedings established by city or county ordinances only exists, if at all, under a contract between DOAH and a particular city or county. The procedures to be followed are generally the same as the procedures applicable to DOAH's review of state agency action. However, when a city or county ordinance establishes procedures that differ from the usual DOAH procedures, the differing city or county procedures will control. Under Section 8-10 of the Lake County Code of Ordinances, there is no mention of the right of discovery in the appeal of an Order of Fine. Although the proceeding is referred to as an appeal, it appears that the proceeding could sometimes involve factual allegations that were not heard previously and which are in dispute. The only way to resolve a factual dispute is by presenting evidence and, for that purpose, discovery is usually a corollary right. However, Respondents have not identified an existing factual dispute related to the only issue they have identified - whether there is factual basis for the dollar amount of the Order of Fine. Respondents have consistently shown in their filings that they wish to raise and argue other issues which cannot be heard in this proceeding. Therefore, Respondents are prohibited from conducting discovery unless and until they identify a factual dispute which can be resolved in this proceeding.

Accordingly, it is

Ordered that:

1. Respondents' motion to abate is DENIED.
2. The parties will be contacted soon to schedule a telephone conference to determine the date for the hearing in this case.

DONE AND ORDERED this 26th day of July, 2011, in  
Tallahassee, Leon County, Florida.



---

BRAM D. E. CANTER  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of July, 2011.

COPIES FURNISHED:

Joshua Frick, Esquire  
Rissman, Barrett, Hurt  
Donahue and McLain, P.A.  
201 East Pine Street  
Orlando, Florida 32801

Donald Watson  
Christine Watson  
12555 Crown Point Drive  
Clermont, Florida 34711

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LAKE COUNTY,	)	
	)	
Petitioner	)	
	)	
	)	
vs.	)	Case No. 11-2448
	)	
DONALD P. AND CHRISTINE H.,	)	
WATSON	)	
	)	
Respondents	)	
_____	)	

**RESPONDENTS' AMENDED SECOND MOTION TO RELINQUISH  
JURISDICTION AND MEMORANDUM OF LAW**

Respondents (Watsons), move for entry of an order relinquishing jurisdiction back to Lake County on the basis that no genuine issue remains as to the material fact that no factual or legal basis exists for the May 10, 2010 Order of Fine amount and that the Order of Enforcement Requirement to obtain a "proper permit" has been complied with in principle and Lake County is therefore estopped from punishing Respondents.

**MEMORANDUM OF LAW**

Florida Administrative Code 28-106.204(5) states:

"In cases in which the Division of Administrative Hearings has recommended order authority, a party may file a motion to relinquish jurisdiction whenever there is no genuine issue as to a material fact."

**Part 1: No Legal Basis for the Fine Amount**

The Special Master acted ultra vires by including a \$500 civil penalty<sup>1</sup> in the fine amount. The Special Master has authority to impose only coercive daily fines for failure to comply with an order of enforcement.<sup>2</sup> Pursuant to Section 8-13 of the Lake County Code, only the county court has jurisdiction for imposing civil penalties for code violations. Consequently, there is no legal basis for the Order of Fine. An order of fine based upon an ultra vires act by the Special Master is per se void. See *Town of Lauderdale FL v. Meretsky*, 773 So.2d 1245 (Fla.App. 4 Dist. 2000) (holding that the Town Commission's authorization of an act contrary to own ordinances was ultra vires and therefore void).

**Part 2: No Factual Basis for the Fine Amount**

The Order of Fine amount that is the subject of this challenge proceeding is a material fact. The amount was calculated over a fine period commencing May 27, 2008 and ending April 22, 2010.

Alison Strange (Watsons' former attorney) and Respondent Donald Watson both gave undisputed testimony that Lake County (by and through Assistant County Attorney Lechea Parson) had agreed to an unconditional abatement of the fines. Ms. Strange and Respondent Watson also testified that neither had received any notice from Lake County of its intent to impose fines after agreeing to the abatement.

---

<sup>1</sup> Misidentified as a "fine" in the Order of Enforcement.

<sup>2</sup> Section 8-6(a)(1) authorizes the Special Master to impose a per violation fine of no more than \$15,000, if the Special Master finds the violation to be irreparable or irreversible in nature. No such finding has been made in this case. Indeed, such a finding would be facially inconsistent with the order of enforcement alternative requirements.

Petitioner was put on notice that it lacked a factual basis for the Order of Fine amount seven months ago. Respondent made precisely this allegation in its very first filing in this case on May 27, 2011. Despite Petitioner's ample opportunity to controvert Respondent's allegation, it has utterly failed to do so. All of the ensuing litigation could have been easily avoided if Petitioner had simply conceded then what it has conceded now by default –that no factual basis exists for the Order of Fine amount.

The ALJ ruled at the commencement of the September 16, 2011 hearing that Lake County had the burden of proving that the fine amount had a factual basis. On October 24, 2011, Petitioner filed *Petitioner, Lake County's, Amended Disclosure of Witnesses for the Final Hearing of November 7, 2011* in which it identified, for the first time, Ms. Parson as a witness it intended to call. Petitioner, however, did not call Ms. Parson at the December 29, 2011 hearing, even though Petitioner and Respondents (and, apparently, the ALJ) fully expected the second hearing to be the final hearing. Petitioner made no reference to Ms. Parson at the hearing, and indeed, affirmatively stated that it had no further witnesses to present.

The ALJ also ruled that the standard of proof controlling this case is the greater weight of evidence. Ms. Strange's and Respondent Watson's testimony were both competent evidence showing that Lake County had agreed to an unconditional abatement of the fines. Petitioner failed to offer any evidence or witness testimony whatsoever controverting that evidence. It is undisputed that the May 10, 2010 Order of Fine failed to account for any abatement period, and therefore, no factual basis exists for the fine amount.

Precedential case law in this district holds that the remedy for an order of fine amount lacking a factual basis is reversal. *See Deluca Properties, Inc. v. City of Wildwood*, 830 So.2d 206 (Fla. 5<sup>th</sup> DCA 2002) .

The ALJ has previously interpreted the scope of this proceeding very narrowly pursuant to Chapter 8-10(b) of the Codification of Lake County, which states in pertinent part:

“The hearing shall be limited to consideration of only those new findings necessary to imposing the order of fine...”

The ALJ’s orders clearly show the ALJ to be concerned with only the very narrow issue of whether the May 10, 2008 Order of Fine in the amount of \$35,250 should be imposed. Indeed the ALJ has expressly excluded evidence that would show a basis for reducing the fine, pursuant to Chapter 8-10(a). Specifically, the ALJ has excluded evidence that goes directly to the issues of:

1. the gravity of the violation (Chapter 8-10(a)(2)(a));<sup>3</sup>
2. actions taken by the violator to correct the violation (Chapter 8-10(a)(2)(b))<sup>4</sup>;
3. the ability of the violator to bring the property into compliance (Chapter 8-10(a)(3)(b))<sup>5</sup>

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<sup>3</sup> Clearly, a fine in the amount of \$35,250 on the basis of Respondent’s not obtaining a “proper permit” is not rationally related to the grading of Lot 13 because Respondent’s lot grading plan shows the grading of Lot 13 to be entirely consistent with the Lake County Land Development Regulations.

<sup>4</sup> At the December 29, 2011 hearing, the ALJ stated that any actions by Respondents prior to entry of the Order of Enforcement were irrelevant as to this proceeding.

<sup>5</sup> Respondents’ ability to bring the property into compliance by obtaining a “proper permit” is necessarily predicated upon the existence of a “proper permit”. The ALJ, however, has excluded evidence showing that no such “proper permit” even exists. See the June 21, 2011 Order on Parties Memoranda of Law, June 21, 2011 Order on

It would be inconsistent in the extreme, as well as inconsistent with precedential case law, for the ALJ to exclude evidence showing that the fine should be reduced pursuant to Chapter 8-10(a) and concurrently recommend that the Order of Fine should be reduced to account for a lack of a factual basis. Indeed, pursuant to Chapter 8-10 of the Codification of Lake County, the ALJ lacks any jurisdiction to recommend that Lake County reduce the amount of the fine to account for a lack of a factual basis for the fine amount.

Furthermore, nothing within either the Administrative Law Judge Services Contract dated December 1, 2010 between Lake County and the Florida DOAH nor the May 11, 2011 Lake County letter to the Florida DOAH requesting a hearing with an administrative law judge vests the ALJ with authority to recommend a reduction in fine amount on the basis of a lack of a factual basis for the fine.

Code Enforcement Special Masters (and Administrative Law Judges) are creatures of statute and are thereby governed by statute, and can only exercise powers granted pursuant to statute. *See Department of Environmental Protection v. Landmark Enterprises, Inc.* 3 So.3d 434, 437 (Fla. App. 2 Dist. 2009). As creatures of statute, neither Code Enforcement Special Masters nor ALJs can increase their jurisdiction and they have no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. *See Department of Environmental Regulation v.*

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Respondent's Motion to Invoke the Doctrine of Judicial Estoppel, June 27, 2011 Order on Respondent's Motion for Clarification, August 18, 2011 Order on Respondent's Motion for Clarification, August 19, 2011 Order on Respondent's Motion for Reconsideration. The ALJ also prohibited Respondents from even questioning Special Master Johnson on the issue of what he meant by the term "proper permit" as set forth in his May 12, 2008 Order of Enforcement.

*Falls Chase Special Taxing District*, 424 So.2d 787, 793 (Fla. 1st DCA 1982), review denied, 436 So.2d 98 (Fla.1983).

Simply put, the ALJ has no jurisdiction to account for the undisputed lack of a factual basis for the Order of Fine amount by recommending a reduction in the fine.

**Part 3: The Order of Enforcement Requirement to Obtain a Proper Permit was Complied With in Principle Before the Fine Commencement Period Began and Lake County is Therefore Estopped from Punishing Respondents**

Respondent Watson presented testimony that the current grading of Lot 13 is unchanged from its condition at the alleged commencement date of the fine period. That testimony was undisputed by Petitioner. Indeed, the premise behind Petitioner's presentation of its 2010 Survey of Lot 13 was that the survey was representative of the grading of Lot 13 as of the alleged commencement and ending dates for the fine period.

Respondents presented, in its January 17, 2012 Request to Take Judicial Notice, Lake County's approval of the Lot 13 Grading Plan that was submitted to Lake County on October 10, 2011 and approved in January 2012. That grading of Lot 13 in the Grading Plan is exactly the same as depicted on Lake County's 2010 survey of Lot 13.<sup>6</sup> Consequently, by Petitioner's own implicit reasoning, the grading of Lot 13 in the summer of 2008 would have also met the requirements for approval by Lake County.<sup>7</sup> Precedential case law holds that a citizen cannot be fined or punished for not obtaining a permit that he is entitled to but which the County has refused to issue. (See *Richbon Inc.*

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<sup>6</sup> The Lot 13 Grading Plan is Exhibit No. 4 to Respondents' Motion to Continue the December 29, 2011 Hearing that was filed on December 9, 2011.

<sup>7</sup> Respondents contend that the **only** reason Lake County would not approve the grading of Lot 13 in the summer of 2008 was because Watsons would not abandon their claim for attorney fees incurred in the appeal of the first Order of Enforcement.

*v. Miami-Dade County*, 791 So.2d 505 (Fla. App. 3 Dist. 2001) (Richbon, Inc. was cited by the Miami-Dade Code Enforcement Board for failure to obtain a certificate of use and occupancy for the Mint Lounge. The Court found that Richbon, Inc. had tried to obtain a certificate for its operation, but that the County wrongfully refused to issue a certificate that Richbon, Inc. was legally entitled to.)<sup>8</sup>

### **Summary**

The only step the ALJ can now lawfully take, given the lack of legal and factual bases for the Order of Fine and the evidence that Lake County wrongfully refused to approve the grading of Lot 13 in the summer of 2008 is to release jurisdiction of this matter back to Lake County.

**WHEREFORE**, for the foregoing reasons, Respondents move for entry of an order pursuant to F.A.C. 28-106.204(5) relinquishing jurisdiction back to Lake County because there is no legal basis for the Order of Fine and because no genuine issue exists regarding the material facts that the May 10, 2010 Order of Fine amount lacks factual basis and that the requirement to obtain a “proper permit” has been complied with in principle.

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<sup>8</sup> The fact pattern in *Richbon* is not precisely the same as for the instant case as Respondents contend that there is no “proper permit” that they could have obtained. Nonetheless, Lake County’s approval of the grading of Lot 13 in the summer of 2008 would have been the functional equivalent of a “proper permit”.

Respectfully submitted this 17<sup>th</sup> day of January, 2012,

/s/Dennis Wells  
Dennis Wells, Esq.  
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Longwood, Florida 32779  
(407) 865-5600  
dwells1185@aol.com  
Florida Bar : 368504  
Attorney for Respondents Donald P. & Christine H. Watson

**CERTIFICATE OF SERVICE**

I CERTIFY that on January 17, 2012, I mailed via U.S. Postal Service a true and correct copy of this Motion to Jeremy Palma, Esq, counsel for Petitioner at Rissman, Barrett, Hurt, Donahue & McLain, P.A., 201 E. Pine Street, 15th Floor, P.O. Box 4940, Orlando, Florida 32802.

I also certify that, pursuant to F.A.C 28-106.303, I conferred telephonically with Jeremy Palma, Esq, counsel for Petitioner, regarding the substance of this motion and am authorized to represent that he opposes this motion.

/s/Dennis Wells  
Dennis Wells, Esq.  
Webb, Wells & Williams, P.A.  
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(407) 865-5600  
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Florida Bar : 368504  
Attorney for Respondents Donald P. & Christine H. Watson

accruing June 10, 2008 as opposed to May 27, 2008, it is clear that the Watsons themselves did not believe that the abatement of the fine was fine unconditional and was to continue in perpetuity.

Now, approximately four months after filing their first Motion to Relinquish Jurisdiction, the Watsons claim that Lake County previously agreed to an unconditional abatement of the fine that was to remain in perpetuity. Simply put, the Watsons know, or at least they should know, that is argument is completely baseless and false.

If the Watsons truly believed that Lake County agreed to an unconditional abatement of the fine forever, they would have raised that issue when they filed their First Motion to Relinquish Jurisdiction in September 2011. They did not and that should speak volumes.

The correspondence between the Watsons' attorney, Alison Strange, and the Lake County Assistant County Attorney, LeChea Parson dated May 22, 2008 is self-evident and could not be more clear. Ms. Strange's May 22, 2008 correspondence states in pertinent part:

Accordingly, I appreciate your agreement to abate the issuance of any fines against Mr. and Mrs. Watson until Lake County has had adequate time to perform its inspections and issue the development order or permit as ordered by the Special Master. Per our discussion this morning, it seems that Tuesday, June 10, 2008

would provide sufficient time and that no fine would accrue prior to then. (Emphasis supplied).

The letter, as written by the Watsons prior attorney, Ms. Strange, speaks for itself. The problem is that the letter does not support either what the Watsons wish or what they assert in their most recent motion.

The Watsons claim that Ms. Strange testified at the September 16, 2011 hearing that Lake County agreed to an unconditional abatement of the fine. Lake County completely disagrees with the Watsons' characterization of Ms. Strange's testimony at the September 16, 2011 hearing.

The Watsons did not provide any evidentiary support of Ms. Strange's testimony. The Watsons have not provided the Court with any portions of the transcript of Ms. Stranges' testimony from the September 16, 2011 hearing.

To date, defense counsel has not received a copy of the transcript from the September 16, 2011 hearing. The transcript was ordered following the December 29, 2011 hearing. Upon receipt of the transcript of the September 16, 2011 hearing, Lake County will provide the Court with pertinent portions of Ms. Strange's testimony which contradicts the Watsons' suggestion that Lake County agreed to an unconditional abatement of the fine. Lake County does not believe that Alison Strange testified as the Watsons claim regarding an unconditional

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LAKE COUNTY, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 11-2448  
 )  
DONALD P. AND CHRISTINE H. )  
WATSON, )  
 )  
Respondents. )  
\_\_\_\_\_ )

ORDER

This cause came before the Special Master on Respondents' second motion to relinquish jurisdiction. A response in opposition to the motion was filed by Petitioner. Having reviewed the motion, the response, and being otherwise advised, it is

ORDERED that the motion is DENIED.

DONE AND ORDERED this 27th day of January, 2012, in Tallahassee, Leon County, Florida.



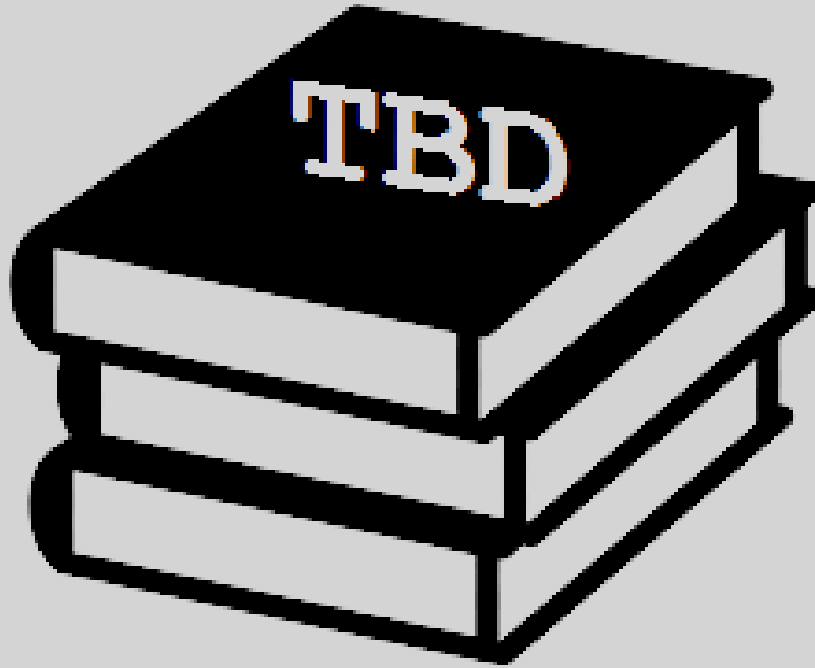
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
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