

|                         |
|-------------------------|
| Meeting Date            |
| <b>February 3, 2015</b> |



|          |                     |
|----------|---------------------|
| AGENDA   |                     |
| Section  | <b>New Business</b> |
| Item No. | <b>VI C 1</b>       |

**AGENDA REPORT**  
*BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS*

|              |                                                                                             |
|--------------|---------------------------------------------------------------------------------------------|
| SUBJECT:     | ACCEPT LIST OF CANDIDATES AND RECOMMENDATIONS FOR SELECTION FOR SPECIAL MAGISTRATE SERVICES |
| DEPT/OFFICE: | CENTRAL SERVICES DEPARTMENT                                                                 |

Requested Action:

It is requested that the Board of County Commissioners accept the list of candidates to perform Special Magistrate services for resolution of code, contractor licensing, nuisance abatement, and vested rights issues. It is also requested that the Board accept the recommendations of the selection committee assigned by the County Manager and authorize the Chairman to execute the contracts with the selected attorneys.

Summary Explanation & Background:

On December 16, 2014, the Board of County Commissioners granted permission for Purchasing Services to solicit a request for qualifications (RFQ) for Special Magistrate services for Unlicensed Contractor, Vested Rights and Code Violation Hearings. In accordance with F.S. CH. 162 and Section 2-169 of the Brevard County, Florida Code of Ordinances, advertisement was made on January 1, 2015 for solicitations for applications from qualified candidates to serve as Special Magistrates to hold hearings and assess fines against violators of the County's Codes and Ordinances. The deadline for submittal of applications was January 22, 2015. Applications were received from the following six individuals:

- Stewart Capps
- Brigitta Hawkins
- Timothy Pickles
- Jed Schneck
- Scott Widerman
- Stanley Wolfman

A selection committee consisting of Venetta Valdengo, Assistant County Manager; Jerry Visco, Risk Management Director; and Carl Tucker, Central Services Department Special Projects Coordinator IV met on January 28, 2015 to review, score and rank the eligible candidates. The six candidates were ranked by each selection committee member based upon their applications and resumes. The selection committee's recommendation is as follows:

- Stewart B. Capps as primary Special Magistrate for Code Enforcement cases; alternate for Contractor Licensing and Vested Right cases.
- Stanley Wolfman as primary Special Magistrate for Contractor Licensing and Vested Rights cases; alternate for Code Enforcement cases.

Staff recommends the Board accept the selection committee recommendation and authorize the Chairman to execute each of the contracts. Should contract negotiations with the selected candidates be unsuccessful, staff will negotiate with the next ranked candidate until contracts have been successfully agreed upon.

Fiscal Impact: FY 2014 expenditures for a combined total for both agreements are projected at \$12,000. Both Special Magistrates would receive a rate of \$125 hour.

CONTACT PERSON: Teresa Camarata, Central Services Director x-55492; [Teresa.camarata@brevardcounty.us](mailto:Teresa.camarata@brevardcounty.us)  
 Leslie Rothering, Purchasing Services x5-6038; [leslie.rothering@brevardcounty.us](mailto:leslie.rothering@brevardcounty.us)

Exhibits Attached:

|                                    |  |                             |                                                                           |                          |    |                          |    |                          |
|------------------------------------|--|-----------------------------|---------------------------------------------------------------------------|--------------------------|----|--------------------------|----|--------------------------|
| Contract /Agreement (If attached): |  | Reviewed by County Attorney | Yes                                                                       | <input type="checkbox"/> | No | <input type="checkbox"/> | PR | <input type="checkbox"/> |
| County Manager                     |  | Assistant County Manager    | Department Director / Extension                                           |                          |    |                          |    |                          |
| Stockton Whitten,                  |  | Assistant County Manager    | <br>Teresa Camarata, Director<br>Central Services Department, ext/ 5-5492 |                          |    |                          |    |                          |



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

February 4, 2015

MEMORANDUM

TO: Teresa Camarata, Central Services Director      Attn: Leslie Rothering

RE: Item VI.C.1., Acceptance of List of Candidates and Recommendations for Selection for Special Magistrate Services

The Board of County Commissioners, in regular session on February 3, 2015, accepted the list of candidates to perform Special Magistrate services for resolution of Code, contractor licensing, nuisance abatement, and vested rights issues; and accepted the recommendations of the Selection Committee assigning Stewart B. Capps as primary Special Magistrate for Code Enforcement cases and alternate for Contractor Licensing and Vested Rights cases, and Stanley Wolfman as primary Special Magistrate for Contractor Licensing and Vested Rights cases and alternate for Code Enforcement cases; and authorized the Chairman to execute the contracts with each selected attorney.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/ds

cc: County Manager  
Budget  
Finance

## SPECIAL MAGISTRATE AGREEMENT

THIS AGREEMENT made and entered into this 3rd day of February 2015, by and between Stanley Wolfman, hereinafter referred to as "Special Magistrate," and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "COUNTY".

### WITNESSETH

**WHEREAS**, as authorized by Florida Statute 162.03, the County has adopted Chapter 2, Article VI, Division 2 Code Enforcement Special Magistrate Code as part of the Brevard County Code of Ordinances;

**WHEREAS**, the County wishes to designate one or more qualified individuals to serve the function as a special magistrate to hold hearings and assess fines against persons found to have violated various county codes;

**WHEREAS**, use of a special magistrate provides for an equitable, expeditious, effective and less expensive procedure for enforcing codes and ordinances;

**WHEREAS**, the County issued a Request for Qualifications (RFQ) seeking qualified applicants to hold hearings regarding violations of contractor licensing and nuisance abatement codes, various other county codes and vested rights;

**WHEREAS**, the person designated herein as Special Magistrate meets the qualifications as set forth in the RFQ and has been recommended by the selection committee to the Board of County Commissioners for final selection;

**WHEREAS**, the parties hereto agree to the following terms as set forth herein.

**NOW THEREFORE**, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. **TERM.** The Special Magistrate hereby agrees to perform the services of a Special Magistrate to the Brevard County Board of County Commissioners for a period of one (1)

year. This Agreement shall commence on February 3, 2015 and will terminate one year later, February 3, 2016 unless extended by agreement of both parties.

2. **RENEWAL.** This Agreement may be renewed annually at the discretion of the County for one year terms, for no more than 4 additional years, on the same terms and conditions contained herein unless otherwise modified by agreement of the parties at the time of renewal.

3. **SPECIAL MAGISTRATE SERVICES.** The Special Magistrate will perform the following services

(a) Preside over hearings regarding violations of county codes including, but not limited to, codes relating to property maintenance, natural resources, environmental health, fire safety, solid waste, contractor licensing, adult entertainment and nuisance abatement; vested rights determinations.

(b) Perform such services as provided for under the terms of this Agreement pursuant to Chapter 2, Article VI, Division 2, of the Brevard County Code of Ordinances, and pursuant to any procedures as may be furnished to the Special Magistrate which are in compliance with the Special Magistrate's obligation to provide due process to the parties before the Magistrate.

(c) The Special Magistrate shall issue written orders for each case. The orders shall be on the forms provided by the County. Final orders shall include findings of fact and conclusions of law.

(d) Convene for hearings at least once per month (provided there are cases to be heard) on a regular schedule.

(e) The County may add other types of code violations or other dispute resolution processes that are to be scheduling for a hearing and heard by the Special Magistrate.

4. **SPECIAL MAGISTRATE QUALIFICATIONS.** The Special Magistrate holds a Juris Doctorate degree, is a member of The Florida Bar, and has practiced law for five (5)

years in the State of Florida. The Special Magistrate will notify the County of any pending investigation or discipline by the Florida Bar.

5. **COMPENSATION.** In consideration of the Special Magistrate performing the above referenced duties, the County shall pay the Special Magistrate at a rate of \$125.00 per hour for hearing time. The Special Magistrate shall receive a minimum of \$125.00 should the Special Magistrate have proceeded to travel to the hearing location and is informed the hearing is canceled or if the scheduled hearings/proceedings last less than an hour. The Special Magistrate shall submit such invoices, in the format agreed upon by the parties. The County shall pay the Special Magistrate under the provisions of the Florida Prompt Payment Act. The Special Magistrate shall not be compensated or otherwise paid for travel time unless approved in advance. The Special Magistrate may submit reimbursement for any necessary postage, paper, copies, etc... However, it is anticipated this would be minimal given that most documents will be exchanged electronically/digitally.

6. **OBLIGATIONS OF THE COUNTY.** The County shall be required to provide the following:

(a) A tape or digital recorder, at the County's expense, together with sufficient blank tapes, etc., to record all hearings.

(b) Administrative personnel to serve as a clerk to the Special Magistrate and to support hearings. Such administrative personnel will provide public notice of each hearing, coordinate preparation of the hearing agenda with staff (including assembling the back-up materials for each agenda item), establish (in consultation with the Special Magistrate, if needed) a schedule for finalization of each agenda, read agenda items into the record, swear-in witnesses as necessary, receive affidavits, prepare documentation (evidence log) for items submitted into evidence, record all hearings, prepare written minutes of the hearing, record the final orders issued by the Special Magistrate in the public records of

Brevard County and maintain the official records of the special magistrate hearings, and to perform other administrative tasks associated with the Special Magistrate.

(c) An attorney or member of the administrative staff who shall represent the County by presenting cases before the Special Magistrate.

**7. INSURANCE.** The Special Magistrate, as an appointed official acting on behalf and within the jurisdiction of the County, is included as a covered party under the County's Public Officials Liability insurance program. Said insurance coverage currently is written with limits of \$3,000,000 per claims with a \$3,000,000 aggregate.

**8. PROCEDURES WORKSHOP.** The Special Magistrate shall be required to attend workshop to review procedures to be held at a future date and time agreeable to the parties at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida 32940. This Workshop shall be held as soon as practical after both parties have executed this Agreement. Should this Agreement be renewed, the County reserves the option to require attendance at such a Workshop upon renewal, but in any event, no more than once per year. Compensation for attendance shall be as provided for on an hourly basis as provided for in Paragraph 5 above.

**9. HEARING DATES.** Hearings before the Special Magistrate for violations of the Brevard County Codes shall be scheduled to begin under this Agreement in February 2015, and each month thereafter. The County shall work with the Special Magistrate to set a regular schedule for the hearings for the year with the intent to schedule the hearings for the same time of the month (for example, the third Thursday of each month) and to begin the same time of the day to the extent possible. Additional hearing days may be convened if the case volume requires more frequent hearings

Hearing days shall generally be held at the Brevard County Government Center located at 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida.

**10. SCHEDULING CONFLICTS/CONFLICTS OF INTEREST.**

(a). If the Special Magistrate has knowledge of any scheduling conflicts for any scheduled hearing, the Special Magistrate shall contact the Clerk to the Special Magistrate within the County's Central Services Department at (321) 633-2082 so that such conflicts may be resolved.

(b) Should the Special Magistrate become aware of any conflict of interest resulting from past representation a party or witness, the Special Magistrate shall contact the Clerk to the Special Magistrate as provided for above.

(c)The Special Magistrate agrees that during the term of this Agreement, and any renewal or extension, the Special Magistrate will not represent any party in a matter that could come before a Special Magistrate as a result of a violation of Brevard County Code of Ordinances.

**11. NON-ASSIGNMENT.** The Special Magistrate shall not enter into any agreements with third parties to delegate any or all of the responsibilities, duties, or rights herein set forth.

**12. INDEPENDENT CONTRACTOR STATUS.** The Special Magistrate shall perform the conditions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. The Special Magistrate shall be responsible for any and all federal, state and local required deductions and/or taxes on the compensation paid under this contract.

**13. CONFLICTS OF INTEREST.** Should the Special Magistrate determine that he/she has a conflict of interest or for any reason feels it would be inappropriate for him/her to hear and deliberate on any given individual's alleged violation or petition, he/she will immediately inform the Clerk to the Special Magistrate within the County's Central Services Department of such conflict so that arrangements to retain another Special Magistrate for that alleged violation or petition hearing can be made.

**14. PUBLIC RECORDS.** Both parties understand that the County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes and all other applicable Florida Statutes. If the materials provided by the Special Magistrate do not fall under a specific exemption, under Florida or federal law, materials provided by the Special Magistrate to the County would have to be provided to anyone making a public records request. It will be the Special Magistrate's duty to identify the information which it deems is exempt under Florida/federal law and identify the statute by number which exempts that information.

Should any person or entity make a public request of the County which requires or would require the County to allow inspection or provide copies of records which the Special Magistrate maintains are exempt from Public Records Law or are confidential, it shall be the Special Magistrate's obligation to provide the County within 24 hours (not including weekends and legal holidays), of notification by the County to the Special Magistrate of the request, of the specific exemption or confidentiality provisions so the County will be able to comply with the requirements of Fla. Stat. 119.07(2)(a). Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Special Magistrate to the County which the Special Magistrate maintains are exempt or confidential from such inspection/production as a public record, then the Special Magistrate shall hire and compensate attorney(s) who shall represent the interest of the County as well as the Special Magistrate in defending such action. The Special Magistrate shall also pay any costs to defend such action and shall pay any costs and attorney's fees which may be awarded pursuant to Fla. Stat. 119.12.

**15. TERMINATION.** Either party hereto may terminate this Agreement upon thirty (30) days written notice. Notwithstanding the previous sentence, the Special Magistrate shall serve at the pleasure of the County Commission and may be removed from service at any time, with or without cause, by a majority vote of a quorum of the County Commission.

**16. NOTICE.** Notice under this Agreement shall be given as follows:

To the Special Magistrate by delivering written notice to  
Stanley Wolfman  
1300 Bedford Drive  
Suite 103  
Melbourne, FL 32940.

To the COUNTY by delivering written notice to

Central Services Department Director  
2725 Judge Fran Jamieson Way  
Building C, Suite C303  
Viera, Florida 32940.

**17. ATTORNEY'S FEES/NON JURY TRIAL:** In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs. Any trial to enforce or interpret the terms of this agreement shall be non-jury.

**18. GOVERNING LAW:** This Agreement shall be governed, interpreted and construed according to the ordinances of Brevard County and of the State of Florida. Any action brought to enforce the terms or litigate the terms of this agreement shall be brought in the venue of Brevard County, Florida. Any Federal action may only be initiated in the Middle District Court, Orlando Division.

**19. VENUE:** Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA**

Central Services Department Director  
2725 Judge Fran Jamieson Way  
Building C, Suite C303  
Viera, Florida 32940.


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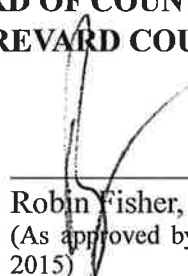
**ATTEST:**



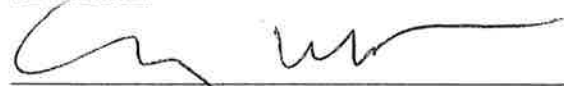
Scott Ellis  
Clerk of the Circuit Court

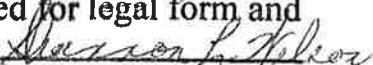
**BOARD OF COUNTY COMISSIONERS  
OF BREVARD COUNTY, FLORIDA**

BY:

  
Robin Fisher, Chairman  
(As approved by the Board on February 3, 2015)

**SPECIAL MAGISTRATE**

  
Stanley Wolfman

Reviewed for legal form and  
content:   
Assistant County Attorney

## SPECIAL MAGISTRATE AGREEMENT

THIS AGREEMENT made and entered into this 3rd day of February 2015, by and between Stewart B. Capps, hereinafter referred to as "Special Magistrate," and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "COUNTY".

### WITNESSETH

**WHEREAS**, as authorized by Florida Statute 162.03, the County has adopted Chapter 2, Article VI, Division 2 Code Enforcement Special Magistrate Code as part of the Brevard County Code of Ordinances;

**WHEREAS**, the County wishes to designate one or more qualified individuals to serve the function as a special magistrate to hold hearings and assess fines against persons found to have violated various county codes;

**WHEREAS**, use of a special magistrate provides for an equitable, expeditious, effective and less expensive procedure for enforcing codes and ordinances;

**WHEREAS**, the County issued a Request for Qualifications (RFQ) seeking qualified applicants to hold hearings regarding violations of contractor licensing and nuisance abatement codes, various other county codes and vested rights;

**WHEREAS**, the person designated herein as Special Magistrate meets the qualifications as set forth in the RFQ and has been recommended by the selection committee to the Board of County Commissioners for final selection;

**WHEREAS**, the parties hereto agree to the following terms as set forth herein.

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**2. RENEWAL.** This Agreement may be renewed annually at the discretion of the County for one year terms, for no more than 4 additional years, on the same terms and conditions contained herein unless otherwise modified by agreement of the parties at the time of renewal.

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(a) Preside over hearings regarding violations of county codes including, but not limited to, codes relating to property maintenance, natural resources, environmental health, fire safety, solid waste, contractor licensing, adult entertainment and nuisance abatement; vested rights determinations.

(b) Perform such services as provided for under the terms of this Agreement pursuant to Chapter 2, Article VI, Division 2, of the Brevard County Code of Ordinances, and pursuant to any procedures as may be furnished to the Special Magistrate which are in compliance with the Special Magistrate's obligation to provide due process to the parties before the Magistrate.

(c) The Special Magistrate shall issue written orders for each case. The orders shall be on the forms provided by the County. Final orders shall include findings of fact and conclusions of law.

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- (c) An attorney or member of the administrative staff who shall represent the County by presenting cases before the Special Magistrate.

**7. INSURANCE.** The Special Magistrate, as an appointed official acting on behalf and within the jurisdiction of the County, is included as a covered party under the County's Public Officials Liability insurance program. Said insurance coverage currently is written with limits of \$3,000,000 per claims with a \$3,000,000 aggregate.

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deems is exempt under Florida/federal law and identify the statute by number which exempts that information.

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**15. TERMINATION.** Either party hereto may terminate this Agreement upon thirty (30) days written notice. Notwithstanding the previous sentence, the Special Magistrate shall serve at the pleasure of the County Commission and may be removed from service at any time, with or without cause, by a majority vote of a quorum of the County Commission.

**16. NOTICE.** Notice under this Agreement shall be given as follows:

To the Special Magistrate by delivering written notice to

Stewart B. Capps, P.A.  
325 Fifth Avenue, Suite 208  
Indialantic, Florida 32903

To the COUNTY by delivering written notice to

Central Services Department Director  
2725 Judge Fran Jamieson Way  
Building C, Suite C303  
Viera, Florida 32940.

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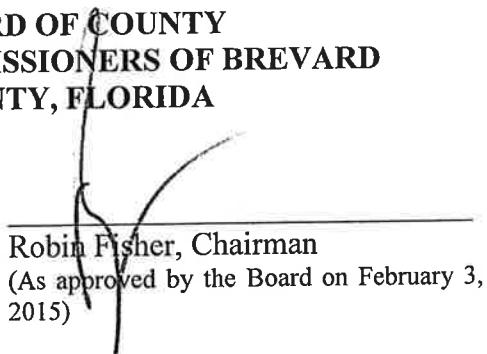
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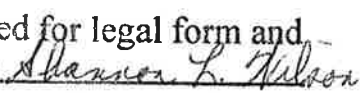
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis  
Clerk of the Circuit Court

**BOARD OF COUNTY  
COMMISSIONERS OF BREVARD  
COUNTY, FLORIDA**

BY:   
\_\_\_\_\_  
Robin Fisher, Chairman  
(As approved by the Board on February 3,  
2015)

Reviewed for legal form and  
content:   
\_\_\_\_\_  
Assistant County Attorney

**SPECIAL MAGISTRATE**  
  
\_\_\_\_\_  
Stewart B. Capps

**Special Magistrate Services  
RFQ #3-15-04  
Final Ranking Sheet**

|                                                                                           |                  |                                   |             |                            |      |
|-------------------------------------------------------------------------------------------|------------------|-----------------------------------|-------------|----------------------------|------|
| Meeting Date and Time: 01/28/15 @ 8:30 a.m.                                               |                  | Posted Date: 01/28/15 @ 4:00 p.m. |             | Through: 02/04/15 @ 5:00pm |      |
| PROPOSER                                                                                  | Venetta Valdengo | Carl Tucker                       | Jerry Visco | TOTAL                      | RANK |
| Stewart Capps                                                                             | 1                | 1                                 | 1           | 3                          | 1 *  |
| Brigitta Hawkins                                                                          | 6                | 6                                 | 6           | 18                         | 6    |
| Timothy Pickles                                                                           | 5                | 5                                 | 4           | 14                         | 5    |
| Jed Schneck                                                                               | 2                | 3                                 | 2           | 7                          | 2 ** |
| Scott Widerman                                                                            | 4                | 4                                 | 5           | 13                         | 4    |
| Stanley Wolfman                                                                           | 3                | 2                                 | 2           | 7                          | 2 *  |
| <b>#1 and #2 Candidate: Stewart Capps; Stanley Wolfman</b>                                |                  |                                   |             |                            |      |
| ** Tie Procedures utilized due to evaluation of responses resulting in identical ranking. |                  |                                   |             |                            |      |

*SW*