

STAFF REPORT

DATE: December 1, 2021

RE: Settlement Agreement for 3515 Flagler Avenue (TC2020-0016)

FROM: Karen DeMaria, City of Key West Urban Forestry Manager

In January 2019, a Settlement Agreement was signed between the City of Key West and Wilson Chery, owner of 3515 Flagler Avenue. The settlement agreement required Mr. Chery to pay a fine of \$250 and replant 5.8 caliper inches of approved trees, FL#1, on site. Mr. Chery paid the fine on January 15, 2019. In September 2019, he planted a gumbo limbo tree. An inspection documented that the gumbo limbo tree was planted incorrectly and was not of FL#1 quality (see attached letter with photos dated September 12, 2019).

On September 13, 2021, a letter was sent to Mr. Chery requesting a compliance update to the signed settlement agreement. On November 9, 2021, a letter was received from Mr. Chery requesting that the Urban Forestry Manager and Tree Commission accept his planting of the gumbo Limbo tree.

On November 16, 2021, an inspection was done of the gumbo limbo tree. The tree is growing and currently has a diameter of 7 inches.



Photo showing location of tree in front yard.



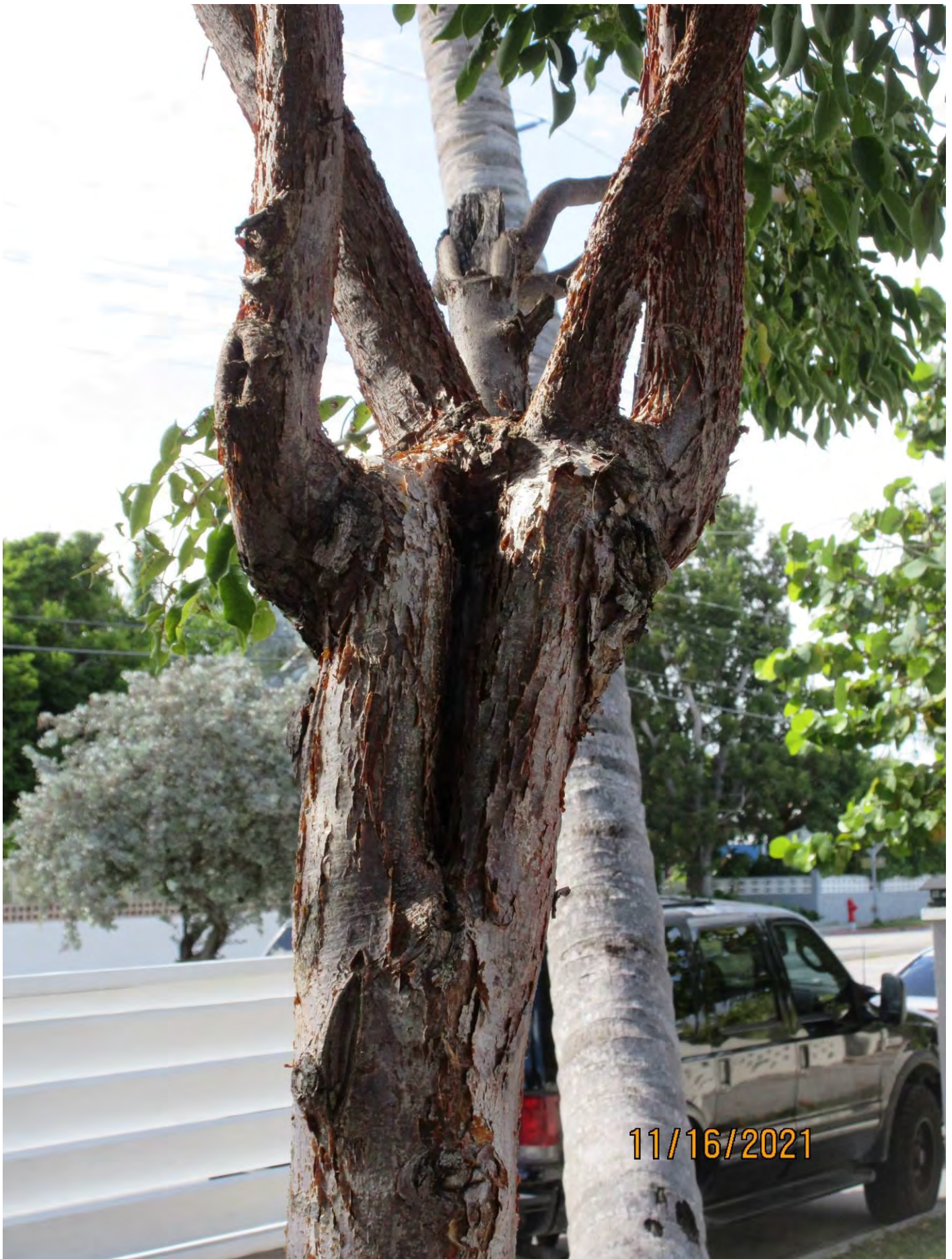
Photo of whole tree, view 1.



Photo of whole tree, view 2.



Photo of tree canopy and damaged area.



Closeup of canopy “crotch” and damage area.



Photo of tree trunk showing damage areas (damage areas have been there since planting, healing wood has been growing).



Photo of
base of tree.



Close up photo
of canopy
“crotch” area,
view 3.



10 - 26 - 21

To Whom it may concern,
Couple years ago was cutting a tree
who was leaning in my house, I cut it without
a Permit I ended up in trouble with city
after we fix the problem I replace the tree
by a combolumbe, but after the inspection
they realized the tree plant in poor condition
then I fix it the right way then tree
perfectly growing please except my planting tree

I apologize for the inconvenience

Wilson Chery



THE CITY OF KEY WEST
Tree Commission
P.O. BOX 1409
Key West, Fl 33041-1409

September 13, 2021

Wilson Chery
3515 Flagler Avenue
Key West, FL 33040

Dear Mr. Chery:

Reference is made to the Settlement Agreement you signed with the Tree Commission on January 15, 2019, regarding the unauthorized tree removal at 3515 Flagler Avenue. The Settlement Agreement required the planting of 5.8 caliper inches of approved dicot trees on the property. On September 3, 2019, a job completion form was received regarding the planting of (1) Gumbo Limbo tree on the property. As per my letter dated September 12, 2019, the planting of this tree was rejected due to improper planting and the poor condition of the tree at the time of inspection.

This letter is to inform you of your requirement regarding this legal issue. Please contact my office by October 29, 2021 to discuss compliance to the Settlement Agreement to include a reinspection of the property and tree. Failure to contact my office will result in the file being forwarded to the Code Enforcement Special Magistrate for processing

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen DeMaria", is written over the printed name.

Karen DeMaria
Urban Forestry Manager
305-809-3768
kdemaria@cityofkeywestcity-fl.gov



THE CITY OF KEY WEST
Tree Commission
P.O. BOX 1409
Key West, FL 33041-1409

September 12, 2019

Wilson Chery
3515 Flagler Avenue
Key West, FL 33040

Dear Mr. Chery:

Reference is made to the Settlement Agreement you signed on January 15, 2019 with the Tree Commission, regarding the unauthorized tree removal at 3515 Flagler Avenue. A job completion form was received on September 3, 2019 regarding the planting of (1) Gumbo Limbo tree.

An inspection on September 4, 2019, documented the Gumbo Limbo had been planted but the tree does not meet the standard health requirements of replacement trees. Condition 2(b) of the settlement agreement states "The property owner shall replant the lot with 5.8 caliper inches of approved trees, FL#1, on site..." FL#1 is a grades and standard measurement used for nursery stock trees and is used to make sure planted trees are of suitable health and structure. The Gumbo Limbo you planted, besides being planted incorrectly, is of poor condition with major decay in the main trunk and a poor structure that does not meet the requirements of the FL#1 standard therefore, it can not be accepted as a replacement tree.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen DeMaria", is written over a horizontal line.

Karen DeMaria
Urban Forestry Manager
305-809-3768
kdemaria@cityofkeywestcity-fl.gov



09/04/2019





5.8"
Settlement
Agreement

CITY OF KEY WEST

Tree Permit Job Completion

To close out the tree permit, the owner/agent must send in this completed form when the approved work has been completed and the replacement(s) has been completed.

In lieu of planting tree(s), you may choose to pay mitigation fees to the City Tree Fund, please make your check payable to "City of Key West" and refer to number **00100003660100** on your check. Mitigation fees are as follows: \$250 per tree for palm trees, and/or \$200 per required replacement caliper inch for dicot/canopy or fruit trees, and/or \$225 per required replacement caliper inch for Royal Poinciana trees.

Permit # _____

The replacement of 1 (0.25) inch dbh
Type of tree(s) planted or Mitigation funds attached

has been completed at 3515 Hogler Ave Key West Fl 33040
Location of tree(s)

Owner Name William Wilson Cherry Signature [Signature]
Print name

Mailing Address 3515 Hogler Ave Key West Fl 33040

Phone Number 305-896-2364 Date 08-28-19

Below please sketch location of replacement tree(s) including structure and cross/corner street names.
Please identify tree(s) with colored tape.

I will place the tree of front the house between a coconut tree & palm tree
it is 7.8 inches dbh in 1.5 ft max with a piece yellow & black tape easy to see

Please send the complete form to the following address:

**City of Key West
Tree Commission
P.O. Box 1409**

Key West, FL 33041-1409

Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.



**THE CITY OF KEY WEST
Tree Commission**

Post Office Box 1409 Key West, FL 33041-1409
Telephone: 305-809-3723

**TREE COMMISSION OF THE CITY OF KEY WEST, FLORIDA
COMPLIANCE SETTLEMENT AGREEMENT**

This ("Agreement"), is made and entered into this 11th day of January 2019, by and between **Wilson Chery**, having an address of **2693 N. Roosevelt Blvd Apt 1, Key West, FL 33040**, ("Property Owner"), and the **City of Key West**, a municipal corporation, having an address of **1300 White Street, P.O. Box 1409, Key West, Florida 33041-1409**, by and through the Tree Commission of the City of Key West, Florida ("Tree Commission").

WITNESSETH

Whereas, Chapter 110 of the Code of Ordinances for the City of Key West provides for hearings of violations, notice, procedure and compliance settlement with regard to the damage or destruction of certain protected trees; and

Whereas, in accordance with Chapter 110 of the Code of Ordinances for the City of Key West, the Tree Commission conducted a hearing and rendered a decision with respect to a certain violation of Chapter 110.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

1. Acceptance of Responsibility for Damage or Destruction:

Property owner accepts full and complete responsibility for the damage or destruction of protected trees on real property located at **3515 Flagler Avenue**, in the City of Key West, Florida, in violation of Chapter 110 of the Code of Ordinances for the City of Key West, as found in the findings made and decision issued by the Tree Commission at its hearing held on January 8, 2019.

2. Remedy:

Pursuant to Section 110-291 of the Code of Ordinance for the City of Key West, the Tree Commission has ordered, and Violator agrees to, the following remedy:

- 1-15-19
- a. The property owner shall pay a fine of \$250 to the City of Key West Tree Fund within 30 days of the date of this signed document.
 - b. The property owner shall replant the lot with 5.8 caliper inches of approved trees, FL#1, on site, within 6 months of the date of this signed agreement.
 - c. The violator shall plant according to current 'Best Management Practices' and the City of Key West, Urban Forestry Program manager shall be contacted for inspection of required tree installation.
 - d. Consistent with permitting requirements, the replacement trees shall remain alive for a minimum of 1 year after planting or replace with like.

Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.

The remedy as indicated above is based upon the value of the damaged or destroyed trees, as found by the Tree Commission.

3. Penalty for Non-Performance:

Failure of Violator to comply with the remedy indicated in Paragraph 2 above shall result in the institution of any and all permitted administrative and legal actions.

4. Sale of Property:

In the event the subject property is sold prior to the completion of compliance with this Agreement, the new owner shall be subject to the terms and conditions of this Agreement. It shall be the duty of the selling property within ten days of the effective date of the sales contract to provide the buyer with a copy of this Agreement. The Urban Forestry Manager shall issue a letter to the property owner when compliance is achieved.

IN WITNESS WHEREOF, Violator and the Tree Commission have caused this instrument to be executed as of the date first written.

TREE COMMISSION

City of Key West, Florida, a municipal corporation, by and through the Tree Commission of the City of Key West

Chairperson: _____

David Jackson

Witness: _____

Print Name: _____

Date: _____

PROPERTY OWNER:

Wilson Chery

Witness: _____

Print Name: _____

Date: _____