



THE CITY OF KEY WEST
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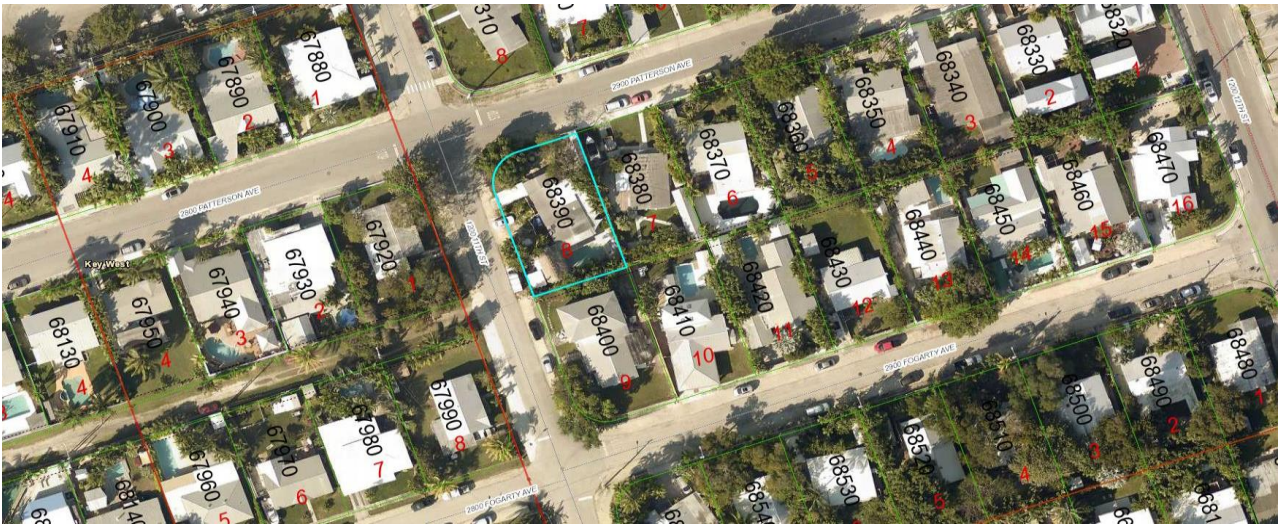
EXECUTIVE SUMMARY
Renewed Request for Mitigation

Date: May 3, 2022
To: City Commission
CC: Patti McLauchlin, City Manager
Shawn D. Smith, City Attorney
From: Nathalia A. Mellies, Assistant City Attorney
Jim Young, Director of Code Compliance
Re: 1205 11th Street Lien Mitigation

Background

The City of Key West received a mitigation request from Van Fischer on behalf of Robert Janicki (“Owner”), the owner of the property, for liens recorded against 1205 11th Street. The total amount of the lien is Five Hundred and Eighty-Five Thousand, Two Hundred and Fifty Dollars, (\$585,250.00). At the March 1, 2022 City Commission meeting, Mr. Janicki, through his representative, offered Ten Thousand Dollars, (\$10,000.00), for the release of the lien placed by the City of Key West Code Compliance Department on the subject property. The City Commission rejected his offer. Mr. Janicki is renewing his request for a mitigation of the lien pursuant to City of Key West Code of Ordinances Sec 2.635 and FL Statute 162.09 (to place the lien) and Sec. 2-646 (to remove lien) and is now offering One Hundred Thousand Dollars (\$100,000.00) for complete release of the lien(s).

Additionally, after thorough review of the file and emails provided by Mr. Janicki, it appears that some delay did occur which is not fully attributable to Mr. Janicki. The City encountered some technological difficulties after Mr. Janicki submitted his permit in December, 2019, which led to a complete loss of Mr. Janicki permit application and required him to resubmit.



The subject property is a residential property purchased on October 20, 2017 by Robert Janicki (the “Owner”).¹ Public records seem to indicate there is no pending foreclosure of the property.² During Mr. Janicki’s ownership, Code Compliance staff processed Code Case No. 18-0280, as detailed in **Table 1**.

Table 1: Case History, CC18-0280

DATE	NARRATIVE
03/02/2018	During an area canvass, a code compliance officer observed tree cuttings on the City right of way. A courtesy notice was left requesting removal of the cuttings.
03/09/2018	A follow-up inspection was conducted by the code officer and a building inspector. During the inspection, three individuals were observed doing work without the required building, electrical and plumbing permits in the main house as well as the shed and a tiki hut. Both the tiki hut and the shed had been converted into habitable living units. A stop work order was posted at the property.
03/12/2018	An after-the-fact electrical permit application was submitted for the following work: kitchen rewire - 6 outlets, relocating 3 switches, rewiring 2 lights, running range wire, checking a/c disconnect/wiring of unit. Rewiring 2 bedroom fans.
03/16/2018	A Notice of Code Violation (NOCV) was issued to the Owner via certified mail. The NOCV cited the subject property owner with violating the following sections of the City’s Code of Ordinances: Sec. 14-37, not having required building, electrical and plumbing permits; Sec. 14-262, not having an electrical inspection, and Florida Building Code P2503.1, not having a plumbing inspection. The Owner received and signed for the NOCV on 03/19/2018.
03/21/2018	An Amended Notice of Code Violation (ANOCV) was issued to the Owner via certified mail. The ANOCV cited the subject property owner with violating the following sections of the City’s Code of

¹ Monroe County Property Appraiser’s Office
² Monroe County Clerk of the Courts

	Ordinances: Sec. 14-37, not having required building, electrical and plumbing permits; Sec. 14-262, not having an electrical inspection; Florida Building Code P2503.1, not having a plumbing inspection; Florida Building Code FBC.1612.4, Flood Hazard Construction; and City of Key West Code of Ordinance Sec. 18-117, aiding or abetting a unlicensed person. The Owner received and signed for the ANOCV on 03/24/2018.
05/16/2018	A Notice of Administrative Hearing (NOAH) was issued to the Owner via certified mail with a hearing date of May 30, 2018. The Code Hearing was continued to June 27, 2018.
06/27/2018	The Special Magistrate found the subject property owner in violation of Sec. 14-37, not having required building, electrical and plumbing permits; Sec. 14-262, not having an electrical inspection; Florida Building Code P2503.1, not having a plumbing inspection; and Florida Building Code FBC.1612.4, Flood Hazard Construction. The Special Magistrate dismissed Count 5, Sec. 18-117, aiding or abetting a unlicensed person. The Special Magistrate assessed a Two Hundred and Fifty Dollar (\$250.00) Administrative Fee and a Two Hundred and Fifty Dollar (\$250.00) daily fine, per count (4 counts total), if compliance was not achieved by August 29, 2018. Due to the Owner applying for a Lawful Unit Determination, the compliance hearing date was continued to May 29, 2019.
05/29/2019	Although the Planning Department did recognize a unit as a lawful unit, at the compliance hearing the Special Magistrate found that proper inspections had not been completed in reference to Counts 1 thru 4 and that there was a failure of compliance. The Special Magistrate imposed a total daily fine of One Thousand Dollars (\$1000.00) to begin running as of May 30, 2019.
12/26/2019	Property owner submits his after-the-fact permit.
12/26/2019-07/20/2020	Permit is undergoing extensive plan review by the City.
06/16/2020	A lien was filed with the Monroe County Clerk of Courts in Book No. 3026, Page No. 2303. The total amount of the lien was Three Hundred and Seventy-Eight Thousand Dollars (\$378,000.00).
11/2020	Plans are resubmitted at the request of the City.
01/04/2021	The property owner achieved compliance. However, the total amount of the fines had accumulated to Five Hundred and Eighty-Five Thousand, Two Hundred and Fifty Dollars (\$585,250.00).

A summary of the fines and offered settlement is shown in **Table 2**. The applicant is requesting the fine be reduced to \$100,000 which represents ~17% of the total outstanding lien.

Table 2: Code Fines Summary

Case Number	Violation	Days in Violation	Daily Fine	Fines Due	Settlement Offered	Reduction Requested
CC18-0280	Building Permits	585	250.00	\$146,250	\$100,000.00	82.9%
CC18-0280	Electrical Inspections	585	250.00	\$146,250		
CC18-0280	Plumbing Inspections	585	250.00	\$146,250		
CC18-0280	Flood Hazard Construction	585	250.00	\$146,250		
Total Fines Due				\$585,000.00		

Mitigation Factors

The following criteria was considered by Staff in evaluating the lien mitigation request:

A. The nature and gravity of the violation.

Failure to obtain building permits, failure to have an electrical inspection, failure to have a plumbing inspection and Flood Hazard construction are typically considered to be violations with a component of hazard, not only to the property owner but to the surrounding neighborhood due to the fact there is no guarantee proper City and building codes were followed during construction.

B. Any actions taken by the Respondent to correct the violation.

The owner did not come into compliance until January 4, 2021, a year and a half after the extended compliance date. However, Respondent did make attempts to come into compliance prior to that date by submitting an after-the-fact permit and working with the City to finalize the permit.

C. The length of time between the previously ordered compliance date and the date the violation was brought into compliance.

The code violations were brought into compliance on January 4, 2021, 585 days after the extended deadline imposed by the Special Magistrate. However, Respondent did make attempts to come into compliance prior to that date by submitting an after-the-fact permit and working with the City to finalize the permit. Some of the permitting delays are not attributable to the Respondent.

D. Any actual costs expended by the Respondent to cure the violation as provided by supporting documentation.

No such information has been provided to the City as to the amount Respondent expended to come into compliance.

E. Any other prior or current violations committed by the Respondent on the subject property or upon any other property owned by the Respondent within the City.

There are currently no code violations on the property or any other properties owned by the Respondent, to the best of staff's knowledge.

F. Respondent's Justification for the requested lien mitigation.

Respondent states that the structures that were the basis for the code case were already on the property when he purchased it in 2017. Respondent also provided documentation that reflects that some of the permitting delays are not attributable to him.

G. Any other factors.

None that staff is aware of or that Applicant has provided to staff.

Recommendation

Staff recommends the Commission hear from the applicant/representative, and determine the appropriate mitigation amount for the lien, if any.

Should the Commission approve a mitigated amount, the Commission should require full payment of that mitigated amount on or before June 2, 2022, and direct Staff to provide the applicant/representative with a Release of Lien for recording with the Monroe County Clerk of the Courts but only upon receipt of the entire mitigated amount on or before June 2, 2022.