



THE CITY OF KEY WEST
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EXECUTIVE SUMMARY

Date: December 7, 2021

To: City Commission

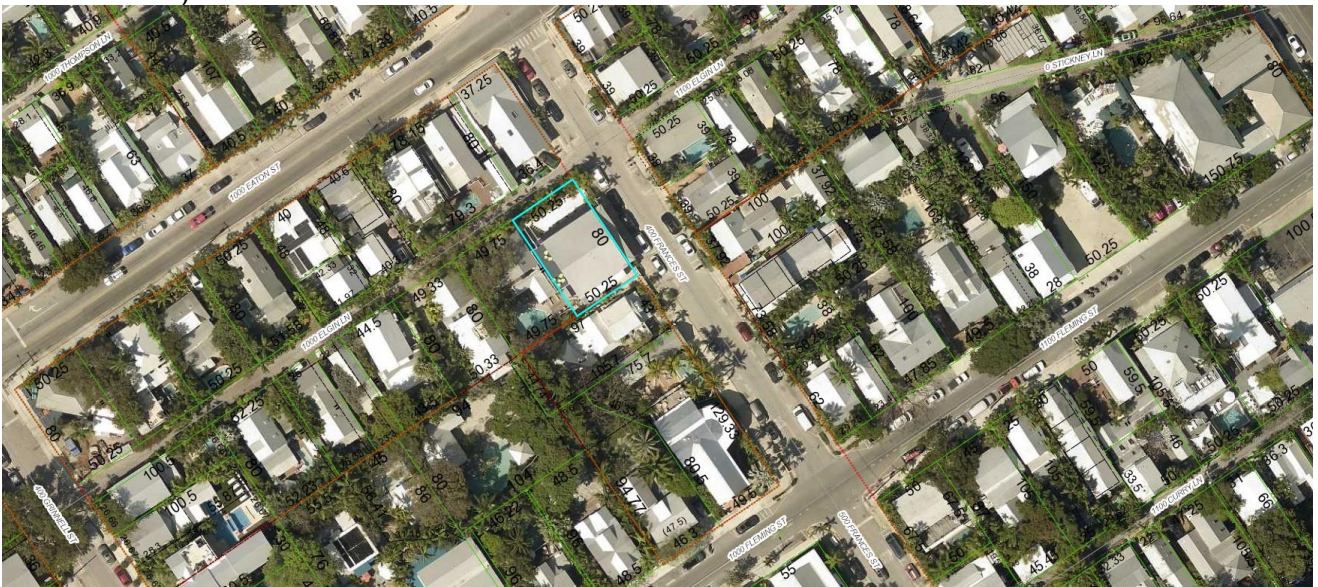
CC: Patti McLauchlin, City Manager
Shawn D. Smith, City Attorney

From: Nathalia A. Mellies, Assistant City Attorney
Jim Young, Director of Code Compliance

Re: 412 Frances Street Lien Mitigation

Background

The City of Key West received a mitigation request from Tracy J. Janssen as Power of Attorney for Roy William Howard of Marsh Enterprises of SW Florida, Inc., the current owner of the property (Owner/Respondent), for liens recorded against 412 Frances Street. The total amount of the lien is Seven Thousand and Seven Hundred and Fifty Dollars, (\$7,750.00). Mr. Howard is offering One Thousand Dollars, (\$1,000.00), for the release of the lien placed by the City of Key West Code Compliance Department on the subject property 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).



The subject property is a 16 room hotel known as Heron House Court single-family residential property purchased on June 1, 2000 by Marsh Enterprises of SW Florida, Inc., the current owner of the property (Owner) for \$2,295,000.¹

In 2018, Code Compliance staff processed Code Case No. 18-1064. The property was cited for failure to obtain building permits. Compliance was achieved on March 29, 2019. The history of the code compliance case is shown below in **Table 1**.

Table 1: Case History, CC18-1064

DATE	NARRATIVE
07/24/2018	Code Compliance received an anonymous complaint that there was construction work being performed at the subject property without the required building permit(s). Code Compliance officers responded and observed a new fence had been built in between the subject property and the neighboring property located at 414 Frances Street, Key West, without the required building permit. A Notice of Code Violation was issued to the subject property owner via certified mail.
07/27/2018	The Notice of Code Violation (NOCV) was signed for by Jan Kamphawen.
08/14/2018	A Notice of Administrative Hearing (NOAH) was issued to the subject property via certified mail. The hearing was originally set for September 26, 2018 and later continued to November 28, 2019.
08/21/2018	The NOAH was signed for by Jan Kamphawen.
11/28/2018	The Special Magistrate found the subject property owner in violation of City of Key West Code of Ordinances Section 14-37 for not having the required building permit. 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 commencing on January 30, 2019.
01/30/2019	The Special Magistrate granted the request to continue this case to February 27, 2019 for compliance.
02/27/2019	The case went before the Special Magistrate for compliance. The Respondent did not appear. The Special Magistrate ruled that the daily fine of \$250.00 would commence accruing on February 27, 2019 for failure to come into compliance.
03/29/2019	The subject property owner achieved compliance, however, the fine amount had accumulated to Seven Thousand and Seven Hundred and Fifty Dollars (\$7,750.00).
06/28/2019	A lien was recorded with the Monroe County Clerk of Courts, Book #2972, Page #1268 against the property owner in the amount of Seven Thousand and Seven Hundred and Fifty Dollars, (\$7,750.00).

¹ Monroe County Property Appraiser's Office and Monroe County Clerk of the Courts

A summary of the fines and offered settlement is shown in **Table 2**. The applicant is requesting an 87% reduction in fines.

Table 2: Code Fines Summary

Case Number	Violation	Days in Violation	Daily Fine	Fines Due	Settlement Offered	Reduction Requested
CC18-1064	Building Permits	30	250.00	\$7,500	\$1,000.00	87%
Total Fines Due				\$7,500.00		

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 is typically considered to be a violation 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. With respect to fences, an improperly placed fence can create boundary and legal issues.

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

To achieve compliance, the Respondent hired a contractor to obtain an after-the-fact permit for the fence which was actually located on 414 Frances Street.

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

The code violation was brought into compliance on March 29, 2019, thirty (30) days after the deadline imposed by the Special Magistrate.

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

At this time, the Respondent has not paid any of the amounts associated with the code enforcement case. The Respondent did pay a fence permit fee in the amount of \$176.00.

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 in the Town. Historically, 5 other Notices of Violation/Notices of Hearing were issued on the property, none of which appear to have resulted in a finding of a violation by the Special Magistrate.

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

None has been provided to staff at this time.

G. Any other factors.

None that staff is aware of or that Respondent 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. Staff recommends approval of the offer from the Respondent.

Should the Commission approve a mitigated amount, the Commission should require full payment of that mitigated amount on or before January 6, 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 January 6, 2022.