

• EXECUTIVE SUMMARY

TO: Jim Scholl, City Manager
FROM: Mark Finigan, Assistant City Manager
DATE: November 18, 2010
SUBJECT: 2507 Linda Avenue
Acceptance of Mitigated Amount
Release of Lien



Action statement:

Recommend the City Commission accept the proposed mitigated amount of \$10,000.00 of accrued fines totaling \$35,250 for the property located at 2507 Linda Avenue. Additionally, request City of Key West City Commission release the lien placed by the City of Key West 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). This would be a full release for the property located at 2507 Linda Avenue as well as any other real property the lien placed by the City may have attached to.

Commission approval of the mitigated amount is subject to a closing on the property in which the terms of the short sale, as described in the background section of this Executive Summary, do not substantially change. Additionally, the closing must also include a disbursement which pays in full all outstanding City of Key West utility charges.

Background:

The original mortgage for 2507 Linda Avenue in October of 2005 was for \$742,000.00. The current principal balance due is over \$742,000, when including accrued interest, legal fees and other foreclosure costs. The subject property is currently under contract for \$306,250 (copy of HUD and Purchase and Sale Agreement attached). The first mortgage holder has "conditionally" accepted a short sale contract payoff amount of \$267,342.76. The Seller will receive \$0.00 at closing. Lender approval for the short sale is contingent on the City of Key West releasing of the lien. In short, no City release - no lender approved short sale. Conversely, no short sale – no City release.

The code violation and subsequent Findings and Order centered on multiple instances of the property being rented transiently by the Owner. The prospective Buyers have certified that it is their intent to occupy the property as their primary residence (see attached Buyer letter).

The recommended mitigated amount of \$10,000 will recover Staff / Magistrate time and filing costs through the Findings and Order as well as cover Staff time to process the release of lien. The proposed \$10,000 mitigated amount is also based on the violation itself in which the owner of 2507 Linda permitted the transient rental of his property even though he was granted a suspended fine for the same action.

Recommendation:

The City Manager recommends the City Commission accept the proposed mitigated amount of \$10,000.00 of accrued fines totaling \$35,250 for the property located at 2507 Linda Avenue. . Although the City does have a lien in place, it post dates the Lis Pendens that was filed as a result of a looming foreclosure action. However, even if the City had timely filed its lien prior to the Lis Pendens, the City would still be in a far inferior position compared to the first mortgage holder when one compares the sale price and the outstanding mortgage balance. If this property were to foreclose, the City would not be in a legitimate position to appreciate a recovery of any of the fines either legally or practically speaking given the significant negative equity that is involved with this property. Staff has reviewed the Settlement Statement (HUD-1) regarding this short sale and the City's interests are adequately represented regarding the escrow and settlement monies.