



THE CITY OF KEY WEST

Executive Summary

To: Jim Scholl, City Manager
From: Jim Young, Director of Code Compliance *JY*
Date: October 7, 2015
Subject: Release of lien, 1104 Virginia Street

Action Statement:

Request the Key West City Commission considers the proposed release of lien placed on the subject property located at, 1104 Virginia Street, Key West, FL. The property owner through her attorney has offered to pay One Thousand Five Hundred Dollars (\$1,500.00). The amount of the lien is Eighteen Thousand Two Hundred Dollars (\$18,200.00). Request the City Commission considers releasing the lien placed by the Code Compliance Department on the subject property pursuant to City of Key West Code of Ordinances Sec. 2-646.

Background:

On March 15, 2013 the Key West Code Compliance Department received complaints from the Key West Engineering Department regarding several properties along Virginia Street having fences and / or other structures encroaching on City right of way. Approximately eight, (8), Courtesy Notices were issued to different property owners requesting they either remove the encroachments or secure easements, HARC Certificates of Appropriateness and Building permits in order to achieve compliance.

On April 4, 2013 a Notice of Code Violation was issued after the subject property owner did not secure an easement application or a building permit application for the fence built in the front yard. The code officer subsequently granted a request for additional time to achieve compliance. On June 17, 2013 a Notice of Code Violation / Notice of Hearing was issued for the July 31, 2013 hearing date, which gave respondents additional time for compliance. The Hearing commenced on August 28, 2013 during which the Special Magistrate found a violation and imposed a Two Hundred and Fifty Dollar (\$250.00) Administrative Cost. The Special Magistrate set the compliance date for November 19, 2013. On November 19, 2013 the Respondents requested two additional continuances for compliance.

On January 29, 2014 a compliance hearing was held. The Special Magistrate imposed a daily fine of Two Hundred Dollars (\$200.00) per day until compliance was achieved. On April

30, 2014, ninety two days (92) later, compliance was accomplished, however, the fines had accrued to Eighteen Thousand Two Hundred Dollars (\$18, 200.00).

On March 11, 2014 and August 8, 2014 collection letters were mailed to the subject property owner. On October 29, 2014 a request for a mitigation hearing was scheduled for November 14, 2014 upon the request of the subject property owner, Anola Mira. This hearing was then canceled upon request of the subject property owner's daughter due to the daughter attempting to obtain power of attorney.

On January 28, 2015 in accordance with City Ordinances a lien hearing was scheduled. Attorney Gregory S. Oropeza, Esq. filed a notice of appearance and advised he would be at the lien hearing representing Mrs. Mira. Mr. Oropeza offered an amount of One Thousand Five Hundred Dollars, (\$1,500.00), which the City did not object to, nor support. The Special Magistrate ordered the Parties to attempt to negotiate an agreeable fine.

On February 25, 2015 the mitigation hearing was held during which the Special Magistrate denied Mr. Oropeza's offer of One Thousand Five Hundred Dollars (\$1,500.00) and upheld the lien in the amount of Eighteen Thousand Two Hundred Dollars (\$18, 200.00).

On May 8, 2015 the lien was filed with the Monroe County Clerk of Courts.

On September 24, 2015 Code Compliance received a request received from Gregory S. Oropeza, Esq. to mitigate the lien with the City of Key West City Commission.

For consideration, please note City Ordinance Sec. 2-682. - Mitigation guidelines; court costs. This section provides guidelines for the Special Magistrate to consider for mitigations of fines.

(b) The Special Magistrate shall consider the amount of time in which compliance was achieved by the applicant as follows:

(1) If compliance was achieved within 60 days of the imposition of the daily fine, the fine shall not be mitigated or discounted by more than 90 percent.

(2) If compliance is achieved within 61 to 120 days of the imposition of the daily fine, the fine shall not be mitigated or discounted by more than 50 percent.

(3) If compliance is achieved within 121 to 180 days of the imposition of the daily fine, the fine shall not be mitigated or discounted by more than 20 percent.

(4) No mitigation shall be considered if compliance was achieved more than 180 days from the imposition of the daily fine.

(c) The special magistrate may consider relevant aggravating factors frustrating compliance in consideration of subsection (b) above. In the event the special magistrate deviates from the guidelines specified in this section, specific written findings shall be entered into the record to that effect.

(d) Other factors that may be considered by the special magistrate include:

(1) Severity of the underlying violation;

(2) Effect the violation has had on the neighbors and neighborhood.