



City Attorney's Communication #2021-69
November 24, 2020

TO: Mayor and City Commission

FROM: Fawn Powers, Assistant City Attorney

VIA: Mark E. Berman, City Attorney

RE: Request execution of Settlement Agreement and Release of Liens to resolve foreclosure action styled *City of Pompano Beach vs. Cristobal Veloz, et al.*

Attached for your review is a proposed Settlement Agreement and Release of Liens (the "Settlement" attached as Exhibit 1) which would resolve this pending foreclosure action and result in the City acquiring the vacant residential lot in the Highlands located at 1620 NE 41 Court which is the subject of the litigation (the "Property").

Background

In December 2009, husband and wife, Cristobal and Iris Veloz (collectively "Veloz"), purchased the Property for \$24,000 from Wells Fargo Bank who had acquired it several months earlier as a result of a successful foreclosure action against the former owner. At the time, a single family home existed on the Property and it had a chain link fence.

The City's Code Enforcement records indicate the Property first became problematic in early 2011 for public nuisance violations such as an overgrown yard and illegal outdoor boat storage. In late 2012, the City began to receive complaints regarding the lack of maintenance at the Property and its unsecured nature from repeated break-ins.

In late 2015, the Building Department cited the vacant home as an unsafe structure due to its deteriorated roof. The City's Unsafe Structures and Housing Appeals Board considered the violations at hearings in which Veloz participated. Ultimately, the Board issued an Order in February 2016 that required the structure be demolished which Veloz unsuccessfully appealed in Circuit Court. The City demolished the deteriorated home in January 2017.

Litigation Summary

In April 2019, the City filed this litigation against Veloz which sought to foreclose four (4) Nuisance Abatement, three (3) Unsafe Structure and two (2) Code Enforcement liens valued in

excess of \$1.6 million against the Property. Thereafter, the City obtained a Default Judgment against Veloz and a third defendant in the action, Erin Capital Management, LLC., who had to be named in the litigation because of a 2006 Final Judgment against Cristobal Veloz valued at approximately \$7,000.00

In accordance with Florida law, the City has taken the position its Nuisance Abatement and Unsafe Structure liens constitute a superior first position on the Property, but not its Code Enforcement liens. This is because the fourth named defendant, the City of North Lauderdale, has Code liens valued in excess of \$996,000 against Veloz that cross-attach to the Property and take a second position as they were recorded prior to our Code liens. As such, if the foreclosure is successfully prosecuted, the City will only be entitled to approximately the first \$25,000.00 of the public sale proceeds (\$20K for the Nuisance Abatement/Unsafe Structure liens and \$5K for attorney's fees and costs), North Lauderdale will be entitled to any additional proceeds, and the City's remaining Code liens will be foreclosed out.

Conclusion

The Property is currently valued at \$36,520 by the Property Appraiser, however, its market value is \$50,000 plus. In addition, and of certain significance, this highly visible corner lot is situated at the front entrance of Norcrest Elementary School as depicted in Exhibit 2 and the City's Department of Housing and Urban Improvement ("OHUI") is interested in acquiring it to construct affordable housing because it is in a highly desirable neighborhood.

As detailed below, I have reached a settlement with the City of North Lauderdale that enables the City to obtain clear title to the Property within days of the City Commission's approval of the proposed Settlement with Veloz. The practical result of the foregoing settlements with North Lauderdale and Veloz is that the City will avoid the additional time and expense involved in pursuing the litigation, which, if successfully prosecuted, would pretty much turn out to be a wash. That is, while the City would receive reimbursement for out-of-pocket costs attendant to the Nuisance Abatement/Unsafe Structure liens, litigation costs and attorney fees, OHUI would lose its opportunity to acquire the strategically located oversized lot for less than a third of its market value. Worse still, the Property would probably sell to an investor at public auction with the likely result of another cycle of community blight.

Exhibit 3 represents the City of North Lauderdale's offer to release its \$996,000 plus security interest in the Property for a \$14,588.25 Settlement Sum that OHUI has committed to paying from its own budget. With regard to OHUI's proposed payment to North Lauderdale, this can be accomplished administratively pending your approval of the Settlement with Veloz.

Exhibit 1 represents the proposed Settlement with Veloz, the terms of which are summarized below for your convenience.

1. Veloz will convey good and marketable fee simple title to the City via a Warranty Deed drafted to include specific provisions that address the concerns of the City's title insurer. Veloz will also be required to execute additional documents and affidavits to resolve additional title defects.
2. The City will pay Veloz the Settlement Sum of \$2,444.22 (\$3,000 minus approximately \$555.78 for outstanding 2020 real property taxes).
3. The City will release Veloz from any claims or liens it has against them.

In light of the foregoing considerations, particularly the Property's approximately \$50,000 plus market value and the fact that the City's total out-of-pocket costs under a global settlement of the litigation are less than \$20,000 (approximately \$14,500 to the City of North Lauderdale and \$2450 to Veloz) and will result in the City obtaining clear title to the Property within the next thirty days for the betterment of the community, I recommend you accept the terms of the proposed Settlement.

It is my intention to place the Settlement with Veloz on the Consent Agenda of your City Commission meeting to be held on December 8, 2020. Therefore, if you have any questions or concerns, kindly contact me beforehand at (954) 786-4083 so we can discuss this matter further.



FAWN POWERS

FP:jmz
l:foreclosure/Veloz/2021-69f

Attachments

cc: Gregory P. Harrison, City Manager
Miriam Carrillo, OHUI Director