



City Attorney's Communication #2018-381

January 25, 2018

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 Lien to resolve pending City's foreclosure action against 2261 NE 12 Street (the "Property")

Attached for your review is a proposed Settlement Agreement and Release of Municipal Lien ("Settlement Agreement") which would resolve the City's pending foreclosure action against the subject Property owned solely by Virginia C. Boone, an elderly married woman. This matter is scheduled for Commission consideration on February 13, 2018.

The subject mixed-use property comprised of a convenience store on the first floor and several residential rental apartments on the second floor was forwarded to me in January 2016 for prioritized enforcement action by Code Compliance as Mrs. Boone was not responding to the City's inspectors. Specifically, the Property was cited in June 2015 for the parking lot being in disrepair, an accumulation of construction debris and trash, and failure to maintain minimum property standards insofar as the building needed to be painted, there was a hole in the exterior wall and the windows and balcony were cracked. In addition, Code Compliance was routinely receiving complaints from the adjacent community regarding the blight caused by the Property's poor condition.

Although Mrs. Boone initially responded to my good faith attempts to work out a mutually acceptable compliance strategy and avoid formal litigation, she subsequently became uncooperative and failed to take appropriate remedial action. As a result I filed the instant foreclosure action on March 31, 2017. Mrs. Boone responded by hiring Thomas Daiello, a local attorney, to represent her in the litigation and thereafter brought the Property into compliance on May 26, 2017.

Despite my numerous requests, I have been waiting since June 2017 for Mr. Daiello to provide me a letter summarizing his client's actions and cost to comply the Property so that I could formulate an appropriate settlement offer. Also, attached is a copy of the letter that I finally received from Mr. Daiello dated January 16, 2018.

The City usually settles the foreclosure cases I litigate for ten percent of the total fine (minus credit to owner for compliance costs) plus reimbursement of the City's out-of-pocket costs (e.g. prior nuisance abatement actions, securing or demolition costs, filing fees, etc.). However, the foreclosure actions I traditionally file involve numerous life safety issues, excessive staff time and contentious litigation whereas this matter involved maintenance and public nuisance violations and was not litigated other than my filing the initial Complaint. In addition, City staff time expended on this enforcement matter has not been excessive.

In light of the foregoing mitigating factors, as illustrated below the proposed settlement sum of \$21,100.00 is approximately \$1,100 less our traditional settlement sum for more problematic properties.

Amount of City's lien	\$358,000.00
Traditional 10% Settlement Sum	\$35,800.00
Owners' Compliance Costs	- <u>14,700.00</u>
	\$ 21,100.00
City's Out-of-pocket costs	+ <u>1,100.00</u>
	\$ 22,200.00 vs. \$21,100.00 Proposed Settlement Sum

Although I am of the opinion that Ms. Boone does not have any valid legal defenses to the pending foreclosure action, I recommend you approve the Settlement Agreement because all violations have been complied, the City is not interested in acquiring the Property and Mrs. Boone made a significant investment to improve and comply the Property assessed at \$786,410.00 by the Broward County Property Appraiser.

Thank you for your consideration of this matter. Please call me at (954) 786-4083 if you wish to discuss further.


FAWN POWERS