CITY OF RIVIERA BEACH • P.O. BOX 10682 • RIVIERA BEACH, FLORIDA 33419
CITY ATTORNEY'S OFFICE
INTER-DEPARTMENTAL COMMUNICATION

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: ANDREW DEGRAFFENREIDT, CITY ATTORNEY

CC: RUTH C. JONES, CITY MANAGER
LINA BUSBY, ASSISTANT CITY ATTORNEY
NATALIE MOORE, CODE ENFORCEMENT ADMINISTRATOR

RECEIVED
JUL 28 2016
EXECUTIVE DEPARTMENT

DATE: JULY 28, 2016

RE: RELEASE OF CODE ENFORCEMENT LIENS

In response to your directive at our last council meeting, please be advised that F.S. section 162.09 provides in pertinent part:

> (3) A certified copy of an order imposing a fine ...recorded in the public records ..... thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.
>
> "A lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section".
>
> "No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under s. 4(a), Art. X of the State Constitution".

The legal process for removing all the liens from homestead properties simply involves, recording a document releasing the code enforcement lien created by each recorded order in the public record for each property encumbered by the lien. That would require a release that encompasses both the property upon which the violation exists. Consideration would have to be made on a case by case basis of whether you desire to release the lien on other property to which the lien has attached by virtue of being located in the same county which is not the owners homestead. (i.e. liens exist based on

violation which occurs on homestead property but line also attaches to all non-homestead property of the owner located within the county). Liens on non-homestead property would be released the same way.

The difficult task you face is making non legal the public policy decisions concerning how to balance and weigh the competing interest between the goals of aesthetics and property values based upon compliance with the provisions the code enforcement statute and the intended protection from enforcement of judgments against the homestead property of city residents afforded by the Florida as applied to the unique characteristics if this community.

Consideration must be given to the following factors in establishing of an overall policy relating to code enforcement and compliance:

- Subrogation of liens to finance cost of compliance.
- Code compliance being cost prohibitive for some residence.
- The likelihood of prospectively recovering the fines imposed by the orders at all.
- Legal limitation on recovery in terms of priority of mortgages, application of statute of limitations, cost of fines exceeding market value of the property.
- Current benefits of releasing liens vis-a-vis long term hopes of recovery of liens.
- Diminishment in value of residential housing & commercial property based upon lies exceeding value of property and inability to financing cost of compliance.
- Impact of loss in value on tax base.

Consideration must be given to the ways and means to facilitate code compliance including without limitation:

- Releasing all liens on homestead upon violation compliance.
- Programs to finance compliance cost.
- Subrogating Code liens behind security interest in property of financial institutions that loan moneys to achieve code compliance.
- Release liens upon payment of fixed administrative fee and upon proof of compliance.
- Limit amount of fines that may accrue on property in violation.
- Release attachment of liens on property, not the source of violation in order to fund compliance on property in violation.
- Limit code enforcement liens only to properties subject to order of violation.

- Impact of code liens on residents' ability to qualify for reverse equity mortgages.
- Increase compliance times & liberal extensions prior to initiation of code prosecutions.
- Establish hardship program qualifications for assistance before prosecution on homestead properties.
- Waive all current liens to extent liens exceed property appraisers assessment if property value.

It appears that a former council considered the matter of ratification of the decisions of the special magistrate that were appointed by the City Attorney rather than the City council as required by City code. The ratification is legally sufficient to sanction and authorize the actions taken by the special magistrate relating to code enforcement hearings and enforcement orders. Further, it is my opinion that you don't have the authority to undo that act of ratification taken by a prior council. However, you can release the liens as indicated herein above.

With respect to your inquiry concerning challenges to the validity of prior code decisions based upon the authority of the special magistrate to act in that capacity, it appears that a former council considered the matter of ratification of the decisions of the special magistrate that were appointed by the City Attorney rather than the City council as required by City code (City Resolution 98-14). The ratification is legally sufficient to sanction and authorize the actions taken by the special magistrate relating to code enforcement hearings and enforcement orders. Further, it is my opinion that you don't have the authority to undue that act of ratification taken by a prior council.

Additionally both federal and state law have utilized the "defacto officer doctrine" to address technical deficiencies in the appointment of officers and judges in order not to invalidate the actions and decisions they have taken (The Florida Bar v. Shibley, 995 So.2d 346 (Fla. 2008); Ryder v. United States 515 U.S. 177 (1995). The defacto officer doctrine is designed to eliminate the inherent chaos that would result multiple and repetitious suits challenging every action taken by the official and to protect the public interest by insuring the orderly function of governmental action despite technical defects in the authority to act. Therefore the defacto officer doctrine would support the validity of the quasi-judicial decisions of the code enforcement special magistrate despite technical deficiencies relating to the appointment to that position.

I trust that the foregoing is responsive to your inquiries and I will address any additional concerns relating to the same at our upcoming meeting.

AD:syj

Sent via email only to: Chair Pro-Tem, Kashamba Miller-Anderson