IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2019-CA-008660-AI

B. & B. PROPERTIES, INC., a Florida corporation, and on behalf of all others similarly situated,

Plaintiff,

vs.

PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida,

Defendant.
_____/

PALM BEACH COUNTY'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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Defendant Palm Beach County ("Defendant" or "County") respectfully requests that the Court enter an order denying Plaintiff B. & B. Properties, Inc. ("Plaintiff" or "B&B") Motion for Summary Judgment filed on May 21, 2024, and in support thereof, states as follows:

I. INTRODUCTION

The original Complaint in this matter was filed on July 3, 2019. On September 29, 2021, Plaintiff filed its four-count Class Third Amended Class Action Complaint for Declaratory, Injunctive, and Monetary against the County ("TAC") for actions related to Defendant's actions pertaining to code violation enforcement. *See* **Exhibit 1**, attached hereto. Plaintiff takes issue with three allegedly improper County-practices in the course of collecting on code enforcement liens by: 1) charging and collecting on interest before filing a lawsuit to foreclose the lien, 2) allegedly improperly calculating said interest, 3) adding collections costs to the amount of a lien before filing a lawsuit to foreclose the lien, 4) allegedly charging and collecting collection agency

fees in excess of what the County allegedly paid the collection agency, and 5) limiting the amount of time that a violator may request a modification hearing before a Special Magistrate to the time period before the lien is referred to the County's Office of Finance, Management & Budget ("OFMB").

As will be explained more fully below, none of these allegations contain merit because: 1) Plaintiff cannot point to any binding legal precedent or legislative statute that affirmatively states that any municipality[1] in the state of Florida cannot charge and collect on accrued interest and collections costs on a code violation lien prior to filing a lawsuit. In fact, many of Florida's 478 municipalities engage in this practice, and these municipalities have the ability to engage in this practice due to the power afforded to them under the Florida Constitution pursuant to their Home Rule powers since that practice is not ***specifically prohibited***. 2) Plaintiff incorrectly places undue importance into its incorrect reading of Fla. Stat. § 162.09 because the "Local Government Code Enforcement Boards Act" (Fla. Stat. §§ 162.01-162.30) was before, and continues to be even now, ***supplemental in nature***, and accordingly does not actually serve the distorted and misguided view of its role ascribed by Plaintiff that it provides the only means by which a municipality can exercise its Home Rule powers to enforce code violations. 3) Plaintiff's claims are barred under Florida's statute of limitations. 4) Plaintiff waived its ability to challenge the County's actions in relation to the subject code violation lien by failing to appeal within 30 days of the issuance of the Order Imposing Lien. 5) Prevailing legal precedent unequivocally cuts against Plaintiff's assertion that it was not provided sufficient Due Process because Plaintiff was provided all the due process afforded under the United States of America's Constitution. 6) The fines associated with the lien

[1] The phrase "municipality" encompasses counties, cities, towns, and villages. See § 2:4. What defines a municipality or municipal corporation, and what powers can one wield?, 24 Fla. Prac., Florida Municipal Law and Practice § 2:4.

are not excessive under the Eighth Amendment. 7) Plaintiff's allegations concerning the County's charging and collecting of collections costs are without merit. 8) Plaintiff's allegations concerning compound interest are without merit.

Accordingly, Plaintiff's Motion for Summary Judgment should be denied, as further explained below.

II. ALLEGATIONS AND INCORPORATED FACTS OF THE TAC

1. On March 18, 2005, the County provided B&B with a "Notice of Violation" regarding its property at 6900 Dwight Road ("Property"). TAC, Exhibit C. The Notice of Violation advised B&B of the compliance date, its responsibility to notify the County when compliance was reached, and that failure to comply would result in the case being presented to a Special Master, who may then find B&B to be in violation and may impose a fine of up to $1,000.00 dollars per day for each day the violation continued. *Id*.

2. Nearly a year later, on March 1, 2006, a public hearing was held before a Code Enforcement Special Master on the case created by the March 2005 Notice of Violation. TAC, Exhibit D. The corporate agent for B&B was present, spoke under oath at the hearing and was allowed to present evidence. *Id*. The Special Master found the Property to be in violation and provided B&B 120 days to bring the Property into compliance. *Id*. The Special Master[2] ordered that, "[i]n the event the violations cited above are not corrected on or before the compliance date, then and in that event there shall be a fine imposed against [B&B] in the amount of $100.00 for each day the violations continue to exist after the compliance date."

3. In capital, bold letters, the Order Finding Violation advised B&B:

[2] The terms "Special Master" and "Special Magistrate" are interchangeable, with the former term being used at thetime the orders in this case were entered and the latter term being used presently.

THE BURDEN SHALL REST UPON RESPONDENT(S) TO REQUEST A REINSPECTION TO DETERMINE WHETHER THE VIOLATION OR REPEAT VIOLATION HAS BEEN BROUGHT INTO COMPLIANCE.

4. B&B does not allege that it requested reinspection of the Property. *See* TAC.

5. The March 1, 2006 Order notified B&B that, "[i]f a finding of violation or repeat violation has been made as provided in Section 162.09, Florida statutes, a hearing shall not be necessary for issuance of the Order imposing such a fine. *Id*.

6. B&B was further notified that the lien could be placed against the Property and that "[a]fter three months from the filing of the lien, the County [was] authorized to pursue any other collection actions the County deems appropriate." *See* TAC, Exhibit D.

7. B&B does not allege that it did not receive the March 1, 2006 Order, nor can it. *See* Joint Stipulation Regarding Notice, filed by B&B and the County on September 30, 2020.

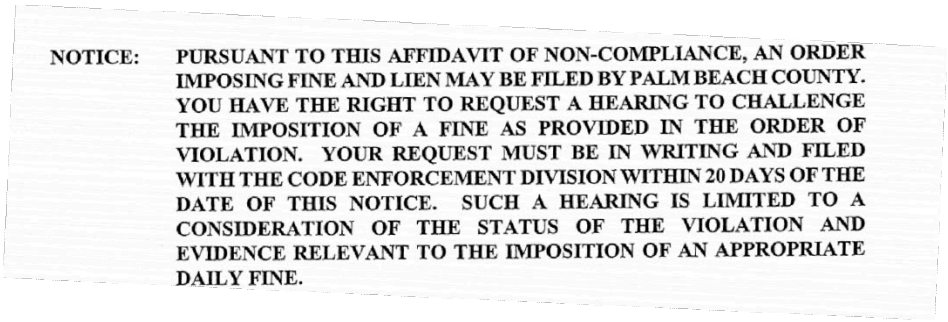
8. B&B does not allege that it appealed the March 1, 2006 Order, which found the Property to be in violation of the code, indicated that no further hearing would be necessary, and set the amount of the daily fine at $100.00 per day. *See* TAC; *see also*, § 162.11, Fla. Stat.

9. On August 21, 2006, a code inspector certified in an "Affidavit of Non-Compliance" under oath that the Property had not come into compliance. *See* TAC, Exhibit E.

10. The Affidavit of Non-Compliance contains a certification that a copy was furnished to B&B by mail on August 21, 2006. *Id*.

11. B&B does not allege that it did not receive the Affidavit of Non-Compliance, nor can it. *See* Joint Stipulation Regarding Notice, filed by B&B and the County on September 30, 2020.

12. The Affidavit of Non-Compliance included the following notice:



NOTICE: PURSUANT TO THIS AFFIDAVIT OF NON-COMPLIANCE, AN ORDER IMPOSING FINE AND LIEN MAY BE FILED BY PALM BEACH COUNTY. YOU HAVE THE RIGHT TO REQUEST A HEARING TO CHALLENGE THE IMPOSITION OF A FINE AS PROVIDED IN THE ORDER OF VIOLATION. YOUR REQUEST MUST BE IN WRITING AND FILED WITH THE CODE ENFORCEMENT DIVISION WITHIN 20 DAYS OF THE DATE OF THIS NOTICE. SUCH A HEARING IS LIMITED TO A CONSIDERATION OF THE STATUS OF THE VIOLATION AND EVIDENCE RELEVANT TO THE IMPOSITION OF AN APPROPRIATE DAILY FINE.

13. B&B does not allege that it requested a hearing "to challenge the imposition of a fine," contest the "status of the violation," or to submit evidence "relevant to the imposition of an appropriate daily fine." *See* TAC.

14. Approximately two years after being placed on notice that a violation existed on their property by the Notice of Violation, one year after attending a hearing and receiving the Order Finding Violation, and six and a half months after the Affidavit of Non-Compliance was mailed, B&B had not corrected the violation on the Property, appealed the Order Finding Violation, requested reinspection of its Property, or requested a hearing on whether a fine was appropriate or in what amount.

15. On March 7, 2007, a Special Master, upon notification by the code inspector in the Affidavit of Non-Compliance that B&B had still not complied with the Order Finding Violation, ordered B&B to pay to the County a fine in the amount of $100.00 per day for every day in violation past the compliance date of June 29, 2006, and indicated that the amount "shall accrue interest at the rate allowed by law.' TAC, Exhibit E.

16. The March 7, 2007, Order Imposing Fine/Lien also advised:

NOTE: If this lien is not satisfied within ninety (90) days of the date the lien is recorded, it will be referred to the Office of Financial Management for referral to a collection agency. No modification requests will be accepted and you will be responsible for any collection fees incurred by the County.

17. B&B does not allege that it did not receive the Order Imposing Fine/Lien, nor can it. *See* Joint Stipulation Regarding Notice, filed by B&B and the County on September 30, 2020.

18. B&B does not allege that it appealed the Order Imposing Fine/Lien.

19. B&B does not allege that it requested a modification hearing before the lien was referred to the Office of Financial Management & Budget ("OFMB") or a collection agency. *See* TAC.

20. The County "acknowledged a partial payment of $44,761.60," paid on May 25, 2018." *Id*. at ¶ 56 (emphasis added). The "Palm Beach County Statement of Account for Code Enforcement Lien" ("Statement of Account") indicates that the payment was received from "COC … from tax deed sales proceeds on cross attached parcel." *See* TAC, Exhibit A, pg. 3.

21. The Statement of Account reflects balances due and owing as of January 31, 2019.

22. A March 28, 2019, email from an Assistant County Attorney, attached to the TAC as Exhibit B, states that the County could not accept B&B's offer to dispose of the lien for $5,904.20 as "we feel that interest has been properly imposed on this lien."

23. B&B does not allege that the March 28, 2019, email was the last communication between the County and B&B on the topic of the amount required to pay off the lien.

24. B&B does not allege that it has paid any interest or collections costs.

25. B&B does not allege that it personally paid any portion of the lien.

26. B&B does not allege that the entirety of the undisputed principal has been paid on the lien.

27. The TAC contains four Counts:

a. Count I – Injunctive Relief (Florida Law and Section 1983)

b. Count II – 42 U.S.C. § 1983 (14th Amendment Procedural Due Process)

c. Count III - 42 U.S.C. § 1983 (8th and 14th Amendment Excessive Fines)

d. Count IV – Declaratory Judgment (Florida Law and Section 1983)

III. STANDARD ON SUMMARY JUDGMENT

Pursuant to Florida Rule of Civil Procedure 1.510, the Court may grant summary judgment only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510. As such, "[t]he burden on the moving party may be discharged by 'showing'—that is, pointing out to the [] court—that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Summary judgment is only appropriate where a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* at 322; *see also In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 309 So. 3d 192, 193 (Fla. 2020); *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 317 So. 3d 72, 76 (Fla. 2021) ("[C]ourts applying the new rule must be guided not only by the *Celotex* trilogy, but by the overall body of case law interpreting federal rule 56.").

To defeat a motion for summary judgment, the nonmoving party must "establish through competent evidence that there truly is a genuine, material issue to be tried." *Smith v. City of Greensboro*, 647 F. App'x 976, 980 (11th Cir. 2016); *Celotex Corp.*, 477 U.S. at 324. A nonmovant can also show that there are genuine issues of material fact and that summary judgment cannot be granted in a movant's favor if the law shows that a movant's claims and interpretations of law are not undisputed similar to this matter where the legal claims upon which Plaintiff's claims rest do not undisputedly show wrongdoing on the County's part nor that Plaintiff is undisputedly entitled to summary judgment based on its interpretation of the law.

IV. ARGUMENT AND MEMORANDUM OF LAW

A. Florida Law Grants Municipalities Broad Home Rule and Police Power for Municipal Purposes Except as Otherwise *Expressly Prohibited* by Law.

Florida law grants municipalities broad home rule and police powers. *See* Art. VIII, § 2(b), Fla. Const.; Fla. Stat. § 166.021. Municipalities have governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services. Municipalities may exercise any power for municipal purposes except as otherwise provided by law. *See* Art. VIII, § 2(b), Fla. Const. Florida's Municipal Home Rule Powers Act is state legislation that implements the provisions of the Florida Constitution relating to municipalities. §§ 166.011 to 166.411, Fla. Stat. and Art. VIII, § 2(b), Fla. Const. It codifies a fully expansive interpretation of the Florida Constitution when it provides that municipalities may exercise any power for municipal purposes, except when expressly prohibited by law. *See* Art. VIII, § 2(b), Fla. Const and § 166.021, Fla. Stat. (containing enabling legislation for municipalities) and:

> (b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.
>
> Art. VIII, § 2(b), Fla. Const.
>
> Acting on its constitutional authority to address municipal powers, the Legislature clarified the powers of municipal government by enacting the Municipal Home Rule Powers Act, which is now codified in section 166.021 of the Florida Statutes. Specifically, section 166.021(1) provides in full:
>
> 166.021 Powers.—
>
> (1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.
>
> § 166.021, Fla. Stat.

The Florida Legislature's intent in enacting the Municipal Home Rule Powers Act was twofold: first, to extend to municipalities the exercise of powers for government, corporate, or proprietary purposes not expressly prohibited by the Florida Constitution, general or special law, or county charter; and second, to remove any limitations, judicially imposed or otherwise, on the exercise of home-rule powers other than those so expressly prohibited. §§ 166.011 to 166.411, Fla. Stat. and § 166.021(4), Fla. Stat.

As previously noted, Plaintiff cannot point to any binding legal precedent or legislative statute that affirmatively states that any municipality in the state of Florida cannot charge and collect on accrued interest and collections costs related to a code violation lien prior to filing a lawsuit. Plaintiff refers to Fla. Stat. § 162.09 to make the argument that the Defendant's actions were illegal but putting Fla. Stat. § 162.09 aside for the moment, as it will be further addressed below, what is key is that the County's practice of charging and collect on accrued interest and collections costs related to a code violation lien prior to filing a lawsuit is ***not expressly prohibited by law***. Municipalities perform a great deal of acts for municipal purposes, including code enforcement, and allowing municipalizes to be sued for simply exercising their broad constitutionally provided powers would create an untenable environment in which municipalities would be reluctant to render the services needed to protect their citizens. To avoid such an untenable environment, the Legislature of the state of Florida ensured to codify that a municipality has broad power to perform municipal functions on behalf of its citizens unless the act is expressly prohibited by law. It is no question that a municipality's codification of codes as it pertains to the appearance, health, and safety of its community is well within its broad Home Rule powers, and acts related to the enforcement of those codes, including collecting on interest and collections costs pertaining to code violation liens, are also well within its broad Home Rule powers because those

actions are simply not expressly prohibited by law. *See Massey v. Charlotte Cnty*., 842 So. 2d 142, 147 (Fla. 2d DCA 2003) (Noting that the county had an interest in protecting the safety and welfare of its citizens by ensuring compliance with the building code and had an interest in expeditiously enforcing its orders without undue time and expense).

In the recent past, there have been quite a few lawsuits that have been filed against municipalities pertaining to their actions related to code enforcement violations and in many of the cases the Court has noted that the municipality was seeking accrued interest on a code violation lien without having filed a lawsuit of its own and in **none** of those cases did the presiding Court rule or note that the *seeking of interest prior to filing a lawsuit was improper or illegal*. *See Innova Inv. Group, LLC v. Vill. of Key Biscayne*, 1:19-CV-22540, 2020 WL 6781821, at *1 (S.D. Fla. Nov. 18, 2020) (Noting that the municipality charged and was seeking to collect on over ***$1.2 million in interest*** on code violation liens as part of the total fines owed by the property owner prior to filing a lawsuit against the property owner), *aff'd*, 21-11877, 2024 WL 2748480, at *1 (11th Cir. May 29, 2024) (same); *see also Ficken v. City of Dunedin, Florida*, 8:19-CV-1210-CEH-SPF, 2021 WL 1610408, at *4 (M.D. Fla. Apr. 26, 2021) (Noting that the municipality charged and was seeking to collect on ***interest and costs*** on code violation liens as part of the total fines owed by the property owner prior to filing a lawsuit against the property owner, and threatening to pursue a foreclosure action against the property owner if the total amount owed on the lien that included interest and costs was not paid), *aff'd*, 21-11773, 2022 WL 2734429, at *2 (11th Cir. July 14, 2022) (same).

To further underscore the ubiquity and lawfulness of municipalities charging and collecting on interest and costs related to a code violation lien prior to filing a lawsuit, the County has attached various ordinances, settlement practices, and publicly recorded settlements of code violation liens

that include interest or collections costs. *See* **Composite Exhibit 2**, attached hereto. It is apparent from these various documents that the practice of charging and collecting of interest and collections costs on code violation liens prior to filing suit is commonplace and has never been deemed to be illegal as such a ruling would not only upend the practices of nearly 478 Florida municipalities but such a ruling would also fly in the face of the Home Rule powers of the 478 Florida municipalities because such actions are not expressly prohibited by law and such actions are done in furtherance of protecting the safety and welfare of its citizens by ensuring compliance with the building codes. As such, any claims made by Plaintiff related to the charging and collecting of interest and collections costs related to code violations prior to the filing of a lawsuit by a municipality are devoid of any merit and summary judgment in favor the Plaintiff on these claims would run afoul of the Florida Constitution and Florida legislative statutes.

B. The "Local Government Code Enforcement Boards Act" Expressly States that it is Supplemental in Nature and is Not the Only Means by Which a Municipality can Exercise its Home Rule Powers to Enforce Code Violations.

The Local Government Code Enforcement Board Act refers to Sections 162.01 to 162.13, Fla. Stat. (the "Act"). The Act was enacted to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of the State of Florida by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities where a pending or repeated violation continues to exist. Its intent is to provide for, among other things, the creation of municipal code enforcement boards. *Id*. § 162.01. Several provisions of the Act state that it is optional and a city may enact its own code enforcement ordinances by opting out of the Act. §§ 162.03(1) and (2), Fla. Stat.; *see also Id*. § 162.13.

§§ 162.03 and 162.13, Fla. Stat. expressly authorize local governments to adopt their own "means of obtaining compliance with local codes," and expressly state that "[n]othing contained in §§ 162.01-162.12 shall prohibit a local governing body from enforcing its codes by any other means," and that "a municipality may, by ordinance, adopt an alternative code enforcement system that gives code enforcement boards … the authority to hold hearings and assess fines [.]" §§ 162.03 & 162.13, Fla. Stat. The Florida Supreme Court has expressly held that the opt-out language applies to the Chapter's fines provision. *See Thomas v. State*, 614 So. 2d 468, 472 n.3 (Fla. 1993). As the Court in *Thomas* explained, Chapter 162 "explicitly states … that its provisions are supplemental and are not designed to prohibit a county or municipality from enforcing its codes or ordinances by other means. *See* Fla. Stat. § 162.13. Chapter 162, therefore, does not provide guidance on the appropriate penalties for violation of a municipal ordinance." *Id*. The Third District Court of Appeal also expressly held in *Miami-Dade Cnty v. Brown*, 814 So. 2d 518, 519 (Fla. 3d DCA 2002) that "Florida Statutes § 162.02, confers on local governments the authority to either adopt Chapter 162, or completely abolish Chapter 162 and adopt an alternative code enforcement system."

Chapter 162 of the Florida Statutes provides two ways for local governments to impose penalties. It sets forth a code enforcement system that local governments may adopt, but it also expressly authorizes local governments to adopt alternative enforcement systems by adopting their own system by ordinance for the purpose of enacting that local government's code enforcement process as well as establishing corresponding penalties. This is made clear from the statute itself, which provides: "It is the legislative intent of §§ 162.01-162.12 to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in §§ 162.01-162.12 shall prohibit a local governing body from enforcing codes by any other means." § 162.13,

Fla. Stat. The statute also expressly states that: a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designed by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. § 162.03(2), Fla. Stat. Thus, the reference "162.01-162.12" expressly includes Section 162.09 which contains the statutory fines language.

These provisions have also been construed as "confer[ring] on local government the authority to either adopt Chapter 162, or completely abolish Chapter 162 and adopt an alternative code enforcement system." *Miami-Dade Cnty. v. Brown*, 814 So. 2d 518, 519 (Fla. 3d DCA 2002); *see also Verdi v. Metro. Dade Cnty*., 684 So. 2d 870, 873 (Fla. 3d DCA 1996) (Fla. Stat. § 162.03(2) "clearly and explicitly confers authority upon the County to adopt, by ordinance, a completely alternative code enforcement system to permit either a code enforcement board or an administrative hearing officer to conduct hearings and assess fines for code violations"); Op. Att'y Gen. Fla. 01-77, 2001 WL 1347157, at *1 (Oct. 30, 2001) ("The Legislature's code enforcement procedures set forth in Chapter 162, Florida Statutes, are an additional or supplemental means of securing compliance with local codes and do not preempt or otherwise operate to prevent a city from enforcing its codes by other means."). In *Brown*, the Court quashed an order that reversed a Miami-Dade hearing officer's order imposing a fine against a property owner. *Brown*, 814 So. 2d, at 518. The circuit court, sitting in its appellate capacity, had held the hearing officer abused his authority by imposing a fine after the violated condition had been cured in contravention of Fla. Stat. §§ 162.06 and 162.09. *Id*. at 519. The Third District Court of Appeal observed that Chapter 162 of the Florida Statutes "confers on local government the authority to either adopt Chapter 162, or completely abolish Chapter 162 and adopt an alternative code enforcement system," and that

Miami-Dade County had done so by adopting an alternative system of enforcement, Chapter 8CC, which permitted imposition of a fine without prior notice or an opportunity to cure the violation. *Id*. at 519-20. The Third District Court of Appeal recognized that Miami-Dade County had "adopted an alternative system of enforcement, Chapter 8CC, and specifically exempted itself from the provisions of Chapter 162, Florida Statutes. *See* § 2-319, Miami-Dade County Code." *Id*. at 519. The Court further acknowledged that it had "previously upheld the constitutionality of Chapter 8CC" and broadly concluded that "the County is specifically authorized by Chapter 162 to create its own system and procedure for enforcement of its Ordinance, *see* § 162.03(2), Florida Statutes, and that the County's alternate system of enforcement is not preempted, expressly or impliedly, by Chapter 162." *Id*. at 519, 520. Last, the County penalty at issue was indeed more than the one authorized by Chapter 162, because the County ordinance allowed the imposition of a $1,000 fine without notice and no penalty would be permitted by Chapter 162 in that circumstance.

Section 2-319 of the Miami-Dade County Code specifically exempted County-wide enforcement of codes from Chapter 162 and proceeded even further to provide that for those municipal code enforcement boards that are created pursuant to Chapter 162, they "may enforce municipal codes which establish a more stringent standard of compliance than a County or State code setting forth minimum standards." § 2-319(a). Moreover, Chapter 8CC of the Miami-Dade County Code sets forth its own schedule of civil penalties. *See* § 8CC-10. Among those civil penalties are fines that exceed the $1,000 per day for the first violation "cap" under Chapter 162 of the Florida Statutes. *See*, e.g., §§ 5-4 (imposing a civil penalty of $5,000); 5-4 ($2,000); 8A-7 ($5,000); 8A-382(a), 8A-386(a)(1), (b)(1) ($2,500); 8AA-101 ($5,000); 15-25.2 ($2,000); 17-138 ($10,000); 33-121.12, et seq. ($2,000). As explained above, the Third District has broadly upheld

Section 2-319 as exempting Miami-Dade County from Chapter 162, and Chapter 8CC as an alternate code enforcement system "specifically authorized by Chapter 162." *Brown*, 814 So. 2d at 520; *see also Verdi*, 684 So. 2d at 874 (concluding that Miami-Dade County "was duly authorized by Chapter 162 of the Florida Statutes to enact the code enforcement procedures outlined in Section 8CC of the Code" and specifically acknowledging that Section 8CC-10 sets forth civil penalties in the form of predetermined fines and costs).

Similarly, the Fourth District Court of Appeal has concluded that the creation of a code enforcement board did not prohibit a city from using alternative methods of prosecution by enforcing a municipal code violation in county court. *See Goodman v. Cnty. Court in Broward Cnty., Fla*., 711 So. 2d 587 (Fla. 4th DCA 1998). The Fourth District observed that although Chapter 162 provides for the creation of a code enforcement board, Section 162.13 specifically states that nothing in the Chapter prohibits "a local governing body from enforcing its codes by any other means." *Id*. at 589 (quoting § 162.13, Fla. Stat. It further noted that the Legislature had likewise enacted Section 162.22, which provides that a municipality "may designate the enforcement methods and penalties to be imposed for the violation of ordinances adopted by the municipality." *Id*. (quoting § 162.22, Fla. Stat.). The Court observed that these provisions "are clear and unambiguous" and "allowed greater flexibility in code enforcement," and, therefore, the "Legislature has provided that the code enforcement board procedure is supplemental to other means of securing code compliance." *Id*. at 589 & n.1.

Applying the above legal precedent to this matter, it is clear that the County is well within its broad Home Rule powers that enable it to charge and collect on interest and collections costs prior to filing a lawsuit. The County is not performing an act that is expressly prohibited by law, and the County is not completely bound to the terms outlined in the Act as the terms of the Act are

merely supplemental to however the County decides it wants to enforce its code violation codes. Additionally, as prviously mentioned, nearly all of the 478 municipalites in the state of Florida operate in the same fashion and have operated in this same fashion for years. No Court has ever ruled that these practices are expressly prohibited by law, and certainly there is no statute that expressly states that the charging and collecting of interest and collections costs on code violation liens prior to the filing of a lawsuit are prohibited. Thus, again, any claims made by Plaintiff related to the charging and collecting of interest and collections costs related to code violations prior to the filing of a lawsuit by a municipality are devoid of any merit and summary judgment in favor the Plaintiff on these claims would run afoul of the Florida Constitution and Florida legislative statutes, and Plaintiff's Motion for Summary Judgment should be denied.

C. The Procedural Due Process Claims Are Without Merit.

There are four independently sufficient bases as to why B&B's procedural due process claims, are without merit as a matter of law: (1) B&B failed to bring its claim within the four-year statute of limitations, (2) this Court lacks subject matter jurisdiction to review the order of the special magistrate, (3) B&B failed to take advantage of the adequate appeal process that was afforded, and (4) B&B was provided all process that was due. Each of these bases are discussed in turn.

1. The statute of limitations bars the procedural due process claims.

The statute of limitations governing claims brought pursuant to § 1983 in Florida state court that are not based on general negligence is four (4) years. *See Sneed v. Pan Am. Hosp*., 370 F. App'x. 47, 49 (11th Cir. 2010) (While § 1983 does not provide for a statute of limitations, it has been established that all constitutional claims brought under § 1983 are tort actions, subject to the statute of limitations governing personal injury actions in the state where the § 1983 action has been brought) (quoting *McNair v. Allen*, 515 F.3d 1168, 1173 (11th Cir. 2008). In *Wilson v.*

Garcia, 471 U.S. 261 (1985), the Supreme Court held that actions pursuant to 42 U.S.C. § 1983 are best characterized as personal injury actions. Later, the Supreme Court decided *Owens v. Okure*, 488 U.S. 235 (1989), holding that when a state, like Florida, has multiple statutes of limitations for personal injury actions, courts considering § 1983 claims should borrow the state's general or residual personal injury statute of limitations. In Florida, this is section 95.11(3)(o), Florida Statutes, which provides a limitations period of four years for actions not specifically provided for in the limitations statutes. The limitations period begins to run when a person with reasonably prudent regard for his rights should be aware of the facts that would support the cause of action, specifically that they were injured and who inflicted the injury. *See Rozar v. Mullis*, 85 F.3d 556, 561 (11th Cir. 1996) (citing *Mullinax v. McElhenney*, 817 F.2d 711, 716 (11th Cir. 1987)). Here, the alleged injury is the denial of a modification hearing before a Special Magistrate after the lien was referred to OFMB. B&B was notified of this denial in the March 7, 2007, Order Imposing Fine/Lien:

> **NOTE: If this lien is not satisfied within ninety (90) days of the date the lien is recorded, it will be referred to the Office of Financial Management for referral to a collection agency. No modification requests will be accepted and you will be responsible for any collection fees incurred by the County.**

B&B was or should have been aware that "no modification requests" would be accepted by the County 90 days after recording of the lien, at the latest, when the lien was recorded on April 27, 2007. *See* § 695.11, Fla. Stat. (all persons are on notice of recorded instruments on the date of recording). Accordingly, the statute of limitations ran in April 2011, now well over a decade ago, and eight years from the filing of the original Complaint, and the procedural due process claims are devoid of any merit as a matter of law because they are time barred.

In *Innova Inv. Group, LLC v. Vill. of Key Biscayne*, 1:19-CV-22540, 2020 WL 6781821, at *4 (S.D. Fla. Nov. 18, 2020), *aff'd*, 21-11877, 2024 WL 2748480 (11th Cir. May 29, 2024), the

plaintiff brought forth three 1983 claims against the Village of Key Biscayne related to code violations and the District Court dismissed all three claims as time barred because the facts in that case pointed to four dates for which Plaintiff was or should have been aware of its rights: (1) January 18, 2012, when the Board affirmed the citation; (2) February 18, 2012, the end of the thirty-day period for plaintiff to appeal the Order; (3) March 18, 2012, the end of the sixty-day period for plaintiff to pay the civil penalties and correct the code violations; or (4) November 5, 2012, when plaintiff states that it cured the code violation. The Court ruled that because plaintiff filed the action on November 14, 2018, the 1983 claims were time-barred under any of the four dates citing *Marshall v. Collier Cnty*., No. 2:14-cv-479-FtM-38DNF, 2014 WL 6389715, at *3 (M.D. Fla. Nov. 14, 2014) (holding date of accrual to be *the date that the code enforcement board entered its order against the plaintiff*). The 11th Circuit Court of Appeals agreed stating:

> It is apparent from the face of Innova's complaint that count four's federal excessive fine claim is untimely under section 95.11(3). The facts necessary to support that claim were apparent, or at least reasonably should've been, by November 5, 2012, at the latest. That's when Innova should have known how much money it would owe the village—it corrected the code violations, the $4,000 daily penalties stopped accruing, and it could have calculated the aggregate amount based on the 231 days its condo was non-compliant. Plus, the board had already recorded its order as a lien on Innova's property and warned the lien would accrue interest at the maximum legal rate. Innova, however, filed its first state-court complaint more than six years later in 2018. It waited six months longer to add excessive fine allegations under federal law.

Innova Inv. Group, LLC v. Vill. of Key Biscayne, 21-11877, 2024 WL 2748480, at *3 (11th Cir. May 29, 2024). Again, B&B was or should have been aware that "no modification requests" would be accepted by the County 90 days after recording of the lien, at the latest, when the lien was recorded on April 27, 2007. However, B&B did not file this action until July 3, 2019 which is clearly past the 4-year statute of limitations. As such, B&B's procedural due process claims are time barred.

2. The availability of state court remedies bars B&B's federal procedural due process claims.

"A violation of procedural due process does not become complete unless and until the state refuses to provide adequate due process. … An appeal of a final administrative order to the Florida State Circuit Court satisfies due process because the circuit court has the power to remedy any procedural defects and cure due process violations." *Lindbloom v. Manatee Cnty.*, 808 F. App'x. 745, 750 (11th Cir. 2020), *cert. denied sub nom. Lindbloom v. Manatee Cnty., Florida*, 141 S. Ct. 679 (2020). B&B could have appealed the March 7, 2007, Order, which provided for interest, collections costs, and a limited period to request a modification, to this Court pursuant to §162.11, Fla. Stat (2020). *Id*. That B&B chose not to take direct appeal to this court does not transform an available process into an unavailable one. *Id.* at 751.

B&B's choice not to appeal the March 7, 2007, Order, to this Court, which was constitutionally adequate process, prevents B&B from now stating a claim for a denial of procedural due process. *See Lindbloom*, 808 F. App'x. at 750 (plaintiff's failure to appeal order was a failure to pursue an adequate state court remedy, and therefore plaintiff had no procedural due process claim); *Manseau v. City of Miramar*, 395 F. App'x. 642, 645 (11th Cir. 2010) (finding no denial of due process where plaintiffs did not attend all available hearings and where plaintiffs "also had the opportunity to appeal the final administrative decisions, but they chose not to do so"). B&B had a statutory right of appeal which it failed to avail itself of and now argues that the County had to institute a procedure of Plaintiff's liking to seek a reconsideration by the same Magistrate that it impliedly asserts made a fundamental error. Such a conclusion is illogical and unsupported by any constitutional principle.

In *Ficken v. City of Dunedin, Florida*, 8:19-CV-1210-CEH-SPF, 2021 WL 1610408, at *18 (M.D. Fla. Apr. 26, 2021), *aff'd*, 21-11773, 2022 WL 2734429 (11th Cir. July 14, 2022), the

District Court was faced with a similar procedural due process allegation as here. The District Court ruled:

> The federal due process claim also fails because Plaintiffs have not proven a "constitutionally inadequate process." *Foxy Lady, Inc*., 347 F.3d at 1236 (internal quotation marks omitted). As discussed above, the bases for Plaintiffs' claim of constitutional inadequacy fail. Further, even if a deprivation of due process occurred, the federal procedural due process claim is not cognizable under Section 1983 because a means by which to remedy the alleged deprivation exists. Specifically, both Section 162.11, Florida Statutes, and Section 22-83, DCO, provided Ficken with the opportunity to appeal the Board's orders to the circuit court. Upon appeal, the circuit court's review would have been "limited to appellate review of the record created before the code enforcement board." Fla. Stat. § 162.11; City of Dunedin, Fla., Code of Ordinances § 22-83. Section 162.11, Florida Statutes, "provides for a plenary appeal to the circuit court as a matter of right from a final administrative order of an enforcement board." *C. Fla. Inv., Inc. v. Orange Cnty*., 295 So. 3d 292, 293 (Fla. 5th DCA 2019). An appeal of the Board's 2015 order would have allowed the circuit court to conduct appellate review of the violation that led to Suncoast First Trust being designated as a "repeat violator." On appellate review, "all errors below may be corrected: jurisdictional, procedural, and substantive." *Id*. at 295 (distinguishing review by appeal from review by certiorari). Further, an appeal of the Board's 2018 orders would have allowed the circuit court to conduct appellate review of the record created before the Board that resulted in the Board imposing fines for the repeat violation. Ficken did not appeal these orders, but only sought reconsideration of the 2018 orders. This remedial procedure is adequate. *See Lindbloom v. Manatee Cnty*., No. 8:18-cv-02642-T-02AEP, 2019 WL 2503145, at *4 (M.D. Fla. June 17, 2019) (stating that an adequate state remedial procedure need not provide all relief available under Section 1983, but must be able to correct any existing deficiencies and provide the plaintiff with whatever process is due), *aff'd* F. App'x 745 (11th Cir. 2020), *cert. denied sub nom. Lindbloom v. Manatee Cnty., Fla*., 141 S. Ct. 679 (2020). As such, the federal due process claim additionally fails because Plaintiffs have not proven a "constitutionally inadequate process" and, even if a deprivation of due process occurred, a means to remedy the alleged deprivation exists.

The 11th Circuit Court of Appeals agreed stating:

> Florida law provided Ficken with adequate means to present his alleged due-process violations and "receive redress from th[ose] [procedural] deprivation[s]." See id. Section 162.11 provides that any aggrieved party "may appeal a final administrative order of an enforcement board to the circuit court." Fla. Stat. § 162.11. Florida courts have explained that, under

> section 162.11, a circuit court may "correct[ ]" "all errors below," including "jurisdictional, procedural, and substantive" errors. *Cent. Fla. Invs., Inc. v. Orange Cnty.*, 295 So. 3d 292, 295 (Fla. 5th Dist. Ct. App. 2019) (internal quotation marks omitted); see also *Kirby v. City of Archer*, 790 So. 2d 1214, 1215 (Fla. 1st Dist. Ct. App. 2001) (explaining that constitutional claims are reviewable on appeal to state court under section 162.11); *Holiday Isle Resort & Marina Assocs. v. Monroe Cnty.*, 582 So. 2d 721, 721–22 (Fla. 3d Dist. Ct. App. 1991); *Ciolli v. Palm Bay*, 59 So. 3d 295, 298 n.5 (Fla. 5th Dist. Ct. App. 2011) (explaining that "[i]t is necessary to fill the procedural gaps in [Chapter 162] by the common-sense application of basic principles of due process" (internal quotation marks omitted)).

Ficken v. City of Dunedin, Florida, 21-11773, 2022 WL 2734429, at *3 (11th Cir. July 14, 2022). Similarly, *DJB Rentals, LLC v. City of Largo*, 373 So. 3d 405, 414 (Fla. 2d DCA 2023), *review denied sub nom. DJB Rentals, LLC v. Largo*, SC2023-1675, 2024 WL 1174435 (Fla. Mar. 19, 2024), the Second District Court of Appeal ruled a plaintiff's due process violation allegation was barred because of available state court remedies that the plaintiff failed to avail itself of. The Court stated:

> All the information about the workings of the City's purportedly unconstitutional fining regime with which DJB takes issue in its counterclaims was available in the order imposing the fine, which DJB failed to appeal…Because DJB's counterclaims involve causes of action other than facial constitutional challenges, DJB was required to appeal from the City's order that provided a single daily fine for multiple violations within thirty days from the date that order was executed. See § 162.11, Fla. Stat. (2015) ("An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the circuit court.... An appeal shall be filed within 30 days of the execution of the order to be appealed."); *Brevard County v. Obloy*, 301 So. 3d 1114, 1117 (Fla. 5th DCA 2020) ("A party dissatisfied with an enforcement board special magistrate's order can either appeal that order or choose to be bound by it. However, it cannot initiate a collateral attack on that order by commencing a new action in circuit court. Put differently, while the circuit court has appellate jurisdiction to entertain a timely appeal of a special magistrate's order regarding enforcement of building and fire codes, it lacks procedural jurisdiction to otherwise entertain a collateral attack upon that order concerning matters that could have been properly raised on appeal."); *Kirby*, 790 So. 2d at 1215 ("Kirby's as applied constitutional challenge may not be raised for the first time in the foreclosure action."). By failing to appeal from the Board's order entered on September 24, 2015, DJB waived any arguments in the lien-

> foreclosure suit regarding the amount of the fine or the fact that the Board's order contained a single daily fine for multiple violations. The claims raised in Counts I and II are therefore futile, and the trial court did not abuse its discretion by denying the motion to amend.

Last, in yet another instance in which a plaintiff complained of due process violations in relation to code enforcement, the District Court ruled the plaintiff's claim was barred due to its failure to appeal by stating:

> In contrast, Defendants highlight that "[t]he state of Florida allows aggrieved parties to appeal 'final administrative orders of an enforcement board to the circuit court.' " *Conley v. City of Dunedin*, 2009 WL 812061, at *5 (quoting Fla. Stat. § 162.11). Because this appeal process considers both the record underlying the initial decision and the constitutionality of the proceedings, Florida "provides a remedy for deprivations of procedural due process resulting from a code enforcement order." Id.
>
> Accordingly, it appears that Plaintiff could have appealed the decision of the CEB to the Florida circuit court and raised the argument that the City's alleged improper motives rendered the CEB decision unconstitutional. "Because [Plaintiff's] complaint fails to allege that this available remedy [existed and] was inadequate, [it] fail[s] to properly state a federal procedural due process claim" under Section 1983. *Id*. Accordingly, Count II is dismissed.

Safety Harbor Powersports, LLC v. City of Safety Harbor, Florida, 8:23-CV-2399-VMC-UAM, 2024 WL 3400278, at *7 (M.D. Fla. July 12, 2024). Thus, as previously stated, Plaintiff's due process claim is barred due to its failure to utilize available state court remedies by failing to appeal the Order Imposing Fine/Lien.

3. This Court lacks subject matter jurisdiction to hear B&B's collateral attack of an order it failed to appeal.

The time has passed for B&B to present its due process violations to this Court, which now lacks subject matter jurisdiction to consider the alleged procedural due process objections concerning the March 7, 2007, Order. *See Hardin v. Monroe Cty.*, 64 So. 3d 707, 710 (Fla. 3d DCA 2011) ("Therefore, as the Violation Order was not timely appealed, the Circuit Court did not and does not have jurisdiction to review the Violation Order."); *City of Miami v. Cortes*, 995 So.

2d 604, 606 (Fla. 3d DCA 2008) (finding the enforcement order to be outside the scope of the circuit court's review because it was not timely appealed); *Kirby v. City of Archer*, 790 So. 2d 1214, 1214 (Fla. 1st DCA 2001) ("Having failed to challenge the Board's action, Kirby cannot raise factual disputes with the Board's findings in the foreclosure action."); *City of Plantation v. Vermut*, 583 So. 2d 393, 394 (Fla. 4th DCA 1991) ("Because no appeal had been taken from the March 29, 1988 final order, we find that the circuit court lacked jurisdiction to set aside the March 29, 1988 final order."); *City of Ft. Lauderdale v. Bamman*, 519 So. 2d 37, 38 (Fla. 4th DCA 1987) (A code enforcement order "was beyond the jurisdictional reach of the circuit court" because the violator failed to timely appeal the order).

Turning again to *Innova Inv. Group, LLC v. Vill. of Key Biscayne*, 1:19-CV-22540, 2020 WL 6781821, at *4 (S.D. Fla. Nov. 18, 2020), *aff'd*, 21-11877, 2024 WL 2748480 (11th Cir. May 29, 2024), the District Court analyzed whether the plaintiff's failure to appeal the Board's Order was an improper collateral attack on the Order. The District Court ruled in the affirmative by stating:

> Here, Counts I and III are nothing more than collateral attacks on the Order that Plaintiff failed to timely appeal to the proper state circuit court. An inspection of the Order clearly indicates that Plaintiff had sufficient notice of its right to appeal, [ECF No. 20-1], and Plaintiff fails to provide an explanation as to why it did not do so. *See Manseau v. City of Miramar*, 395 F. App'x 642, 645 (11th Cir. 2010) (per curiam) ("Plaintiffs [ ] had the opportunity to appeal the final administrative decisions, but they chose not to do so.... We conclude that Plaintiffs' allegations show that they were afforded constitutionally-adequate process." (citations omitted)). Instead, Plaintiff attempts to artfully plead around its failure to appeal the Order by bringing constitutional claims under § 1983. However, "it is the facts and substance of the claims alleged, not the jurisdictional labels attached, that ultimately determine whether a court can hear a claim." *DeRoy v. Carnival Corp.*, 963 F.3d 1302, 1311 (11th Cir. 2020) (citations omitted). "[L]ook[ing] beyond the labels to the underlying facts of the complaint," id. at 1310, Plaintiff's claims, at base, challenge Plaintiff's obligation to pay the civil penalties as ordered. Therefore, Plaintiff cannot plead around its failure to timely appeal the Order by couching its claims as constitutional violations. Accordingly,

> Counts I and III are dismissed with prejudice as improper collateral attacks on a final administrative order.

In making this ruling, the District Court also cited to *City of Fort Lauderdale v. Scott*, No. 10-CIV-61122, 2011 WL 3157206, at *5 n.8 (S.D. Fla. July 26, 2011) ("An aggrieved party may appeal any final administrative orders to state circuit court." (citing Fla. Stat. § 162.11)); *Brevard Cnty. v. Obloy*, 301 So. 3d 1114, 1117 (Fla. 5th DCA 2020) ("A party dissatisfied with an enforcement board special magistrate's order can either appeal that order or choose to be bound by it."). Section 162.11 "provides for a plenary appeal to the circuit court as a matter of right from a final administrative order of an enforcement board." *Cent. Fla. Invs., Inc. v. Orange Cnty.*, 295 So. 3d 292, 293 (Fla. 5th DCA 2019). "[W]hile the circuit court has appellate jurisdiction to entertain a timely appeal of a special magistrate's order ..., it lacks procedural jurisdiction to otherwise entertain a collateral attack upon that order concerning matters that could have been properly raised on appeal." *Brevard Cnty.*, 301 So. 3d at 1117 (citations omitted).

And, turning again to *DJB Rentals, LLC v. City of Largo*, 373 So. 3d 405, 414 (Fla. 2d DCA 2023), *review denied sub nom. DJB Rentals, LLC v. Largo*, SC2023-1675, 2024 WL 1174435 (Fla. Mar. 19, 2024), that Court also ruled that the failure to appeal the Board's Order also made that action an impermissible collateral attack and in support cited to *Brevard County v. Obloy, 301* So. 3d 1114, 1117 (Fla. 5th DCA 2020) ("A party dissatisfied with an enforcement board special magistrate's order can either appeal that order or choose to be bound by it. However, it cannot initiate a collateral attack on that order by commencing a new action in circuit court. Put differently, while the circuit court has appellate jurisdiction to entertain a timely appeal of a special magistrate's order regarding enforcement of building and fire codes, it lacks procedural jurisdiction to otherwise entertain a collateral attack upon that order concerning matters that could have been properly raised on appeal").

Accordingly, this Court cannot consider Plaintiff's Due Process claims as this court lacks jurisdiction over the claims.

4. B&B was provided all the process that it was due.

B&B was provided the paradigm of due process. *See City of Fort Lauderdale v. Scott*, 551 F. App'x. 972, 975 (11th Cir. 2014) ("A hearing, had it been requested, would have afforded the property owner a right to be heard in full—to contest the violation. And judicial review would have been available. This is a paradigm of due process.").

Pursuant to § 162.06, Fla. Stat., when a violation of codes is found and continues upon the property after notice to the violator, the code inspector may request a hearing. The violator must be provided notice of the hearing as prescribed in § 162.12. § 162.06(2), Fla. Stat. The TAC alleges no defect with the notice for, or the procedure of, the March 1, 2006, hearing regarding the violation. In any event, B&B waived, or is estopped from asserting, any procedural defect in the notice of the March 1, 2006, hearing, by appearing at the hearing. *See Schumacher v. Town of Jupiter*, 643 So. 2d 8, 9 (Fla. 4th DCA 1994) ("The general rule is that, while strict compliance with statutory notice requirements is mandatory and jurisdictional, a contesting landowner may waive the right, or be estopped, to assert a defect in the notice if that landowner appeared at the hearing and was able to fully and adequately present any objections to the ordinance.").

At the March 1, 2006, hearing, the Special Master found that B&B had been given notice and a prior opportunity to remedy the violation, but that a violation of §104.1.1 of the Florida Building Code continued to exist on the property. (TAC, Exhibit D, March 1, 2006, Order Finding Violation.) The Order provided B&B until June 29, 2006, to correct violations and advised it that:

THE BURDEN SHALL REST UPON RESPONDENT(S) TO REQUEST A REINSPECTION TO DETERMINE WHETHER THE VIOLATION OR REPEAT VIOLATION HAS BEEN BROUGHT INTO COMPLIANCE.

The order advised that, unless brought into compliance, the violations **shall** result in the imposition of a $100.00 daily fine, continuing daily until a determination of compliance, as well as an assessment of $140.87 in costs. The case costs were paid on March 27, 2006. *See* TAC.

The March 1, 2006, Order bears a certificate of service to B&B, and B&B does not dispute receipt of the March 1, 2006, Order. B&B does not allege that it appealed the March 1, 2006, Order within the thirty days afforded it by section 162.11.[3] Nor does B&B allege that it requested a reinspection between March 1, 2006, and June 29, 2006 (the 120-day correction period provided in the Order) to determine whether the violation had been brought into compliance before the date set by the Special Master.

On August 21, 2006, a code inspector certified in an Affidavit of Non-Compliance that he inspected the Property on July 5, 2006, and that the violations had not been corrected. The Affidavit of Non-Compliance provided the following notice to B&B:

NOTICE: PURSUANT TO THIS AFFIDAVIT OF NON-COMPLIANCE, AN ORDER IMPOSING FINE AND LIEN MAY BE FILED BY PALM BEACH COUNTY. YOU HAVE THE RIGHT TO REQUEST A HEARING TO CHALLENGE THE IMPOSITION OF A FINE AS PROVIDED IN THE ORDER OF VIOLATION. YOUR REQUEST MUST BE IN WRITING AND FILED WITH THE CODE ENFORCEMENT DIVISION WITHIN 20 DAYS OF THE DATE OF THIS NOTICE. SUCH A HEARING IS LIMITED TO A CONSIDERATION OF THE STATUS OF THE VIOLATION AND EVIDENCE RELEVANT TO THE IMPOSITION OF AN APPROPRIATE DAILY FINE.

The Affidavit of Non-Compliance bears a certificate of service indicating that it was mailed to B&B at the Property. B&B does not allege that it requested reinspection or a "hearing to challenge the imposition of a fine as provided in the order of violation."

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[3] Florida Statutes, §162.11 states that "[a]n aggrieved party . . . may appeal a final administrative order of an enforcement board to the circuit court . . . An appeal *shall be filed within 30 days of the execution of the order* to be appealed. Fla. Stat. §162.11 (emphasis added).

Consequently, after the Special Master was notified by the code inspector through the August 21, 2006, Affidavit of Non-Compliance, that the facts as they were on March 1, 2006, had not changed, *i.e*. that compliance had not occurred, the daily fine of $100 determined to be appropriate on March 1, 2006, was imposed beginning on June 29, 2006, just as the March 1, 2006, Order decreed. (TAC, Exhibit E, March 7, 2007, Order).

This procedure was – and is still – authorized by §162.09, Florida Statutes. Section 169.09 provides:

> (1) An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance … . If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine.

§162.09, Fla. Stat. (2007) (emphasis added). The allegations of and attachments to the TAC demonstrate that the County proceeded in accordance with the statutory requirements of Chapter 162, which do not require a hearing prior to the imposition of a fine, in imposing a fine. *See City of Tampa v. Brown*, 711 So. 2d 1188, 1188 (Fla. 2d DCA 1998) ("Section 162.09, however, does not provide for a hearing and does not require that the order [finding violation] entered be provided to the violator."). Accordingly, the County, in mailing the Order Imposing Fine/Lien to the correct address provided B&B with all the pre-fine-imposition notice provided all the process it was due. "The violator received notice, had the opportunity to be heard, and was provided a copy of the final order from which an appeal could be taken. Nothing more is required." *Id.* at 1189.

To fulfill the principles of due process, the Second District Court of Appeal did fill a procedural gap in Chapter 162 in the case of *Massey v. Charlotte Cnty.*, 842 So. 2d 142 (Fla. 2d DCA 2003), which is instructive on the issue before this Court. *Massey* is therefore discussed in depth below. The Masseys were given notice of and participated in a hearing regarding a code

violation. *Id*. at 144. An initial order was entered, finding a violation and requiring the Masseys to remedy the violation within 6 months by applying for a permit. *Id*. The order informed the Masseys that failure to comply would result in the imposition of a $100.00 fine per day if the violation was **shown** to exist. *Id*. (emphasis added). After 6 months passed, a code enforcement officer submitted an affidavit to the Code Enforcement Board stating that the violation still existed and that the fine should be assessed for 101 days as well as costs in the amount of $130.40. *Id*. The Masseys were not notified of the affidavit. *Id*. At a meeting months later, the Code Enforcement Board considered the affidavit and voted to impose a fine/lien in the amount of $10,240.90. *Id*. The order imposing the fine/lien did not indicate any avenue by which the validity or amount of the fine could be challenged. The Masseys appealed the order imposing fine/lien to the circuit court, which affirmed the order. *Id*.

The Masseys then appealed to the Second District Court of Appeal, which quashed the order imposing fine/lien on the basis that the Masseys were not afforded due process. *Id*. at 145. The due process concern of the Second District related to the fact that the Masseys were not provided an opportunity to challenge the facts upon which the fine was based. *Id*. at 146. In finding that the Masseys were not afforded due process, the Second District did "not mandate any specific procedure that the Code Enforcement Board must follow," but ruled that the "procedure must provide the property owner with notice and an opportunity to be heard concerning any factual determination necessary to impose a fine or create a lien." *Id*. In a footnote that is dicta, the Second District suggested one possible, optional procedure:

> For example, the Code Enforcement Board could mail the 'order imposing penalty/lien' to the property owner with a notice that the owner could request a hearing to challenge the fine and the resulting lien within twenty days from the date of the order. The notice could explain that the lien order would be recorded after twenty days unless the property owner filed a timely request for hearing. Presumably, the hearing would be limited to a

consideration of only those new findings necessary to impose an appropriate fine and create a lien.

Id. at 147 n.3. Note that the Second District did not suggest a pre-fine-imposition hearing. *See Id*. Significantly, the suggested process was to provide a post-deprivation hearing for a limited time, twenty days, and only to those who timely requested the hearing. *See Id*.

First, examine the differences between the process provided to B&B and the Masseys. In *Massey*, the order finding violation advised that a $100 fine would be imposed for each day the property was **shown** to be in violation. That fine could be assessed for the period between the initial hearing date and the date of the order imposing fine. Additionally, the costs to be assessed against the Masseys appear to have been determined, not at the initial hearing, but at the meeting where the Board voted to impose the fine as a lien. In *Massey*, "the amount of fines imposed and the propriety of the lien depended upon factual findings that the Masseys were never given an opportunity to protest." *Id*. at 147 (emphasis added).

That is vastly different than the process provided to Plaintiff in the instant matter, where B&B was advised of the amount of the costs that would be assessed, the amount of the fine that would be assessed, and that the daily fine would be imposed for each day of noncompliance after June 29, 2006. The fine in this case was not conditional upon the **showing of violation,** like the Massey order was, but would be assessed for each day after June 29, 2006, unless and until **compliance was shown**. The burden of showing compliance was explicitly, in bold capital letters placed upon B&B to request a reinspection to determine compliance in the March 1, 2006, Order Finding Violation. B&B, unlike the Masseys, was notified of the duty and opportunity to have compliance officially determined prior to the assessment of the fine. B&B declined to make any protest to the imposition or the amount of the fine, unlike the Masseys, who never had the opportunity.

Further, B&B had notice of the hearing finding violation (where the fine amount and cost amount was set) and was represented by an agent at the hearing. B&B knew the property could be and was found in violation. B&B then had an opportunity to appeal that order but declined to do so. Unlike the Masseys, B&B was mailed the August 2006 Affidavit of Non- Compliance, and notified that it could, within 20 days, request a hearing to contest the imposition of the fine, including disputing the condition of the property and presenting argument regarding the appropriate daily fine. B&B was also mailed the order imposing the fine/lien *before* it was recorded and became a lien. That order indicated that modification requests would not be accepted after the lien was referred to OFMB, which would occur 90 days after recording the lien. B&B did not then seek a reinspection, request a modification hearing, or take an appeal in the circuit court. Thus, B&B is bound by its decision not to challenge the order finding violation or the order imposing fine/lien, and this Court is without jurisdiction to now, nearly a decade later, review those orders.

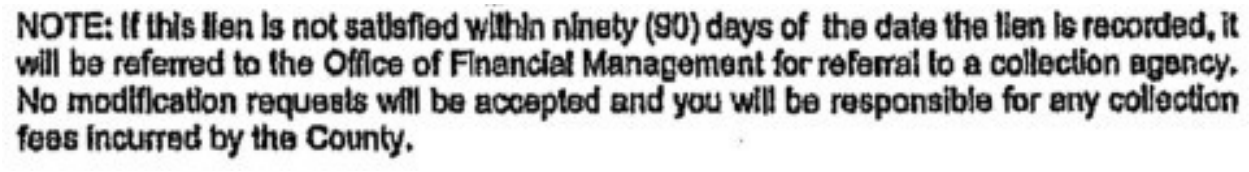
Finally, and notably, the County provided B&B with the type of notice and process contemplated by *Massey*. The *Massey* Court suggested the Code Enforcement Board mail the order imposing the fine. That was done here. The *Massey* Court suggested there be some opportunity for the violator to be heard regarding the factual findings necessary to impose the fine, specifically finding that a post-deprivation process limited to 20 days after the date of the order would be sufficient. The County provided B&B both pre- and post-deprivation opportunities to be heard. Before imposing a lien, the order finding violation advised B&B that it could request reinspection to have compliance determined. If B&B had requested reinspection and had been in compliance, the Special Magistrate would have been required to issue an order acknowledging compliance. *See* §162.07, Fla. Stat. Additionally, the County sent B&B an Affidavit of Non-

Compliance advising B&B of its right to request a hearing before a fine was imposed fine. After a Special Master determined that a lien could be imposed, the County mailed B&B a copy of the Order Imposing Fine/Lien. The order advised B&B that its opportunity to request a modification would be limited to the time period before the lien was referred to OFMB, which would occur 90 days after recording (more than quadruple the time suggested by the Second District Court of Appeal). B&B also had an opportunity to appeal the March 7, 2007, Order Imposing Fine/Lien, which provided for interest, collections costs, and a limited time to request a modification.

B&B does not allege, nor could it, that it requested a hearing before the Special Magistrate prior to the imposition of the fine/lien or within 90 days of the lien being recorded. Because whether and when compliance was reached were the only facts necessary for the imposition of the fine/lien and because B&B had an opportunity to be heard on those facts, B&B cannot legally state a cause of action that it was not afforded the process contemplated by *Massey*. *See Lindbloom,* 808 F. App'x. at 750 (11th Cir. 2020) ("A violation of procedural due process does not become complete unless and until the state refuses to provide adequate due process.") (citing *Club Madonna, Inc. v. City of Miami Beach,* 924 F.3d 1370, 1378 (11th Cir. 2019)). There exist no set of facts that Plaintiff can allege around to assert a cognizable legal claim.

What process then does B&B allege it was due and not afforded? An opportunity to present issues to a Special Magistrate, including interest, interest rate, collection fees, and reasons for modification of the lien, after the lien was referred to the Collections Coordinator, OFMB. TAC, ¶ 37. Essentially, it is asserting that it should have been afforded a right to a re-hearing before the same Special Magistrate it asserts committed error. B&B fails to legally allege a cause of action that it was due this specific process it now requests – a re-hearing before a Special Magistrate after

the lien was referred to OFMB. The March 7, 2007, Order notified B&B that referral to OFMB would occur 90 days after recording:


NOTE: If this lien is not satisfied within ninety (90) days of the date the lien is recorded, it will be referred to the Office of Financial Management for referral to a collection agency. No modification requests will be accepted and you will be responsible for any collection fees incurred by the County.

In complaining that the County has not provided "due process," B&B points the Court to section 162.09(2)(c), which states, "(c) An enforcement board may reduce a fine imposed pursuant to this section." TAC, ¶ 34. This subsection of §162.09 cannot form the basis of a procedural due process claim. It does not identify any process, nor does it specify that anything is due. First, it does not provide for a hearing, let alone a hearing at any time of B&B's choosing, and specifically a hearing to occur after the lien has been recorded for more than 90 days and referred to OFMB. *See Howard v. Town of Bethel*, 481 F. Supp. 2d 295, 306 (S.D.N.Y. 2007) ("Due process of law does not amount to process of plaintiffs' choosing."). Second, the statute is conditional: a fine **may** be reduced. The statute does not provide that a "fine **shall** be reduced" upon any particular showing, and, there is no statutory guarantee that the fine may be reduced at any time the violator chooses. *See In re Asher*, 772 A.2d 1161, 1166 (D.C. 2001) ("In the due process context, an opportunity to be heard at a meaningful time does not mean only at such time as one party finds it to be convenient.").

B&B was provided all the process that was constitutionally due to it. It was provided a notice of violation and an opportunity to be heard on the violation. It was provided notice of the order finding violation and an opportunity to have the property inspected to be found "in compliance." It was provided notice of the code inspector finding the property not in compliance and an opportunity to be heard before a Special Magistrate before the imposition of a fine/lien. It was provided notice of the order imposing the fine/lien, an opportunity to appeal to the circuit

court within 30 days, and an opportunity to request a modification before a Special Magistrate within 90 days. B&B cannot, having failed to take advantage of available, adequate process, now allege a procedural due process violation. *See Lindbloom,* 808 F. App'x. at 750 (11th Cir. 2020); *City of Tampa*, 711 So. 2d at 1189. There simply exist no set of facts that give rise to a due process violation. Plaintiff is simply asserting it wanted a different process than it was afforded, not that it did not receive due process. Accordingly, the procedural due process claim is without merit.

D. The Eighth Amendment Excessive Fines Claims are Legally Without Merit.

1. B&B's Eighth Amendment claims are legally without merit because they are a collateral attack on a code enforcement order, which this Court has no subject matter jurisdiction to hear.

The time has passed for B&B to present its excessive fines violations to this Court, which now lacks subject matter jurisdiction to consider the alleged excessive fines objections concerning the March 7, 2007, Order. *See Hardin v. Monroe Cty.*, 64 So. 3d 707, 710 (Fla. 3d DCA 2011) ("Therefore, as the Violation Order was not timely appealed, the Circuit Court did not and does not have jurisdiction to review the Violation Order."); *City of Miami v. Cortes*, 995 So. 2d 604, 606 (Fla. 3d DCA 2008) (finding the enforcement order to be outside the scope of the circuit court's review because it was not timely appealed); *Kirby v. City of Archer*, 790 So. 2d 1214, 1214 (Fla. 1st DCA 2001) ("Having failed to challenge the Board's action, Kirby cannot raise factual disputes with the Board's findings in the foreclosure action."); *City of Plantation v. Vermut*, 583 So. 2d 393, 394 (Fla. 4th DCA 1991) ("Because no appeal had been taken from the March 29, 1988 final order, we find that the circuit court lacked jurisdiction to set aside the March 29, 1988 final order."); *City of Ft. Lauderdale v. Bamman*, 519 So. 2d 37, 38 (Fla. 4th DCA 1987) (A code enforcement order "was beyond the jurisdictional reach of the circuit court" because the violator failed to timely appeal the order).

Turning again to *Innova Inv. Group, LLC v. Vill. of Key Biscayne*, 1:19-CV-22540, 2020 WL 6781821, at *4 (S.D. Fla. Nov. 18, 2020), *aff'd*, 21-11877, 2024 WL 2748480 (11th Cir. May 29, 2024), *Innova* is particularly instructive on many of the issues in this matter. Due to the similarities between the cases and claims, *Innova* will be discussed further in depth below.

In *Innova*, the Village of Key Biscayne cited Innova Investment Group ("Innova") for code violations for failure to obtain proper permits. The citation required Innova to correct the violation and pay a $4,000 civil penalty. Innova appealed the citation, which was heard by the Village's Board of Code Enforcement Special Magistrates ("Board"). The Board entered an order requiring Innova to pay the civil penalty and correct the violation, indicating that failure to comply would result in Plaintiff continuing to pay civil penalties of $4,000 per day. The order stated in bold that it could be appealed to the circuit court in Miami-Dade County within thirty days. The Village recorded the order and it became a lien pursuant to §162.09(3). Innova did not comply with the order, so the Village imposed daily fines as well as interest until the date of compliance. The fines consisted of $924,000.00 in daily fines and $1,271,774.97 in interest.

In a Third Amended Complaint, Innova brought four claims, including Count I, Eighth Amendment excessive fines pursuant to §1983. The Village moved to dismiss the Eighth Amendment claim with prejudice as an impermissible collateral attack on a final administrative decision that Innova failed to appeal and as time barred. The court agreed on both bases. The latter basis will be discussed in the next sub-section of this Opposition.

The Village argued that Innova failed to appeal the Order within 30 days of its execution pursuant to §162.11, Florida Statutes. The court examined section 162.11, which provides for an "aggrieved party" to appeal a "final administrative order of an enforcement board to the circuit

court" within thirty (30) days of the execution of the order. The court also examined Florida case law regarding the circuit court's jurisdiction to review the Order:

> A party dissatisfied with an enforcement board special magistrate's order can either appeal that order or choose to be bound by it. **However, it cannot initiate a collateral attack on that order by commencing a new action in circuit court**. Put differently, while the circuit court has appellate jurisdiction to entertain a timely appeal of a special magistrate's order regarding enforcement of building and fire codes, it lacks procedural jurisdiction to otherwise entertain a collateral attack upon that order concerning matters that could have been properly raised on appeal.

Brevard Cnty. v. Obloy, 301 So. 3d 1114, 1117 (Fla. 5th DCA 2020). Constitutional claims can be properly raised in an appeal of a special magistrate's code enforcement order pursuant to §162.11. *Holiday Isle Resort & Marina Associates v. Monroe Cnty.*, 582 So. 2d 721, 721–22 (Fla. 3d DCA 1991) (*cited by Wilson v. County of Orange*, 881 So. 2d 625, 632 (Fla. 5th DCA 2004) ("Section 162.11, Florida Statutes, provides for an appeal of [Code Enforcement Board] final orders, which has been held to be the proper forum to address constitutional claims.")). The appeal provided in §162.11 is a party's remedy if they dispute the code enforcement final order, and **failure to bring those disputes, even constitutional disputes, in a timely appeal waives the issue**. *Kirby v. City of Archer*, 790 So. 2d 1214, 1215 (Fla. 1st DCA 2001) (emphasis added).

The Court found that Innova had a legal right to appeal, failed to appeal, and provided no explanation for that failure. "Looking beyond the labels" of Innova's claim, the court determined that the complaint boiled down to a challenge of Innova's "obligation to pay the civil penalties as ordered." Holding that Innova could not plead around its failure to appeal the order, the court dismissed Innova's Eighth Amendment claim with prejudice. In making this ruling, the District Court also cited *City of Fort Lauderdale v. Scott*, No. 10-CIV-61122, 2011 WL 3157206, at *5 n.8 (S.D. Fla. July 26, 2011) ("An aggrieved party may appeal any final administrative orders to state circuit court." (citing Fla. Stat. § 162.11)); *Brevard Cnty. v. Obloy*, 301 So. 3d 1114, 1117 (Fla. 5th DCA 2020) ("A party dissatisfied with an enforcement board special magistrate's order can

either appeal that order or choose to be bound by it."). Section 162.11 "provides for a plenary appeal to the circuit court as a matter of right from a final administrative order of an enforcement board." *Cent. Fla. Invs., Inc. v. Orange Cnty*., 295 So. 3d 292, 293 (Fla. 5th DCA 2019). "[W]hile the circuit court has appellate jurisdiction to entertain a timely appeal of a special magistrate's order ..., it lacks procedural jurisdiction to otherwise entertain a collateral attack upon that order concerning matters that could have been properly raised on appeal." *Brevard Cnty*., 301 So. 3d at 1117 (citations omitted).

And, turning again to *DJB Rentals, LLC v. City of Largo*, 373 So. 3d 405, 414 (Fla. 2d DCA 2023), *review denied sub nom. DJB Rentals, LLC v. Largo*, SC2023-1675, 2024 WL 1174435 (Fla. Mar. 19, 2024), that Court also ruled that the failure to appeal the Board's Order also made that action an impermissible collateral attack and in support cited to *Brevard County v. Obloy*, 301 So. 3d 1114, 1117 (Fla. 5th DCA 2020) ("A party dissatisfied with an enforcement board special magistrate's order can either appeal that order or choose to be bound by it. However, it cannot initiate a collateral attack on that order by commencing a new action in circuit court. Put differently, while the circuit court has appellate jurisdiction to entertain a timely appeal of a special magistrate's order regarding enforcement of building and fire codes, it lacks procedural jurisdiction to otherwise entertain a collateral attack upon that order concerning matters that could have been properly raised on appeal").

Further, and very importantly, Plaintiff's contention that it could not have appealed under the basis of an excessive fine claim because it did not know that the ultimate amount would include "illegally charged interest" or "illegally charged collections costs" is also unavailing. That is the very same argument that Innova made to the 11th Circuit Court of Appeals that the Circuit Court quickly shot down:

> Innova contends it couldn't have been expected to appeal the village's fine as excessive because it did not know the ultimate amount "at the inception." But Innova is mistaken again; "[a]ll the information about the workings of the [village]'s ***purportedly unconstitutional fining regime*** with which [Innova] takes issue ... was available in the order imposing the fine." See id. at 414. The order unambiguously warned Innova to correct the condo's code violations or pay "continuing civil penalties of $4000 per day." Compare id. at 407–08, 414 (considering an order that warned the violator to correct code violations by a deadline "or face a fine of $250 per day," although the city's ultimate claim on its lien was $590,295).

Innova Inv. Group, LLC v. Vill. of Key Biscayne, 21-11877, 2024 WL 2748480, at *5 (11th Cir. May 29, 2024) (emphasis added). *See also DJB Rentals, LLC v. City of Largo*, 373 So. 3d 405, 414 (Fla. 2d DCA 2023), *review denied sub nom. DJB Rentals, LLC v. Largo*, SC2023-1675, 2024 WL 1174435 (Fla. Mar. 19, 2024) ("All the information about the workings of the City's purportedly unconstitutional fining regime with which DJB takes issue in its counterclaims was available in the order imposing the fine, which DJB failed to appeal").

In the instant case, the order similarly advised B&B of both of the charges it now complains are "excessive" fines: The order advised that the lien amount "shall accrue interest" and that B&B would be responsible for any collection fees incurred by the County. *See* TAC, Exhibit E. B&B does not allege any excuse for its failure to timely appeal the Special Magistrate's Order. It had a statutory right to argue in that appeal that the Special Magistrate did not have authority to "award interest" and that it should not be responsible for collection fees. Because these complaints could have been brought in an appeal challenging the Special Magistrate's Order Imposing Fine/Lien, this Court lacks subject matter jurisdiction to now consider the collateral attacks on the Order. *See Obloy*, 301 So. 3d at 1117. "Plaintiff cannot plead around its failure to timely appeal the Order by couching its claims as constitutional violations." *Innova Inv. Group, LLC v. Vill. of Key Biscayne*, 1:19-CV-22540, 2020 WL 6781821, at *3 (S.D. Fla. Nov. 18, 2020), *aff'd*, 21-11877, 2024 WL 2748480 (11th Cir. May 29, 2024).

Accordingly, this Court cannot consider Plaintiff's Excessive Fines claims as this court lacks jurisdiction over the claims.

2. The Eighth Amendment claims are time-barred.

The Eighth Amendment claims brought pursuant to §1983 in Count III fail to legally state a cause of action because they are time barred. B&B had four years from the alleged unlawful practice to bring Count III. *Innova Inv. Group, LLC v. Vill. of Key Biscayne*, 1:19-CV-22540, 2020 WL 6781821, at *3 (S.D. Fla. Nov. 18, 2020), *aff'd*, 21-11877, 2024 WL 2748480 (11th Cir. May 29, 2024). B&B was or should have been aware that interest would accrue, that no modification requests would be accepted after referral to OFMB, and that B&B would be responsible for collections costs upon receipt of the March 7, 2007, Order, or at the latest, upon recording of the Order on April 27, 2007. All persons are deemed to be on notice of instruments authorized to be recorded at the time and the date of recording. §695.11, Fla. Stat. (2020). Plaintiff's §1983 claims were time barred well a decade ago, in April 2011 and an assertion now is a futile endeavor.

Plaintiff's argument that there were "continuing" violations beyond the entry of the Order, the County points the Court to the analysis in *Innova*, which explained, "the daily application of interest to the fine does not create a new violation in and of itself. Rather, it is simply the '**present consequence' of Plaintiff's failure to pay the fine** … ." *Innova Inv. Group, LLC*, 1:19- CV-22540, 2020 WL 6781821, at *5 (emphasis added). *See also Innova Inv. Group, LLC v. Vill. of Key Biscayne*, 21-11877, 2024 WL 2748480, at *3 (11th Cir. May 29, 2024). Likewise, in this case, all things Plaintiff complains about – the accrual of interest charges, the charging of collection fees, and the County's "prohibition" of B&B presenting issues to the Special Magistrate "after the lien was referred to the Collections Coordinator, OFMB," are the present consequences of B&B's failure to bring its property into compliance, appeal the Order Imposing Fine/Lien, pay

the fine prior to referral to OFMB, or request a modification prior to referral to OFMB. B&B knew or should have known about these consequences from the Order Imposing Fine/Lien, which was recorded in the Official Record Book in April 2007. Accordingly, Plaintiff's Eight Amendment claims should not be considered as they are time barred.

3. Even if interest and collections costs were subject to the Eighth Amendment, their statutory authorization and proportionality precludes B&B from stating an excessive fines claim, and B&B's compounding interest allegation is without merit, and B&B's allegations concerning the amount of collections costs charged are without merit.

A fine may be excessive under the Eighth Amendment if it is "grossly disproportional." *See United States v. Sperrazza*, 804 F.3d 1113, 1127 (11th Cir. 2015) (internal quotation marks omitted). To determine whether a fine is "grossly disproportional," we must consider "(1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed; (2) other penalties authorized by the legislature ...; and (3) the harm caused by the defendant." *Id*. (internal quotation marks omitted). The second factor is the most important. A fine that falls within the range authorized by the legislature enjoys a "strong presumption of constitutionality." *United States v. Chaplin's, Inc*., 646 F.3d 846, 852 (11th Cir. 2011) (internal quotation marks omitted). *In Ficken v. City of Dunedin, Florida*, 21-11773, 2022 WL 2734429, at *4 (11th Cir. July 14, 2022), the Court ruled that the plaintiff could not overcome the strong presumption of constitutionality of his fine because Florida law permitted a $500-per-day fine for repeat violations of municipal ordinances pursuant to Fla. Stat. § 162.09(2)(a). Thus, plaintiff's fine was "almost certainly ... not excessive." *Sperrazza*, 804 F.3d at 1127 (internal quotation marks omitted).

"No matter how excessive (in lay terms) an administrative fine may appear, if the fine does not exceed the limits prescribed by the statute authorizing it, the fine does not violate the Eighth Amendment." *Newell Recycling Co., Inc. v. U.S. E.P.A.*, 231 F.3d 204, 210 (5th Cir. 2000). Here,

neither the interest nor collections costs exceed the amount permitted by the authorizing statutes. Therefore, these charges, even if construed as fines, cannot be constitutionally "excessive."

First, prejudgment interest is authorized by section 162.09(3), Florida Statues, which states, "After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest." (Emphasis added). The past tense "accrued" indicates that interest has already been accruing and in fact had accrued prior to the entry of the judgment. *See*, *generally*, INTEREST, Black's Law Dictionary (11th ed. 2019) ("-accrued interest. (18c) Interest that is earned but not yet paid…").

The Statement of Account indicates that:

Note: Accrued Interest fees are in accordance with chapter 55, Paragraph 55.03, Florida Statutes. The Interest Rate in effect in 2007, when the lien was entered, was 11% and is the rate that has been used in the above computation.

> Section 687.01 refers to section 55.03, Florida Statutes (2003), for the rate to be used for prejudgment interest where no contractual interest rate applies. The governing version of section 55.03 provides that Florida's Chief Financial Officer shall set the interest rate on January 1 of each year and that "[t]he interest rate established at the time a judgment is obtained shall remain the same until the judgment is paid." § 55.03(1), (3), Fla. Stat. (2003). The same should apply to prejudgment interest. Once the rate is obtained based on the date of loss, it should remain the same.

Regions Bank v. Maroone Chevrolet, L.L.C., 118 So. 3d 251, 257–58 (Fla. 3d DCA 2013).

> The Legislature then amended the statute, effective July 1, 2011. Under the amendment, the Chief Financial Officer must establish a statutory interest rate each quarter. "The interest rate is established at the time a judgment is obtained and such interest rate shall be adjusted annually on January 1 of each year in accordance with the interest rate in effect on that date as set by the Chief Financial Officer until the judgment is paid. " § 55.03(3), Fla. Stat. (2011); *see also* Ch.2011–169, § 1, Laws of Fla. (effective July 1, 2011).

Genser v. Reef Condo. Ass'n, Inc., 100 So. 3d 760, 762 (Fla. 4th DCA 2012).

For purposes of calculating pre-judgment interest, the rate and law in effect at the "date of loss" should be used. *Id*. The "date of loss" is when the lien was entered, which was in 2007. Thus, the governing version of section 55.03 when the lien was entered and recorded was the 2003 version of the statute. *Id*. So, the authorized, statutory rate of prejudgment interest is a fixed 11%, just as the Statement of Account provides. B&B's argument regarding when or how the County collects its prejudgment interest does not convert a non-excessive, statutorily authorized amount into a constitutionally "excessive" amount.

Moreover, the daily accrual of interest on non-paid sums due and owing is directly proportionate to "the offense" (if interest were a penalty, which it is not) of nonpayment. This proportionality precludes a finding that the interest is excessive. *See*, *generally*, *Moustakis v. City of Fort Lauderdale*, 338 F. App'x. 820, 822 (11th Cir. 2009). In *Moustakis*, the plaintiffs complained that the cumulative fine of $700,000, which was more than the value of the house found to have violated the city code, was excessive. *Id*. The Eleventh Circuit found that "the $700,000 fine was created by the Moustakises' failure to bring the house into compliance with the Code each day for 14 years. Rather than being grossly disproportionate to the offense, the $700,000 fine is, literally, directly proportionate to the offense." *Id*. The Eleventh Circuit then held that the plaintiffs had not alleged any facts to support a conclusion that the lien or underlying fines were excessive under either the Florida Constitution or the United States Constitution. *Id*.; *see also Conley v. City of Dunedin*, 808CV01793T24AEP, 2010 WL 146861, at *5 (M.D. Fla. Jan. 11, 2010) ("Of course, by failing to correct the code violations, the Conleys have allowed a small fine to grow into an enormous one.").

Second, §938.35, Florida Statutes authorizes the County to "pursue the collection of any fees, service charges, fines, or costs to which it is entitled which remain unpaid for 90 days or

more, or refer the account to a … collection agent who is registered and in good standing pursuant to chapter 559." (Emphasis added). The TAC argues that §938.35 applies only to "court costs," but that argument is refuted by the plain text of the statute that has been in effect since 2004.[4] "The collection fee, … paid to any … collection agent retained by the board of county commissioners … may be added to the balance owed, in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agents for collection." § 938.35, Fla. Stat. (emphasis added). The principal and interest balance owed to the County as reflected on the January 2019 Statement of Account, exceeded $100,000. The sum of the $25,000 collection fee on the Statement of Account does not exceed the statutorily authorized amount of 40 percent of the amount owed. Accordingly, the collection fee is not constitutionally excessive. *See Newell Recycling Co., Inc.*, 231 F.3d at 210. Therefore, Plaintiff cannot as a matter of law allege a claim based on the collection fees under any legal theory.

The amount of the accrued interest and collections fees relate to the amount of time that passed between the date B&B should have brought its Property into compliance, June 2006, and the date it obtained a Statement of Account, January 2019. *See Wemhoff v. City of Baltimore*, 591 F. Supp. 2d 804, 809 (D. Md. 2008) ("The fact that the overall fine has now grown to hundreds of dollars is more a reflection of Mr. Wemhoff's failure to timely pay or contest the original fine owed than it is a reflection of unconstitutional excess in the design of the late payment penalty."). This Court cannot allow B&B, by permitting approximately 12 and a half years to pass between its obligation to pay a fine and its attempt to pay a fine, to create a constitutionally excessive fine.

[4] Pre-2004 versions of the statute did contain language that may have supported B&B's interpretation of the statute, listing: "any fines, court costs, or other costs imposed by the court which remain unpaid for 90 days or more, …" (Emphasis added). This construction, which ends with "imposed by the court," is no longer the law, nor has it been at any time relevant to this case.

See Moustakis v. City of Fort Lauderdale, 08-60124-CIV, 2008 WL 2222101, at *2 (S.D. Fla. May 27, 2008), *aff'd,* 338 F. App'x. 820 (11th Cir. 2009) (to do so would be "contrary to reason and public policy"). Accordingly, Plaintiff's claims that the prejudgment interest and collections costs are constitutionally excessive are without merit.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the County respectfully requests that this Honorable Court deny B&B's Motion for Summary Judgment and award all other relief this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to all individuals registered to receive service through the Florida Court's E-Filing Portal on this Friday, August 23, 2024.

By: *s/ Tyrone A. Adras*
Tyrone A. Adras, Esq.

IN THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
Case No.: 50-2019CA008660XXXXMB

B. & B. PROPERTIES, INC., a Florida corporation, on its own behalf and on behalf of all others similarly situated,

Plaintiff, **CLASS REPRESENTATION**

vs.

PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida,

Defendant.
_____/

THIRD AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF

Plaintiff, B. & B. PROPERTIES, INC., (hereinafter "B&B"), on its own behalf and on behalf of all others similarly situated, sues Defendant, PALM BEACH COUNTY (hereinafter "the County"), and alleges:

1. This is a class action for declaratory, injunctive, and monetary relief for which the amount in controversy is in excess of $30,000, and this court is vested with jurisdiction pursuant to § 86.011, Fla. Stat., to issue declaratory relief.

2. Any conditions or prerequisites to the commencement of this action have been waived, fulfilled, or excused.

3. Plaintiff has retained the undersigned attorneys to represent its interests in this action and has agreed to pay them a reasonable fee for such services.

THE PARTIES

4. Plaintiff B&B is a Florida corporation which maintains a place of business in Palm Beach County, Florida.

EXHIBIT 1

5. The class and subclasses of similarly situated parties for which B&B proposes to serve as Class Representative consist of affected property owners against whom orders imposing code enforcement liens were entered and who were illegally charged and/or who paid interest and/or collection agency fees (collectively, "Affected Owners"). The class and subclasses are defined in detail in paragraph 29 below.

6. Defendant Palm Beach County is a home rule charter county and exists as a political subdivision of the State of Florida under the Constitution of the State of Florida, the laws of the State of Florida, and the Palm Beach County Charter.

THE PALM BEACH COUNTY CHARTER

7. At all times relevant to this lawsuit, the County has operated County Government under the authority of the Charter of Palm Beach County, Article I through Article VIII, effective January 1, 1985, as amended ("Charter").

8. Section 1.1 of the Charter provides that "except as may be limited by this home rule charter, [the County] shall have all powers of county self-government granted now or in the future, by the constitution and laws of the state of Florida."

9. Section 1.2 of the Charter provides that "nothing in this home rule charter shall override or conflict with state law or the state constitution."

FLORIDA LAW

10. Chapter 162, Fla. Stat., "Local Government Code Enforcement Board Act," provides the State law authority for County Code Enforcement.

11. Section 162.02, Fla. Stat., provides:

> **Intent.**—It is the intent of this part to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative

> boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist.

12. The County has established an enforcement procedure utilizing Special Magistrates pursuant to § 162.03, Fla. Stat., which provides:

> **162.03 Applicability. —**
> (1) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided herein.
> (2) A charter county, a non-charter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter. References in this chapter to an enforcement board, except in s. 162.05, shall include a special magistrate if the context permits.

(emphasis added).

PALM BEACH COUNTY ORDINANCES

13. The County adopted the Unified Land Development Code ("ULDC"), which provides in Article 1, Chapter A, Section 1.,B., the authority for the ULDC:

> The Board of County Commissioners (BCC) has the authority to adopt this Code pursuant to Art. VIII, § 1(g), Fla. Const., the PBC Charter, F.S. § 125.01, F.S. § 163.3161, and such other authority and provisions that are established by statute, administrative rule, or common law in the State of Florida.

14. ULDC, Article 10, Enforcement, Chapter A, General, states: "The provisions of this Code shall be enforced by: (i) the Code Enforcement Special Magistrate pursuant to the authority granted by Fla. Stat. § 162.01, *et seq.*, as may be amended . . ." (emphasis added).

15. On February 11, 2019, Plaintiff's former attorney asked the County for the source of authority to add interest and collection agency fees to code enforcement liens. Exhibit "A."

16. An Assistant County Attorney responded for the County on March 28, 2019 (Exhibit "B") and indicated that the authority for interest and collection agency fees was §§ 162.09(3), 55.03, and 938.35, Fla. Stat.

17. Section 162.09(3), Fla. Stat., only allows interest to be charged in conjunction with a lawsuit by the County for a money judgment to recover the amount of the code enforcement lien or in connection with a lawsuit to foreclose on a lien. That section provides:

> (3) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and 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. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. 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. After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. 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.

(emphasis added).

18. In addition to § 162.09(3), Fla. Stat., the applicable County ordinance is Article 10 of the ULDC. Section 3(F) of Article 10 provides for interest in conjunction with an action to foreclose a Code Enforcement Lien. Section 3(F) states:

> After three months from the filing of any such lien which remains unpaid, PBC may foreclose the lien in the same manner as mortgage liens are foreclosed. Such liens shall bear interest at the rate allowable by law from the date of compliance set forth in the recorded order acknowledging compliance.

19. ULDC Article 10 does not authorize the County to impose interest on code enforcement liens except as set forth in ULDC Section 3(F).

20. The County has never brought an action to foreclose B&B's Code Enforcement Lien, and as to all other Code Enforcement Liens since 2005, the County has only brought two actions to foreclose a lien. Additionally, other than the counterclaim filed to a previous complaint in the present case, the County has never brought an action for a money judgment to recover the amount of a Code Enforcement Lien, plus accrued interest, against a property owner with a Code Violation.

21. Further, in calculating the amount of interest charged to an Affected Owner, the County's custom, policy, and practice is to improperly compound interest up to the date that the Affected Owner complies with the code violation, as was the case with the calculation of B&B's interest from June 30, 2006 until November 18, 2007.

22. After the Affected Owner has fully complied with the code violation and the daily fine has ceased, the County then improperly charges the Affected Owner interest on the compounded interest amount and the accumulated daily fine amount, as was done with B&B.

23. The County has also charged collection agency fees to B&B and members of the putative class, allegedly imposed for collection efforts by the County to collect Code Enforcement Liens, interest charges, and other charges imposed against the putative class members' and B&B's real property.

24. Florida Statutes do not authorize the imposition of collection agency fees on code enforcement liens and certainly not on illegally imposed interest charges.

25. The County may charge collection agency fees paid to a collection agent or a collection attorney when collecting court costs. Sections 938.31 and 938.35, Fla. Stat., provide the following:

> **938.31 Incorporation by reference. –** The purpose of this chapter is to facilitate uniform imposition and collection of court costs throughout the state and, to this end, a reference to this chapter, or to any section or subdivision within this chapter, constitutes a general reference under the doctrine of incorporation by reference.

(emphasis added).

> **938.35 Collection of court-related financial obligations**. – The board of county commissioners or the governing body of a municipality may pursue the collection of any fees, service charges, fines, or costs to which it is entitled which remain unpaid for 90 days or more or refer the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559. In pursuing the collection of such unpaid financial obligations through a private attorney or collection agent, the board of county commissioners or the governing body of a municipality must determine this is cost-effective and follow applicable procurement practices. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent retained by the board of county commissioners or the governing body of a municipality may be added to the balance owed, in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agents for collection.

(emphasis added).

26. Special Magistrate hearings are not court proceedings, and the fines, interest and collection agency fees resulting therefrom are not court costs.

27. Sections 938.31 and 938.35, Fla. Stat., provide no authority for collection agency fees on code enforcement fines or liens which are not in conjunction with a court proceeding. Therefore, the County's custom, policy, and practice by which it charges collection agency fees on code enforcement liens violates §§ 938.31 and 938.35, Fla. Stat., and there is no other authority for the imposition of collection agency fees on code enforcement liens.

28. Additionally, B&B and the putative class have been charged collection agency fees in excess of the amount paid by the County, and prior to any payment by the County to any collection agency, neither of which is permitted by law. In addition, the collection agency fees calculated by the County include improper interest charges and collection agency fees that do not correspond to the time and effort expended by the collection agency.

29. B&B seeks to represent a class and subclasses that include the following:

a. Property owners against whose property the County imposed code enforcement liens beginning on January 1, 2005 that unlawfully included interest or collection costs and where said lien continued to encumber the property on or after July 3, 2015.
b. Property owners who received an Order Imposing Fine/Lien beginning on January 1, 2005 and paid interest or collection agency fees on or after July 3, 2015 and against whom no court proceedings were brought.
c. Property owners against whose property the County imposed code enforcement liens beginning January 1, 2005, which liens remained on their property on or after July 3, 2015, and who were charged compounding interest to the date of compliance and thereafter charged interest on both that sum plus the accumulated daily fine amount.

d. Property owners against whose property the County imposed code enforcement liens beginning on January 1, 2005, which liens remained on the property on or after July 3, 2015, and who were charged improper interest amounts, due to the County's practice of treating Special Magistrate Orders Imposing Fine/Lien as a judgment from a court of law, and then improperly calculating the time periods for calculating its claim for pre-judgment interest.
e. Property owners against whose property the County imposed code enforcement liens beginning January 1, 2005, which liens remained on their property on or after July 3, 2015, and who were charged or paid collection agency fees after July 3, 2015, or where said fees were in excess of what was paid by the County or before the County paid the collection agency fees.
f. Property owners against whose property the County imposed code enforcement liens beginning January 1, 2005, which liens remained on their property on or after July 3, 2015, and who were not given an opportunity to seek modification or reduction of the amounts charged for interest or collection agency fees, before an impartial magistrate, after their code enforcement lien was referred to the Office of Financial Management and Budget ("OFMB").

CROSS-ATTACHING LIENS

30. Pursuant to § 162.09(3), Fla. Stat., the lien for code enforcement violations attaches to all real property of the Affected Owner in Palm Beach County.

> A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and 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.

Id. (emphasis added)

31. The County also imposes the lien against any property the Affected Owner subsequently acquires in Palm Beach County.

32. Thus, B&B and the putative class have been further damaged and have suffered losses as a result of liens cross-attaching to other real property owned by them in Palm Beach County, or real property acquired by them after the imposition of the lien.

DUE PROCESS REQUIREMENTS

33. Section 162.09(3), Fla. Stat., provides that code enforcement liens may be released by the local governing body:

> . . . 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....

34. Section 162.09(2)(c), Fla. Stat., provides that only the Special Magistrate may reduce a code enforcement fine:

> (c) An enforcement board [Special Magistrate] may reduce a fine imposed pursuant to this section.

(emphasis added).

35. Because code enforcement proceedings are penal in nature, procedural due process protections are at their highest.

36. The County has a custom, policy, and practice to refer Code Enforcement Liens that remain unpaid for 90 days to OFMB, and once the code enforcement lien is referred to OFMB, the County refuses to accept any modification request and denies a hearing before an impartial magistrate.

37. After being referred to OFMB, Affected Owners are denied the ability to seek a modification or reduction before an impartial hearing officer and are left with no option but to seek a modification from OFMB. Because OFMB has no objective criteria for evaluating when, if at all, to reduce or modify the amounts being charged by the County for the code enforcement liens imposed against them, the Affected Owners are deprived of due process.

38. Additionally, as to B&B and the putative class, collection agency fees are not incurred or paid by the County until after the code enforcement lien is referred to OFMB

and then to a collection agency, at which time it is the County's custom, policy, and practice not to accept a modification request; nor will it consider any modification hearing before an impartial magistrate.

39. Plaintiff and the putative class have property interests in not being charged unlawful interest charges and collection agency fees which result in excessive code enforcement liens encumbering their properties.

VIOLATION OF THE 14th AMENDMENT FOR WHICH 42 U.S.C. § 1983 PROVIDES A REMEDY

40. The 14th Amendment to the United States Constitution provides:

> ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

41. 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

42. The County has acted under color of state law, and its customs, practices, and policies have deprived B&B and the putative class of their property interests without due process. *See* paras. 1 through 41, *supra*.

43. Plaintiff and the putative class have property interests in not being charged excessive fines and in not having their real properties encumbered by code enforcement

liens that are excessive to the extent that they unlawfully include interest and collection agency fees which are charged before and after compliance.

44. The County has denied B&B and the putative class procedural due process of law guaranteed by the 14th Amendment of the United States Constitution.

45. By charging interest and collection agency fees against B&B and members of the putative class, where such interest and collection agency fees are not authorized by law, and where such interest and collection agency fees become part of the lien that is imposed on their property, the County denies them due process, for which § 1983 provides a remedy.

46. 42 U.S.C. § 1988(b) provides for the award of attorney fees and expenses for Plaintiff's attorneys.

VIOLATIONS OF THE EIGHTH AND 14th AMENDMENTS FOR WHICH 42 U.S.C. § 1983 PROVIDES A REMEDY

47. The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." (emphasis added).

48. B&B and the putative class do not contend that code enforcement fines that are within amounts permitted by law are excessive. Rather, they contend that the interest and collection agency fees charged by the County, both before and after compliance with the underlying violations, and the attempts to collect and the collections thereon, are illegal and render the fines excessive under the Eighth and 14th Amendments to the United States Constitution.

CLASS REPRESENTATIVE

49. B&B's property was subjected to a Notice of Violation, Case No. C0503090002, attached as Exhibit "C."

50. B&B's property was adjudicated in violation by a Palm Beach County Special Magistrate on March 1, 2006; copy of order attached as Exhibit "D."

51. On March 7, 2007, the Special Magistrate entered an Order Imposing Fine/Lien, which was recorded in the County's public records on April 27, 2007. *See* Exhibit "E."

52. The Order Imposing Fine/Lien stated, "this amount shall accrue interest at the rate allowed by law." *Id.* However, the County never notified or advised B&B that it would charge interest in addition to the daily fine without first bringing an action to foreclose the lien or an action for a money judgment for the amount of the lien, plus accrued interest, in accordance with §162.09(3), Fla. Stat., until the County sent B&B's counsel a Statement of Account on or about July 13, 2018. *See. Exhibit "F".*

53. Pursuant to §162.09(3), Fla. Stat., the County does not have authority to add an interest charge to the daily fine, unless the County files a lawsuit to foreclose the Code Enforcement lien or a lawsuit for a money judgment to recover the amount of the Code Enforcement Lien. Since B&B was not notified, until it received the July 13, 2018 Statement of Account, that the County was in fact charging interest or the amount of said interest in addition to the daily fine when no legal action was brought, B&B never had the opportunity to contest the charge of interest or the amount of interest. Additionally, when B&B was notified that the County was indeed charging interest even when no legal action to foreclose or for a money judgment was ever filed, B&B's code enforcement lien had been referred to OFMB. It is the County's custom, policy, and practice that once there is

a referral to OFMB, an Affected Owner can no longer request a modification hearing, and all appellate rights at that time would have expired.

54. It is the County's custom, policy, and practice, after the lien is referred to OFMB, to not allow B&B or any Affected Owner a modification hearing, where B&B or a putative class member can challenge interest, the calculation of interest, and/or the interest rate, and/or the improper collection agency fees.

55. As to B&B, the County began charging interest on the day after the date of the ordered compliance, June 30, 2006, and has continued to charge interest thereafter. The County charged said interest before any action to foreclose or for a money judgment was filed against B&B. Further, the County calculated interest on a compound basis and improperly calculated the time period for its claim of "prejudgment interest," even though no court action against B&B had ever been filed.

56. The County incurred no collection agency fees until May of 2018 and paid no collection agency charges until June of 2018. On or about May 25, 2018, the County received $44,761.60 from a tax deed sale as to a property owned by B&B. On or about June 12, 2018, the County allocated from that amount a collection agency fee of $7,146.81, resulting in a reduction of the principal amount of the lien to $37,548.99. Even though the County only paid the collection agency $7,146.81, the Statement of Account of 7/13/18 (Exhibit "F"), sent to B&B's counsel, contained a collection agency charge of $22,413.66, plus $47.01. The July 13, 2018 statement of account, *id.,* was the first notification from the County to B&B that the County had incurred or paid a collection agency fee.

57. On January 16, 2019, the County's Collection Coordinator from OFMB sent an email to a B&B employee, Anne Chappell, which stated the following:

> Pursuant to your request, I have attached a copy of the Code Enforcement Lien Payoff Statement together with copies of the pertinent code lien documents for the subject case. Said statement has been computed up through 1/31/19 with the daily per diem thereafter noted on the bottom of the statement.
>
> Payment should be made payable to: **Palm Beach County BOCC** and remitted to my attention [at the] following address:
>
> **PALM BEACH COUNTY**
> **C/O OFMB**
> **301 N. OLIVE AVE, 7TH FLOOR**
> **WEST PALM BEACH, FL 33401**
>
> Once full payment has been received by the County, we will prepare and have the applicable release of lien executed and recorded thereby removing the code lien from the subject property and all other real and personal property under their ownership.
>
> If you should have any questions, please let me know.

See Exhibit "G."

58. A review of the Statement of Account, which the Collections Coordinator attached to his email of January 16, 2019, indicates that the "full payment" amount totaled $97,152.22. *See* Exhibit "H." The interest charges on that Statement Account totaled $68,589.51. *Id.* The collection agency fees totaled $22,658.51. *Id.* Therefore, "full payment" of $97,152.22 included interest charges and collection agency charges which totaled $91,248.02. *Id.*

59. B&B does not dispute prior to the tax deed sale that it owed the principal amount of the fine of $50,600.00 and recording costs. B&B offered the County $5,904.20 which included the balance remaining of the principal amount of the lien ordered by the Special Magistrate after the County received $44,761.60 from the tax deed sale, together with recording fees. However, the County refused B&B's offer to pay the full principal

amount, when the Assistant County Attorney on behalf of the County stated to B&B's counsel, "[t]he County cannot accept that offer as we feel that interest has been properly imposed on this lien." *See* Exhibit "B."

CLASS REPRESENTATION ALLEGATIONS

60. B&B brings this lawsuit seeking Class Representation under Fla. R. Civ. P. 1.220.

61. Based on information gained through public records requests and discovery taken in this case, more than 100 property owners have been affected by the wrongful actions of the County.

62. The joinder of at least 100 Affected Owners is impractical.

63. Commonality exists with all class members, as each Affected Owner is affected by orders of a Special Magistrate finding their property in violation of County Codes and the County's imposition of illegal interest and collection agency fees. Affected Owners whose liens have been referred to OFMB have been denied procedural due process. Each Affected Owner has had title to real property affected or has been unlawfully charged or paid interest or collection agency fees. The claims of B&B and B&B's questions of law and fact are common to the claims and questions of law and facts of the putative class.

64. The claims of B&B are typical of the claims of the putative class.

65. B&B's interests are not antagonistic to other class members.

66. B&B has hired the undersigned law firms, and B&B and the law firms intend to vigorously pursue this lawsuit.

67. B&B has the necessary resources to vigorously pursue this lawsuit and protect and represent the interests of each member of the putative class.

68. The prevailing questions of law and fact in this lawsuit predominate over any question of law or fact affecting individual members.

69. Class representation with regard to this lawsuit is superior to any other available form of relief for the fair and efficient adjudication of this controversy.

70. Putative class members' claims are maintainable under Fla. R. Civ. P 1.220(b)(1)(A) and (b)(2) and (b)(3).

71. Rule 1.220(c)(2)(B). (Commonality). The questions of law and fact that are common to B&B and the putative class members' claims include, among other things:

a. Did the County illegally charge interest?

b. Did the County improperly calculate interest?

c. Did the County charge interest and collection agency fees resulting in excessive fines?

d. Did the County illegally charge collection agency fees?; and

e. Did the County deny Affected Owners procedural due process?

72. Rule 1.220(c)(2)(C). (Typicality). The claims advanced by B&B are typical of the claims of each member of the class because B&B has been illegally charged interest and collection agency fees and has been denied procedural due process.

73. Rule 1.220(c)(2)(D)(i). (Numerosity). On information and belief, the approximate number of class members exceeds 100.

74. Rule 1.220(c)(2)(D)(ii). (Definition). The definition of the alleged class is real property owners who have had their property encumbered by code enforcement liens

beginning on January 1, 2005, which include interest and collection agency fees and which property continued to be encumbered on or after July 3, 2015, and real property owners who received an Order finding a code violation beginning on January 1, 2005 and paid interest or collection agency fees on or after July 3, 2015 and against whom no court proceedings were brought, and as further defined in paragraph 29.

75. Rule 1.220(c)(2)(D)(iii). (Adequacy). The facts and circumstances that show the representative party will fairly and adequately protect and represent the interests of each member of the proposed Class are that B&B's interests coincide with, and are not antagonistic to, the interests of the members of the Class that B&B seeks to represent. Additionally, B&B has retained competent counsel, will retain experts as necessary, intends to prosecute this action vigorously, and has the resources to do so. The interests of the Class members will be fairly and adequately protected by B&B and its counsel.

76. Rule 1.220(c)(2)(E). The facts and circumstances supporting the conclusions required of the Court in determining that the action may be maintained as a class action pursuant to subdivisions (b)(1)(A), or (b)(2) or (b)(3) are set forth in paragraphs 1 through 59 hereof.

77. Rule 1.220(d). (Notice). The class members may be notified by publication, first class mail and/or email with respect to the pendency of this action, their opportunity to "opt-out" of membership in this Class once certified as proposed herein, and such other matters as this Court might determine to be necessary.

78. Rule 1.220(a)(2). (Predominance of Common Questions of Law and Fact). Common questions of law and fact exist and predominate among B&B and all members

of the Class. These common legal and factual questions are listed above in paragraphs 63 and 71.

79. Rule 1.220(b)(3). (Superiority). Questions of law and fact common to the Class members predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The issues in this litigation involve only the charging or payment of interest, collection agency fees, and denial of due process and imposition of excessive fines to Class members, as described herein, and do not include any other potential individual disputes between putative class members and the County.

80. The monetary relief awardable to each putative class member is determinable, and given the likely extensive litigation necessitated by the County's uniform pattern of conduct of which each class member complains in this case, the individual prosecution of each putative class member's claim would prove burdensome and disproportionately expensive. It would be virtually impossible for the members of the class individually to effectively redress the identical wrongs that have been done to each of them. Even if the members of the class themselves could afford such individual litigation, it would be an unnecessary burden on the courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system generally. By contrast, this class action lawsuit will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based on a single determination.

81. Rule 1.220(b)(2). (Injunctive and Declaratory Relief Appropriate for the Class). Class certification is also appropriate because the County has acted and refused to act in ways generally applicable to the putative class, making appropriate equitable injunctive and declaratory relief with respect to B&B and the putative class. Specifically, B&B and the putative class seek injunctive relief in the form of an injunction requiring: (A) withdrawal and rescission of any charges for interest or collection agency fees to B&B or the putative class; (B) discontinuation of any improper efforts to collect interest or collection agency fees not in accordance with the law; (C) access to the Special Magistrate for modification of fines/liens after referral to OFMB; and (D) the award of a refund for all interest and collection agency fees paid by B&B and the putative class after July 3, 2015.

82. B&B and the putative class also seek a declaration from this Court that the County's custom, policy, and practice of disallowing Affected Owners a modification request and/or access to Special Magistrates for modification of lien hearings once the lien is referred to OFMB, violates Florida law and procedural due process required by the Unites States Constitution.

83. B&B and the putative class also seek a declaration from this Court that the County's custom, policy, and practice of illegally charging interest and collection agency fees, when added to the fines, constitute excessive fines under the United States Constitution.

COUNT I - INJUNCTIVE RELIEF (Florida Law and Section 1983)

84. B&B and the putative class incorporate paragraphs 1 through 59 and 81, as if fully restated herein.

85. The County's unlawful conduct directed toward B&B and the putative class violates Florida and Federal law as set forth above, has been unrelenting, and will continue indefinitely absent this Court's injunction preventing its continuation.

86. B&B and the putative class have no adequate remedy at law.

87. The public interest will not be harmed or would benefit from the exercise of this Court's equitable power to enjoin the continued perpetration of the County's unlawful acts of which B&B and the putative class complain herein, or by further injunctive relief requiring the County to stop attempting to collect the interest and collection agency fees which it has already charged and continues to charge B&B and the putative class.

WHEREFORE, B&B and the putative class pray for the following relief:

A. an injunction preventing the County from charging interest on fines or liens or at a rate and in a manner not authorized by Florida law and contrary to the Eighth and 14th Amendments;

B. an injunction preventing the County from charging collection agency fees on fines or liens or charging an amount in excess of what was paid by the County;

C. an injunction preventing the County from denying B&B and the putative class the right to seek a modification request and/or access to the Special Magistrate once the lien has been referred to OFMB; and

D. an injunction requiring the County to (i) discontinue any efforts to collect interest or collection agency fees from B&B and the putative class except in conjunction with a lawsuit for a money judgment to recover the amount of the lien or to foreclose a lien; and (ii) allow access to the Special Magistrate

for modification of the improper interest or collection agency fees after the lien has been referred to OFMB.

COUNT II – 42 U.S.C. § 1983 (14th Amendment Procedural Due Process)

88. B&B and the putative class incorporate paragraphs 1 through 59 as if fully restated herein.

89. The actions of the County with respect to charging interest and collection agency fees and denying modification requests and/or access to the Special Magistrate after the lien is referred to OFMB, deprive B&B and the putative class of their fundamental right to quiet enjoyment of their real property in the lawful conduct of their business and personal use, and to enjoy the profits thereof. That right is protected by procedural due process which is applicable to the states and their agencies and subdivisions through the 14th Amendment of the United States Constitution.

90. The County's actions deny B&B and the putative class their property interests.

91. Imposition of interest and collection agency fees, and denial of the right to seek a modification request and/or access to the Special Magistrate for reduction or modification after referral to OFMB, are an abuse of government power of such a magnitude as to rise to the level of a constitutional violation that has caused actual, and not just theoretical, damages or, alternatively, nominal damages to B&B and the putative class.

92. The interest and collection agency fees, when added to the fines as explained herein, especially after compliance, constitute excessive fines under the United States Constitution.

93. The County was acting under color of state law when it engaged in the unlawful conduct described in this complaint, including:

a. The improper charging of interest;

b. The improper calculation of interest;

c. The improper charging of collection agency fees;

d. Encumbering property with the County's improper charges; and

e. Denying B&B and the putative class procedural due process and protection against excessive fines.

94. The County's unlawful conduct has been directed at the putative class, has been unrelenting, and will indefinitely exist absent an injunction issued by this Court.

95. Putative class members have no adequate remedy at law in that a money judgment requiring a refund of sums illegally collected by the County will not prevent the County from continuing to assess improper charges in the future.

96. The public's interest will benefit from, and not be harmed by, the exercise of this Court's equitable power to enjoin the County from continuing the illegal acts that Plaintiff and the putative class have complained of herein.

WHEREFORE, B&B and the putative class pray for the following relief:

A. an injunction preventing the County from charging interest on fines or liens or in a manner or rate not authorized by Florida Statutes;

B. an injunction preventing the County from charging collection agency fees on fines or liens or charging an amount in excess of what was paid by the County;

C. an injunction preventing the County from denying Plaintiff or the putative class a modification request and/or access to the Special Magistrate once the lien has been referred to OFMB;

D. a declaration that the County's customs, practices, and policies violate B&B and the putative class's 14th Amendment rights;

E. award Plaintiff and the putative class damages against the County sufficient in amount to refund, with interest, the unlawful sums collected from B&B and the putative class or, alternatively, award Plaintiff and the putative class nominal damages; and

F. award reasonable attorney fees and expenses under 42 U.S. C. § 1988(b).

COUNT III – 42 U.S.C. § 1983 (Eighth and 14th Amendments Excessive Fines)

97. B&B and the putative class incorporate paragraphs 1 through 59 as if fully restated herein.

98. The County's unlawful charging of interest and collection agency fees on the code enforcement fines, especially after compliance, renders the fines excessive, in violation of the Eighth and 14th Amendments, for which 42 U.S.C. § 1983 provides a remedy.

WHEREFORE, B&B and the putative class pray for the following relief:

A. an injunction preventing the County from charging interest on fines or liens or in a manner or a rate not authorized by Florida law;

B. an injunction preventing the County from charging collection agency fees on fines or liens or charging an amount in excess of what was paid by the County in violation of Florida law;

C. an injunction preventing the County from denying Plaintiff and the putative class a modification request and/or access to the Special Magistrate once the lien has been referred to OFMB;

D. a declaration that the County's customs, practices, and policies violate B&B and the putative class's Eighth and 14th Amendment rights;

E. require the County, its law firms, and its collection agencies to: (i) discontinue any efforts to collect interest or collection agency fees from B&B and the putative class; and (ii) allow access to the Special Magistrate for modification of fines/liens once the lien has been referred to OFMB;

F. award Plaintiff and the putative class damages against the County sufficient in amount to refund, with interest, the unlawful sums collected from B&B and the putative class or, alternatively, award Plaintiff and the putative class nominal damages; and

G. award reasonable attorney fees and expenses under 42 U.S. C. § 1988(b).

COUNT IV – DECLARATORY JUDGMENT (Florida Law and Section 1983)

99. B&B and the putative class incorporate paragraphs 1 through 59 as if fully restated herein.

100. A present controversy exists between B&B and the members of the putative class on the one hand, and the County on the other hand, regarding whether the County

may charge interest and collection agency fees on code enforcement liens and deny B&B and the class access to the Special Magistrate after referral of Affected Owners to OFMB.

101. The declaration sought by B&B and the putative class deals with a present, ascertainable state of facts and a present and ongoing controversy referable to those facts.

WHEREFORE, B&B and the putative class request this Court to declare that:

A. The County's imposition of interest on code enforcement liens violates Florida and Federal law;

B. The County's imposition of collection agency fees on code enforcement liens violates Florida and Federal law;

C. The County's calculation of interest and collection agency fees violates Florida and Federal law;

D. Denying Plaintiff and the class members the ability to seek a modification request and/or access to the Special Magistrate for reduction or modification of liens is illegal after the lien has been referred to OFMB and violates procedural due process; and

E. Plaintiff and the Putative Class are entitled to recover and shall be awarded damages sufficient in amount to refund, with interest, the unlawful sums collected from Plaintiff and the Putative Class.

JURY TRIAL DEMAND

B&B and the Class demand trial by jury on all claims herein so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the E-Filing Portal to all individuals on the attached Service List, this _____ day of August 2021.

SILBER & DAVIS
105 S. Narcissus Ave., Suite 402
West Palm Beach, FL 33401
Tel: 561-615-6262
Fax: 561-615-6263
LSilber@silberdavis.com
ADavis@silberdavis.com
dnigels@silberdavis.com

BY: */s/ Louis M. Silber*
LOUIS M. SILBER
Fla. Bar No. 176031

/s/ *James K. Green*
James K. Green, FL Bar No. 229466
JAMES K. GREEN, P.A.
Esperanté, Suite 1650
222 Lakeview Ave.
West Palm Beach, FL 33401
Tel: 561-659-2029
jkg@jameskgreenlaw.com

/s/ Gary Dunkel
Gary Dunkel, FL Bar No. 350354
FOX ROTHSCHILD LLP
777 South Flagler Drive
17th Floor West Tower
West Palm Beach, FL 33401
(561) 804-4444 - direct
gdunkel@foxrothschild.com

Counsel for Plaintiff

B. & B. Properties v Palm Beach County
Case No: 502019CA008660XXXXMB AA

SERVICE LIST

Rachel Fahey, Esquire
Anaili M. Cure, Esquire
Rachel A. Canfield, Esquire
300 North Dixie Highway
Third Floor
West Palm Beach, Florida 33401
ldennis@pbcgov.org
rfahey@pbcgov.org
jborum@pbcgov.org
aosslund@pbcgov.org
acure@pbcgov.org;
rcanfiel@pbcgov.org

Phillip H. Hutchinson, Esquire
Greenberg Traurig, PA
777 South Flagler Drive, Suite 300
West Palm Beach, FL 33401
hutchinsonp@gtlaw.com

Counsel for Defendant

Gary Brandenburg

From:	Gary Brandenburg
Sent:	Monday, February 11, 2019 1:24 PM
To:	Shannon Fox
Cc:	Glenn Meeder
Subject:	B. & B. Properties, Inc.
Attachments:	Ltr re B. & B. Properties, Inc..pdf

Shannon;
On a different matter, a client asked me to send the attached letter requesting information regarding the Interest and collection fees charged by the County.
Thank you,
Gary

BRANDENBURG & ASSOCIATES, P.A.
11891 U.S. Highway One, Suite 101
North Palm Beach, Florida 33408
(561) 799-1414
www.BrandenburgPA.com

Gary M. Brandenburg
ATTORNEY AT LAW
Gary@BrandenburgPA.com

February 7, 2019

Shannon Fox, Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

Mr. Glenn Meeder, Coordinator
Revenue Collection Section
Office of Financial Management & Budget
301 North Olive Avenue, 7th Floor
West Palm Beach, FL 33401

Re: B. & B. Properties, Inc.
PCN: 00-42-43-28-02-000-0020
C-2005-03090002

Dear Shannon and Glenn:

I represent B. & B. Properties, Inc.

I have enclosed a Statement of Account, dated January 31, 2019, showing $97,152.22 is due in order to remove the Code Enforcement Lien on the property. I have reviewed the Order of the Special Magistrate, the County Code, and Chapter 162, Florida Statutes. I have been unable to find any authority for the County to charge any interest, the rate to be charged, or any collection agency fees.

Please clarify the County's source of authority for the charge of interest, the rate of interest, and collection fees, as a prerequisite for release of the lien on this property.

Thank you for your assistance.

Very truly yours,

BRANDENBURG & ASSOCIATES, P.A.

By:
Gary M. Brandenburg, Esq.

Palm Beach County
Statement of Account
for Code Enforcement Lien

Debtor Name:	B&B Properties
Lien #:	**ORB:**21670 **Page:** 0840 **On:** 04/27/07
Case #:	C-2005-03090002
Property Control #:	00-42-43-28-02-000-0020
Property Address:	6900 Dwight Road, West Palm Beach FL

	Amount
Principal Fine Amount (506 days x $100):	$50,600.00
Accrued Interest (06/30/06 - 11/18/07):	4,053.05
Accrued Interest (11/19/07 - 05/25/18):	63,247.80
Case Costs:	pd on 03/27/06
Recording Fees:	65.80
Collection Agency Fees:	22,413.66
Total Amount Due Thru 05/25/18	$140,380.31
Less: Partial Payment Received from COC on 5/25/18 from tax deed sales proceeds on cross attached parcel.	(44,761.60)
Balance Due As Of 5/25/18	$95,618.71
plus additional interest (05/26/18 thru 01/31/19)	1,288.66
plus additional collection agency fees (05/26/18 thru 01/31/19)	244.85
Balance Due as of 01/31/19	$97,152.22

Note: Accrued interest fees are in accordance with chapter 55, Paragraph 55.03, Florida Statutes. The Interest Rate in effect in 2007, when the lien was entered, was 11% and is the rate that has been used in the above computation.

PC122807

NOV Date:	03/18/05	
CESM Hearing Date:	03/01/06	(11.4 months)
Ordered Compliance:	06/29/06	(15.4 months)
AOC Date:	11/18/07	(32.1 months)
# of Fine Days:	506	

The Daily Per Diem after 01/31/19 is $4.68

Gary Brandenburg

From: Shannon Fox <SXfox@pbcgov.org>
Sent: Thursday, March 28, 2019 12:22 PM
To: Gary Brandenburg
Cc: Glenn Meeder
Subject: RE: B. & B. Properties, Inc.

Gary,

I response to the three questions posed in your February 7, 2019, letter, Section 162.09, Fla. Stat., authorizes the County to impose interest, Section 55.03, Fla. Stat., establishes the amount imposed, and Section 938.35, Fla. Stat. authorizes the County to impose collections fees.

Section 162.09(3) clearly recognizes that the lien accrues interest.

Section 163.09(3):
A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and 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. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. 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. After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien **plus accrued interest**. 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.

Fla. Stat. § 162.09

Section 938.35, Fla. Stat, authorizes the County to include in the amount owed by your client collection fees in an amount up to 40% of the amount owed.

938.35:
Collection of court-related financial obligations.—The board of county commissioners or the governing body of a municipality may pursue the collection of any fees, service charges, fines, or costs to which it is entitled which remain unpaid for 90 days or more, or refer the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559. In pursuing the collection of such unpaid financial obligations through a private attorney or collection agent, the board of county commissioners or the governing body of a municipality must determine this is cost-effective and follow applicable procurement practices. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent retained by the board of county commissioners or the governing body of a municipality may be added to the balance owed, in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agents for collection.

EXHIBIT
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Interest was calculated on your client's lien pursuant to Section 55.03, Fla. Stat. At the time this order was imposed, the statute provided that the interest rate was fixed at the time of the order rather than yearly as it is currently calculated.

As to your offer to pay the County $5,904.20 to dispose of your client's lien, the County cannot accept that offer as we feel that interest has been properly imposed on this lien.

What basis does your client believe it has to file suit? I am not seeing any legal basis, but I am curious to hear what theory you are traveling under.

Shannon

NOTICE OF VIOLATION

PALM BEACH COUNTY BUILDING & ZONING DEPARTMENT
100 AUSTRALIAN AVE, WEST PALM BEACH, FL. 33406
TELEPHONE: (561)233-5500

TO: B & B PROPERTIES INC
C/O S. L. BOATWRIGHT REG. AGT.

MARCH 18, 2005

ADDRESS: 16545 S.W. FARM RD
INDIANTOWN, FL 34956-

PREMISES: 6900 DWIGHT RD
PCN# : 000 42 43 28 02 000 0020

ZONING CLASSIFICATION: IL

COMPLAINT NUM: C0503090002

YOU ARE HEREBY NOTIFIED THAT AN INSPECTION OF THE ABOVE PREMISES DISCLOSED THAT YOU HAVE VIOLATED ONE OR MORE CODES OF PALM BEACH COUNTY, FLORIDA AS FOLLOWS:

* * *

104.1.1 FLORIDA BUILDING CODE, AS AMENDED

AND PARTICULARLY

OPENLY KEEPING/STORING OF A MOBILE HOME/TRAILER(S) WITHOUT PROPER PERMITS IS PROHIBITED. CANOPY ERECTED WITHOUT REQUIRED PERMIT(S) IS PROHIBITED.

REQUIREMENTS FOR CORRECTION

OBTAIN PROPER PERMITS OR REMOVE MOBILE HOME/TRAILER(S). OBTAIN REQUIRED CANOPY PERMIT OR REMOVE.

COMPLIANCE DEADLINE: APRIL 18, 2005.

THE REQUIREMENTS FOR CORRECTION MUST BE MET NO LATER THAN APRIL 18, 2005. IF THE VIOLATION IS CORRECTED AND THEN RECURS OR IF THE VIOLATION IS NOT CORRECTED BY THE TIME SPECIFIED FOR CORRECTION IN THIS NOTICE, THE CASE MAY BE PRESENTED TO THE SPECIAL MASTER FOR HEARING EVEN IF THE VIOLATION HAS BEEN CORRECTED PRIOR TO THE HEARING. IF YOU ARE FOUND TO BE IN VIOLATION BY ORDER OF THE SPECIAL MASTER, THERE MAY BE IMPOSED AGAINST YOU A FINE UP TO $1000.00 DOLLARS PER DAY FOR EACH DAY THE VIOLATION CONTINUES PAST THE COMPLIANCE DATE SET BY THE SPECIAL MASTER.

FURTHERMORE, THE COUNTY SHALL BE ENTITLED TO RECOVER FROM YOU

ALL COSTS IT INCURS IN SUCCESSFULLY PROSECUTING THIS CASE BEFORE THE SPECIAL MASTER.

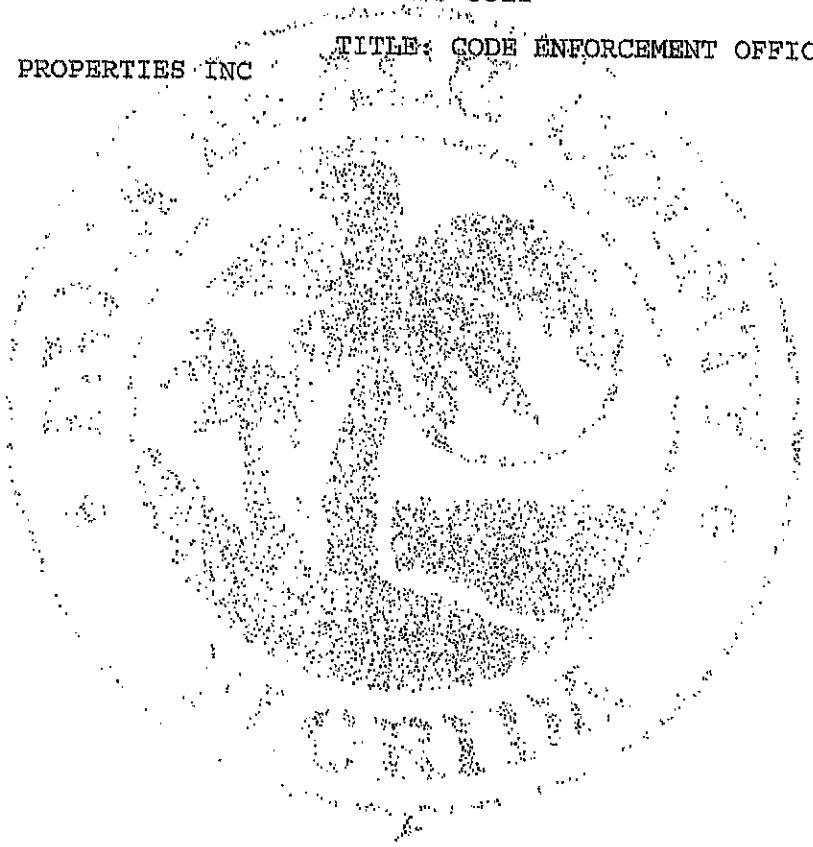
SHOULD YOU HAVE ANY SPECIFIC QUESTIONS REGARDING THIS VIOLATION NOTICE, PLEASE CONTACT THE CODE ENFORCEMENT OFFICER BETWEEN 8:00 AND 9:30 A.M.

NOTE: IT IS YOUR RESPONSIBLITY TO CONTACT THIS OFFICE WHEN COMPLIANCE HAS BEEN ACHIEVED.

PALM BEACH COUNTY
BUILDING & ZONING DEPARTMENT
CODE ENFORCEMENT DIVSION
BY: PATRICK COVAULT
TGC 233-5511

TITLE: CODE ENFORCEMENT OFFICER

C/C: B & B PROPERTIES INC



ORDER
CODE ENFORCEMENT SPECIAL MASTER

TO: **B & B Properties Inc.** **C#0503090002**
C/o S. L. Boatwright, Reg. Agent
16545 S. W. Farm Road
Indiantown, FL 34956

RE: **Violation of Section 104.1.1 of the Florida Building Code, as amended. Canopy erected without required permit(s) is prohibited.**

CEO: **Patrick Covault**

THIS CAUSE came for public hearing before the Codes Enforcement Special Master on **March 1, 2006**, and the Special Master having heard testimony under oath, from Mr. Boatwright, received evidence and heard argument, enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Respondent, **B & B Properties, Inc., c/o S. L. Boatwright, Reg. Agent** , whose mailing address is **16545 S. W. Farm Road, Indiantown, FL 34956**, is the owner(s) or person(s) in charge of the property located at **6900 Dwight Road, West Palm Beach (00-42-43-28-02-000-0020).**

2. Respondent(s) received notice of the code violations cited above and was given reasonable time to correct said violations. Respondent(s) failed to correct said violations within the allotted time.

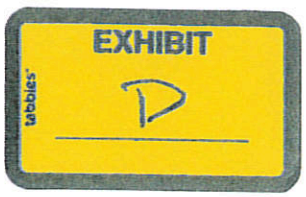
3. At the time of hearing, the violations cited above **continued to** to exist.

4. Palm Beach County incurred costs in the amount of **$140.87** in successfully prosecuting this case.

CONCLUSIONS OF LAW

1. Respondent, by reason of the foregoing is in violation of the Codes as cited above, and is therefore subject to the provisions of Article 10 of the Palm Beach County Unified Land Development Code, under the authority of Chapter 162 of Florida Statutes, as may be amended.

2. Palm Beach County is entitled to recover all costs incurred in successfully prosecuting this action.



ORDER

Respondent(s) is (are) to correct the violations cited above on or before June 29, 2006 (120 days). In the event the violations cited above are not corrected on or before the compliance date, then and in that event there shall be a fine imposed against Respondent(s) in the amount of $100.00 for each day the violations continue to exist after the compliance date. If a repeat violation has been committed, then and in that event there shall be fine imposed against Respondent(s) in the amount of n/a for each day the repeat violations continues, beginning with the date the repeat violation is found to have occurred by the code inspector. If a finding of violation or repeat violation has been made as provided in Section 162.09, Florida Statutes, a hearing shall not be necessary for issuance of the Order imposing such a fine.

Failure to comply on or before the compliance date may result in a lien being placed against the above described property, and upon any other real or personal property owned by the respondent(s) pursuant to Sections 162.08 and 162.09, Florida Statutes may be amended and Article 10, Palm Beach County Unified Land Development Code. After three months from the filing of the lien, the County is authorized to pursue any other collection actions the County deems appropriate.

THE BURDEN SHALL REST UPON RESPONDENT(S) TO REQUEST A REINSPECTION TO DETERMINE WHETHER THE VIOLATION OR REPEAT VIOLATION HAS BEEN BROUGHT INTO COMPLIANCE.

In addition to the daily fine set forth above, you are hereby ordered, pursuant to Article 10 of the Palm Beach County Unified Land Development Code and Chapter 162 of Florida Statues, as may be amended, to pay costs to the County in the amount of $140.87. This amount is due and owing as of the date of this Order.

A certified copy of this Order may be recorded in the public records of Palm Beach County, Florida, and shall thereafter constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property. The findings in this Order shall be binding upon Respondent(s) and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns pursuant to Article 10 of the Palm Beach County Unified Land Development Code and Chapter 162 of Florida Statutes, as may be amended.

DONE and ORDERED this 1 day of March 2006.

William Pruitt, Special Master

ATTEST: Janet B. Macapayag
Secretary

I hereby certify that a true and correct copy of the foregoing order has been furnished to B & B Properties, Inc., c/o S. L. Boatwright, Reg. Agent, by U.S. Mail this 8th day of March, 2006.

Janet B. Macapayag
Secretary

Cc: B & B Properties Inc.
P. O. Box 696
Indiantown, FL 34956

u:orderamwithtestimony(10/26/99)

CFN 20070204257
OR BK 21670 PG 0840
RECORDED 04/27/2007 09:06:05
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0840 - 843; (4pgs)

Palm Beach County
Planning Zoning & Building
Code Enforcement Liens
2300 North Jog Road
West Palm Beach, FL 33411-2741
Acct. # 1019

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WC

CODE ENFORCEMENT SPECIAL MASTER
OF PALM BEACH COUNTY

CASE NO. C0503090002

TO: B & B Properties, Inc.
C/o S. L. Boatwright, Reg. Agent
7984 SW 13th. St.
Okeechobee, FL 34974

CEO: Patrick Covault

PAGE 1 OF 4

ORDER IMPOSING FINE/LIEN

THIS CAUSE came for public hearing before the Code Enforcement Special Master/Code Enforcement Board on March 1, 2006, after due notice, at which time the Code Enforcement Special Master or Code Enforcement Board heard testimony under oath, received evidence, and issued its Findings of Fact, Conclusions of Law and Order, which was reduced to writing and furnished to B & B Properties, Inc., c/o S. L. Boatwright, Reg. Agent. A copy of said Order is attached hereto.

Said Order required the respondent(s) to take certain corrective action by a specified date, as more specifically set forth in that Order dated March 1, 2006.

An Affidavit of Non-Compliance dated August 21, 2006 has been filed by the code inspector, which Affidavit certifies under oath that the required corrective action was not taken by the specified date as ordered.

Accordingly, it having been brought to the Code Enforcement Special Master's attention that the respondents failed to comply by the date specified in said Order, it is hereby

ORDERED that B & B Properties, Inc., c/o S. L. Boatwright, Reg. Agent pay to Palm Beach County a fine in the amount of $100.00 per day for every day in violation past June 29, 2006 which is the compliance date set by said Order, for the property at 6900 Dwight Road, West Palm Beach, property control number is 00-42-43-28-02-000-0020. This amount shall accrue interest at the rate allowed by law.

A certified copy of this Order may be recorded in the public records of Palm Beach County, Florida, and shall thereafter constitute a lien against the above-described property, and upon any other real or personal property owned by the respondents pursuant to Sections 162.08 and 162.09, Florida Statutes, as may be amended and Article 10, Palm Beach County Unified Land Development Code. After three months from the filing of the lien, the County is authorized to foreclose the lien or pursue any other collection actions the County deems appropriate.

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DONE AND ORDERED this 7th day of March, 2007, at West Palm Beach, Palm Beach County, Florida.

PALM BEACH COUNTY CODE ENFORCEMENT

By: _____
Code Enforcement Special Master

Attest Janet B. Macapagal
Secretary

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

_____
Assistant County Attorney

PAGE 2 OF 4

I hereby certify that a true and correct copy of the foregoing Order has been furnished to B & B Properties Inc., c/o S. L. Bostwright, Reg. Agent, by U.S. Mail this 14 day of March, 2007.

Janet B. Macapagal
Secretary

NOTE: If this lien is not satisfied within ninety (90) days of the date the lien is recorded, it will be referred to the Office of Financial Management for referral to a collection agency. No modification requests will be accepted and you will be responsible for any collection fees incurred by the County.

Cc: B & B Properties Inc.
6900 Dwight Road
Royal Palm Beach, FL 33411-2602

B & B Underground Contractors, Inc.
C/o Richard T. Davis, Reg. Agent
250 Australian Avenue South
West Palm Beach, FL 33401-5016

gpm

Undersheet (2/02)

B & B Underground Contractors, Inc.
c/o Richard T. Davis, Reg. Agent
One Clearlake Centre, Suite 1601
250 Australian Avenue South
West Palm Beach, FL 33401-5016

Remailed 4/20/07
gpm

I HEREBY CERTIFY THAT I AM SECRETARY TO THE CODES ENFORCEMENT SPECIAL MASTER AND FURTHER THAT THIS IS A TRUE AND CORRECT COPY OF THE CODES ENFORCEMENT SPECIAL MASTER ORDER AND/OR LIEN

to B & B Properties, Inc
c/o S. L. Bostwright, Reg. Agent
Janet B. Macapagal
SECRETARY
CODE ENFORCEMENT

ORDER
CODE ENFORCEMENT SPECIAL MASTER

TO: B & B Properties Inc.
C/o S. L. Boatwright, Reg. Agent
16545 S. W. Farm Road
Indiantown, FL 34956

C#0503090002

RE: Violation of Section 104.1.1 of the Florida Building Code, as amended, Canopy erected without required permit(s) is prohibited.

CEO: Patrick Covault

PAGE 3 OF 4

THIS CAUSE came for public hearing before the Codes Enforcement Special Master on March 1, 2006, and the Special Master having heard testimony under oath, from , received evidence and heard argument, enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Respondent, B & B Properties, Inc., c/o S. L. Boatwright, Reg. Agent , whose mailing address is 16545 S. W. Farm Road, Indiantown, FL 34956, is the owner(s) or person(s) in charge of the property located at 6900 Dwight Road, West Palm Beach (00-42-43-26-02-000-0020).

2. Respondent(s) received notice of the code violations cited above and was given reasonable time to correct said violations. Respondent(s) failed to correct said violations within the allotted time.

3. At the time of hearing, the violations cited above continued to to exist.

4. Palm Beach County incurred costs in the amount of $140.87 in successfully prosecuting this case.

CONCLUSIONS OF LAW

1. Respondent, by reason of the foregoing is in violation of the Codes as cited above, and is therefore subject to the provisions of Article 10 of the Palm Beach County Unified Land Development Code, under the authority of Chapter 162 of Florida Statutes, as may be amended.

2. Palm Beach County is entitled to recover all costs incurred in successfully prosecuting this action.

PAGE 4 OF 4

ORDER

Respondent(s) is (are) to correct the violations cited above on or before June 29, 2006 (120 days). In the event the violations cited above are not corrected on or before the compliance date, then and in that event there shall be a fine imposed against Respondent(s) in the amount of $100.00 for each day the violations continue to exist after the compliance date. If a repeat violation has been committed, then and in that event there shall be fine imposed against Respondent(s) in the amount of n/a for each day the repeat violations continues, beginning with the date the repeat violation is found to have occurred by the code inspector. If a finding of violation or repeat violation has been made as provided in Section 162.09, Florida Statutes, a hearing shall not be necessary for issuance of the Order imposing such a fine.

Failure to comply on or before the compliance date may result in a lien being placed against the above described property, and upon any other real or personal property owned by the respondent(s) pursuant to Sections 162.08 and 162.09, Florida Statutes may be amended and Article 10, Palm Beach County Unified Land Development Code. After three months from the filing of the lien, the County is authorized to pursue any other collection actions the County deems appropriate.

THE BURDEN SHALL REST UPON RESPONDENT(S) TO REQUEST A REINSPECTION TO DETERMINE WHETHER THE VIOLATION OR REPEAT VIOLATION HAS BEEN BROUGHT INTO COMPLIANCE.

In addition to the daily fine set forth above, you are hereby ordered, pursuant to Article 10 of the Palm Beach County Unified Land Development Code and Chapter 162 of Florida Statues, as may be amended, to pay costs to the County in the amount of $140.87. This amount is due and owing as of the date of this Order.

A certified copy of this Order may be recorded in the public records of Palm Beach County, Florida, and shall thereafter constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property. The findings in this Order shall be binding upon Respondent(s) and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns pursuant to Article 10 of the Palm Beach County Unified Land Development Code and Chapter 162 of Florida Statutes, as may be amended.

DONE and ORDERED this 1 day of March 2006.

William Pruitt, Special Master

ATTEST: Janet B. Macapugay
Secretary

I hereby certify that a true and correct copy of the foregoing order has been furnished to B & B Properties, Inc., c/o S. L. Boulwright, Reg. Agent, by U.S. Mail this 6th day of March, 2006.

Janet B. Macapugay
Secretary

Cc: B & B Properties Inc.
P. O. Box 698
Indiantown, FL 34956

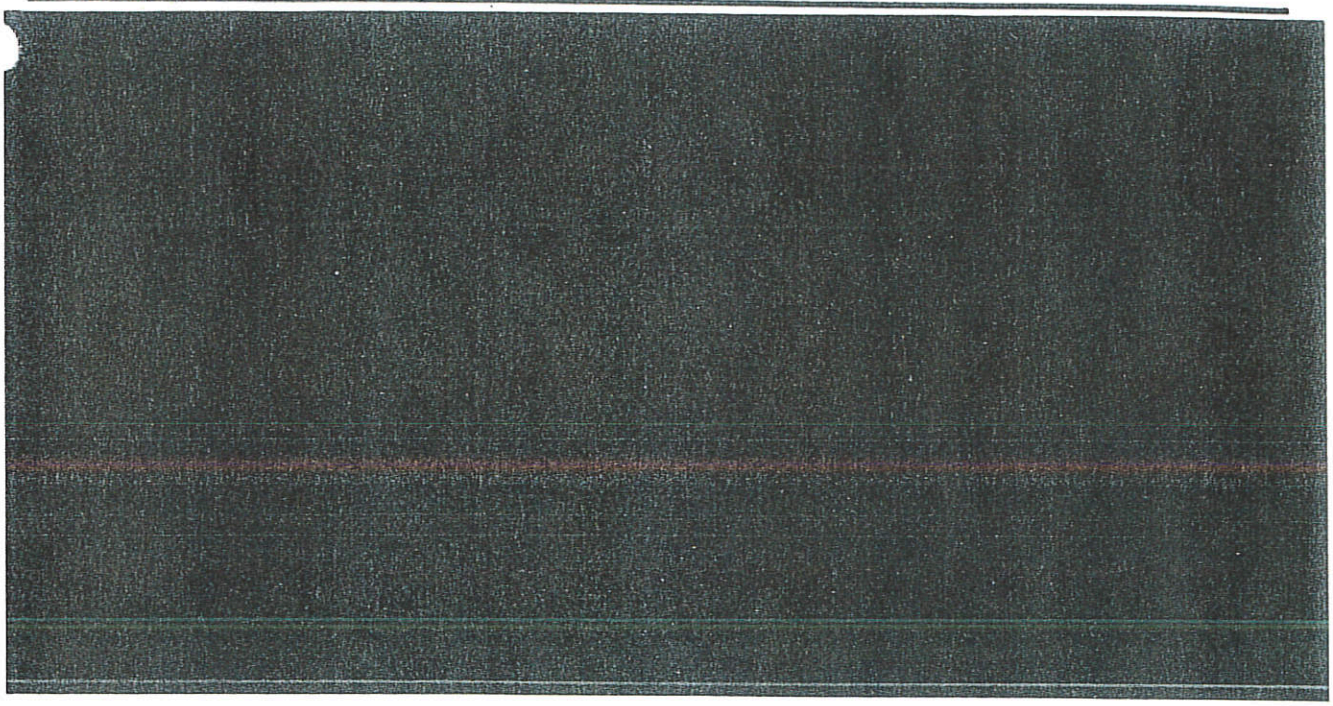
I HEREBY CERTIFY THAT I AM SECRETARY TO THE CODES ENFORCEMENT SPECIAL MASTER AND FURTHER THAT THIS IS A TRUE AND CORRECT COPY OF THE CODES ENFORCEMENT SPECIAL MASTER ORDER AND/OR LIEN.

SECRETARY
CODE ENFORCEMENT

B & B Properties, Inc.
6900 Dwight Road
Royal Palm Beach, FL 33411-2502

B & B Underground Contractors,
David, Richard T.
One Clearlake Centre Suite 1501
250 Australian Ave South
West Palm Beach, FL 33401-5016

Gary Brandenburg



From: Glenn Meeder <GMeeder@pbcgov.org>
Sent: Friday, July 13, 2018 12:03 PM
To: Ellie Halperin <ellie@halperin-law.com>
Subject: RE: C0503090002

Hi Ellie,

When we last spoke, I told you that I would work on gathering some information regarding your client's case and suggested that you go to code enforcement to review their case file as well. My office has been inundated with requests, so we have been running about three to four weeks behind in being able to review cases and get information out to the requestors.

After pulling some of your client's case documents, I found that your client already received a huge break in that the CESM Order only referenced the canopy and not the two (2) mobile homes that were a part of the cited violations and NOV. In 2015 , when your client's reps went into code enforcement to go over case, one of the senior code officers, Bobbi Boynton , reviewed various documents that were brought in and

EXHIBIT
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pictures of the property and determined that the canopy had been removed in 2007 and that the two (2) mobile homes, which were still there in 2016 and part NOV , for some unknown reason were not contained in the Order and so she used 11/18/ 2007 for the compliance date in the AOC for the canopy removal date. The daily fine amount and lien amount would have been substantially greater had the two (2) mobile homes been included (and which they should have) in the Order. That was a huge break for your client.

There were no service issues and I have included, in the attached PDF, copies of the code case notes in which I highlighted some very key information . I have also included a copy the collections agency's case notes and contacts that they made with your client back in 2008 , so your client . along with the lien documents that were sent them and their registered agent at the time, would have received subsequent notice of the lien and outstanding amount due years ago and did nothing.

The amount on the attached statement stands and is based on the CESM's Order Imposing fines /lien and the provision for interest in said Order is clearly delineated. It is the property owner that controls how high their lien gets and is responsible to address in a timely matter to avoid a large lien amount.

If you still believe that a meeting is necessary, we may be able to meet at code enforcement next Thursday morning at 10:30 as we will already be out there for another meeting . Let me know.

If you should have any questions, please let me know.

Glenn Meeder

Collections Coordinator

Palm Beach County

Office of Financial Management & Budget

301 North Olive Avenue

Palm Beach County
Statement of Account
for Code Enforcement Lien

Debtor Name:	B&B Properties
Lien #:	**ORB:**21670 **Page:** 0840 **On:** 04/27/07
Case #:	C-2005-03090002
Property Control #:	00-42-43-28-02-000-0020
Property Address:	6900 Dwight Road, West Palm Beach FL

	Amount
Principal Fine Amount (506 days x $100):	$50,600.00
Accrued Interest (06/30/06 - 11/18/07):	4,053.05
Accrued Interest (11/19/07 - 05/25/18):	63,247.80
Case Costs:	pd on 03/27/06
Recording Fees:	65.80
Collection Agency Fees:	22,413.66
Total Amount Due Thru 05/25/18	$140,380.31
Less: Partial Payment Received from COC on 5/25/18 from tax deed sales proceeds on cross attached parcel.	(44,761.60)
Balance Due As Of 5/25/18	$95,618.71
plus additional interest (05/26/18 thru 07/13/18)	247.42
plus additional collection agency fees (05/26/18 thru 07/13/18)	47.01
Balance Due as of 07/13/18	**$95,913.14**

Note: Accrued Interest fees are in accordance with chapter 55, Paragraph 55.03, Florida Statutes. The Interest Rate in effect in 2007, when the lien was entered, was 11% and is the rate that has been used in the above computation.

PC122807

NOV Date:	03/18/05	
CESM Hearing Date:	03/01/06	**(11.4 months)**
Ordered Compliance:	06/29/06	**(15.4 months)**
AOC Date:	11/18/07	**(32.1 months)**
# of Fine Days:	**506**	

The Daily Per Diem after 07/13/18 is $4.68

B & B Properties Code Lien - Case Number C-2005-03090002 - 6900 Dwight Road

From: Glenn Meeder (GMeeder@pbcgov.org)

To: bandbproperties@att.net

Date: Wednesday, January 16, 2019, 10:51 AM EST

Good Morning Ms. Chappell,

Pursuant to your request , I have attached a copy of the code enforcement lien payoff statement together with copies of the pertinent code lien documents for the subject case. Said statement has been computed up through 1/31/19 with the daily per diem thereafter noted on the bottom of the statement .

Payment should be made payable to : PALM BEACH COUNTY BOCC and remitted to my attention following address:

PALM BEACH COUNTY

C/O OFMB

301 N. OLIVE AVE., 7TH FLOOR

WEST PALM BEACH, FL. 33401

Once full payment has been received by the County, we will prepare and have the applicable release of lien executed and recorded thereby removing the code lien from the subject property and all other real and personal property under their ownership.

If you should have any questions, please let me know.

Glenn Meeder

Collections Coordinator

Palm Beach County

Office of Financial Management & Budget

301 North Olive Avenue

West Palm Beach, FL 33401, 7th Floor

Office (561) 355-4010 Fax (561) 656-7143

gmeeder@pbcgov.org

DOC011619.pdf
1.5MB

Palm Beach County
Statement of Account
for Code Enforcement Lien

Debtor Name:	B&B Properties
Lien #:	**ORB:**21670 **Page:** 0840 **On:** 04/27/07
Case #:	C-2005-03090002
Property Control #:	00-42-43-28-02-000-0020
Property Address:	6900 Dwight Road, West Palm Beach FL

	Amount
Principal Fine Amount (506 days x $100):	$50,600.00
Accrued Interest (06/30/06 - 11/18/07):	4,053.05
Accrued Interest (11/19/07 - 05/25/18):	63,247.80
Case Costs:	
Recording Fees:	pd on 03/27/06
Collection Agency Fees:	65.80
Total Amount Due Thru 05/25/18	22,413.66
	$140,380.31
Less: Partial Payment Received from COC on 5/25/18 from tax deed sales proceeds on cross attached parcel.	
Balance Due As Of 5/25/18	(44,761.60)
	$95,618.71
plus additional interest (05/26/18 thru 01/31/19)	1,288.66
plus additional collection agency fees (05/26/18 thru 01/31/19)	244.85
Balance Due as of 01/31/19	**$97,152.22**

Note: Accrued Interest fees are in accordance with chapter 55, Paragraph 55.03, Florida Statutes. The Interest Rate in effect in 2007, when the lien was entered, was 11% and is the rate that has been used in the above computation.

PC122807

NOV Date:	03/18/05	
CESM Hearing Date:	03/01/06	(11.4 months)
Ordered Compliance:	06/29/06	(15.4 months)
AOC Date:	11/18/07	(32.1 months)
# of Fine Days:	506	

The Daily Per Diem after 01/31/19 is $4.68

EXHIBIT H

Implementing Order

Implementing Order No.: IO 2-5

Title: CODE ENFORCEMENT

Ordered: 12/12/23 **Effective:** 12/22/23

AUTHORITY:

The Miami-Dade County Home Rule Charter, including, among others, Sections 1.01, 2.02(A), 5.01 and 5.03, and Chapter 8CC, Code of Miami-Dade County.

SUPERSEDES:

This Implementing Order supersedes Implementing Order 2-5 ordered September 20, 2022 and effective October 1, 2022.

POLICY:

It shall be the policy of Miami-Dade County to foster compliance with the ordinances passed by the Board of County Commissioners, as embodied in the Code of Miami- Dade County (the "Code") by encouraging its Code Inspectors to utilize available enforcement mechanisms, including the issuance of Uniform Civil Violation Notices ("CVNs"), to attain this goal. It shall also be the policy of Miami-Dade County to recover enforcement fines levied, administrative hearing and enforcement costs incurred by the departments involved in code enforcement activities, and accrued interest by utilizing administrative settlement and lien procedures as permitted by law.

ENFORCEMENT PROCEDURE FOR MUNICIPALITIES:

Municipalities within Miami-Dade County shall be entitled to utilize the applicable provisions of Chapter 8CC within their municipal boundaries by entering into an interlocal agreement with Miami-Dade County pursuant to Code Section 8CC-11. The County reserves the right to set minimum education, training and background check requirements to be met by municipal employees or agents enforcing the Code. Furthermore, the County shall provide oversight and auditing authority in order to withdraw delegation if it is determined that the municipality is improperly enforcing the Code. Any appeals to the Circuit Court or beyond from CVNs issued by a municipality shall be handled by that municipality and its legal staff.

HEARING OFFICERS AND HEARING FEES:

Compensation for Hearing Officers shall be $100.00 per hour for a minimum of $400.00 per day and up to a maximum of $800 per day, when hearing appeals of issued CVNs or notices of assessment of continuing penalties under Chapter 8CC of the Code of Miami-Dade County, except that Hearing Officers adjudicating cases before the Unsafe Structures Appeal Panel shall be paid $150 per hour for a minimum of $600.00 per day and up to a maximum $1,200 per day. Hearing officers shall be compensated for adjudicating hearings, and any assigned administrative responsibilities required to be performed under Chapter 8CC of the Code of Miami-Dade County and this Implementing Order. Any Hearing Officer performing assigned administrative responsibilities shall be compensated for the actual hours worked, but not less than the per day minimum noted above. Assigned administrative responsibilities shall include but not be limited to, the review and approval of liens (orders imposing a civil penalty, or electronic copies of such orders, to be recorded in the public records and which thereafter constitute liens against the land on which the violations exist or upon any other real or

personal property owned by the violator), assessment of CVN continuing penalties that were not appealed by the named violator (pursuant to the filing by the Code Inspector of the requisite documents evincing noncompliance as required by the Code, and the related determination that violations continued to exist beyond the time for correction, and for how long), and review and approval or denial of written requests for continuances. Hearing officers are required to work as many hours as necessary to complete the agenda of scheduled hearings to avoid any inconvenience to the public. Each Hearing Officer decision finding a named violator guilty at the Administrative Hearing shall assess hearing administrative costs to be paid by the named violator, for the Clerk of Court, Code Enforcement Division, in the amount of $75.00 per violation adjudicated guilty, and, as provided in Section 8CC-6(L) and this Implementing Order, additional administrative enforcement costs for the issuing department in relation to the hearing, as determined by the hearing officer.

DEPARTMENTS' RESPONSIBILITIES:

Department directors of those departments charged with code enforcement, or their designees, shall be responsible for the following:

1. Prior to being provided the authority to initiate enforcement proceedings under Section 8CC-3(a) of the Code, a Code Inspector shall be required to successfully complete a "Level 2" state and national criminal history record check, which shall be conducted by the Human Resources Department through the Florida Department of Law Enforcement and the Federal Bureau of Investigation at the request of Code Enforcement departments. This criminal history background check consists of a nationwide search of law enforcement databases and includes a review of federal, state and local criminal activity. The Level 2 criminal history records check requirements shall be included in all Code Inspector job announcements. Municipal employees shall also be required to successfully complete a Level 2 criminal history record check or its equivalent prior to being provided authority to initiate enforcement proceedings under Chapter 8CC of the Code. In addition, driving records shall be reviewed as a part of the initial criminal background check and subsequently on an annual basis.

2. Code Inspectors shall enforce the ordinances listed in Section 8CC-10 of the Code within the jurisdiction of their respective departments.

3. Upon the issuance of a CVN the issuing Department will transmit a copy of the CVN, or the required data, to the Code Enforcement division of the Miami-Dade County Finance Department, or its successor. Processes pertaining to the enforcement of the Code, including, but not limited to the enforcement language written on the CVN, all notices and due process requirements, shall be the responsibility of the Department. The Departments will collaborate with the Finance Department, or its successor, prior to the modification of the stated forms and notices to coordinate efficiencies among the enforcement and collection processes.

4. Named violators shall be notified on the CVN that: (a) all original civil penalty payments, continuing civil penalty payments and administrative hearing costs imposed pursuant to the provisions of Chapter 8CC shall be remitted directly to the Code Enforcement division of the Miami-Dade County Finance Department, or its successor, with a check made payable to "Miami-Dade County Finance", unless the case is the subject of a settlement agreement; and (b) all appeals of a CVN or Assessment of Continuing Penalties shall be sent directly to, and filed with, Code Enforcement, County Clerk Division.

5. For any CVN issued in which a date of correction has been given, or for any case in which a Hearing Officer has set a date of correction (see Sec. 8CC-4(f) of the Code), or in which the Department has extended the date of compliance by Agreement, a Code Inspector must prepare the required paperwork as set forth in Section 8CC-4(g) of the Code concerning compliance or non-compliance with the date of correction given in the CVN or the agreed upon

extended date of compliance and shall send a copy to Code Enforcement, County Clerk Division. The documents must indicate whether payment of the civil penalty has been made and whether the violation has been corrected by the applicable date of correction set forth in the CVN or by the Hearing Officer; and, if the violation has not been corrected or payment of the civil penalty has not been made, the documents required by Section 8CC-4(g) of the Code must so reflect and must set forth a request that a Hearing Officer issue an Order finding the violator guilty of a continuing violation and assess continuing penalties based upon the length of time the civil penalty remained unpaid and/or the violation continued to exist beyond the applicable date of compliance.

6. Departments shall be authorized to enter into agreements, extending dates of compliance with the Code, settling civil penalties and liens for amounts less than the maximum continuing penalty, costs and accrued interest. Such agreements shall contain the justification for settlement; the CVN number; the original penalty amount; the settlement amount; the amount collected (indicating full payment or partial payment); and, the signature of the department director, or designee, with notification to the Code Enforcement division of the Miami-Dade County Finance Department, or its successor, and to Code Enforcement, County Clerk Division. If any penalties have been made the subject of court actions, settlements must also include an approval from the County Attorney's Office. Unless otherwise specifically provided in the Code, the department will require the violator to remit the original amount of the ticket and any administrative hearing costs imposed by the Hearing Officer to the Code Enforcement division of the Miami-Dade County Finance Department, or its successor, and will collect the remainder of the settlement amount directly. The Departments shall provide to the Code Enforcement division of the Miami-Dade County Finance Department, or its successor, a written settlement memorandum which includes the following information: CVN number, settlement amount, amount received, date received, and record of collection number. If the settlement is based upon installment payments, the department shall provide the foregoing information for each payment until satisfaction of the agreement.

7. Whenever a violator has corrected a violation but failed to pay the civil penalty, or has failed to correct the violation and pay the civil penalty, or has paid the civil penalty but failed to correct the violation, then, upon the assessment of continuing penalties by a Hearing Officer, the named violator will be advised that if payment of the assessed penalties is not received, a lien shall be placed against the named violator's real and/or personal property unless the Department enters into a settlement agreement with the named violator. The departments shall notify the violator of Miami-Dade County's intent to file said lien against the violator's real or personal property when permitted by law. The Notice of Intent to Lien shall offer the violator an opportunity within a specified time period to avoid placement of the lien by executing a settlement agreement which provides for correction of the violation, payment of the original amount of the CVN, payment of continuing penalties, payment of administrative hearing costs where applicable, payment of all enforcement costs incurred by the department and accrued interest. A copy of the Notice of Intent to Lien shall be sent to mortgage holders and may be sent to insurance carriers, credit bureaus and any other parties holding a legal, equitable or beneficial interest in the property.

8. A lien shall be placed on a violator's real or personal property, except as provided for herein, if the violator does not respond within the prescribed time period to the Notice of Intent to Lien by correcting the violations and paying all penalties, costs and interest due, or executing a settlement agreement and complying with said agreement. The lien document shall make specific reference to the civil violation notice number and the issuing department. The lien shall be recorded in the Official Records of Miami-Dade County, and the Code Enforcement division of the Miami-Dade County Finance Department, or its successor, shall be notified of same.

9. Departments may offer a payment plan in negotiating settlements prior to or after placement of

liens upon written request of the violator and establishment of economic need or extenuating circumstances. In order to ensure the department's ability to collect all civil penalties, administrative hearing and enforcement costs and interest due, departments are required to file a lien where possible whenever the violator enters into a payment plan in response to a Notice of Intent to Lien.

10. Upon placement of a lien against real or personal properties, the individual or business entity holding a mortgage on the property shall be notified of the lien placement by the department. The department may notify credit bureaus, insurance carriers and other parties holding a legal, equitable or beneficial interest in the property of the placement of the lien.

11. The department may initiate collection proceedings including, but not limited to, referral to collection agencies and filing of civil suits as warranted in an effort to recover monies owed Miami-Dade County resulting from the issuance of CVNs.

12. For any lien placed against real property pursuant to Chapter 8CC or other provisions of the Code which remains unsatisfied one year from the date of recordation of the lien, the departments may notify the Office of the County Attorney and it shall be the responsibility of the County Attorney to initiate foreclosure actions in Circuit Court on non-homestead properties where foreclosure of the property is in the best interest of Miami-Dade County.

13. Upon final payment under a settlement agreement or full payment of a lien, all accrued interest and the costs of lien recordation and satisfaction, the departments shall record a Satisfaction of Lien in the Miami-Dade County public records. The Satisfaction of Lien document shall make specific reference to the civil violation notice number and the issuing department.

CODE ENFORCEMENT, COUNTY CLERK DIVISION RESPONSIBILITIES:

Code Enforcement, County Clerk Division shall be responsible for the following:

1. If payment has not been received for a Civil Violation Notice and/or the violation of the Code Section has not been corrected, Code Enforcement, County Clerk Division shall issue a notice to the violator (where no timely appeal has been filed), indicating the civil penalty, accrued penalty, and the total amount due within 30 days. The violator shall be further advised that if payment is not received or the violation is not corrected within 30 days, a lien shall be placed against the violator's real or personal property. Upon the assessment of continuing penalties by a Hearing Officer, a Notice of Assessment of Continuing Penalties will be sent to the named violator pursuant to Section 8CC-4(g) of the Code.

2. All requests for administrative hearings appealing either a CVN or an Assessment of Continuing Penalties shall be filed with Code Enforcement, County Clerk Division. Code Enforcement, County Clerk Division shall accept and process all requests for appeal that have been timely filed by the named violators such that it shall notify the issuing Department, and the Code Enforcement division of the Finance Department, or its successor, of each appeal that has been filed; and request that the issuing Department provide the next available date and location for which to conduct the hearing.

3. Upon the notification from the issuing Department of the available location and next available date to conduct the Administrative Hearing, the Code Enforcement, County Clerk Division shall select and assign a Hearing Officer to hear such appeal and shall send a Notice of Hearing to the named violator pursuant to Section 8CC-6(b).

4. The Code Enforcement, County Clerk Division shall maintain the docket of the administrative

hearings and shall provide same to the issuing Department confirming the appellant, date, location, and time that each appeal will be heard by the assigned Hearing Officer.

5. Upon a Hearing Officer finding a named violator guilty at the Administrative Hearing, a copy of the Hearing Officer's decision will be provided to the violator which shall include, the amount of time or specific date by which to correct the violation (if applicable) and the requirement to pay the civil penalty, hearing administrative costs, enforcement costs, assessed penalties (if applicable), and instructions that the total amount is to be paid to the Code Enforcement division of the Finance Department, or its successor. The violator shall be further advised that if payment of the assessed penalties is not received and the violation is not corrected within 30 days, a lien may be placed against the violator's real and/or personal property unless the Department enters into a settlement agreement with the named violator.

6. If a violator files a written request to reschedule the hearing and that written request is provided ten days or more prior to the administrative hearing date, Code Enforcement County Clerk Division shall advise the issuing department in writing of the request. The affected issuing department will then either agree or object to the continuance request. If the issuing department objects to the request, the Code Enforcement County Clerk Division shall forward the request to the standby Hearing Officer for ruling on the written request for rescheduling, and the Clerk shall notify the violator and the affected department of the Hearing Officer's ruling. If the standby Hearing Officer is not able to be reached or is unable to rule on the request prior to the scheduled hearing, the Code Enforcement Clerk Division shall notify the named violator that the request for rescheduling shall be presented and heard by the Hearing Officer at the scheduled hearing. The Code Enforcement County Clerk Division shall inform the violator that they have not been excused from the hearing and must appear or send a legally authorized representative on their behalf, including but not limited to a duly authorized power of attorney or attorney in fact.

   If the request for rescheduling is made less than 10 days before the hearing date, Code Enforcement County Clerk Division shall advise the issuing department in writing of the request. The affected issuing department will then either agree or object to the continuance request. If the affected issuing department objects to the request the Code Enforcement County Clerk Division shall inform the violator that request is pending and that the Hearing Officer will adjudicate the request at the scheduled hearing prior to the commencement of testimony and the presentation of evidence. The Code Enforcement County Clerk Division shall inform the violator that they have not been excused from the hearing and must appear or send a legally authorized representative on their behalf, including but not limited to a duly authorized power of attorney or attorney in fact.

7. Management information reports for administrative hearings appealing either a CVN or the Assessment of Continuing Penalties will be generated twice per month for distribution to Departments sequenced by department, name of alleged violator, date of citation issuance, date of request for appeal, Code Inspector Name, address of violation, mailing address for named violator, and citation number.

RESPONSIBILITIES OF THE CODE ENFORCEMENT DIVISION WITHIN MIAMI- DADE COUNTY FINANCE DEPARTMENT

1. The County Mayor, through the Code Enforcement Division of the Finance Department, or its successor, in collaboration with the issuing departments, shall develop and distribute to all issuing departments templates for all CVN notices to be issued, for the documents required by Section 8CC-4(g) concerning compliance and non-compliance with the date of correction given in the CVN or the agreed upon extended date of compliance, and for all other notices and records required to be sent to violators and to be maintained so as to ensure consistency and

reasonable uniformity in the code enforcement process. Departments that issue CVNs pursuant to Section 8CC of the Code will provide notification to the Finance Department, or its successor, of desired modifications to the format of all CVNs, related compliance or noncompliance documents, and all other notices and records required to be sent to named violators that pertain to the collection of fines, penalties, costs, liens, or related debt associated with the CVNs. Processes pertaining to the collection of debt, as provided herein, relating to fines, costs, penalties, and debt, as stated herein, shall be the responsibility of the Finance Department, or its successor.

2. Within five (5) days of issuance of a CVN to a violator, a letter will be issued to the violator indicating the amount of the civil penalty and the date by which the penalty is to be paid, advising the violator the date by which the violation must be corrected (if applicable), and providing the deadline date to request an administrative hearing in writing to appeal the issuance of the CVN.

3. Upon receipt of the Mandate from the Circuit Court pertaining to an appeal of a Hearing Officer's Final Order, where the County is the prevailing party, a letter will be issued to the violator indicating the amount of the civil penalty, administrative costs, any other applicable obligations, and enforcement costs that are due and payable within ten (10) days. The violator shall be further advised that if payment is not received or the violation is not corrected within ten (10) days, a lien shall be placed against the violator's real or personal property when permitted by law.

4. When appropriate, a Satisfaction of Lien will be filed in the Official Records of Miami-Dade County.

5. Management information reports will be generated monthly for distribution, sequenced by department and badge number, indicating citations paid, citations complied with, and citations not complied with. A report will be generated on an annual basis, by department, detailing outstanding violations for the previous year.

DEPARTMENT SUPPLEMENTAL COSTS:

Department supplemental costs shall mean certain administrative costs incurred by using departments while processing continuing violations and levying liens and expenses incurred in collection efforts. Department supplemental costs are not provided for under Chapter 8CC and can only be levied or collected if authorized by other statutory Code provisions or implementing order or by approval of the County Commission.

ADMINISTRATIVE REIMBURSEMENT:

In order to cover the actual administrative expenses incurred by the County Clerk Division in supporting the Code Enforcement system, the Code Enforcement division of the Finance Department, or its successor, shall remit to the County Clerk its administrative hearing costs that are assessed by a Hearing Officer. The expenses incurred by the Code Enforcement Division of the Miami-Dade County Finance Department, or its successor, as well as any expenses incurred by the County Clerk, not fully reimbursed by its administrative hearing costs, will be covered from remaining code enforcement collections. Code enforcement departments shall be further entitled to compensation for costs and expenses pursuant to 8CC-6(l) and are not precluded from further assessment of such costs. The manner and timing of cost allocations and the subsequent distribution of remaining funds to Miami-Dade County code enforcement departments shall be determined by the Miami-Dade County Finance Department, or its successor, Code Enforcement Departments, the County Clerk and the Budget Director, but shall in any event occur on not less than an annual basis. The continuing penalties, enforcement costs, and departmental supplemental costs collected shall be distributed to issuing

departments on a quarterly basis.

CLOSURE OF CASES:

Cases may be closed in the following circumstances:

1. Where the civil penalty is paid and the violation corrected (if applicable).

2. Where the department has settled with the violator, pursuant to this Implementing Order.

3. Where the department voids or administratively closes the CVN.

4. Where the Miami-Dade County Finance Department, or its successor, has been delegated the authority by the issuing department and administratively dismisses the CVN.

5. Where the Hearing Officer finds the named violator not guilty and no appeal is taken by the County or issuing municipality.
6. Where there is a final settlement, judgment, order or other resolution of a case by a court of competent jurisdiction.

This Implementing Order is hereby submitted to the Board of County Commissioners of Miami- Dade County, Florida.

Approved by the County Attorney
as to form and legal sufficiency _____

ORDINANCE NO. 2023-13

AN ORDINANCE OF ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, ESTABLISHING PROCEDURES FOR THE RELEASE OR REDUCTION OF CODE ENFORCEMENT LIENS; MAKING FINDINGS OF FACT; PROVIDING FOR DEFINITIONS; PROVIDING FOR SATISFACTION OR RELEASE OF LIENS; ESTABLISHING MINIMUM APPLICATION REQUIREMENTS FOR REDUCTION OR FORGIVENESS OF LIENS; PROVIDING FOR APPLICATION FEES; PROVIDING FOR ELIGIBILITY; PROVIDING FOR REVIEW AND PROCESSING OF APPLICATIONS; PROVIDING FOR CODE ENFORCEMENT BODY HEARING, REVIEW, AND RECOMMENDATION; PROVIDING FOR PRESENTATION TO THE BOARD AND BOARD ACTION; PROVIDING FOR PAYMENT; PROVIDING FOR EFFECT OF DENIAL OF APPLICATION; PROVIDING FOR NO RIGHT OF APPEAL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to the applicable code enforcement ordinances, St. Johns County Code enforcement officers issue alerts of violations or written warnings to violators advising of the circumstances deemed to be violations of specific County code or ordinance and providing a reasonable time to correct the violation; and

WHEREAS, in many instances, the violator fails to comply with written requirements for corrective action as stated in the alert of violation or written warning, which results in the issuance of a citation or the matter being scheduled for hearing before the applicable enforcement board or special magistrate; and

WHEREAS, a finding of a code or ordinance violation may result in an order of fines, penalties, and/or costs being entered against the violator by the applicable enforcement board or special magistrate, a certified copy of which may be recorded and shall constitute a lien against the real and personal property owned by the violator; and

WHEREAS, in the case of unsafe buildings or structures, for example, St. Johns County may be authorized to repair or demolish the structure and to remove the demolition debris from the property, which may necessitate hiring a local contractor, the cost of which is imposed as a lien against the subject property; and

WHEREAS, under St. Johns County Ordinance No. 2000-48, unsafe building abatement liens, if not paid in full within one (1) year after the recordation of a certified copy of the lien order, accrue at eight percent (8%) per annum commencing from the date of recording of the lien order until payment in full, including accrued interest; and

WHEREAS, in many instances, after the imposition of a code enforcement lien, the subject property becomes subject to tax deed sale or third-party foreclosure without having satisfied the lien, and the new property owner after tax deed sale or foreclosure may request a reduction or

forgiveness of the lien on the grounds of not having caused the original violations on the property; and

WHEREAS, in other instances, the owner or violator, or a contract purchaser, may seek to satisfy, or request the reduction or forgiveness of, a lien as part of the sale or other disposition of the subject property in order to return the property to beneficial, tax-generating use; and

WHEREAS, Section 162.09(3), Florida Statutes, provides that code enforcement liens run in favor of local governing body, and the local governing body may execute a satisfaction or release of any code enforcement lien; and

WHEREAS, Section 162.09(2)(c), Florida Statutes, provides that a code enforcement board, or special magistrate designated by the County pursuant to Section 162.03(2), Florida Statutes, may reduce a code enforcement fine before the order imposing such fine has been recorded; and

WHEREAS, Attorney General Opinion 2002-62 opines that code enforcement boards are not authorized to reduce fines after code enforcement orders have been recorded in the public records, and that only the local governing body is vested with the authority to compromise, satisfy, or release liens after such liens have been recorded; and

WHEREAS, Attorney General Opinion 2001-09 and Attorney General Opinion 99-03 conclude that the local governing body may delegate its authority to execute satisfactions or releases of code enforcement liens, so long as such delegation does not result in a complete divestiture of such liens by the local governing body; and

WHEREAS, it is in the County's best interest to delegate requests for reduction or satisfaction of code enforcement liens to the applicable code enforcement body, before which an applicant may present any and all evidence and extenuating circumstances in support of the request and which may issue a recommendation to the Board of County Commissioner for final action; and

WHEREAS, pursuant to Section 125.01, Florida Statutes, the County, through its home rule powers, shall have the power to carry on county government to the extent not inconsistent with general or special law.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. Findings of Fact. The above recitals are true and correct and incorporated by reference into the body of this Ordinance and adopted as findings of fact.

Section 2. Definitions. When used in this Ordinance, the following words and terms shall have the meanings set forth below:

A. "Board" shall mean the Board of County Commissioners of St. Johns County, Florida.

B. "Code Enforcement Body" shall mean, depending on the context, (i) the Construction Board of Adjustments and Appeal provided for in St. Johns County Ordinance Nos. 2000-48 and 2022-33, as each may be amended from time to time; (ii) the Contractors Review Board provided for in St. Johns County Ordinance No. 2002-48, as may be amended from time to time; or (iii) a Special Magistrate appointed by the Board pursuant to St. Johns County Ordinance No. 2007-21, as may be amended from time to time.

C. "County" shall mean, depending on the context, either (i) the unincorporated area of St. Johns County, Florida, or (ii) the government of St. Johns County, Florida, acting through the Board.

D. "County Administrator" shall mean the County's chief administrative officer, or designee.

Section 3. Satisfaction and Release of Lien. Where a certified copy of an order imposing a fine, penalty, or costs for a code enforcement violation has been recorded in the public records and has become a lien against real or personal property, a person may apply for a satisfaction or release of such lien as follows:

A. Upon payment of the full amount of the lien resulting from of a code enforcement action, including any and all interest accrued through the date of payment, the County Administrator is hereby authorized to execute and record, at the person's expense, a satisfaction or release of lien. The Board may establish by resolution a fee to be paid in advance by any party submitting such a request for satisfaction or release of lien, which such fee shall include the actual costs incurred by the County in processing and reviewing such a request.

B. Upon request for a reduction or forgiveness of a lien resulting from a code enforcement action, the person shall submit a written application to the County Administrator as provided in Section 4, below, for consideration in accordance with this Ordinance.

Section 4. Minimum Application Requirements. The County Administrator shall prescribe an application form for any person requesting reduction or forgiveness of a lien. The application shall be executed under oath and sworn to in the presence of a notary public and, among other things, shall require the applicant to provide:

A. The mailing address, phone number, and email address for the applicant;

B. The Code Enforcement Body that entered the order imposing a lien on the property and the case number;

C. A copy of the order imposing a lien on the property;

D. The address or brief legal description, or both, of the property upon which the violation occurred;

E. The address or brief legal description, or both, of all real property owned by the applicant in the State of Florida;

F. The date upon which the subject property was brought into compliance;

G. The reasons, if any, compliance was not obtained prior to the date the lien was recorded;

H. The factual basis upon which the applicant believes the application for reduction or forgiveness of the lien should be granted;

I. The specific terms upon which the applicant believes a satisfaction or release of lien should be granted;

J. The amount of the reduction of the lien requested by the applicant;

K. Information concerning any outstanding mortgages on the property subject to the lien, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default;

L. Any other information, documents, or evidence which support, or which the applicant deems pertinent to, the request, including but not limited to the circumstances that exist which would warrant the reduction or forgiveness of the lien.

M. A certification that all ad valorem property taxes, special assessments, county utility fees, and other government-imposed liens against the subject property have been paid;

N. A certification that the applicant is not personally indebted to the County for any reason; and

O. A certification that all county code violations on the subject property have been corrected under necessary permits issued therefor.

P. A waiver of the applicant's right, if any, to seek judicial review of the Board's discretionary decision whether or not to reduce or forgive the lien and, if so, by how much.

Section 5. Application Fee. The Board may establish by resolution a fee to be paid in advance by any party submitting an application for reduction or forgiveness of a lien pursuant to Section 4, above. Such fee shall be non-refundable, without regard to the final disposition of the application, and shall be due each time an application is submitted, including for the same lien.

Section 6. Eligibility. No application for reduction or forgiveness of a lien may be granted if:

A. The applicant purchased the property after the date of recording of the lien was recorded. In such cases, the lien should have been identified and satisfied at the time of purchase of the property;

B. A title insurance policy was issued at the time the property was purchased and the title insurance policy failed to identify or consider the lien. In such cases, the lien should have been discovered by the title insurer and reduction or forgiveness would serve to indemnify the title insurer against losses due to negligent examination of title;

C. The Board has previously reduced the amount of the lien, without regard to whether the current applicant was the recipient of the previous reduction or not;

D. Either the lien or the subject property is the subject of any pending foreclosure proceeding filed by the County or other county enforcement proceeding;

E. Any ad valorem property taxes, special assessments, county utility fees, or other government-imposed liens against the subject property are outstanding;

F. The applicant is personally indebted to the County for any reason; or

G. Any county code violations on the subject property have not been corrected under necessary permits issued therefor.

Section 7. Review and Processing of Application.

A. Upon receipt of a complete and sufficient application for reduction or forgiveness of lien, the County Administrator shall confirm that all ad valorem property taxes, special assessments, county utility fees, and other government-imposed liens against the subject property have been paid; that the applicant is not personally indebted to the County for any reason; and that all county code violations on the subject property have been corrected under necessary permits issued therefor. Upon confirmation, the County Administrator shall place the application upon the agenda of the next available meeting of the applicable Code Enforcement Body.

B. Upon presenting the County Administrator with a bona fide written contract for purchase and sale of property subject to a lien and proof of closing date prior to the next available meeting of the applicable Code Enforcement Body, the County Administrator shall place the application on the agenda for the next available regular meeting of the Board without first seeking the recommendation of the applicable Code Enforcement Body.

C. If a property subject to a lien is the subject of a pending tax deed sale prior to the next available meeting of the applicable Code Enforcement Body, and if a party submits a sworn statement to the County Administrator that the party intends to submit a bid to purchase the property at the tax deed sale, the County Administrator shall place the application on the agenda for the next available regular meeting of the Board without first seeking the recommendation of the applicable Code Enforcement Body.

Section 8. Code Enforcement Body Hearing; Review and Recommendation.

A. At the hearing, the Code Enforcement Body shall review and consider the sworn application for reduction or forgiveness of the lien and any documents or evidence submitted in support thereof, provide the applicant with an opportunity to address the authority regarding the application, and take the testimony of other interested parties, including but not limited to county staff.

B. Upon review of the application and any testimony presented, the Code Enforcement Body shall recommend to the Board approval, approval with conditions, or denial of the application for reduction or forgiveness of lien. The burden of proof shall be on the applicant to show cause for reducing or forgiving the lien. The Code Enforcement Body, in determining its recommendation, may consider the following factors, as may be applicable:

i. The nature and gravity of the violation;

ii. Any actions taken by the applicant to correct the violation, including any actual costs expended by the applicant, along with supporting documentation;

iii. Any costs incurred by the County to abate the violation and prosecute the case, including administrative and overhead expenditures;

iv. The length of time the subject property was in violation prior to the lien being placed;

v. The time it took for the subject property to come into compliance;

vi. The accrued amount of the lien, as well as the market value of the property;

vii. Any previous or subsequent code violations on the subject property;

viii. Whether there is a prior recorded mortgage on the subject property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such magnitude that it would not be practical for the County to institute a lien foreclosure action;

ix. Consideration for the future or proposed use of the subject property for public purpose;

x. The number and status of all other properties in the County owned by the applicant, and how many active code enforcement cases or code enforcement liens;

xi. Whether the applicant requesting the reduction owned the property at the time the lien was placed;

xii. Any financial hardship; and

xiii. Any other mitigating circumstance that may warrant the reduction or forgiveness of the lien.

C. The Code Enforcement Body shall notify the applicant of its recommendation in writing by certified mail. No written findings by the Code Enforcement Body are required.

Section 9. Presentation to Board; Board Action.

A. After a recommendation has been rendered by the Code Enforcement Body, the County Administrator shall place the application for reduction or forgiveness of lien upon the agenda of the next available regular meeting of the Board for its consideration and final determination. The Board may take action solely based upon the sworn application and the recommendation of the Code Enforcement Body or may, in its discretion, provide the applicant with an opportunity to address the Board regarding the application and take testimony of other interested parties, including but not limited to county staff. The Board may accept, modify, or reject the recommendations of the Code Enforcement Body and may reduce the amount of the lien, waive the full amount of the lien, or continue the lien in its full amount and approve, approve with conditions, or deny the application for reduction or forgiveness of lien. No written findings by the Board are required.

B. If the Board approves the application for reduction or forgiveness of the lien and the approval is conditioned upon the applicant paying a reduced amount, or any other condition, the satisfaction or release of lien shall not be prepared or recorded until any conditions placed by the Board have been satisfied. The applicant shall have thirty (30) days in which to comply with any such conditions. Failure to timely comply shall result in the automatic denial of the application for reduction or forgiveness of lien.

Section 10. Payment. Board approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within thirty (30) days of the Board approval date. Upon timely payment in full of the reduced amount, the County Administrator is authorized to execute and record, at the applicant's expense, a satisfaction or release of lien. If the reduced amount is not paid in full within thirty (30) days, the approval of the reduction shall automatically become null and void and the full amount of the lien shall remain due and payable.

Section 11. Effect of Denial. If the application for reduction or forgiveness of the lien is denied, or if the application is automatically denied due to the failure of the applicant to comply with any condition imposed by the Board or to timely pay the reduced amount, the applicant shall thereafter be barred from applying for a subsequent reduction or forgiveness of the lien for a period of one (1) year from the date of denial. During the one-year period, the lien may only be satisfied and released upon full payment of the lien, including accrued interest.

Section 12. No Right of Appeal. A lien is an asset of the County. Any decision or action by the Board on an application for reduction or forgiveness under this Ordinance is strictly discretionary, not quasi-judicial, and shall not constitute a final administrative order for purposes

of Section 162.11, Florida Statues. An applicant has no right to the requested reduction or forgiveness of a fine, penalty, costs, and/or lien. Due process, including the opportunity for appeal, was provided the property owner/violator through the proceedings before the applicable Code Enforcement Body, and an application for reduction or forgiveness a lien under this Ordinance shall not constitute, or be used for purposes of, rehearing or appeal of the underlying code enforcement action or the order imposing the fine, penalty, or costs. The procedures in this Ordinance are not intended, and shall not be deemed, to create additional substantive or procedural due process rights.

Section 13. Severability. It is the intent of the Board of County Commissioners of St. Johns County, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, subsections, sentences, clauses, phrases, or provision of this Ordinance.

Section 14. Effective Date. This Ordinance shall take effect upon its being filed with the Department of State of Florida.

PASSED AND ENACTED by the Board of County Commissioners of St. Johns County, Florida, this 4th day of April, 2023.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By: _____
Christian Whitehurst, Chair

ATTEST: Brandon J. Patty,
Clerk of the Circuit Court & Comptroller

By: Crystal Smith
Deputy Clerk

Rendition Date APR 04 2023

Effective Date: APR 05 2023

LOCALiQ

FLORIDA

PO Box 631244 Cincinnati, OH 45263-1244

PROOF OF PUBLICATION

Minutes And Records
CLERK OF THE COURTS
Minutes And Records
500 San Sebastian View

Saint Augustine FL 32084

STATE OF FLORIDA, COUNTY OF ST JOHNS

The St Augustine Record, a daily newspaper published in St Johns County, Florida; and of general circulation in St Johns County; and personal knowledge of the facts herein state and that the notice hereto annexed was Published in said newspapers in the issues dated or by publication on the newspaper's website, if authorized, on:

03/21/2023

and that the fees charged are legal.
Sworn to and subscribed before on 03/21/2023

Legal Clerk

Notary, State of WI, County of Brown

My commision expires 9.19.25

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Please do not use this form for payment remittance.

VICKY FELTY
Notary Public
State of Wisconsin

NOTICE OF PUBLIC HEARING
OF THE
ST. JOHNS COUNTY BOARD OF
COUNTY COMMISSIONERS

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of St. Johns County, Florida, will hold a public hearing to consider adoption of the following ordinance at a regular meeting on Tuesday, April 4, 2023, at 9:00 a.m. in the County Auditorium at the County Administration Building, 500 San Sebastian View, St. Augustine, Florida:

AN ORDINANCE OF ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, ESTABLISHING PROCEDURES FOR THE RELEASE OR REDUCTION OF CODE ENFORCEMENT LIENS; MAKING FINDINGS OF FACT; PROVIDING FOR DEFINITIONS; PROVIDING FOR SATISFACTION OR RELEASE OF LIENS; ESTABLISHING MINIMUM APPLICATION REQUIREMENTS FOR REDUCTION OR FORGIVENESS OF LIENS; PROVIDING FOR APPLICATION FEES; PROVIDING FOR ELIGIBILITY; PROVIDING FOR REVIEW AND PROCESSING OF APPLICATIONS; PROVIDING FOR CODE ENFORCEMENT BODY HEARING, REVIEW, AND RECOMMENDATION; PROVIDING FOR PRESENTATION TO THE BOARD AND BOARD ACTION; PROVIDING FOR PAYMENT; PROVIDING FOR EFFECT OF DENIAL OF APPLICATION; PROVIDING FOR NO RIGHT OF APPEAL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The proposed ordinance is on file in the office of the Clerk of the Board of County Commissioners at the County Administration Building, 500 San Sebastian View, St. Augustine, Florida, and may be examined by interested parties prior to the said public hearing. Please take note that the proposed ordinance is subject to revision prior to hearing or adoption. All parties having any interest in said ordinance will be afforded an opportunity to be heard at the public hearing.

If a person decides to appeal any decision made with respect to any matter considered at the hearing, such person will need a record of the proceedings, and for such purposes he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

NOTICE TO PERSONS NEEDING SPECIAL ACCOMMODATIONS AND TO ALL HEARING IMPAIRED PERSONS: In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact ADA Coordinator, at (904-209-0400 or at the Facilities Management Department, 2416 Dobbs Road, St. Augustine, FL 32086. For hearing impaired individuals: Florida Relay Service: 1-800-955-8770, no later than 5 days prior to the date of this hearing.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA
BRANDON J. PATTY, ITS CLERK
By: Yvonne King, Deputy Clerk

FLORIDA DEPARTMENT of STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

FILED APR 05 2023
ST. JOHNS COUNTY
CLERK OF COURT
BY: Crystal Smith
DEPUTY CLERK

April 6, 2023

Honorable Brandon Patty
Clerk of Courts
St. Johns County
500 San Sebastian View
St. Augustine, FL 32084

Attention: Crystal Smith

Dear Honorable Brandon Patty,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of St. Johns Ordinance No. 2023-13, which was filed in this office on April 5, 2023.

Sincerely,

Anya Owens
Program Administrator

ACO/wlh

Town of Fort Myers Beach
Agenda Item Summary Blue Sheet Number: **2012-009**

1. Requested Motion: **Meeting Date: Feb 6, 2012**

Approve Release of Lien relating to Code Enforcement Case No. 2001-1045 for property located at 136 Primo Drive, Fort Myers Beach, FL upon payment of outstanding prosecution costs plus interest in the amount of$668.55.

Why the action is necessary: The Town recorded a Code Enforcement Lien with respect to code violations on property located at 136 Primo Drive, Fort Myers Beach, FL. The property owner, at the time the violations occurred and when the lien was recorded was William Pender. The violations were abated prior to any fine accruing, but the prosecution costs in the amount of $285.00 were never paid. The Code Enforcement statute (Chapter 162, Florida Statutes) provides that only the governing body can authorize release of a code enforcement lien. Code enforcement liens accrue interest in the same manner as court judgments. The amount of interest that has accrued since December 19, 2001 is $383.55 making the total amount due to satisfy the lien $668.55.

What the action accomplishes: Authorizes the Mayor and Town Clerk to execute a Release of Lien.

2. Agenda:

_X_ Consent
_ Administrative

3. Requirement/Purpose:

Resolution
_ Ordinance
X_ Other

4. Submitter of Information:

_ Council
Town Staff
X_ Town Attorney

5. Background: On December 19, 2001, the Town recorded a Code Enforcement Lien against property located at 136 Primo Drive, Fort Myers Beach, FL. The violations were abated prior to any fines being imposed, but the property owner failed to pay the $285.00 prosecutorial costs, so a lien was filed against the property in the amount of $285.00. The amount of statutory interest that has accrued to date is $383.55, making the total amount due to satisfy the lien $668.55. A copy of the Code Enforcement Lien is attached. The subject property is in compliance and currently under contract to be sold. The attorney who is handling the closing is requesting a Release of Lien to clear title to the property.

6. Alternative Action: Do not release the lien.

7. Management Recommendations: Approve execution of a Release the Lien for the subject property.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk

9. Council Action:

_ Approved _ Denied _Deferred _Other

A

INSTR # 5311380
OR BK 03542 PG 3808
RECORDED 12/19/01 08:32 AM
CHARLIE GREEN CLERK OF COURT
LEE COUNTY
RECORDING FEE 19.50
DEPUTY CLERK B Thompson

PARCEL #: 19-46-24-W4.0060H.0240

THIS SPACE FOR RECORDING

BEFORE THE HEARING EXAMINER OF
LEE COUNTY, FLORIDA IN AND FOR
THE TOWN OF FORT MYERS BEACH

TOWN OF FORT MYERS BEACH, FLORIDA
Petitioner,
vs.
WILLIAM PENDER
Respondent
/

CASE NO.: 2001-1045

CODE ENFORCEMENT ORDER

THIS CASE was first heard by the undersigned Lee County Hearing Examiner at a public hearing on October 9, 2001, after which an Order was entered which found that a violation existed on the subject property located, as reported by the Petitioner, at 136 Primo, and required the Respondent, WILLIAM PENDER, as the responsible person or entity, to complete certain actions that would abate the violation by a date certain or face the imposition of a specified fine.

On November 9, 2001, the Hearing Examiner received competent evidence that the violation had been abated but the prosecution costs were not paid, and therefore finds and decides:

1. That the Respondent complied with the above-noted Order by removing the inoperable/unregistered vehicle, car seat, weeds, wood, and other debris; and

2. That the violation on the subject property is abated; and

3. That the Respondent has not paid the prosecution costs in the amount of **$285.00**, which shall become a lien on the subject property upon recording in the Public Records of Lee County.

Respondent is advised that because the abatement of the violation occurred after the time allowed in the initial Notice Of Code Violation, any similar violation in the future by the same property owner on property located in Lee County may be treated as a "repeat offense" for fine assessment purposes.

Upon recording in the public records, this Order shall constitute a lien for the fine amount against all real and personal property of Respondent, including but not limited to the property described on the attached exhibit, and subsequent foreclosure of such lien may result in the loss of such property. The prosecution costs awarded herein may also become a lien against Respondent, upon recording, pursuant to Chapter 162, Florida Statutes.

DONE AND ORDERED at 1500 Monroe Street, Second Floor, Fort Myers, Lee County, Florida on **November 9, 2001.**

SALVATORE TERRITO
Hearing Examiner
Lee County, Florida in and for
the Town of Fort Myers Beach

A copy of this Order has been furnished by regular U.S. Mail to the Respondent, and to Dick Roosa, Esquire, Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers Beach, FL 33931; and by interoffice mail or hand delivery to the Lee County Development Services Division (Code Enforcement), on November 13, 2001.

APPEAL: An aggrieved party may appeal an Order of the Hearing Examiner of Lee County to the Circuit Court. The appeal shall be limited to appellate review of the record created before the Hearing Examiner. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

oac.cnpd.11/9/01

FOR RECORDING ONLY

I hereby certify that as an agent of the Lee County Development Services Division, the Office to whose custody the original is entrusted, this is a true and correct copy of the document maintained on file in the Code Enforcement records of Lee County, Florida.

Fred Roenick
Code Enforcement Officer
Development Services Division

Please return to: Richard Roosa, Attorney
Town of Fort Myers Beach
2523 Estero Blvd.
Fort Myers Beach, FL 33932

2001-1045

This Instrument Prepared by:
Marilyn W. Miller
Fowler White Boggs
2235 First Street
Fort Myers, FL 33901

RELEASE OF LIEN

KNOW ALL MEN BY THESE PRESENTS THAT the TOWN OF FORT MYERS BEACH, FLORIDA, in consideration of the payment of Nine Hundred Seventy and no/100 ($668.55) Dollars, does hereby release the real property described below from those certain Code Enforcement Lien filed in Fort Myers Beach Code Enforcement Case No. 2001-1045 against William Pender recorded in Official Records Book 3542, Pages 3808-3810 in the Public Records of Lee County, Florida, and hereby consents that the same shall be released of record against the following described real property:

Lot 24, Block H, VENETIAN GARDENS, according to the plat thereof as recorded in Plat Book 6, Page 70, Public Records of Lee County, Florida

IN WITNESS WHEREOF, the Town of Fort Myers Beach, Florida has caused these presents to be signed in its name by its Mayor and attested by its Clerk this _____ day of _____, 2012.

ATTEST:

_____ By:_____
Michelle Mayher Larry Kiker, Mayor
Town Clerk

STATE OF FLORIDA
COUNTY OF LEE

On this day personally appeared before me Larry Kiker, Mayor of the Town of Fort Myers Beach and Michelle Mayher, Town Clerk of the Town of Fort Myers Beach to me well known to be the persons described herein and who executed the foregoing instrument and severally acknowledged before me that they executed the same for the purposes therein expressed as the act and deed of said municipal corporation.

_____
My Commission Expires: Notary Public, State of Florida