



COUNCIL AGENDA STATEMENT

Meeting Date: September 12, 2023

To: Honorable Mayor and City Councilmembers

From: Steven Williams, City Attorney

Agenda Item: Authorization to initiate litigation against R&R PROGRESSIVE LLC and their property, 58876 Overseas Highway, Marathon, Florida 33050, to seek compliance with the City Code and enforce the lien(s) arising from code compliance case number C2012-0363.

BACKGROUND & JUSTIFICATION:

The property, 58876 Overseas Highway, Marathon, Florida 33050, was the subject of a code compliance case for violation of Sections 103.18 “Abandoned Vehicles”; 103.19 “Abandoned Watercraft”; 22-20 “Premises to be Cleaned of Debris and Noxious Material”; 22-24 “Lot Mowing and Maintenance”; and 103.15(A), Table 103.51 “Standards” of the City of Marathon Code. The violations were based on inspections that revealed that the property contained unlicensed/unregistered watercraft and vehicles, including trailers, that the property was an overgrown lot with high grass, weeds, trash and debris, and that the property was being used as a junk, salvage, or recycled metal yard which is not an allowed use within a residential zoning district. The accrued fines as of June 22, 2023, total \$244,500 and continue to accrue at \$100 per day plus a \$300 administrative cost for the hearing on July 12, 2017, \$300 administrative cost for the hearing on December 17, 2020 (Transfer of Lien to New Owner) and \$300 administrative cost for the hearing on May 19, 2022 (Transfer of Lien to New Owner).

In July 2012, a Notice of Violation was sent to the at the time owner, Donald K. Raper. After continuously working with Donald Raper and inspecting the property over a span of four (4) years and compliance still not being met, a Notice of Unsafe Building was sent to Donald Raper on July 14, 2016. An Amended Notice of Violation was sent to the at the time owner, Donald K. Raper, on September 2, 2016 setting a Hearing date before the Code Compliance Board on October 12, 2016. At the hearing on October 12, 2016, the at the time owner was present and the Code Compliance Board found that the property remained in violation of Sections 103.18, 109.19, 20-20 and 103.15(A), Table 103.15.1 of the City of Marathon Code and set a compliance date of December 11, 2016. If the violation was not resolved, the Code Compliance Board ordered a \$100 per day fine to accrue for each day the violation continued retroactive to the hearing date of October 12, 2016.

Upon further investigation and inspection(s), the Property remained non-compliant with the Findings of Fact, Conclusions of Law and Order and a Notice of Hearing Non-Compliance was sent to the at the time owner, Donald K. Raper, which set a hearing date of July 12, 2017. At the Hearing on July 12, 2017, the at the time owner, Donald K. Raper was present, and the Code Compliance Board found that the property remained in violation of the Board’s previous Order and that the \$100 per day fine had started to accrue on October 12, 2016, and would continue to accrue until the property is brought into compliance. The City’s lien was recorded on July 19, 2017.

On June 11, 2019, a Notice of Lis Pendens was filed by The Bank of New York Mellon FKA The Bank of New York, As Trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2006-OA22, Mortgage Pass-Through Certificates, Serles 2006-OA22, on the property 58876 Overseas Highway, Marathon, FL 33050. The case number for the foreclosure action was 2019-CA-152-M. The City of Marathon filed an Answer in the matter on August 12, 2019. An Order to Dismiss Action Without Prejudice and Dissolve Lis Pendens was entered in the case on September 22, 2020.

On August 31, 2020, a Warranty Deed conveyed the property from Donald K. Raper to 302 South Street, LLC. Pursuant to the change in ownership, a Hearing was set for December 17, 2020, in order to transfer the imposition of the lien to the new owner. On January 11, 2021, a Lien/ Final Order and Order Authorizing a New Final Order to Transfer Imposition of Lien to New Owner(s) of Record was signed by the City of Marathon Code Compliance Special Magistrate.

On January 11, 2022, a Quit Claim Deed conveyed the property from 302 South Street, LLC to the current owner R&R Progressive, LLC. Pursuant to the change in ownership, a Notice of Hearing for May 19, 2022, was sent via Certified Mail to the current owner R&R Progressive LLC and registered agent. In addition, the property was also posted with the hearing date and an Affidavit of Posting/Notice of Hearing was signed by a Code Compliance Officer. At the hearing on May 19, 2022, the Respondents failed to appear, and the Code Compliance Special Magistrate ordered that the imposition of the lien be transferred to the new owners of record and a \$300 Administrative Fee. On June 3, 2022, the Code Compliance Special Magistrate signed a Final Order to Transfer Imposition of Lien to New Owner(s) of Record and Order Authorizing a New Final Order to Transfer Imposition of Lien to New Owner(s) of Record.

The Monroe County Property Appraiser lists the Just Market Value for 58876 Overseas Highway, Marathon, Florida 33050, as \$275,672. The property is not homesteaded and does not appear to have a pending foreclosure action. There are two (2) potentially interested parties; (1) Lindback Construction Co., who has a Mechanic's Lien recorded on February 12, 2016, against at the time owner Donald K. Raper; (2) Sachem Capital Corp., who has a Mortgage and Security Agreement recorded on September 29, 2020, against at the time owner 302 South Street, LLC.

Pursuant to the City of Marathon's Code of Ordinances Section 10-6(i):

“After three (3) months from the date of filing of any such notice of assessment, which remains unpaid, the City may foreclose or otherwise execute on the lien. Alternatively, the City may sue to recover a money judgment for the amount of the lien plus accrued interest. Such liens shall be superior and paramount to the interest in such parcel or property of any owner, lessee, tenant, mortgagee or other person except the lien of State, County and City taxes, and providing for the exemption of a super priority bank foreclosure, and shall be on parity with the lien of such State, County and City taxes.”

Further, under Florida Statutes Chapter 162, the City has the legal options of injunctive relief, foreclosure, writ of execution, and money judgment.

CONSISTENCY CHECKLIST:

Yes

No

- 1. Comprehensive Plan
- 2. Other _____
- 3. Not Applicable

_____	_____
_____	_____
<u> X </u>	_____

FISCAL NOTE:

RECOMMENDATION:
Approval of Litigation



COUNCIL AGENDA STATEMENT

Meeting Date: September 12, 2023
To: Honorable Mayor and City Councilmembers
From: Steven Williams, City Attorney

Agenda Item: Authorization to initiate litigation against HYDER BROWNLOW LIVING TRUST AGREEMENT 9/20/2012 and their property, 1000 97th Street, Marathon, Florida 33050, to enforce the lien(s) arising from code compliance case number C2018-0028.

BACKGROUND & JUSTIFICATION:

The property, 1000 97th Street, Marathon, Florida, 33050, was the subject of a code compliance case for violation of Section 6-52(a)(1)b. of the City of Marathon Code for repairs to an existing dock without the benefit of a permit. An after the fact permit was not closed until February 22, 2023. The accrued fines total \$157,000 plus a \$300 administrative cost for the violation hearing and \$300 administrative cost for the non-compliance hearing.

In January 2018, a Code Compliance Officer determined that repairs had been made to an existing dock without the benefit of a permit in violation of Section 6-52(a)(1)b. of the City of Marathon Code. On February 2, 2018, a Notice of Violation was sent to the owner, which outlined the corrective measures needed to bring the property into compliance. There was communication between the Code Compliance Officer, owner and potential contractor, however, after a reasonable amount of time and no further communication nor compliance, a Notice of Hearing was sent to the owner.

At the hearing on September 19, 2018, the owner was not present, however, a contractor was present and spoke on behalf of the owner. The Findings of Fact, Conclusions of Law and Order found the owner to be in violation of Section 6-52(a)(1)b. and ordered compliance within forty-five (45) days starting from September 20, 2018, with a \$100 per day accruing fine in the event that the violation was not corrected. The City's lien was recorded on October 11, 2018.

Upon further investigation and inspection, the Property remained not compliant and a Notice of Hearing on non-compliance was sent to the owner with a hearing date of January 16, 2019. A copy of the Affidavit of Non-Compliance was recorded on December 26, 2018. At the hearing on January 16, 2019, the owner was not present, and the Special Magistrate found that the Property failed to comply with the Findings of Fact, Conclusions of Law, and Order and ordered a \$100 fine per day for each day the violation continued past the date initially set for compliance (November 4, 2018). The City's lien was recorded on February 12, 2019. A \$300 administrative fee was assessed for both the initial violation hearing and the hearing of non-compliance.

An after the fact Building Permit was ultimately obtained, however, was not closed until February 22, 2023. The code case remains open for failure to pay the outstanding fines and costs.

The Monroe County Property Appraiser lists the Just Market Value for 1000 97th Street, Marathon, Florida 33050, as \$1,413,675.00. The property is not homesteaded and does not appear to have a mortgage or pending foreclosure action.

Pursuant to the City of Marathon’s Code of Ordinances Section 10-6(i):

“After three (3) months from the date of filing of any such notice of assessment, which remains unpaid, the City may foreclose or otherwise execute on the lien. Alternatively, the City may sue to recover a money judgment for the amount of the lien plus accrued interest. Such liens shall be superior and paramount to the interest in such parcel or property of any owner, lessee, tenant, mortgagee or other person except the lien of State, County and City taxes, and providing for the exemption of a super priority bank foreclosure, and shall be on parity with the lien of such State, County and City taxes.”

Further, under Florida Statute 162.09, which is adopted in the City of Marathon’s Code of Ordinances Chapter 10, the City has the legal options of foreclosure, writ of execution, and money judgment.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other _____	_____	_____
3. Not Applicable	<u> X </u>	_____

FISCAL NOTE:

RECOMMENDATION:

Approval of Litigation