

Meeting Date: 3-10-15

Agenda Item 3

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

SHORT TITLE OR MOTION: Request Commission approval to execute a Settlement Agreement between the City of Pompano Beach, Jose Alirio Ortiz and Omar Haber, Jr.

Summary of Purpose and Why:

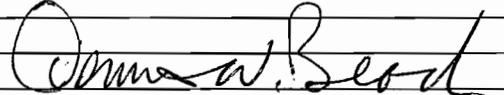
A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SETTLEMENT AGREEMENT AND RELEASE OF MUNICIPAL LIENS AND ASSESSMENTS BETWEEN THE CITY OF POMPANO BEACH, JOSE ALIRIO ORTIZ, AND OMAR HABER, JR., TO RESOLVE PENDING FORECLOSURE LITIGATION ON REAL PROEPRTY LOCATED AT 712 NE 3rd AVENUE IN POMPANO BEACH, FLORIDA; PROVIDING AN EFFECTIVE DATE.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: City Attorney
- (2) Primary staff contact: Fawn Powers, Assistant City Attorney Ext. 4614
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding _____

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
City Attorney	2/17/15		City Attorney's Comm. #2015-592 

Advisory Board
 Planning and Growth Management Director
 Public Works Administrator
 City Manager 



ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
1st Reading	1st Reading	Results:	Results:
2nd Reading			



City Attorney's Communication #2015-592
February 17, 2015

TO: Dennis W. Beach, City Manager

FROM: Fawn Powers, Assistant City Attorney

RE: Resolution Authorizing Settlement Agreement And Release of Municipal Liens between the City of Pompano Beach, Jose Alirio Ortiz, and Omar Haber, Jr.

Attached please find the following captioned Resolution addressing the above-referenced matter:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SETTLEMENT AGREEMENT AND RELEASE OF MUNICIPAL LIENS AND ASSESSMENTS BETWEEN THE CITY OF POMPANO BEACH, JOSE ALIRIO ORTIZ, AND OMAR HABER, JR., TO RESOLVE PENDING FORECLOSURE LITIGATION ON REAL PROEPRTY LOCATED AT 712 NE 3rd AVENUE IN POMPANO BEACH, FLORIDA; PROVIDING AN EFFECTIVE DATE.

Please place this matter on the March 10, 2015 City Commission Consent Agenda. I have attached a Commission Agenda Cover Sheet for your convenience.

Should you have any questions regarding this matter, please feel free to contact me.

FAWN POWERS

FP/ds
l:cor/manager/2015-592
Attachments

RESOLUTION NO. 2015 _____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A SETTLEMENT AGREEMENT AND RELEASE OF MUNICIPAL LIENS AND ASSESSMENTS BETWEEN THE CITY OF POMPANO BEACH, JOSE ALIRIO ORTIZ, AND OMAR HABER, JR., TO RESOLVE PENDING FORECLOSURE LITIGATION ON REAL PROEPRTY LOCATED AT 712 NE 3rd AVENUE IN POMPANO BEACH, FLORIDA; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Settlement Agreement and Release of Municipal Liens and Assessments between the City of Pompano Beach, Jose Alirio Ortiz and Omar Haber, Jr. in regard to *City of Pompano Beach v. Omar Haber, Jr. et al.*, Case No. 12-019952 (11), a copy of which Settlement Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to ratify execution of the aforesaid Settlement Agreement between the City of Pompano Beach, Jose Alirio Ortiz and Omar Haber, Jr.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK



City Attorney's Communication #2015-579

February 17, 2015

TO: Mayor and City Commission

FROM: Fawn Powers, Assistant City Attorney

VIA: Gordon Linn, City Attorney 

RE: Request execution of Settlement Agreement and Release of Municipal Liens to Resolve Pending Foreclosure Litigation on 712 NE 3rd Avenue (the "Property")

Attached for your review is a proposed Settlement Agreement and Release of Municipal Liens ("Settlement Agreement") between the City, Jose A. Ortiz and Omar Haber, Jr. which would resolve the City's pending foreclosure action against the Property. This matter is scheduled for your consideration on March 10, 2015.

Background

This vacant, single family Property currently valued at \$88,000 by the County Appraiser is owned by Messrs. Haber and Ortiz, who bought it as an investment in 2006 for \$188,700.00. Unfortunately, the real estate market bottomed-out shortly thereafter and commencing in 2007, the property began to blight the neighborhood accumulating more than \$220,000.00 in Code Enforcement fines as indicated in Exhibit "1" to the Settlement Agreement. Additionally, over the past four years, the City has also spent several thousand dollars in out-of-pocket costs to secure the Property and clean up landscape violations.

Mr. Ortiz filed for bankruptcy in 2011 and although the *Order Confirming Chapter 13 Plan* issued in February 2012 provided the Property should be surrendered to the bank that held two outstanding mortgages on it, for reasons unknown to both Messrs. Ortiz and Haber, the bank never took title.

The City filed the subject foreclosure litigation in July 2012, however, it has taken the past two years to clear up the confusion surrounding title to this Property due to the above referenced bankruptcy issues and the longstanding failure of one of the named defendants to release its mortgages against the Property.

Litigation Status

Other than the filing of the initial pleadings in the pending foreclosure action, there has been no other legal action taken as the focus has been on the parties working together to resolve matters amongst themselves. It should be noted that both Messrs. Ortiz and Haber have been cooperative and recently quitclaimed their interest in the Property to the City in return for the City releasing its claims against them. Subject to your approval of the Settlement Agreement, I will dismiss the

pending foreclosure action with prejudice as I have resolved all other title concerns on the Property other than the payment of delinquent taxes.

Conclusion

My recommendation is you approve the Settlement Agreement because Messrs. Haber and Ortiz have acted in good faith and have no significant resources other than their respective homestead residences. Moreover, other than the payment of back taxes, the City has clear title to the Property which has been slated for affordable housing purposes under the direction of the City's Department of Housing and Urban Improvement.

Thank you for your consideration of this matter. I remain available to provide further assistance or clarification as needed.



FAWN POWERS

**SETTLEMENT AGREEMENT
AND
RELEASE OF MUNICIPAL LIENS AND ASSESSMENTS**

This Settlement Agreement and Release(s) of Municipal Liens and Assessments ("Settlement Agreement") is made and entered into this _____ day of _____, 2015, by and between JOSE ALIRIO ORTIZ ("Ortiz") whose address is 220 SW 9th Avenue, Pompano Beach, Florida 33009; OMAR HABER, JR. ("Haber") whose address is 1460 SW 32 Court, Ft. Lauderdale, Florida 33315; and the CITY OF POMPANO BEACH ("City"), a Florida municipal corporation located at 100 West Atlantic Boulevard, Pompano Beach, Florida 33060.

WHEREAS, Ortiz, Haber, and the City are parties in a certain foreclosure action in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, and styled *City of Pompano Beach v. Omar Haber, Jr.; Jose Ortiz; et al.*, Case No. 12-019952 (11);

WHEREAS, the subject of the foregoing foreclosure action is the vacant single family property located at 712 NE 3rd Avenue in Pompano Beach, Florida 33060 (the "Property");

WHEREAS, as set forth in Exhibit 1 attached hereto and made a part hereof, the City has one (1) Code Enforcement, seven (7) Nuisance Abatement and three (3) Unsafe Structure liens against the Property totaling \$227,065.47 as of November 7, 2014; and

WHEREAS, the parties have agreed to settle and completely resolve all of their outstanding differences, disputes and claims, asserted or unasserted, known or unknown, and all other matters affecting title to said Property in return for Haber and Ortiz quitclaiming their respective interest in the Property to the City.

NOW THEREFORE, in consideration of the above recitals and the promises and agreements contained in this Settlement Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Ortiz, Haber, and the City do hereby covenant and agree as follows.

1. Representations. All of the above statements are true and correct to the best of the parties' belief and knowledge.

2. Conveyance of the Property to the City. Haber and Ortiz have agreed to transfer their ownership interest in the Property to the City pursuant to the executed Quit Claim Deeds attached hereto and made a part hereof as Exhibits 2 and 3.

- a. In exchange for the foregoing conveyance, the City shall provide Releases on all the liens referenced in Exhibit 1 and record same in the Public Records of Broward County releasing any and all recorded, unrecorded, open, pending or other matters affecting title through the date of execution of this Settlement Agreement;
- b. In addition, the City shall execute and file a Notice of Dismissal of Lis Pendens and a Stipulation for Dismissal With Prejudice in the pending foreclosure action with the Court retaining jurisdiction to enforce the terms of this Settlement Agreement.

3. No Precedent. It is understood and agreed by all parties hereto that this Settlement

Agreement is executed based on the particular circumstances of this case and does not establish a precedent for the resolution of other cases.

4. Complete Agreement. This Settlement Agreement constitutes the entire understanding of the parties hereto. There are no promises, terms, conditions, or obligations other than those contained herein in writing and all negotiations, understandings, conversations, and communications are merged into this Settlement Agreement. Each party warrants that it has not relied on any promises or representations outside of this Settlement Agreement.

5. No Oral Modifications. This Settlement Agreement can be modified, amended or revoked only by express written consent of all parties. No waiver of any of the provisions of this Settlement Agreement shall constitute a waiver of any of its other provisions.

6. Voluntary Agreement and Consultation with Counsel. Ortiz, Haber, and the City represent and acknowledge that they (a) have read this Settlement Agreement and understand all its terms; (b) have made such investigation of the matters contained herein as deemed necessary and find the terms to be satisfactory; (c) execute this Settlement Agreement freely, voluntarily and without coercion, with full knowledge of its significance, binding effect and the legal consequences thereof; and (d) have been represented by counsel of their choice and have had adequate opportunity to review and consider the terms of this Settlement Agreement.

7. Non-Assignability. This Settlement Agreement is not assignable and all parties agree that they shall not sell, assign, transfer, merge or otherwise convey any of their respective interests, rights, or obligations under it, in whole or in part, to any other person, corporation or entity.

8. Non-Assignment of Claims. Each party represents and warrants that no other person or entity has or has had any interest in the claims, demands, or obligations or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein, and that it has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to herein.

9. Authority. Each party expressly covenants, represents and warrants that it has the authority to enter into this Settlement Agreement, and that each person signing on behalf of Ortiz, Haber and the City has the requisite power to bind that person, public body or entity.

10. Governing Law. This Settlement Agreement shall be governed by, and construed in accordance with the laws of the State of Florida without regard to the conflict of law rules thereof and shall not be more strictly construed against one party than against the other by virtue of the fact that it may have been physically prepared by one party or its attorney.

11. Severability. Should any provision of this Settlement Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts of this Agreement shall remain in full force and effect.

12. Expenses. Each of the parties shall bear their own costs and expenses incurred or to be incurred in connection with, related to or arising out of this Settlement Agreement, including any transactions contemplated herein.

13. Further Assurances. Each of the parties shall execute and deliver any and all

additional paper, documents, and other assurances, and shall take such additional actions as may be necessary in connection with the performance of their obligation hereunder to carry out the intent of the parties with respect to this Settlement Agreement.

14. No Obligation to Third Parties. Except for the parties to this Settlement Agreement and as otherwise provided herein, no person or entity is intended to be a beneficiary of any of its provisions and, accordingly, there shall be no third party beneficiaries of this Agreement.

15. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile signature pages shall be acceptable in the absence of the original signature pages.

16. Default. In the event of a default of any of the covenants and conditions set forth herein, any provision as to release of the defaulting party is null and void.

17. Survival of Provisions. All covenants, warranties and representations contained in this Settlement Agreement, and all documents to be delivered by the parties in connection with the consummation of the transaction contained herein, shall survive the consummation of said transaction.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto each have approved and executed this Settlement Agreement on the dates set forth below.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2015 by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"ORTIZ"

Witnesses:

Print Name:

JOSE ALIRIO ORTIZ

Print Name:

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____,
2015, by JOSE ALIRIO ORTIZ, who is personally known to me or has produced _____
_____ as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"HABER"

Witnesses:

Print Name:

OMAR HABER, JR.

Print Name:

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____,
2015, by OMAR HABER, JR. who is personally known to me or has produced _____
_____ as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Exhibit "1"

<u>Case Type/No.</u>	<u>Complied</u>	<u>Daily Fine +/<u>or Interest</u></u>	<u>Amount as of 11/7/2014</u>	<u>Recording Reference and Date</u>
Code 07-1603	yes	\$0	\$222,200.00	OR BK 44683 PGS 1052-1056 10/5/07
US 12-08000052 (12-049)	yes	\$0.03	\$314.98	OR BK 49466 PGS 234-235 1/31/13
US 08-33	yes	\$0.00	\$277.42	OR BK 45536 PGS 1505-1506 7/18/08
US 11-045	yes	\$0.00	\$231.94	OR BK 48186 PGS 781-782 9/19/11
NAB 11-307	yes	\$0.04	\$381.03	OR BK 49150 PGS 1546-1558 10/11/12
NAB 11-146	yes	\$0.14	\$1,211.17	OR BK 48955 PGS 1090-1096 7/31/12
NAB 10-1711	yes	\$0.02	\$206.10	OR BK 49304 PGS 1323-1473 12/6/12
				OR BK 47788 PGS 811-831 3/17/11
				OR BK 47814 PGS 1427-1447 3/30/11
NAB 37224	yes	\$0.06	\$523.02	OR BK 49304 PGS 1323-1473 12/6/12
NAB 43213	yes	\$0.08	\$613.92	OR BK 50364 PGS 397-0407 11/26/13
NAB 23584	yes	\$0.08	\$679.56	OR BK 50427 PGS 533-546 12/23/13
NAB 52531	yes	\$0.05	\$426.33	OR BK 49446 PGS 1243-1258 1/24/13
				OR BK 51178 PGS 0960-0968 10/17/14

This Instrument Prepared By:

Fawn Powers, Assistant City Attorney
City of Pompano Beach
P. O. Box 2083
Pompano Beach, Florida 33061

QUIT CLAIM DEED

Executed this 4th day of November, 2014, by

OMAR HABER, JR., a single man, whose post office address is 1460 SW 32 Court, Ft. Lauderdale, Florida 33315, first party, to

CITY OF POMPANO BEACH, a municipal corporation of the County of Broward, State of Florida, whose post office address is 100 W. Atlantic Boulevard, P. O. Box 2083, Pompano Beach, Florida 33061, second party, to

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

WITNESSETH, that the said first party, for and in consideration of the sum of TEN and No/100 DOLLARS (\$10.00) in hand paid by the second party, the receipt of which is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land situate, lying and being in the County of Broward, State of Florida, to-wit:

**LOT 9, BLOCK 3, TOD ACRES 2ND ADDITION,
ACCORDING TO THE PLAT THEREOF, AS RECORDED
IN PLAT BOOK 33, AT PAGE 19, OF THE PUBLIC
RECORDS OF BROWARD COUNTY, FLORIDA.**

FOLIO NO. 8235-45-0270

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of said first party, either in law or equity, to the only proper use, benefit and behoof of said second party forever.

IN WITNESS WHEREOF, the first party has signed and sealed these presents the day and year first above written.

WITNESSES:

Jill R. Mesojedec

Jill R. Mesojedec
(Print or Type Name)

Donna Samolewicz

DONNA SAMOLEWICZ
(Print or Type Name)

[Signature]

OMAR HABER, JR.

STATE OF FLORIDA :
COUNTY OF BROWARD :

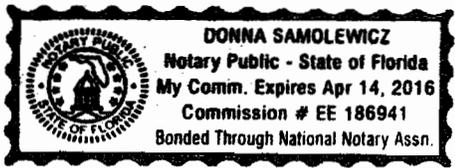
The foregoing instrument was acknowledged before me on this 4th day of November, 2014 by OMAR HABER, JR., a single man. He is personally known to me or produced [Signature], as identification.

NOTARY SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
(Signature of the Notary Taking Acknowledgment)

DONNA SAMOLEWICZ
(Name of Acknowledger Typed, Printed or Stamped)

(Commission Number)



This Instrument Prepared By:

Fawn Powers, Assistant City Attorney
City of Pompano Beach
P. O. Box 2083
Pompano Beach, Florida 33061

QUIT CLAIM DEED

Executed this 14th day of November, 2014, by

JOSE ALIRIO ORTIZ, a single man, whose post office address is 220 SW 9th Avenue, Hallandale Beach, Florida, first party, to

CITY OF POMPANO BEACH, a municipal corporation of the County of Broward, State of Florida, whose post office address is 100 W. Atlantic Boulevard, P. O. Box 2083, Pompano Beach, Florida 33061, second party, to

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

WITNESSETH, that the said first party, for and in consideration of the sum of TEN and No/100 DOLLARS (\$10.00) in hand paid by the second party, the receipt of which is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land situate, lying and being in the County of Broward, State of Florida, to-wit:

**LOT 9, BLOCK 3, TOD ACRES 2ND ADDITION,
ACCORDING TO THE PLAT THEREOF, AS RECORDED
IN PLAT BOOK 33, AT PAGE 19, OF THE PUBLIC
RECORDS OF BROWARD COUNTY, FLORIDA.**

FOLIO NO. 8235-45-0270

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of said first party, either in law or equity, to the only proper use, benefit and behoof of said second party forever.

IN WITNESS WHEREOF, the first party has signed and sealed these presents the day and year first above written.

WITNESSES:

Jill R. Mesojede

Jill R. Mesojede
(Print or Type Name)

Donna Samolewicz

DONNA SAMOLEWICZ
(Print or Type Name)

Jose Alirio Ortiz
JOSE ALIRIO ORTIZ

STATE OF FLORIDA :
COUNTY OF BROWARD :

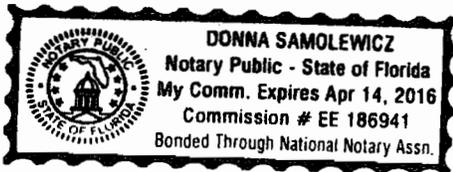
The foregoing instrument was acknowledged before me on this 4th day of November, 2014 by JOSE ALIRIO ORTIZ, a single man. He is personally known to me or produced _____, as identification.

NOTARY SEAL:

Donna Samolewicz
NOTARY PUBLIC, STATE OF FLORIDA
(Signature of the Notary Taking Acknowledgment)

DONNA SAMOLEWICZ
(Name of Acknowledger Typed, Printed or Stamped)

(Commission Number)



l:foreclosure/2014-273f