

Meeting Date: 4-14-15

Agenda Item 22

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

SHORT TITLE OR MOTION: Request Commission approval to execute a Settlement Agreement and Release of Liens between the City of Pompano Beach, Mark A. Marasco, and Stephanie K. Marasco

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 TO RESOLVE PENDING FORECLOSURE LITIGATION BETWEEN THE CITY OF POMPANO BEACH, MARK A. MARASCO AND STEPHANIE K. MARASCO; 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	4/1/15	<i>Approve</i>	City Attorney's Comm. #2015-791 <i>ABC</i>

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

Thomas W. Seal

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 #2015-791

April 1, 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, Mark A. Marasco and Stephanie K. Marasco

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 TO RESOLVE PENDING FORECLOSURE LITIGATION BETWEEN THE CITY OF POMPANO BEACH, MARK A. MARASCO AND STEPHANIE K. MARASCO; PROVIDING AN EFFECTIVE DATE.

Please place this matter on the April 14, 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/2015-791f
Attachments

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 TO RESOLVE PENDING FORECLOSURE LITIGATION BETWEEN THE CITY OF POMPANO BEACH, MARK A. MARASCO AND STEPHANIE K. MARASCO; 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 between the City of Pompano Beach, Mark A. Marasco, and Stephanie K. Marasco with regard to *City of Pompano Beach v. Mark A. Marasco, et. al.*, Case No. 13-024254, 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, Mark A. Marasco and Stephanie K. Marasco.

SECTION 3: This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

Mayor and City Commission
April 1, 2015
Page 2 of 2

City Attorney's Communication #2015-781

The difference between this case and the other foreclosure actions I litigate is that this involves unpermitted work, maintenance and public nuisance violations and not life safety issues (other than attempting to replace the electrical panel without permits). The other cases I traditionally file involve properties with numerous life safety issues and contentious litigation. Other than the approximately 30 hours I spent to address this situation, staff time expended on this enforcement matter has not been excessive.

Although I am of the opinion that the Marascos do not have any valid legal defenses to the pending foreclosure action, I recommend you approve the Settlement Agreement because all violations have been complied, the City is not interested in acquiring the Property and the Marascos have made a significant investment to improve and comply the Property.

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



FAWN POWERS

I:\cor\comsn\2015-781f
Attachments
cc: Dennis Beach, City Manager

**SETTLEMENT AGREEMENT
AND
RELEASE OF MUNICIPAL LIENS**

EXHIBIT

1

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 the City of Pompano Beach ("City"), a Florida municipal corporation located at 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, and Mark A. Marasco and Stephanie K. Marasco (collectively "Marasco") whose address is 1117 Sea Spray Avenue, Delray Beach, Florida 33483.

WHEREAS, City and Marasco are parties in a certain foreclosure action in the Seventeenth Judicial Circuit in and for Broward County, Florida, styled *City of Pompano Beach v. Mark A. Marasco, et. al.*, Case No. 13024254;

WHEREAS, the subject of the foregoing litigation is the single family rental property located at 3404 Dover Road, Pompano Beach, Florida 33060 (the "Property") which is owned by Marasco;

WHEREAS, as set forth in Exhibit A attached hereto and made a part hereof, the City has three (3) Code Enforcement liens against the Property totaling \$369,150.00; 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, for a sum in settlement ("Settlement Sum") of its three (3) liens on the Property and out-of-pocket costs in this matter as detailed in Exhibit B.

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, the parties 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. **Settlement Sum.** Marasco shall pay City the Settlement Sum of \$4,397.32 in accordance with the following payment schedule:

- \$500 due on or before June 11, 2015;
- \$500 due on or before July 11, 2015;
- \$500 due on or before August 11, 2015;
- \$500 due on or before September 11, 2015;
- \$500 due on or before October 11, 2015;
- \$500 due on or before November 11, 2015;
- \$500 due on or before December 11, 2015;
- \$500 due on or before January 11, 2016; and
- \$397.32 due on or before February 11, 2016.

Notwithstanding the foregoing schedule, Marasco may also pay the Settlement Sum in

full earlier without penalty by City. In exchange for payment in full of the Settlement Sum, the City shall timely execute a Release on the subject three (3) Code Enforcement liens and record same in the Public Records of Broward County.

3. City's Obligations. The City shall cooperate with Marascos and not unreasonably or arbitrarily refuse to timely provide and record a Release on the three (3) Code Enforcement liens upon payment in full of the settlement sum.

4. Force Majeure. In the event any parties failure to perform any of the covenants herein is due to conditions beyond their control including accidents, death, acts or God, terrorism or force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary to correct the adverse effect of such event of force majeure.

5. 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 of future violations on the Property. Specifically, based on the Property's history of unpermitted work, public nuisance and blight, the Marascos understand they should not expect any further leniency if they are cited for additional Code Enforcement violations on the Property in the future.

6. 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.

7. 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.

8. Voluntary Agreement and Consultation with Counsel. The City and Marasco 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.

9. 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.

10. 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.

11. 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 Marasco and the City has the requisite power to bind that person, public body or entity.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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 BEACH, CITY MANAGER

Attest:

(SEAL)

ASCELETA HAMMOND
CITY CLERK

Approved As To Form:

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA)
) ss
COUNTY OF BROWARD)

The foregoing instruments were acknowledged before me this _____ day of _____, 2015 by **LAMAR FISHER** as Mayor, **DENNIS 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 are personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"MARASCO"

Witnesses:

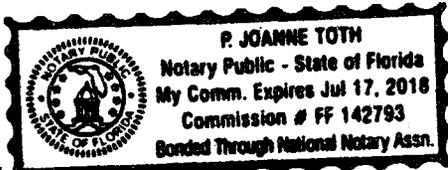
[Signature]
[Signature]

[Signature]
MARK A. MARASCO

STATE OF FLORIDA)
)ss
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 26 day of March, 2015, by MARK A. MARASCO who is personally known to me or has produced _____ as identification.

NOTARY'S SEAL:



P. Joanne Toth
NOTARY PUBLIC, STATE OF FLORIDA
P. Joanne Toth
(Name of Acknowledger Typed, Printed or Stamped)
FF 142793
Commission Number

Witnesses:

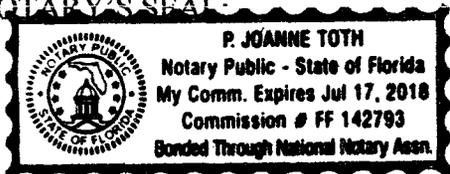
[Signature]
[Signature]

[Signature]
STEPHANIE K. MARASCO

STATE OF FLORIDA)
)ss
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 26 day of March, 2015, by STEPHANIE K. MARASCO who is personally known to me or has produced _____ as identification.

NOTARY'S SEAL:



P. Joanne Toth
NOTARY PUBLIC, STATE OF FLORIDA
P. Joanne Toth
(Name of Acknowledger Typed, Printed or Stamped)
FF 142793
Commission Number

L:/foreclosure/marasco/settlement agreement
3/24/15

EXHIBIT A

<u>CASE TYPE/NO.</u>	<u>LIEN AMOUNT</u>
Code Case 13-06000469	\$ 254,200.00
Code Case 12-030100	96,550.00
Code Case 13-060064	<u>18,400.00</u>
TOTAL	\$ 369,150.00

EXHIBIT B

OUT-OF-POCKET COSTS

Filing Fee and Issuance of Two (2) Summons	\$	929.00
Service of Process		<u>90.00</u>
TOTAL	\$	1,019.00

CODE ENFORCEMENT LIENS

LIEN AMOUNT

Code Case 13-06000469	\$	254,200.00
Code Case 12-030100		96,550.00
Code Case 13-060064		<u>18,400.00</u>
TOTAL	\$	369,150.00

5% of City liens totaling \$369,150	\$18,457.50
Owners' compliance costs	- <u>15,079.18</u>
	\$ 3,378.32
City's out-of-pocket costs	+ <u>1,019.00</u>
Settlement Sum	\$ 4,397.32

February 23, 2015

EXHIBIT

RE: 4304 Dover Road
Pompano Beach, FL 33062

Dear Mayor and City commissioners,

I am writing you today regarding fines imposed on my property that accrued last year. The city attorney suggested that I reach out to you. I'm seeking a fine reduction that accrued on my house which were imposed but not life threatening or life safety risks. My home had been misrepresented by a friend of a friend of our family. We had given him an opportunity, due to unfortunate circumstances in his life, a place to stay. He was as a skilled carpenter from the California area looking for work. We gave him the opportunity to maintain the property with skilled work to repair things in and around property in exchange for rent. We did not charge him rent, and unfortunately trusted that he would do right by us and keep up grass maintenance. The other large fine other than the grass over 6 inches in height, was improper address numbers on the house. Due to strong winds or age, they seem to have disappeared from the property without my knowledge.

This upheaval of misfortune came at a very busy time in our lives. My eldest daughter had finished High School and was leaving for College. We wanted to make the most of this summer by doing a family trip not knowing what lied ahead, thinking this could be our last time to spend together. Then with all the commotion of getting her settled and leaving for school, things got busy and time was missed in taking care of other priorities.

Then in late August we were informed my mother in-law was losing her home in California due to an unfortunate mishandling money circumstance. Her only choice was to move in with us. This was extremely difficult and overwhelming for us since she was very bitter and dementia was setting in.

So I hope you might have some understanding and lenience to this very busy time in our life. I'm reaching out to you for a reduced fine and know now how important it is to keep up the property and the overall appearance. We were overwhelmed with responsibilities and misfortune and need this property to financial support our 3 children's education.

I will be reaching out to you in the next few days with a follow up call. Please reach out to me with your concerns. Thank you for your time.

Sincerely,



Stephanie Marasco

561-350-4542

Proposed Settlement Sum \$18,457.50

Owners' Compliance Costs - 15,079.18

\$ 3,378.32

City's Hard Costs + 1,019

\$ 4,397.32

I would be more than willing to pay the city's hard costs. I hope you will please reconsider the proposed settlement sum due to my recent circumstances which I have outlined in my letter dated February 23, 2015.

Fence	\$1,850.00
Repaired side yard gate	\$450.00
Repair large car gate	\$650.00
Soffets - repaired with foamboard	\$1,650.00
Exterior painting & exterior brick repair stucco	\$3,500.00
Demo of side shed	\$350.00
Dump runs	\$150.00
Bee removal	\$400.00
Pool pump & filter	\$399.00
Leak detection	\$275.00
Pressure clean & paint pool, chemicals drained & filled 3x	\$900.00
Kitchen cabinets	X \$2,400.00
Installation granite, cabinets hung & trimmed	X \$3,500.00
Plumbing: disposal, faucets installation	X \$1,300.00
Appliances: stove, dishwasher, microwave oven	X \$1,057.97
Lawn maintenance - trimming of trees on side and back of property 2x	\$800.00
Permitting & Drawings	\$605.18
Driveway repair and stepping stones	\$500.00
Broken window repair (6)	\$150.00
Replaced address numbers	\$50.00
Installation of new electrical panel inside house	X \$6,469.60
FPL installation on panel	X \$668.64
Home Depot & Lowes supplies	\$2,400.00
	<u>\$30,475.39</u>

- 15,396.21
15,079.18

X = items for which owner
didn't receive credit for
compliance costs under
terms of proposed
settlement totaling \$15,396.21

EXHIBIT 4

<u>CASE TYPE/NO.</u>	<u>LIEN AMOUNT</u>
Code Case 13-06000469	\$ 254,200.00
Code Case 12-030100	96,550.00
Code Case 13-060064	<u>18,400.00</u>
TOTAL	\$ 369,150.00



City Attorney's Communication #2015-781

April 1, 2015

TO: Mayor and City Commission
FROM: Fawn Powers, Assistant City Attorney
VIA: Gordon B. Linn, City Attorney
RE: Request execution of Settlement Agreement and Release of Liens to resolve pending City's foreclosure action against 3404 Dover Road (the "Property")

Attached for your review as Exhibit 1 is a proposed Settlement Agreement and Release of Municipal Liens ("Settlement Agreement") which would resolve the City's pending foreclosure action against the subject Property co-owned by Stephanie and Mark Marasco, a married couple. Ms. Marasco's written appeal to you in this matter dated February 24, 2015, is enclosed as Exhibit 2 for your further reference. This matter is scheduled for Commission consideration on April 14, 2015.

In June 2013, in accordance with established procedures, the City's Code Compliance Department forwarded to me the single family rental property located at 3404 Dover Road ("Property") for prioritized enforcement action as the Marascos were not properly maintaining it or responding to the City's inspectors. I filed the subject foreclosure action on October 31, 2013, after the Marascos did not respond to my repeated written requests to contact me so we could work out a mutually acceptable compliance strategy and avoid formal litigation. After the City filed suit, it took the Marascos almost a year to comply fairly routine maintenance and unpermitted work violations which could have been accomplished in 90 days and then another several months for them to provide me the documentation needed to formulate a settlement sum in this matter.

Since the Marascos bought the Property in 1991, the City has had to perform three (3) nuisance abatement actions and also secure it on one occasion. It is located in an upscale neighborhood and has been the subject of numerous complaints from the neighbors over the years due to its deteriorated exterior and public nuisance conditions, including, but not limited to, rotting fascia and peeling/discolored paint on the residence; an overgrown yard with discarded objects strewn about; gravel driveway in poor condition; tenants living at the Property without water service; bee hives and a mosquito-breeding stagnant pool.

The Marascos submitted the attached list (Exhibit 3) along with receipts to document their compliance costs, all of which were reviewed and approved for accuracy by Building and Code Compliance staff. However, as indicated by my handwritten notes on Exhibit 3, City staff are not agreeable to providing the Marascos credit for monies they spent for those six capital improvements marked with an "x" nor particularly sympathetic to the fact that it took them three (3) years to resolve relatively routine violations.

Although the City usually settles the foreclosure cases I litigate for ten percent of the total fine (minus credit to owner for compliance costs) plus reimbursement of the City's out-of-pocket costs (e.g. prior nuisance abatement, securing or demolition costs, filing fees, etc...), as set forth below, the proposed settlement sum of \$4,397.32 releases the City's Code liens totaling \$369,150.00 (Exhibit 4) for almost one fifth of what the City traditionally accepts.

Proposed 5% Settlement Sum	\$18,457.50	Traditional 10% Settlement Sum	\$36,915.00
Owners' Compliance Costs	<u>-15,079.18</u>	Owners' Compliance Costs	<u>-15,079.18</u>
	\$ 3,378.32		\$21,835.82
City's Out-of-pocket costs	<u>+1,019.00</u>	City's Out-of-pocket costs	<u>+1,019.00</u>
	\$ 4,397.32		\$22,854.82