

Meeting Date
December 6, 2016



AGENDA	
Section	New Business
Item No.	V.I.F.1

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Board Consideration re: 40 day extension of time to make payment; Lien for Bank of America and Arns, Inc., Merritt Island (Dist. 2)
DEPT/OFFICE:	Citizen Request / Angela M. Fiorentino, Esq.

Requested Action:
 Request for 35-day enlargement of time to make \$3,300 payment, plus second payment of \$165 for prior rejected payment.

Summary Explanation & Background:
 The Magistrate's proposed order required payment of \$3,300 to be made within 30 days from **October 4, 2016** (the date of the BOCC's vote accepting the Magistrate's recommendation). Although we requested to make payment prior to the BOCC vote because we had concerns about our client's ability to make the payment quickly, we were told by the County via email on August 22, 2016 that early payment would not be accepted. Despite that the BOCC voted on **October 4**, we did not receive the County paperwork necessary to request payment from our client until **October 21**. We understand the County's delay was due to hurricane Matthew. We were unable to obtain timely payment from our client so our firm agreed to pay by telephone at the County's request. Unfortunately, we were unaware that our bank does not accept checks tendered by phone. As such, the payment was rejected. We are seeking a 40-day extension of time through and including **December 8, 2016** within which to make the \$3,300 payment plus a second payment in the amount of \$165 for the rejected phone payment. I will bring two cashiers' checks to the BOCC meeting on **December 6**. Thank you for your consideration.

Clerk to the Board Instructions:
 Exhibits Attached:

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager	Department Director / Extension
Stockton Whitten	Assistant County Manager	



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

December 7, 2016

MEMORANDUM

TO: Stockton Whitten, County Manager

RE: Item VI.F.1., Citizen Request of Angela M. Fiorentino, Esquire, for 40-Day Extension of Time to Make a Payment; Lien for Bank of America and ARNS, Inc., Merritt Island

The Board of County Commissioners, in regular session on December 6, 2016, approved citizen request by Angela M. Fiorentino, Esquire, for an extension of time to make the \$3,300 payment, per the Special Magistrates recommendation, including \$100 per day since November 4, 2016, for each additional day the fine was not paid, and \$165 for the rejected telephone payment, for property located at 235 Northgrove Drive, Merritt Island; and the Board further directed the payment be made in full by Friday, December 9, 2016.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: Planning and Development Director
Clerk to the Special Magistrate
Finance
Budget

P&D Staff Report
Citizen Request by Angela M. Fiorentino, Esq.

Overview of Code Enforcement Hearing Process:

The County's Code Enforcement process provides a mechanism for a property owner (referred to as "Respondent") to contest a Notice of Violation before an independent Special Magistrate. The Special Magistrate takes testimony from the Code Enforcement Officer, Respondent, and other witnesses requested by either party.

At the conclusion of the hearing, the Special Magistrate issues Findings of Fact and Conclusions of Law, and issues an Order that may include a notice that the violation must be complied by a specified date and that a fine may be imposed for failure to comply by that date. His decision is generally rendered immediately following the presentation of evidence and a written copy is given to the Respondent. A certified copy of the Order is recorded in the public records of the County and constitutes notice to any subsequent purchasers, successors or assigns. If an Order is recorded and the violation is complied by the date specified in the Order, the Special Magistrate issues an Order acknowledging compliance that is also recorded in the public records.

If a violation is not brought into compliance, a fine will be assessed in accordance with the Special Magistrate's Order. Once fines accrue, the County may request that the accumulated fines be imposed as a lien. By Code, said lien cannot exceed 35 percent of the assessed value of the property.

Once a lien is imposed by the County, only the Board of County Commissioners has authority to reduce or release a lien. In order to be eligible for a lien reduction/release, the violation must be cured. The request for reduction/release must first be heard by the Special Magistrate (referred to as a "Reduction Hearing"), who makes a recommendation on the matter to the Board of County Commissioners along with written findings to support the recommendation. Unless County staff has an objection to the reduction, the matter will be placed on the Consent Agenda of a Board meeting. If County staff has an objection, the matter will be placed on the Board agenda as a New Business item. The Board may reject, alter (higher or lower) or accept the Special Magistrate's recommendation. The Respondent is advised to attend the Board meeting to be afforded the opportunity to address the Board, if desired.

Background on the Code Enforcement Case:

Ms. Fiorentino's request relates to Code Enforcement Case No. 14CE-00379 (March 2014) for an unsecured pool at 235 Northgrove Drive, Merritt Island owned by Bank of America, N.A. Since unsecured pools are considered an imminent health safety violation, a compliance timeframe of 10 days following receipt of the Notice of Violation via certified mailing (April 3, 2014) was given by the Code Enforcement Officer. A follow up compliance inspection on April 14th revealed that the pool remained unsecured.

The case was scheduled for the May 15, 2014 Special Magistrate hearing. The day before the Special Magistrate hearing, a representative from a company that performs maintenance services for Bank of America, N.A. contacted Code Enforcement and was advised of the violation on the property.

Bank of America, N.A. was not present at the May 15, 2014 Special Magistrate meeting. The Magistrate ordered the Respondents to be found in violation and ordered a compliance date of May 22, 2014. Since this violation is viewed as a safety issue, the fine amount was set at \$100 per day thereafter if not brought into compliance. A follow up inspection on May 29, 2014 revealed that the violation remained. A subsequent inspection on July 3, 2014 revealed that the pool remain unsecured.

Over a year later, on July 16, 2015, an interested party for the property (Altisource) contacted Code Enforcement and was advised of the active safety violation accruing the \$100 per day fine. The fine, as of said date, was \$41,900 plus \$550 enforcement costs.

A re-inspection of the property on July 24, 2015 revealed that the violation remained active on the property. Staff research disclosed, however, that a new owner (ARNS, Inc.) had been recorded with the Clerk of Courts on May 18, 2015. The new owner was added to the case.

On October 6, 2015, staff received another call from the aforementioned interested party (Altisource) who was informed that the violation remained active with fines accruing. As of this date, the fine was \$50,100 and continuing at \$100 per day. On October 26, 2015, another inquiry from Altisource was received. The inquirer was informed that the fine continues to accrue and has reached \$52,100 plus enforcement costs of \$550.

A lien imposition was scheduled for the November 19, 2015 Special Magistrate meeting. Notice was provided by certified mail to Bank of America, N.A. and ARNS, Inc.

On November 16, 2015, Code Enforcement received a call from Angela Fiorentino on behalf of ARNS, Inc., Bank of America, N.A., and Ocwen Loans to discuss the status of the case. Ms. Fiorentino stated that the property had been brought into compliance and that she would be filing a Notice of Appearance and Motion for Continuance (of the lien imposition). Code enforcement costs of \$550 were paid via credit card. A November 18, 2015 staff inspection of the property revealed that the property was still not in compliance. Ms. Fiorentino was notified.

During the Special Magistrate hearing on November 19, 2015, Ms. Fiorentino was present and stated that a cover had been placed over the pool, making it a less attractive nuisance. Staff maintained that it did not constitute an approved barrier under the Building Code. The Special Magistrate ordered the fine be imposed as a lien, which had accrued to \$54,500 as of said date.

On December 10, 2015, Ms. Fiorentino contacted code enforcement staff advising that the pool screen enclosure had been repaired, thereby constituting compliance. The following day, the code officer inspected the property and found that only the bottom panels of the screen enclosure had been replaced, measuring 34 inches from grade. Per Code, the minimum height barrier requirement is 48 inches. The doors in the screen enclosure were either missing screens or did not latch properly. The pool cover was curled up so that the water surface was visible and did not secure the pool properly.

On May 6, 2016, staff was asked to perform another compliance inspection. Said re-inspection verified that the violation had been corrected. An Affidavit of Late Compliance was prepared and fines of \$68,800 assessed. An application to request a fine reduction was requested by Ms. Fiorentino. A reduction hearing was tentatively scheduled for June 16, 2016, pending receipt of her completed

application. The reduction application was not received in time for the June 2016 Special Magistrate meeting, so the matter was scheduled for the July 21, 2016 meeting. Ms. Fiorentino appeared at the July 2016 Special Magistrate hearing and stated that the barrier installed on April 28, 2016 had an ASTM (American Society for Testing Materials) rating for 485 pounds. The County's posture was that the cover was not a sufficient barrier, as per the Code. Instead, the County maintains that compliance was not achieved until May 6, 2016, when the pool enclosure barrier was repaired.

The Special Magistrate made a recommendation to the Board of County Commissioners that the fine be reduced to \$3,300 contingent upon payment within 30 days of the date that the Board renders a decision approving his recommendation, with an option for establishment of a payment plan which must be created within 30 days of the date that the Board renders decision and payment plan is timely paid accordingly. His Order further stated that, if the reduced amount is not paid by the above specified timeframe, the fine will revert to the original amount due, less payments received.

On October 4, 2016, the Special Magistrate's recommendation was presented to the Board of County Commissioners for consideration. Ms. Fiorentino was present at the meeting and addressed the Board concerning her request. The Board accepted the Special Magistrate's recommendation for reduction and 30 day window for payment (November 4, 2016 deadline).

On November 4, 2016, Ms. Fiorentino contacted Code Enforcement seeking a time extension, alleging that "It is taking our client some time to obtain investor approval to pay this amount." Ms. Fiorentino was advised that staff does not have authority to modify the action of the Board. Staff offered to accept payment by phone with a credit card, since it was the last day to make payment of the reduced amount. Payment options for payment in full or for a payment plan were offered to Ms. Fiorentino. At 5 p.m., the County received payment of \$3,300 via e-check transaction. On November 10, 2016, however, the County received notice from our bank that the e-check was returned unpaid because "The Corporate Customer advises not authorized." A fee of \$165 has been incurred by the County as a result of the stop payment on the check.

Citizen's Requested Action:

Ms. Fiorentino is requesting an after-the-fact time extension of the Board's decision to reduce the fine from \$68,600 to \$3,300 and stipulating that payment be made within 30 days. Further, the Board stipulated that, if not paid accordingly, the fine amount would revert to the original amount due. Since the Board's action to reduce the fine occurred on October 4, 2016, the payment deadline was November 4, 2016.



Meeting Date
October 4, 2016

AGENDA	
Section	CONSENT
Item No.	II.C.1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	BOARD CONSIDERATION RE: REQUEST FOR REDUCTION OF FINE AND RELEASE OF CODE ENFORCEMENT LIEN FOR BANK OF AMERICA and ARNS, INC. MERRITT ISLAND (DIST. 2) FY 16 FISCAL IMPACT - \$68,600 FINE/\$65,300 REDUCTION=\$3,300 PAYMENT DUE
DEPT/OFFICE:	Central Services Office/Clerk to the Special Magistrate/for Planning and Development

Requested Action:
It is requested that the Board consider the Special Magistrate's recommendation to reduce the accrued fine for the violation at 235 Northgrove Dr., Merritt Island, FL 32953; Case 14CE-00379, from \$68,600 to \$3,300 and direct staff to prepare and execute a release and satisfaction of lien upon receipt of payment.

Summary Explanation & Background:
On July 21, 2016, the Code Enforcement Special Magistrate, upon petition of previous owner, Bank of America and ARNS, Inc., through their attorney, Angela M. Fiorentino, reviewed the basis for reduction of the fine, heard testimony from Angela M. Fiorentino and the County, and reviewed the Minutes and other documents from the original hearing.

This cause was initially heard during public hearing before the Code Enforcement Special Magistrate on 05/15/14 after due notice to the Respondent, Bank of America. The violation was for the safety issue of an unsecured pool. The Special Magistrate heard testimony under oath, received evidence, and issued Findings of Fact, Conclusions of Law and Order, and thereupon issued his oral Order which was reduced to writing and furnished to the Respondent.

The Special Magistrate's Order found the Respondent to have committed the violation. This case was brought back to the Special Magistrate on 11/19/15 because the Respondent did not comply in a timely manner with the Special Magistrate's Order. An Order Imposing Administrative Fine and/or Costs as Lien was filed against the property and upon any other real or personal property owned by the Respondent, Bank of America and ARNS, Inc., and recorded in the official records of Brevard County, Book 7496 Page 2739. The fine accrued at a rate of \$100 per day from 05/23/14 to the compliance date of 04/28/16 to \$70,600. A partial release payment of \$2,000 was received for other real property leaving the balance of the fine at \$68,600.

Testimony and evidence presented by Attorney, Angela M. Fiorentino, stated that their client installed an ASTM cover that holds up to 485 pounds and has a fastening mechanism. The County's posture was that said cover is not a sufficient barrier, as per the code. Subsequently, the pool enclosure barrier was repaired and compliance was achieved on May 6, 2016.

Findings: After hearing testimony from all parties involved, the Special Magistrate recommended a reduction of the fine from \$68,600 to \$3,300. This reduction is contingent upon payment being made within 30 days of the date that the Board of County Commissioners render a decision approving the Special Magistrate's recommendation, with an option for the establishment of a payment plan to be created within 30 days of the date that the Board render its decision. If the reduced amount is not paid accordingly, the accrued fine will revert to the original amount due, less payments received. Total actual costs are \$2,126 of which \$550 in enforcement costs have been paid.

FY16 FISCAL IMPACT - \$68,600 FINE/\$65,300 REDUCTION/\$3,300 PAYMENT DUE

Contacts: Robin M. DiFabio, AICP, Planning & Development Department 633-2069

Clerk to the Board Instructions: N/A

Exhibits Attached: Findings and Recommendation of the Special Magistrate, Reduction Factor Worksheet, Request for Reduction of Penalty, CAP Report, and copy of Property Appraiser's screen, actual costs worksheet

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager Director, Central Services Dept.

Department Director / Extension

Stockton Whitten

Teresa Samarata

Robin M. DiFabio, AICP, Director, Planning & Development Dept.

Daughtry, Sandy

From: Fiorentino, Angela <afioentino@bakerdonelson.com>
Sent: Friday, November 18, 2016 3:00 PM
To: Daughtry, Sandy
Cc: Smith, Michael
Subject: FW: 14CE-00379 - Fiol
Attachments: ARNS Code Reduction agenda.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Sandy,

I received an out of office reply from Sally. Can you please assist us with getting on the BOCC agenda Dec 6? (Details below.) Thank you.

Angela M. Fiorentino, Esq. | Baker Donelson | 407-367-5461

From: Fiorentino, Angela
Sent: Friday, November 18, 2016 2:57 PM
To: 'sally.lewis@brevardfl.gov'
Cc: Smith, Michael
Subject: FW: 14CE-00379 - Fiol

Hi Sally,

We'd like to be placed on the BOCC's agenda for a fine reduction request (further described below). I understand there's a meeting on 12/6. Can we be placed on that agenda? Thanks.

Angela M. Fiorentino, Esq. | Baker Donelson | 407-367-5461

From: Yuan, Diana [<mailto:Diana.Yuan@brevardfl.gov>]
Sent: Friday, November 18, 2016 2:52 PM
To: Fiorentino, Angela
Cc: Beaudoin, Karen
Subject: RE: 14CE-00379

Angela,

The Chairman does not execute a written reduction in these situations. I reviewed the Board's discussion of the reduction at the 10/4/16 meeting (video recording can be found at: <http://brevardcountyfl.iqm2.com/Citizens/Calendar.aspx>) and the associated agenda report (attached) and it's my opinion that the Board approved the Special Magistrate's recommendation, which includes the 30-day payment provision.

As such, the lien has reverted back to the full amount and you will have to go back to the Board for further action. Please contact Sally Lewis (sally.lewis@brevardfl.gov) to determine when the next available meeting is for you to get on the agenda. Sally will let you know if anything else is required.

Let me know if I can be of further assistance.

Best,

Diana E. Yuan, Esq.
Assistant County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamieson Way, Suite 308
Viera, FL 32940
Telephone: 321/633-2090
Fax: 321/633-2096
diana.yuan@brevardcounty.us

Please note: The State of Florida has a broad public records law. Most written communications to or from county employees regarding county business are public records available upon request to the public and media. Your e-mail communications may therefore be subject to public disclosure.

From: Fiorentino, Angela [<mailto:afiorentino@bakerdonelson.com>]
Sent: Friday, November 18, 2016 10:11 AM
To: Yuan, Diana
Subject: 14CE-00379

Diana, calling you about this in a second.

Angela M. Fiorentino
Attorney

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
SunTrust Center
200 South Orange Avenue
Suite 2900
Orlando, Florida 32801

Phone: 407.367.5461
Facsimile: 407.264.8429
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Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
represents clients across the U.S. and abroad from offices
in Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, Tennessee,
Texas and Washington, D.C.

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Meeting Date
October 4, 2016

AGENDA	
Section	CONSENT
Item No.	II.C.1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

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DEPT/OFFICE:	Central Services Office/Clerk to the Special Magistrate/for Planning and Development
Requested Action:	

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Findings: After hearing testimony from all parties involved, the Special Magistrate recommended a reduction of the fine from \$68,600 to \$3,300. This reduction is contingent upon payment being made within 30 days of the date that the Board of County Commissioners render a decision approving the Special Magistrate's recommendation, with an option for the establishment of a payment plan to be created within 30 days of the date that the Board render its decision. If the reduced amount is not paid accordingly, the accrued fine will revert to the original amount due, less payments received. Total actual costs are \$2,126 of which \$550 in enforcement costs have been paid.

FY16 FISCAL IMPACT - \$68,600 FINE/\$65,300 REDUCTION/\$3,300 PAYMENT DUE

Contacts: Robin M. DiFabio, AICP, Planning & Development Department 633-2069

Clerk to the Board Instructions: N/A

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Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Director, Central Services Dept.	Department Director / Extension
Stockton Whitten	Teresa Gamarata <i>Teresa Gamarata</i>	<i>Robin M DiFabio</i> Robin M. DiFabio, AICP, Director, Planning & Development Dept.