

**J. New Business - Development and Environmental Services Group
ITEM 4.**



**AGENDA REPORT
October 23, 2018**

Board Consideration, Re: Request for Reduction of Fine and Release of Code Enforcement Lien for Cocoa Beach Club & Marina LLC, Tax Account 2520257, OCEANUS LN, COCOA BEACH, FL 32931 (15CE-01380) (District 2)

SUBJECT:

Board Consideration, Re: Request for Reduction of Fine and Release of Code Enforcement Lien for Cocoa Beach Club & Marina LLC, Tax Account 2520257, OCEANUS LN, COCOA BEACH, FL 32931 (15CE-01380) (District 2).

FISCAL IMPACT:

FY18 - Fiscal Impact \$16,740

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board consider the Special Magistrate's recommendation to reduce the accrued fine from \$22,575 to \$5,835 and release the lien upon full payment for case 15CE-01380 at Tax Account 2520257, OCEANUS LN, COCOA BEACH, FL 32931.

SUMMARY EXPLANATION and BACKGROUND:

This matter came for public hearing before the Code Enforcement Special Magistrate on September 17, 2015 for Recurring violations of County Code, Section 114-28(b), Overgrowth. More specifically, mow property up to and including all property/fence lines, removed accumulations and maintain. After due notice to the Owner, Cocoa Beach Club & Marina, LLC, an Affidavit of Stipulation was executed admitting the violations and the Special Magistrate found the property in violation of County Code and issued a Findings of Fact, Conclusions of Law and Order & Lien for Costs, which was executed and recorded in Official Records.

On April 20, 2017, the Special Magistrate issued an Order Imposing Fine as Lien which was executed and recorded in Official Records. The fines on the property accrued at \$25 per day from October 2, 2015. The property was mowed and maintained, thereby correcting the violation as of March 23, 2018 (903 days). The fines accrued to \$22,575.

On May 17, 2018, the Owner, Cocoa Beach Club & Marina, LLC, petitioned the Code

Enforcement Special Magistrate for a reduction of the fine to \$2,000. The Special Magistrate recommends a reduction of the fine from \$22,575 to \$5,835, contingent upon payment within 30 days or establishment of a payment plan within 30 days of the date that the Board of County Commissioners render a decision approving the Special Magistrate's recommendation.

Actual cost: Total actual costs for this case are \$1,670. The enforcement costs of \$350 were paid toward that amount bringing the remaining actual costs to \$1,320.

Contacts: Brian Lock, Code Enforcement Manager, extension 52779, brianlock@brevardfl.gov.

CLERK TO THE BOARD INSTRUCTIONS:

N/A

ATTACHMENTS:

- | | Description |
|---|---|
| ▯ | Findings and Recommendation of Special Magistrate and Reduction Factor Worksheet |
| ▯ | Request for Reduction of Penalty |
| ▯ | Actual Costs Worksheet |



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

October 24, 2018

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director

RE: Item J.4., Request for Reduction of Fine and Release of Code Enforcement Lien for Cocoa Beach Club & Marina LLC, Tax Account 2520257, Oceanus Lane, Cocoa Beach (15CE-01380)

The Board of County Commissioners, in regular session on October 23, 2018, approved the Special Magistrate's recommendation to reduce the accrued fine from \$22,575 to \$5,835; and approved release of lien upon full payment for Case 15CE-01380 at Tax Account 2520257, Oceanus Lane, Cocoa Beach.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: Code Enforcement Manager
Finance
Budget

CODE ENFORCEMENT SPECIAL MAGISTRATE
BREVARD COUNTY, FLORIDA

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
a political subdivision of the State of Florida,
Petitioner,

CASE NUMBER: 15CE-01380

Property Address: Tax Account 2520257, OCEANUS LN,
COCOA BEACH FL 32931
District: 2

vs.

COCOA BEACH CLUB & MARINA LLC, Owner,
Respondent(s)

**FINDINGS AND RECOMMENDATION TO
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

Upon petition of COCOA BEACH CLUB & MARINA LLC, Owner, through representatives Brian Curley and Yane Zana, Registered Agent, the Code Enforcement Special Magistrate, on 5/17/2018, reviewed the basis for reduction of the accrued fine stated in the Request for Reduction of Penalty and Recommendation to Brevard County Board of County Commissioners application provided by COCOA BEACH CLUB & MARINA LLC, heard testimony from Brian Curley and Yane Zana and the County; reviewed the Minutes and other documents from the original hearing, and being fully advised finds:

I. FACTS

1. This cause came on for public hearing before the Code Enforcement Special Magistrate on 9/17/2015 after due notice to the Respondent, COCOA BEACH CLUB & MARINA LLC, at which time the Code Enforcement Special Magistrate heard testimony under oath, received evidence, and issued his Findings of Fact, Conclusions of Law and Order & Lien for Costs, and thereupon issued his oral Order which was reduced to writing and furnished to the Respondent. Findings of Fact, Conclusions of Law and Order & Lien for Cost recorded in the official records of Brevard County Book 7453, Page 1451.

2. Said order found the Respondent in violation of Overgrowth and ordered a fine of \$25.00 per day will be imposed beginning 10/2/2015. A re-inspection on 3/23/2018 revealed the corrective action ordered by the Code Enforcement Special Magistrate was completed and the inspecting officer filed an Affidavit of Late Compliance. The fine accrued to \$22,575.00.

3. Accordingly, it was brought to the Code Enforcement Special Magistrate's attention on 4/20/2017 that the Respondent did not comply with the Special Magistrate's Order, and an Order Imposing Fine as Lien was filed against the property and upon any other real or personal property owned by the Respondent, COCOA BEACH CLUB & MARINA LLC, and recorded in the official records of Brevard County, Book 7869 at Page 2668.

4. Testimony and evidence was presented by Brian Curley and Yane Zana, stating:

Said he forced to call inspection to confirm
proton compliance

5. Testimony was received from the County stating:

- a) The County objects to the request for reduction OR
 The County acknowledges the Special Magistrate's authority to recommend a fine reduction pursuant to Board policy.

b) FINE reduced TO 20% plus actual UNPAID
COSTS

II. FINDINGS

The Special Magistrate weighing the severity of the violation of **OVERGROWTH**.

All of above factors support ~~do~~ do not support a recommendation of reduction of the accrued fine.

III. RECOMMENDATION

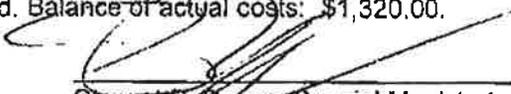
1. Based upon the foregoing factors, the request is DENIED.

OR

1. Based upon the foregoing factors, which in total weigh in favor of reduction of the accrued fine, the Special Magistrate recommends reduction of the accrued fine in the amount of \$22,575.00 to the reduced sum of \$5835.00, contingent upon:

- a. Payment within 30 days of the date the Board of County Commissioners renders a decision approving the Special Magistrate's recommendation.
- b. With an option for the establishment of a **payment plan which must be created within 30 days of the date of the Board of County Commissioners rendered decision, and payment plan timely paid accordingly.**
- c. If reduced amount is not paid by the above time frame(s) as specified, the accrued fine will revert to the original amount due, less payments received.
- d. The actual costs total: \$1,670.00. Enforcement costs in the amount of \$350.00 have been paid. Balance of actual costs: \$1,320.00.

Dated May 17, 2018.


Stewart B. Capps, Special Magistrate
Code Enforcement

You have a right to appeal a final administrative Order to the 18th Circuit Court for Brevard County within a period of 30 days in accordance with Brevard County Code Section 2-178.

cc: YANE F. ZANA, RA., COCOA BEACH CLUB & MARINA LLC, 1555 INDIAN RIVER BLVD.
SUITE B-125 VERO BEACH FL 32960

Mail payment to: Brevard County Code Enforcement, 2725 Judge Fran Jamieson Way, Bldg A 114, Viera, FL 32940

REDUCTION FACTOR WORKSHEET

CASE # 15CE-01380

A. Extenuating Circumstances? Circle any that apply.

- 1) The applicant did not have the resource to comply
- 2) The applicant had a financial hardship
- 3) The applicant had a medical hardship
- 4) The applicant was experiencing hard times or was a victim of circumstances.

Explain: _____

- 5) There were technical and/or procedural issues with the case
- 6) The applicant did not have authority to make corrections (i.e., other legal action pending)
- 7) The required corrections were complex in nature
- 8) The applicant's age prevented timely compliance
- 9) The applicant experienced a language barrier

B. Nature of the violation.

- 1) Heightened health, safety, welfare concern Yes/No No
- 2) The amount of time to correct
 - a) 1-60 days
 - b) 61-120 days
 - c) Over 120 days
- 3) Degree of responsibility the applicant contributed to the delay in compliance
 - a) None
 - b) Somewhat
 - c) Complete
- 4) The applicant's level of cooperation with code enforcement
 - a) None
 - b) Somewhat
 - c) Complete
- 5) Did the applicant ever request an extension of the compliance date?
Yes ___ was it granted ___ denied ___ None requested ✓
- 6) If yes, how many extensions were granted? _____

C. What type of interest does the applicant have on the property?

- 1) Considering acquiring the property
- 2) Foreclosure/Tax Deed Sale
- 3) Inherited property
- 4) Acquired property from the violator
- 5) The applicant was the owner when the violation occurred

D. Financial beneficiary of the fine reduction

- 1) Violator
- 2) New owner who corrected violation
- 3) _____

Original Fine \$22,575.00

Recommend Reduction to \$ 5385.00

Contingent on payment within 30 days

Establish Payment Plan within 30 days, and pay in full by one yr

If unpaid, fine will revert to original amount, less payments received

SAC
S. Capps

5/17/18

CODE ENFORCEMENT SPECIAL MAGISTRATE
BREVARD COUNTY, FLORIDA

CODE ENFORCEMENT

Special Magistrate Hearing: Thursday, 5/17/18 9:00 a.m.,
Bldg C, 2nd Floor Space Coast Room, 2725 Judge Fran
Jamieson Way, Viera, FL 32940

MAY 02 2018

FAX COMPLETED FORM TO: 321-633-2167

RECEIVED

Mail original to: Brevard County Code Enforcement, 2725
Judge Fran Jamieson Way, Bldg A 114, Viera, FL 32940

DUE ON OR BEFORE: ASAP- 4/20/2018

Case No. 15CE-01380

Property Address: Tax Account 2520257, OCEANUS LN, COCOA BEACH FL 32931 District: 2
Owner's Name: COCOA BEACH CLUB & MARINA LLC

**REQUEST FOR REDUCTION OF PENALTY and
RECOMMENDATION TO BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**
**(Consider this document your Notice of Hearing-No other notice will be sent for this request
*THIS IS A 2-STEP PROCESS)**

BY COMPLETING THIS FORM, YOU ARE MAKING STATEMENTS UNDER OATH. FAILURE TO BE TRUTHFUL IS A VIOLATION OF FLORIDA STATUTES PERTAINING TO PERJURY, WHICH IS A FELONY PUNISHABLE BY UP TO 15 YEARS IMPRISONMENT.

INSTRUCTIONS: Please review and complete the entire package. Failure to provide complete information will delay consideration of your request. Enforcement Costs must be paid prior to scheduling case for hearing and are not eligible for reduction. Be specific when writing your statement. Please return this form to the Special Projects Coordinator in Code Enforcement prior to the above deadline. The Request will then be scheduled for the next available Special Magistrate hearing and before the Board of County Commissioners thereafter. You must be present at both of the meetings. If you are claiming medical or financial hardship, you may attach supporting documentation, however they will become public record. If you have any questions, please call Angela at (321) 633-2086, ext. 52885.

Property Owner's Name: COCOA BEACH CLUB & MARINA LLC, Rep: Brian Curley/Yane Zana

Property Owner's Mailing Address: 1555 Indian River Blvd, Ste B-125, Vero Beach FL 32960

Phone Number where you can be reached during the day: Brian Curley-772-559-0011/Yane Zana-772-532-3418

STATUS OF PROPERTY AS OF INSPECTION MADE BY Holly Hendricks ON 3/23/2018

VIOLATION of: Section 114-28(b), Brevard County Code - Overgrowth

Violation heard on 9/17/2015; fine ordered to accrue at \$25.00 per day from 10/2/2015 to 3/23/2018; the fine accrued to = \$22,575.00 (903 days in violation); Fine imposed as lien by Special Magistrate on 4/20/2017.

Enforcement costs in the amount of \$350.00 were paid on 9/18/2015.

If the property owner is unable to complete this form, list the name of the person who completed the form and is authorized to act for the Property Owner and their relationship to the property owner.

Brian Curley/Yane Zana

MAKE CERTAIN THAT THIS FORM AND ANY ATTACHMENTS COMPLETELY SET FORTH YOUR POSITION. YOU MUST BE PRESENT TO ANSWER ANY QUESTIONS THE SPECIAL MAGISTRATE MAY HAVE.

I, Brian Curley/Yane Zana, do hereby submit this Request for Reduction of Penalty, and in support offer the following statement:

The subject property, despite financial difficulties over many years, has been in compliance for most of the time period stated for violation. We have records that we can present regarding landscaper invoices paid monthly for maintenance of the property to compliance. We've made our best efforts, despite financial difficulties over many years, to be compliant and good neighbors.

Date: 4/18/18

Signed: [Signature]

STATE OF FLORIDA)
COUNTY OF BREVARD)

PERSONALLY appeared before me, the undersigned authority duly authorized to administer oaths and take acknowledgments, Brian Curley/Yane Zana, who first being duly sworn, acknowledged before me that the information contained herein is true and correct. He/she is not personally known to me and has produced a Florida driver's license as identification and did take an oath.

Date: 04.18.18 Notary Public: [Signature]



REDUCTION FACTOR WORKSHEET

THIS WORKSHEET MUST BE COMPLETED AS PART OF THE APPLICATION PROCESS

CASE #15CE-01380

A. Extenuating Circumstances? Circle any that apply.

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- 2) New owner who corrected violation
- 3) _____

.....
Original Fine \$22,575.00

Recommend Reduction to \$ 2,000.00
(Must Enter an Amount)

Worksheet for Assessment of Actual Costs for Case 15CE-01380

Inspector	Hendricks							
Wages S&B Hourly	\$22.86							
Per Minute	\$0.38							
Officer Costs:								Sub Total
# Field Inspections	6 x	\$22.86	Hourly	Total	\$137.16			\$137.16
Vehicle Mileage								per mile
# Field Inspections	6 x2: Rdtrip	12	x miles	17	204	0.54		\$110.16
Administrative Costs:								
		Minutes						
# Computer Entries	29	10	290		\$0.38			\$110.49
# Telephone calls	16	5	80		\$0.38			\$30.48
# Research	16	15	240		\$0.38			\$91.44
# Hearings/Prehearings	3	120	360		\$0.38			\$137.16
								\$369.57
								\$369.57
Extra Investigative Insp:								
S&B Hr/Mn		Minutes						
								\$0.00
								\$0.00
Recording Fees								
1 Page		\$10.00						\$10.00
2 Pages		\$18.50						\$18.50
3 Pages		\$35.50						
4 Pages		\$44.00						
Hearings (public, extension, reduction, imposition)	3 x	\$200.00					Legal Fees	\$600.00
Hearing Prep Office-number of hearings	5 x	\$85.00						\$425.00
Subtotal Actual Costs for case								\$1,670
Enforcement Costs Assessed and Paid - \$350 or \$550								\$350
Balance due of Actual Costs - DEFICIT								\$1,320