

TOWN OF LOXAHATCHEE GROVES

155 F Road Loxahatchee Groves, FL 33470



AGENDA MEMO

TO: Town Council of Town of Loxahatchee Groves

FROM: Office of the Town Attorney

VIA: Francine Ramaglia, Town Manager

DATE: May 7, 2024

SUBJECT: Discussion of Code Compliance and Foreclosures

Background:

At its meeting on April 2, 2024, the Town Council requested information regarding code compliance and foreclosures. Chapter 162, Florida Statutes, provides local governments with a framework for ensuring code compliance. Code section 14-1 adopts the procedures of Chapter 162. The following is a summary of the code compliance process and related legal issues.

Overall, the Town's approach to code compliance has been complaint-driven. Last year Town Council directed staff to continue this reactive approach to code compliance, with the exception of development without a floodplain development permit or approval, tree removal, unpermitted uses, more than 4 recreational vehicles on a property, and livestock waste dumping. Town staff has been proactive in initiating code compliance cases for violations of these identified regulations and continues to initiate cases based on complaints for all other violations.

Recent changes in state law have affected the complaint-driven model. For example, in 2021, the legislature amended section 162.06 to prohibit local governments from initiating enforcement proceedings based on anonymous complaints. The statute now requires that a complainant give a full name and address, which possibly has a chilling effect on reports and/or leads to the submission of false names and addresses associated with the complaint. This office has previously opined that false names and address do not comport with section 162.06. Despite the changes regarding anonymous complaints, the Town's code compliance officers are still able to initiate enforcement proceedings based on their own observations.

When a code officer finds that the property is not in compliance with the code, section 162.06(2) requires that the property owner be given notice of the violation and an opportunity to cure it. If the violation is not cured, the case then proceeds to a hearing before a special magistrate, who serves as a neutral decision-maker.

Based on the evidence presented at the hearing, the special magistrate determines whether a violation of the code exists. If the special magistrate finds that a violation exists, the special magistrate will provide a date certain by which the property owner must bring the property into compliance. If the property remains in violation past the date for compliance, fines may be assessed. A recorded order imposing fines becomes a lien on the property and all other property owned by the property owner in any County in which the order is recorded. After three months, the Town can foreclose on a lien attached to a non-homestead property. *See* section 162.09(3), Florida Statutes.

Whether to foreclose on a code enforcement lien involves a cost-benefit analysis that differs based on the property. As a threshold matter, it must be determined whether the property is homestead property. A search should also be performed to determine if the property owner owns additional property in Palm Beach County that may be foreclosed. A complete lien search should be done to determine whether there are other liens that would take priority. For example, tax liens take priority over Chapter 162 code enforcement liens, *see* section 197.122(1), Florida Statutes, and mortgages and cross-attaching code enforcement liens may take priority over more recent code enforcement liens. *See City of Palm Bay v. Wells Fargo Bank*, 114 So. 3d 924 (Fla. 2013). Then, the Town should consider the complexity of the particular case and the resources available to pursue the litigation. Historically, the Town has not foreclosed on code enforcement liens.

Inasmuch as it allows the imposition of daily fines, Chapter 162, Florida Statutes, is designed to encourage compliance. Additional time may be provided at the discretion of the special magistrate to allow compliance without incurring fines. Pursuant to section 14-4 of the Town's Code, the special magistrate also has the authority to consider and render decisions on applications for reductions, satisfactions and releases of code enforcement liens.

Recently, the Town has handled several cases based on violations for unpermitted uses. These cases have brought to light at least two aspects of the Town's Unified Land Development Code (ULDC) that often serve as a hurdle to achieving compliance. First is that the Town's current code does not contain a straightforward process for recognizing legal non-conformities. The code requires that the non-conformity must be verified by Town Council. This is an unusual process that, to date, no property owner has applied for. Second is the limited number of allowed uses available in the Agricultural Residential Zoning District, which comprises the majority of the Town. The limited uses allowed by the code are not obvious when looking at the existing uses on property throughout the Town. For example, as discussed during the Evaluation and Appraisal Report (EAR) process, there are numerous commercial businesses operating within the Town's Agricultural Residential Zoning District. This discrepancy in allowed and existing uses leads to additional uses that violate the Town's code and no clear path for the property owners to achieve compliance and maintain their livelihood within the Town. The options for complying violations for unpermitted use are to cease the unpermitted use or accrue daily fines. Town staff often hears that ceasing the unpermitted use will effectively shut down businesses and force property owners to leave the Town.

Recommendations:

Discussion by Town Council, if desired, and direction to staff.