



T R A S K
 D A I G N E A U L T
 LLP
 A T T O R N E Y S

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 JAY DAIGNEAULT, B.C.S.*
 ERICA F. AUGELLO, B.C.S.*
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 ROBERT ESCHENFELDER, B.C.S.*
 NANCY S. MEYER, B.C.S.*
 JEREMY SIMON
 MEGAN R. HAMISEVICZ


** Board Certified by the Florida Bar in
 City, County and Local Government Law*

MEMORANDUM

DATE: November 14, 2023

TO: Mayor James "Jim" Rostek
 Vice Mayor Ray Kerr
 Commissioner David Tagliarini
 Commissioner Eddie McGeehen
 Commissioner Anne-Marie Brooks

CC: Robin Gomez, City Manager

FROM: Thomas J. Trask, City Attorney 

RE: Special Magistrate Liens at 13222 3rd Street E., Madeira Beach
 Case Nos. 2017.133 and 2018.109 (Overture Realty, LLC)

The purpose of this memorandum is to obtain your authorization to accept a settlement offer of 25% of the net sale proceeds of the subject property from Attorney Samuel Alexander on behalf of Overture Realty, LLC, the current owner and seller of the property, in exchange for a Release of three (3) Liens.

BACKGROUND

On October 21, 2001, the Director of Administrative Services for the City of Madeira Beach found the subject property in violation of Section 34-42 (Clearing of Excessive Growth and Litter from Open Private Property by City) of the city code and a Lien was recorded which imposed a fine in the amount of \$185.00 after the City mowed the property. The lien was recorded on November 16, 2001, at O.R. Book 11679, Page 1424, in the Public Records of Pinellas County. Because the recorded lien is more than 20 years, it is no longer subject to collection. However, this lien is being released merely to clear title to the property upon its sale.

On October 25, 2017, the Special Magistrate found the subject property in violation of Section 14-68 (Maintenance of Vegetation, Trees, Plantings and Landscaping) of the city code and an Order Imposing Fine was executed by the Special Magistrate. The Order imposed a fine in the amount of \$250.00 per day (plus interest) as well as mowing and property maintenance

November 14, 2023

Page 2

costs in the amount of \$761.45 for this lien against the owner. The lien remains unpaid as to Case No. 2017.133.

On May 3, 2018, the Special Magistrate found the subject property in violation of Section 14-69 (Maintenance of the Exterior of the Premises) and Section 14-70 (General Maintenance) of the city code and an Order Imposing Fine was executed by the Special Magistrate. The Order imposed a fine in the amount of \$100.00 per day (plus interest) as well as an administrative fine in the amount of \$154.25 against the owner. The lien remains unpaid as to Case No. 2018.109.

In 2020, the City of Madeira Beach pursued the foreclosure of the liens by filing suit in the Circuit Court of Pinellas County (Case No. 20-1097-CI) and retained Matthew Weidner to represent the City on its behalf. Recently Attorney Weidner was contacted by Attorney Alexander in an effort to resolve the liens and made a settlement offer on the seller's behalf in the amount 25% of the net sale proceeds of the subject property. The code enforcement liens have a total balance of \$127,554.65, excluding attorney's fees, interest and costs. The Property Appraiser's website shows that the 2023 Just Market Value is \$277,497 and the Sales Comparison value is \$322,300. Assuming that the closing costs are at around 10% and there are no encumbrances other than the City liens, the net sales proceed would be approximately \$249,748. The city's share of that (at 25%) would be \$62,437.

RECOMMENDATION

Based upon the facts of this case and to avoid incurring additional attorney's fees and costs, it is my recommendation that the Board of Commissioners accept this settlement offer of 25% of the net sales price of the subject property in exchange for a Release of the liens referenced herein.

Respectfully submitted.

TJT/kt

Attachments: Special Magistrate Liens
Settlement Offer

cc: Clara VanBlargan, City Clerk
Holden Pinkard, Building Operations Coordinator
Grace Mills, Code Compliance Officer
Frank DeSantis, Building Official

KARLEEN F. DE BLAKER, CLERK OF COURT
PINELLAS COUNTY, FLORIDA

This instrument was prepared by:

Name Judy Walker, City of Madeira Beach
Address 300 Municipal Drive, Madeira Beach, FL 33708

BC176563 11-16-2001 08:59:06 SSS
51 LEN-KAELIN
0532B2
IH:01400372 BK:11679 SPG:1424 EPG:1424
RECORDING 001 PAGES 1 \$6.00

PLACEMENT OF LIEN
October 29, 2001

NAME AND ADDRESS OF VIOLATOR

Louis H or Mary H Kaelin
c/o Factory Electric
2422 Palumbo Drive
Lexington, KY 40509-1117

01-400372 NOV-16-2001 8:59AM
PINELLAS CO BK 11679 PG 1424

TOTAL: \$6.00
CHECK AMT. TENDERED: \$6.00
CHANGE: \$0.00
BY _____ DEPUTY CLERK

ADDRESS AND LEGAL DESCRIPTION OF PROPERTY WHERE VIOLATION OCCURRED

13222 3rd Street East
Madeira Beach, FL 33708
Lot 17, Block K, Mitchell's Beach
Parcel Identification Number: 10/31/15/65304/011/0170

Violation of Code Enforcement Board Regulations
Section 34-42

Total fine owed as of September 27, 2001 \$185.00

I, Elaine Trehy, the undersigned, being the Director of Administrative Services for the City of Madeira Beach, Pinellas County, Florida, do hereby certify that the foregoing is a true and correct copy of a lien for code enforcement violation charges to be placed on the above stated property and property owner, as per Charter of the City of Madeira Beach, Florida, Section 34-42.

Elaine Trehy
Elaine Trehy
Director of Administrative Services

**STATE OF FLORIDA
COUNTY OF PINELLAS**

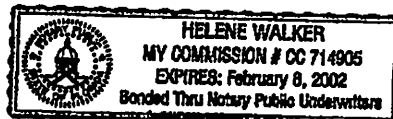
The foregoing instrument was acknowledged before me this 29 Day of October, 2001, by Elaine Trehy, who is personally known to me, who did not take an oath and acknowledged that she executed the foregoing lien for the purpose therein expressed.

WITNESS my hand and seal the day and year last above written.

Helene Walker
Helene Walker
HELENE WALKER, Notary Public
Commission No. CC 714905

WITNESS:

Judy G. Walker
Judy G. Walker



CODE ENFORCEMENT SPECIAL MAGISTRATE
CITY OF MADEIRA BEACH

CITY OF MADEIRA BEACH,

CASE NUMBER: 2017.133

Petitioner,

vs.

KEN BURKE, CLERK OF COURT
AND COMPTROLLER PINELLAS COUNTY, FL
INST# 2020047584 02/11/2020 03:53 PM
OFF REC BK: 20880 PG: 566-568
DocType:LN RECORDING: \$27.00

OVERTURE REALTY, LLC,

Respondent.

This document is being re-recorded
as a certified copy pursuant to
Florida Statute 162.10

ORDER IMPOSING ADMINISTRATIVE FINE AND CERTIFYING LIEN

THIS CAUSE came on to be heard for public hearing before the undersigned Special Magistrate on October 11, 2017, after due notice to the Respondent, and the Special Magistrate having heard testimony under oath, received evidence, and otherwise being advised in the premises, hereby finds:

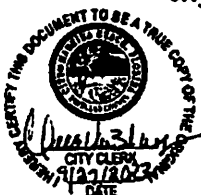
Findings of Fact:

1. The City was represented by the City Attorney, Erica Augello and its Code Enforcement Officer, Deputy Roxby.
2. No one was present at the hearing on behalf of the Respondent.
3. The property in question, located at 13222 3rd Street E, Madeira Beach, Florida 33708 ("Property"), is owned by the Respondent.
4. Proper notice was served upon the Respondent via certified mail, regular mail, posting or hand delivery in accordance with Chapters 162 and 166, Florida Statutes.
5. The Respondent was notified that Respondent was in violation of the following section of the Code of Ordinances of the City of Madeira Beach to wit:

Sec. 14-68.- Same-Maintenance of vegetation, trees, plantings and landscaping.

The owners/occupants of private property are responsible for the maintenance of plants, trees, grass, ground cover, plantings, landscaping, organic materials, and vegetation of any type or nature (collectively referred to as vegetation and organic material) located on such property and abutting rights-of-way, excluding roads and streets. The board of commissioners may designate by resolution right-of-way areas to be maintained by the city due to special circumstances.

- (1) Private property and rights-of-way shall be maintained with a herbaceous layer of sod, a ground cover material or organic mulch. Sod shall be maintained



at a maximum overall height of six inches or less; other ground cover material shall be maintained at an overall height not to exceed 12 inches. Organic mulch shall be composed of chopped or shredded organic material and maintained in a manner which will retard or prevent the rapid or easy spread of fire.

6. The violation set forth in Paragraph 5 above existed as of the date of the Notice of Violation herein and at all times subsequent thereto up to the date of this Hearing.

7. That a reasonable period of time for correcting the above violation and bringing the property into compliance is a period of seven (7) days from the date of this Hearing.

BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS HEREBY ORDERED AND ADJUDGED:

1. That the Respondent and the Property at the above mentioned location are found to be in violation of Section 14-68(1) of the Code of Ordinances of the City of Madeira Beach

2. The Respondent shall correct the above stated violations on or before October 18, 2017, by taking the remedial action as set forth in the Notice of Violation.


3. If the Respondent fails to timely comply with the remedial actions as set forth above, a fine shall be imposed, without further hearing, in the amount of \$250.00 per day for the violation set in Paragraph 5 for each day the Respondent has failed to correct the violations after October 18, 2017, and the fine shall continue to accrue until such time as the property is brought into compliance. Additionally, an administrative fine in the amount of \$250.00 shall be imposed to cover the City's costs in bring this matter to hearing and the City shall be entitled to its mowing and property maintenance costs in the amount of \$761.45.

4. That the City of Madeira Beach may record this Order Imposing Administrative Fine and Certifying Lien in the Official Records of Pinellas County.

5. That upon recording, this Order Imposing Administrative Fine/Lien shall become a lien upon the above described real property, and other real property of Respondent in Pinellas County and any personal property of the Respondent, as provided by law.

6. The Special Magistrate does hereby retain jurisdiction over this matter to enter such other and further orders as may be just and proper.

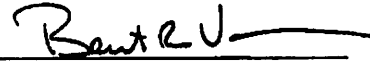
DONE AND ORDERED this 25th day of October, 2017.



Bart R. Valdes
Special Magistrate



A true and correct copy of this Findings of Fact and Special Magistrate Order was delivered by certified mail and regular mail to: **Overture Realty, LLC, 13222 3rd Street E, Madeira Beach, Florida 33708, and 149 N. Limestone, Lexington, KY 40507** on this 25th day of October, 2017.


Bart R. Valdes

APPEALS

An aggrieved party, including the local governing body, may appeal a final administrative order of a Special Magistrate to the circuit court. Such an appeal shall not be a hearing de nova but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed. Ss. 162-11.



CODE ENFORCEMENT SPECIAL MAGISTRATE
CITY OF MADEIRA BEACH

CITY OF MADEIRA BEACH,

CASE NUMBER: 2018.019

Petitioner,

KEN BURKE, CLERK OF COURT
AND COMPTROLLER PINELLAS COUNTY, FL
INST# 2020047683 02/11/2020 03:53 PM
OFF REC BK: 20880 PG: 563-666
DocType:LN RECORDING: \$27.00

vs.

OVERTURE REALTY, LLC,

This document is being re-recorded
as a certified copy pursuant to
Florida Statute 162.10

Respondent.

**FINDINGS OF FACT AND ORDER IMPOSING
ADMINISTRATIVE FINE AND CERTIFYING LIEN**

THIS CAUSE came on to be heard for public hearing before the undersigned Special Magistrate on April 23, 2018, after due notice to the Respondent, and the Special Magistrate having heard testimony under oath, received evidence, and otherwise being advised in the premises, hereby finds:

Findings of Fact:

1. The City was represented by the City Attorney, Ralf Brooks, and its Building Code Compliance Official, Deputy Shannon Roxby.
2. No one was present at the hearing on behalf of the Respondents.
3. The property in question, located at 13222 3rd St. E., Madeira Beach, Florida 33708 ("Property"), is owned by the Respondents.
4. Proper notice was served upon the Respondents via certified mail, regular mail, posting or hand delivery in accordance with Chapters 162 and 166, Florida Statutes.
5. The Respondents were notified that Respondent was in violation of the following sections of the Code of Ordinances of the City of Madeira Beach to wit:

Sec. 14-69. - Same—Maintenance of the exterior of premises.

The exterior of premises and all structures thereon including but not limited to private property and vacant lots shall be kept free of all hazards to the health, safety and welfare of persons on or near the premises. It shall be the duty of the owner/occupant of such property to promptly abate or remove the same.

(3) Overhanging or overhead objects which are loose, insecurely fastened or otherwise constitute a danger of falling on persons or property by reason of their location above the ground shall not be stored or maintained on private property.





Sec. 14-70. - Same—General maintenance.

The exterior of every structure or accessory structure (including fences, signs, screens and store fronts) shall be maintained in good repair, termite free and all surfaces thereof shall be kept painted or have similar protective coating where necessary for purpose of preservation and appearance. All surfaces shall be maintained free of broken glass, loose shingles, crumbling stone or brick, excessive peeling paint or other condition reflective of deterioration or inadequate maintenance to the end which the property itself may be preserved, safety and fire hazards eliminated, and adjoining properties will be protected from conditions which tend to decrease the property values of surrounding properties.

(1) All reconstruction of walls and sidings shall conform to the requirements of the Standard Building Code and shall be finished in a manner such that the materials used will not be of a kind which by their appearance, under prevailing practices and standards, will depreciate the values of the neighboring and adjoining premises.

(2) Floors, interior walls and ceilings of every structure shall be structurally sound.

(4) All roofs shall have a suitable covering free of holes, cracks or excessively worn surfaces, which will prevent the entrance of moisture into the structure and provide reasonable durability. Metal roofs showing signs of corrosion shall be painted with an approved product or have similar protective coating applied in accordance with the manufacturer's specifications.

(7) Walls and ceilings shall be in good repair, free from excessive cracks, breaks, loose plaster and similar conditions. Walls shall be provided with paint, wall covering materials or other protective covering.

6. The violations set forth in Paragraph 5 above existed as of the date of the Notice of Violation herein and at all times subsequent thereto up to the date of this Hearing.

7. The violations set forth in Paragraph 5, as well as the evidence presented at the hearing, make it clear that the condition of the property constitutes a health and safety hazard to the public at large.

8. That a reasonable period of time for correcting the above violation and bringing the property into compliance is a period of one (1) day from the date of this Hearing.

BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS HEREBY ORDERED AND ADJUDGED:

1. The Respondent and the Property at the above mentioned location are found to be in violation of Section(s) 86-52, of the Code of Ordinances of the City of Madeira Beach

2. The Respondent shall correct the above stated violations on or before April 24, 2018, by taking the remedial action as set forth in the Notice of Violation.

3. That, as a result of the violations set forth in Paragraph 5, the Property is hereby found to present a serious threat to public health, safety, and welfare.



4. In accordance with the provisions of §§162.06(4) and 162.09(1), Fla. Stat., the City is hereby authorized to enter upon the Property to make all reasonable repairs which are required to bring the Property into compliance and otherwise abate the public nuisance. The costs of all such reasonable repairs shall be charged to the Respondent in addition to the fines imposed herein below.


5. If the Respondent fails to timely comply with the remedial actions as set forth above, a fine shall be imposed, without further hearing, in the amount of \$100.00 per day for each of the violations set in Paragraph 5 for each day the Respondent has failed to correct the violations after April 24, 2018, and the fine shall continue to accrue until such time as the property is brought into compliance. Additionally, an administrative fine in the amount of \$154.20 shall be imposed to cover the City's costs in bring this matter to hearing, plus any additional costs incurred by the City to remediate the health and safety concerns which were incurred immediately prior to the hearing.

6. The City of Madeira Beach may record this Order Imposing Administrative Fine and Certifying Lien in the Official Records of Pinellas County.

7. Upon recording, this Order Imposing Administrative Fine/Lien shall become a lien upon the above described real property, and other real property of Respondent in Pinellas County and any personal property of the Respondent, as provided by law.

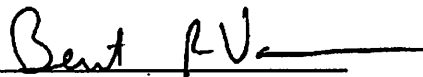
8. The Special Magistrate does hereby retain jurisdiction over this matter to enter such other and further orders as may be just and proper.

DONE AND ORDERED this 3rd day of May, 2018.



Amber E. Ashton
Special Magistrate

A true and correct copy of this Findings of Fact and Special Magistrate Order was delivered by certified mail and regular mail to: Overture Realty, LLC, 13222 3rd St. E., Madeira Beach, Florida 33708, and 149 N. Limestone, Lexington, KY 40507, on this 3rd day of May, 2018.



Amber E. Ashton

APPEALS

An aggrieved party, including the local governing body, may appeal a final administrative order of a Special Magistrate to the circuit court. Such an appeal shall not be a hearing de nova but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed. Ss. 162-11.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of the last day set forth on the signature page ("Effective Date") by and between the City of Madeira Beach, a municipal corporation ("the City") and Overture Realty, a Kentucky Limited Liability Corporation ("Defendant") for the purpose of resolving by compromise and settlement certain claims, controversies, alleged liabilities, and disputes between them.

RECITALS

This Agreement is entered into with reference to the following facts:

1. The City filed a lien foreclosure action in Pinellas County Circuit Court bearing Case No. 20-001097-CI which seeks to foreclosure a series of liens owned and held by the City. All those liens subject to this agreement are specifically identified in that action.
2. The Parties desire to compromise and settle all disputes and claims which exist or which may exist between and among them arising out of the facts, matters, and events set forth in the Action, without admitting any liability and settle their rights and obligations in connection with the Liens.

AGREEMENTS, RELEASES, AND PROMISES

3. **Incorporation of Recitals:**

The Recitals set forth at the beginning of this Agreement are deemed incorporated herein, and the Parties represent they are true, accurate, and correct.

4. **Full compliance with the City's Codes:**

Contemporaneous with the execution of this agreement, the City of Madeira Beach will issue an Affidavit of Compliance regarding those code enforcement violations that resulted in the liens at issue in this case and further confirming that no outstanding liens in favor of the City exist and that all code violation issues are resolved. The Defendant agrees to keep the subject property in a condition that does not violate City code, and the City retains the right to enforce its code as to any subsequent violations.

5. **Settlement Funds and Conclusion of Litigation:**

The parties agree to conclude this matter with Defendant paying to the Plaintiff the total sum of 25% of the net proceeds it receives from a fair market sale to a bona fide purchaser for fair market value of the real property identified as 13222 3rd Street East Madeira Beach FL 33708. Neither party shall be entitled to any prevailing party or other attorney's fees or costs. Upon receipt of good settlement funds specified above, the City will dismiss the action with prejudice and release all those liens identified in the case.

6. **Listing Subject Property for Sale:**

Upon execution of this agreement, the Defendant will cause the subject property to be publicly listed on the Multiple Listing Service with a Realtor of the Defendant's choosing and on such terms as the Defendant finds acceptable. The Defendant will immediately forward a copy of any executed sale agreement to Plaintiff for review.

7. **Acknowledgements:**

- a. This Agreement is entered into and executed voluntarily by each of the Parties and without any duress or undue influence on the part of, or on behalf of, any such Party.
- b. Each of the Parties has been represented by counsel of its/his own choice, or has had the opportunity to be represented by counsel and to seek advice in connection with the negotiations for, and the preparation of, this Agreement and that he or it has read this entire agreement and that he or it is fully aware of its contents and legal effects.
- c. The drafting and negotiation of this Agreement has been undertaken by all Parties and their respective counsel. For all purposes, this Agreement shall be deemed to have been drafted jointly by all Parties hereto with no presumption in favor of one party over another in the event of any ambiguity.

8. **Binding Effect:**

This Agreement shall be binding on, and shall inure to the benefit of, the Parties and their respective administrators, representatives, successors, and assigns.

9. **Counterparts:**

This Agreement may be executed by the Parties in any number of counterparts, including by facsimile, and each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument. This Agreement may be executed by electronic signature technology and such electronic signature shall act as the Parties' legal signatures on this Agreement and shall be treated in all respects as an original handwritten signature.

10. **Integration Clause:**

This Agreement contains the entire agreement between and among the Parties with regard to the Action and the Liens, and supersedes all prior and contemporaneous discussions, negotiations, understandings, and agreements, whether oral or written, express or implied, between them relating to the subject matter of this Agreement. This Agreement may be amended only by an agreement in writing signed by the Parties.

11. **Effective Date:**

This Agreement shall be deemed effective on the date that it is signed by all the Parties.

12. **Controlling Law and Venue:**

This Agreement shall be construed by and controlled under the laws of the State of Florida. The Parties consent to jurisdiction over them in the State of Florida and agree that venue for any state action arising under this Agreement shall lie solely in the courts located in Pinellas County, Florida, and for any federal action shall lie solely in the United States District Court, Middle District of Florida, Tampa Division.

13. **Attorneys' Fees:**

In the event of legal action or other proceeding to enforce this Agreement, the prevailing Party shall be entitled to recover from the adverse Party all of its reasonable attorneys' fees and costs incurred by the prevailing Party in the prosecution or defense of such action and in any action filed in breach of this Agreement whether incurred before suit, at the trial level or at the appellate level.

IN WITNESS WHEREOF, each of the Parties hereto has executed this agreement on the date set forth with its name below. The undersigned hereby certify that they have read and fully understand the terms, provisions, and conditions of this Agreement and have executed this Agreement voluntarily.

DEFENDANT:

By: _____
Printed Name: _____
Title: _____
Date: _____

PLAINTIFF:

Dated: _____, 2023

By: Robin Gomez, City Manager

Attest:

City Clerk