

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

3G-1

AGENDA ITEM SUMMARY

Meeting Date: July 10, 2007

Consent

Regular

Workshop

Public Hearing

Department: Office of Financial Management and Budget

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve a negotiated settlement offer in the amount of \$150,000 for the full satisfaction of a Code Enforcement Lien that was entered against Palm Bay Investments, Inc. on May 22, 1996.

**Summary:** The Code Enforcement Board (CEB) entered an Order on January 3, 1996 giving Palm Bay Investments, Inc. until May 2, 1996 to reduce the height of masonry walls in their development to the maximum permitted height of six feet as reflected on the approved building plans for the development, or to obtain a required variance. Compliance with the CEB's Order was not achieved by the ordered compliance date and a fine in the amount of \$250.00 per day was imposed. The CEB then entered a claim of lien against Palm Bay Investments, Inc. on May 22, 1996. The cited code violations were fully corrected as of February 19, 1998, when the variance was approved. The total accumulated lien amount through May 17, 2007 totaled \$346,925.79, of which the title insurers, together with the non-insured property owners, have collectively agreed to pay the County \$150,000 (43.24%) for full settlement of the County's outstanding Code Enforcement Lien. (District 4) (PGE)

**Background and Policy Issues:** The initial building code violation that gave rise to this code enforcement case was for the construction of masonry walls in the townhome section of the development that exceeded the approved and permitted site plan height. At the time the violation was cited and the subsequent code lien was entered, the developer still owned and controlled nineteen properties of which fifteen new townhomes were under construction. Four of the lots remained vacant and were quitclaim deeded to a company that had lent the developer construction funds for the project as a partial repayment of the loan. The CEB gave the developer, Palm Bay Investments, Inc. until May 2, 1996 to reduce the height of the walls or obtain the proper variance or a fine of \$250.00 per day would begin to accrue. A follow-up inspection by Code Enforcement on May 9, 1996 confirmed that the property was still not in compliance. A code lien was then entered against Palm Bay Investments, Inc. on May 22, 1996. The Collections Section of OFMB was contacted about a year ago by the owner of the four vacant lots to discuss a settlement of the outstanding code lien, after he tried to sell his four parcels, and was advised there was an outstanding County code lien attached to his properties. Due to the fact that there are a total of nineteen properties under the lien, the Collections Section of OFMB worked with all of the property owners and their respective title insurance companies, as a global settlement with all parties is required. We have received agreements from all parties to the proposed settlement, and recommend County Commission approval of the proposed lien settlement amount.

(Continued on Page 3)

Attachments:

Recommended by: Richard Roberts  
Department Director

6/26/07  
Date

Approved by: [Signature]  
County Administrator

6/26/07  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

<b>Fiscal Years</b>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<b>Capital Expenditures</b>	_____	_____	_____	_____	_____
<b>Operating Costs</b>	_____	_____	_____	_____	_____
<b>External Revenues</b>	<u>(\$150,000)</u>	_____	_____	_____	_____
<b>Program Income (County)</b>	_____	_____	_____	_____	_____
<b>In-Kind Match (County)</b>	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>(\$150,000)</u>	_____	_____	_____	_____

# ADDITIONAL FTE  
POSITIONS (Cumulative)

Is Item Included In Current Budget?    Yes \_\_\_    No X  
Budget Account No.:    Fund 0001    Department 600    Unit 6241    Object 5900

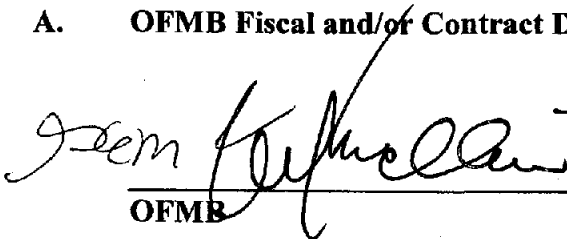
Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

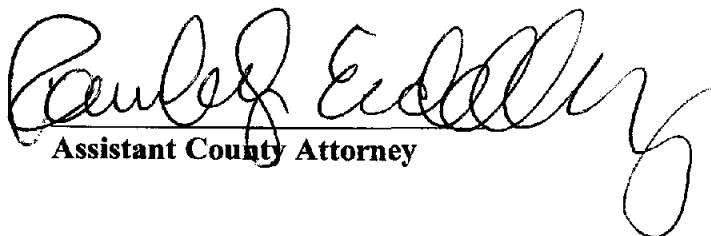
**C. Departmental Fiscal Review:**

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

 _____ OFMB	<p align="center">N/A</p> _____ Contract Dev. and Control
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**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

N/A  
 \_\_\_\_\_  
 Department Director

**This summary is not to be used as a basis for payment**

**Background and Policy Issues Continued**  
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The mitigating factors considered, during our review and evaluation, are as follows:

1. The developer of the community, Palm Bay Investments Inc., was found to have constructed masonry separation walls that exceeded the approved and permitted site plan height. A Unified Land Development Code violation was cited and subsequently resulted in a code lien being entered. After being cited, the developer began working on the variance, which was needed in order for the walls to remain at the greater height. However, the process took a long time and a daily fine in the amount of \$250.00 began to accrue on May 2, 1996. Even though the developer began selling the properties, the lien remained unpaid. The developer and his attorney/closing agent, who is no longer practicing law, cannot be located. As a result, the title insurers and the property owners who do not have title insurance must now satisfy the lien so that each of the owners can obtain clear titles on their properties. After lengthy negotiations between all of the parties involved, the proposed settlement amount of \$150,000 was agreed upon and needs the approval of the Board of County Commissioners.
2. The variance for the increased wall height was ultimately granted. The developer could have avoided the daily fines had he reduced the height of the walls to their original permitted height of six feet while he was going through the variance process. However, for reasons unknown, he let the existing walls stand at their violation height during the variance process.
3. The proposed \$150,000 settlement is approximately 91.2% of the total principal fine in the amount of \$164,500. The majority of the proposed lien reduction is the accrued interest that has accumulated since 1996.

An Affidavit of Compliance has been issued by Code Enforcement and states that the cited violations were corrected as of February 19, 1998 and that the subject properties are in full compliance with the CEB's Order. Further, the cited violation did not involve any health/safety issues.

Settlement offers that reduce any debt amount due to Palm Beach County by more than \$2,500 require the approval of the Board of County Commissioners, per Countywide PPM# CW-F-048. This settlement offer exceeds the \$2,500 limit and requires Board approval.

In light of the above stated circumstances, Staff believes that the proposed settlement is fair and in the best interest of Palm Beach County.