



Item No. 16a

# AGENDA ITEM MEMORADUM

Development Services

Bud Bentley/Tuchette Torres

Department

Department Director/Code Officer

<b>COMMISSION MEETING DATE - 7:00 PM</b>	<b>Deadline to Town Clerk</b>
<input checked="" type="checkbox"/> June 26, 2012	June 22, 2012

- Presentation     Reports     Consent     Ordinance  
 Resolution     Quasi-Judicial     **Old Business**     New Business  
 **FY2012 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC**

**SUBJECT TITLE: Sandra Stella's Application for Relief of Code Enforcement Liens**

**EXPLANATION:** On June 19, 2012, the Commission decided to reconsider Sandra Stella's application for relief of code enforcement liens at its June 26, 2012 meeting.

The property owner has provided the attached offer of settlement (**Exhibit 1**). The offer of \$20,000 is inclusive of the renewal fees for the BTR (\$1,920) and vacation rental permits and of the Town's administrative expenses (\$1,599). The settlement offer to mitigate the code liens is \$16,481 or 6.2%.

Also attached is the June 12, 2012 staff report (**Exhibit 2**).

We will provide an update of the Town's administrative costs at the June 26<sup>th</sup> meeting.

**RECOMMENDATION:** Staff recommends the Commission determine and set the amount they are willing to mitigate, add the Town's administrative costs to that amount, and make the settlement contingent on full payment being made to the Town within 30 days of Commission approval.

- EXHIBITS:**
1. Settlement Offer from Sandra Stella
  2. June 12, 2012 Agenda Memorandum

Reviewed by Town Attorney  
 Yes     No

Town Manager Initials BT

**CANNIZZARO**  
**Law Firm, P.L.**

**Exhibit 1**

3350 S.W. 148<sup>th</sup> Avenue, Suite 110, Miramar, Florida 33027  
Phone: (954) 734-2772 ~ (954)240-1520  
Facsimile: (305)829-8490 ~kara@clfflorida.com

June 22, 2012

*Sent via e-mail: BudB@lauderdalebythesea-fl.gov*

Town of Lauderdale-By-The-Sea  
Attn: Bud Bentley, Assistant City Manager  
4501 North Ocean Drive  
Lauderdale-By-The-Sea, Florida 33308

**Re: Letter in Support of Application for Relief From Code Enforcement  
Fines or Liens Concerning the Following Property and Case Nos.:**

<b>Property Address</b>	<b>Case Number</b>	<b>Issue</b>
<b>4216 Seagrape Drive</b>	<b>10-KM-00624 11-KW-00016</b>	<b>Vacation Rental Certificate Non-Renewal of Business Tax Receipt ("BTR")</b>
<b>4236 East Tradewinds Ave</b>	<b>10-KM-00626 11-KW-00017</b>	<b>Vacation Rental Certificate Non-Renewal of BTR</b>
<b>4557 Poinciana Street</b>	<b>11-KW-00015 10-KW-00089</b>	<b>Vacation Rental Certificate Non-Renewal of BTR</b>

Honorable Town Commissioners:

I represent Ms. Sandra Stella, owner of the above-captioned properties (collectively, the "Properties") in the referenced matters. The purpose of this letter is to provide the Town of Lauderdale-By-The-Sea (the "Town") with information in support of our request for relief of the above Code Enforcement liens. We recognize that this is the second time the Commission has taken the matter under consideration and we are grateful for the opportunity to provide information which we believe establishes that an abatement of the liens is appropriate and fair, under the circumstances.

With regard to the factors relevant to the above cases, we offer the following for your consideration:

**1) Nature and Gravity of the Violation:**

**a. *The nature and gravity of each of the violations are minimal.***

No real damage has been suffered by the City with respect to these violations, as they involve non-renewal of Business Tax Receipts and failure to complete applications for Vacation Rental Licenses. The violations do NOT involve issues related to violations of

the building code; unsafe premises; conditions which result in a nuisance to neighboring properties, or any disturbance to neighbors. Moreover, the violations do not constitute a threat to the health, safety or welfare of the citizens of the Town.

Along those lines, Ms. Stella was the first resident to offer Vacation Rentals in the Town and initially apply for Vacation Rental licensing. She has been in business for over 30 years. <sup>Adc.</sup> She has purchased, built and re-modeled over 30 properties in Lauderdale-By-The-Sea over the years and has made significant contributions to the Town's economy by way of her numerous home improvements and Vacation Rental offerings.

Ms. Stella acknowledges that she was not responsive to notices concerning hearings on the violations. Furthermore, Ms. Stella recognizes that had she been able to attend the original hearings in order to address these issues, she would not be in this position. However, it is worth noting, and we believe it is relevant to the issue of Ms. Stella's non-responsiveness, that she was faced with a significant family emergency in May, 2010 when she learned her daughter had been diagnosed with a rare eye disease which would ultimately lead to blindness. Upon receiving this devastating news, Ms. Stella focused all of her time and effort to seeking medical treatment and a cure for her daughter. The gravity of her daughter's medical condition led to her failure in addressing the violations, because at that time, her singular focus was in seeking medical treatment for her daughter. Please refer to the previously submitted backup materials demonstrating significant travel time and medical treatment.

Over the course of the past two years, Ms. Stella's daughter has been treated by over 25 physicians, including physicians at Harvard, the University of Iowa, Wisconsin, Italy, Baltimore, Lutherville and Marblehead, Maryland, in addition to more than a dozen different physicians throughout South Florida. Moreover, in addition to various treatments for her daughter's eye condition, the family was also dealing with other significant long-standing mental health issues of her daughter, including but not limited to severe generalized anxiety disorder and social anxiety disorder. These personal circumstances presented significant challenges for the family, making it very difficult for Ms. Stella to maintain her typical business practices and bookkeeping. As a result of the constant traveling and time spent consulting with various physicians across the country, Ms. Stella did not actually receive notices concerning the violations until sometime after the hearings occurred.

Once Ms. Stella became aware of the severity of the impending liens, however, she took action to correct the situation by paying all applicable fees, fines and penalties in the amount of \$1,920.00, and bringing the Properties into full compliance, on May 2, 2012.

***b. Regarding Non-Renewal of Business Tax Receipts (BTRs), a \$100 per diem fine is unwarranted and is not authorized under the Town's Code of Ordinances.***

Additionally, the Town's Code of Ordinances specifically limits penalties for non-renewal of BTR to 25 percent of the business tax for the delinquent establishment. Accordingly, it would appear improper and inappropriate to impose a per diem fine in the

amount of \$100 per day on the above violations for non-renewal of BTR, since Section 12-4 of the Town Code states the total delinquency penalty [for non-renewal of BTR] shall not exceed 25 percent of the business tax for the delinquent establishment.

It is our position that the liens and penalties related to non-renewal of BTRs should be limited to the amounts already paid. Ms. Stella has tendered a total of \$1,920.00 for the renewal of BTRs, for granting of the Vacation Rental licenses, and for all associated penalties. The fines associated with non-renewal of the BTRs account for \$114,000.00 of the outstanding penalties. Based on the hardship circumstances discussed throughout this correspondence and this honorable Commission's ability to weigh the equitable considerations, we respectfully request that the penalties associated with non-renewal of BTRs be fully discharged and removed.

***c. Case Nos. 10-KW-0089 & 10-KW-00015 Impose Fines where The Property Was Not Being Used as a Vacation Rental for Eight (8) Months During the Penalty Period***

We also respectfully request the Commission to take into consideration that Ms. Stella's property located at 4557 Poinciana Street was occupied by her daughter from March, 2011 through November, 2011. The home was NOT being used as a Vacation Rental during that time. Ms. Stella did communicate this information to Kim Williams, former Code Inspector, to no avail. Accordingly, had the file accurately reflected that the property was not being rented, the liens associated with the Vacation Rental License and Non-Renewal of BTRs would have only run for 230 days and 110 days, respectively.

As a result, we are asking the Commission to consider abating the associated penalties for the period in which there was clearly no violation (approximately 272 days) for the property located at 4557 Poinciana Street. Such recognition would reduce the initial fines as follows:

	<u>Original Alleged Days in Violation</u>	<u>Adjusted Days in Violation</u>	<u>Original Lien Amount</u>	<u>Adjusted Lien Amount</u>
<b>11-KW-00015 Non-Renewal of BTR</b>	382	110 days	\$38,300	\$11,000 <sup>1</sup>
<b>10-KW-00089 Vacation Rental Certificate</b>	502	230 days	\$50,350	23,000

Additionally, it should be noted that the properties located at 4216 Seagrape Drive and 4236 Tradewinds Avenue were only intermittently used as Vacation Rentals. Section 30-327(k)(3) of the Town Code provides for penalties for "each day of continued use" and the properties were not in continuous "vacation rental use" subsequent to the entry of each Order Imposing Fine/Certificate of Lien. Therefore, we would ask the Commission to consider the actual usage in determining whether the total amount of the liens are fair, equitable and appropriate.

<sup>1</sup> While we have listed the amount above to reflect that the home was not being used as a vacation rental, with respect to any fines related to non-renewal of BTR, we believe the penalties should be fully abated, as discussed in Section b. of this correspondence.

***d. Hardship Circumstances Justify a Substantial Reduction***

We also respectfully request that the Commission consider the significant hardship circumstances which are associated with the application. As previously demonstrated, Ms. Stella was facing tremendous challenges in treating her daughter's diagnosis, as well as her other mental health conditions. She has expended in excess of \$100,000.00 out of pocket for various medical treatments for her daughter, in attending to her care.

Additionally, other significant financial hardship circumstances exist. The status of each of the Properties is unclear, as Ms. Stella struggles to keep the mortgage payments current. In fact, Ms. Stella is selling another property in an attempt to free up funds to save the Properties at issue. We believe the Town would support efforts to keep homeowners in their homes, as opposed to seeing these homes forced into foreclosure. As you may know, there are many concerns associated with the Bank's ability to maintain properties once foreclosure proceedings ensue, which would inevitably have a negative impact on Ms. Stella's neighbors and could cause a further decrease in surrounding property values. Indeed, a number of municipalities, including Pompano Beach, Coral Springs, Riviera Beach, Opa Locka, Largo, Daytona Beach, Plantation, and Sunrise, to name a few, have recently implemented Code Enforcement Amnesty Programs, allowing residents a break from certain fines after coming into compliance. Sunrise Code Enforcement Manager Kim Sibner has reportedly been thrilled with the program's success, noting all of the feedback and positive results. The City has seen so much success with the results that they may be extending the program.

We highlight the efforts of these local governments simply to demonstrate their recognition of the financial difficulty many people, like Ms. Stella, are facing; and we ask that the Town likewise consider Ms. Stella's financial hardship, in determining that an abatement of the liens are fair and appropriate.

***e. Consideration of a Reduction in the Initial Imposition of a \$100 Per Diem Fine***

As an alternative or in addition to the proposal of discharging all of the liens associated with the non-renewal of the BTR, we would ask the Commission to consider reducing the fines at issue from \$100 per day to \$25 per day, on the basis that the underlying violations were not egregious, but rather, were administrative in nature, and again, did not pose a hazardous situation. Such reduction would bring the total lien amount for all 6 cases to \$66,262.50.

**2) Any Actions Taken by the Respondent to Correct the Violation:**

As discussed, once Ms. Stella became aware of the severity of the Orders Imposing Fine/Certification of Lien, Ms. Stella paid the full amount owed in the amount of \$1,920.00 on May 2, 2012 and obtained all applicable licenses and permits, bringing her in compliance.

Based on the foregoing, and in light of the significant equitable considerations associated with the Application for Relief, I respectfully request relief from the fines and liens discussed herein. In considering the impact of the violations, which were minimal, as well as the length of time in which it took to get the Properties compliant, which we acknowledge was considerable, as well as the other equitable considerations addressed herein, Ms. Stella is prepared to offer the amount of Twenty Thousand Dollars (\$20,000.00) for full settlement and discharge of the liens and fines. This amount includes the \$1,920.00 already paid and would also include the Town's administrative costs in the amount of \$1,599.00, bringing the total reduced figure to \$16,481.00.

In the event the liens and fines concerning non-renewal of BTRs are eliminated and removed, which we believe is warranted given the plain language of the Town's Code, the total adjusted lien amount would be \$151,050.00. The reduced amount we are offering, therefore, would amount to a fine in excess of 13% of an adjusted lien amount of \$151,050.00, when considering the \$1,920.00 Ms. Stella has already paid towards licenses, permits, and penalties.

On behalf of Ms. Stella, I thank you in advance for your understanding and consideration of these important issues.

Very truly yours,

  
Kara L. Cannizzaro



Item No. 176

**AGENDA ITEM MEMORADUM**

**Development Services**

**Bud Bentley/Tuchette Torres**

Department

Department Director/Code Officer

<b>COMMISSION MEETING DATE - 7:00 PM</b>	<b>Deadline to Town Clerk</b>
<input checked="" type="checkbox"/> June 12, 2012	June 8, 2012

- Presentation     Reports     **Consent**     Ordinance  
 Resolution     Quasi-Judicial     Old Business     New Business

**FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC**

**SUBJECT TITLE: Sandra Stella's Application for Relief of Code Enforcement Liens**

**EXPLANATION:** Ms. Sandra Stella, the owner of three residential properties, seeks relief from six code enforcement liens on three properties. The owner's applications for 98.9% relief and our case histories are attached (**Exhibit 1 - 3**).

- The properties are located at:
1. 4216 Seagrape Drive
  2. 4236 E. Tradewinds Avenue
  3. 4557 Poinciana Street

The Town issued Notice of Violations on August 18, 2010 for no vacation rental permits and on January 5, 2011 for non-renewal of Business Tax Receipts. Each case was presented before the Special Magistrate and given time to comply before the fines started. The owner corrected the violations on May 2, 2012 by acquiring the required business tax receipts and vacation rental permits.

The following tables summarize the cases:

**Table 1 – Summary of Six Code Cases**

Property	Days in Violation Vacation Rental / BTR	Total Lien	Offered Settlement	
			\$	% of Lien
Seagrape	502 / 382	\$88,350	\$1,000	1.1%
Tradewinds	502 / 382	\$88,350	\$1,000	1.1%
Poinciana	502 / 382	\$88,350	\$1,000	1.1%
<b>Total</b>	<b>502 / 382</b>	<b>\$265,050</b>	<b>\$3,000</b>	<b>1.1%</b>
<b>Administrative Costs of \$1,599</b>				



**Table 2 – No Vacation Rental Permit**

Case #	Special Magistrate Final order	Days in Violation	Total Lien	Offered Settlement	% of Lien	Exhibit
10-KM-00624 Seagrape	Comply by December 12, 2010 or \$100 per day	502	\$50,350	\$500	1%	1
10-KM-00626 Tradewinds		502	\$50,350	\$500	1%	2
10-KW-0089 Poinciana		502	\$50,350	\$500	1%	3
<b>Total</b>			<b>\$151,050</b>	<b>\$1,500</b>	<b>1%</b>	

**Table 2 – Business Tax Receipts were not renewed**

Case #	Special Magistrate Final order	Days in Violation	Total Lien	Offered Settlement	% of Lien	Exhibit
10-KW-00016 Seagrape	Comply by April 16, 2011 or \$100 per day	382	\$38,000	\$500	1.3%	1
10-KW-00017 Tradewinds		382	\$38,000	\$500	1.3%	2
10-KW-00015 Poinciana		382	\$38,300	\$500	1.3%	3
<b>Total</b>			<b>\$114,000</b>	<b>\$1,500</b>	<b>1.3%</b>	

The Town's administrative costs have been approximately \$383 per property plus \$450 in attorney fees for a total of \$1,599.

Resolution 2010-13, Subsection 2 requires the Commission to consider all relevant factors, including the following criteria, to determine what relief, if any, is appropriate.

**A. The nature and gravity of the violation.**

The violations are moderate.

**B. Any actions taken by the Respondent to correct the violation.**

On May 2, 2012, the property owner paid \$1,920, which covers the current and past due vacation rental license and rental business tax receipts.



**C. The length of time between the previously ordered compliance date and the date the violation was brought into compliance.**

The properties were in violation from the Special Magistrate's ordered compliance date a total of 502 days for the vacation license violations and 382 days for the Business Tax Receipt violations.

**D. Any actual costs expended by the Respondent to cure the violation as provided by supporting documentation.**

The violations were cured by securing the appropriate Town licenses and paying their business tax plus late penalties at a total cost of \$1,920. There were no on site conditions that had to be corrected.

**E. Any other prior or current violations committed by the Respondent on the subject property or upon any other property owned by the Respondent within the Town.**

**4216 Seagrape Drive:**

1. Cited in 2011 for trash cans left out and no vacant property registration when the property was vacant. Both cases complied before being taken to a hearing.
2. Cited in 2011 for renting property for less than seven days as required for a vacation rental. The case, 11KW-00049, was taken to a hearing and a lien was recorded. The \$625 lien was paid by the property owner on May 2, 2012.

**4236 E. Tradewinds:**

1. Cited in 2010 for no vacant property registration. The case was taken to a hearing and dismissed by Magistrate because the property owner stated property was not vacant.
2. Cited in 2011 for roof overhangs in disrepair, rotted and falling apart. The property owner came into compliance and paid the administrative fee.

**4557 Poinciana:**

1. Cited in 2010 for no vacant property registration. The case complied before the Special Magistrate hearing date.
2. Cited in 2011 for renting the property for less than the seven days required for a vacation rental. The case complied before the Special Magistrate hearing date.

The property owner submitted a May 11, 2012 letter of support (**Exhibit 4**) from S. Alan Johnson, Esq. Mr. Johnson raises several points of law concerning the validity and legality of the Town's code process and these fines in particular. The Town Attorney has reviewed Mr. Johnson's letter and advises that the Town processes and procedures are proper and very defensible.



In addition to the property owner's application for relief (**Exhibits 1-3**), Ms. Stella has sent information directly to the Commissioners that provides history she believes relevant to her relief request. Since that information includes personal health information, it is not included as an exhibit to this agenda item.

**RECOMMENDATION:**

The property owner has offered to settle the six cases for a total of \$3,000, which is a 98.9% reduction.

The Commission generally has not approved relief of more than 80% of the total lien plus the payment of the Town's administrative costs. For these six violations, 80% relief would be a reduction of \$212,040, which would reduce the \$265,050 fine to \$53,010. The Town's administrative costs are \$1,599.

Staff recommends that the Commission determine and set the amount they are willing to mitigate, add the \$1,599 administrative costs to that amount, and make settlement contingent on full payment being made to the Town within 30 days of Commission approval.

**EXHIBITS:**

- 1 4216 Seagrape Drive: case history and application
- 2 4236 E. Tradewinds Avenue: case history and application
- 3 4557 Poinciana Street: case history and application
- 4 Letter of Support from S. Alan Johnson, Esq.

Reviewed by Town Attorney

Yes  No

Town Manager Initials CH

Summary of Case History

Exhibit 1

Address 4216 Seagrape Drive

Case # 10-KM-00624 Folio # 9318 05 0263

Violation: No vacation rental permit for rental of property

Ordinance: 30-327

1) NOV:

- Issued on: 8/18/2010 Correction Date: 9/1/2010
- Notification was provided via: Personal Services/Certified Mailing/Posting
- Complied (prior to correction date/after correction date) /Non-compliance

2) Hearing: Before Magistrate:

- Hearing Date: 11/17/2010 Time: 1:30 p.m.
- Notification was provided via: Personal Service/ Certified Mailing/Posting
- Magistrates Final Order: Bring property into compliance by December 17, 2010 or \$100.00 per day
- Complied with order/Non-compliance with order on: 12/17/2010

3) Certification of Lien Hearing:

- Hearing Date: 1/19/2011 Time: 1:30 p.m
- Fees owed: Administrative: \$150.00  
Fine: \$100.00 per day  
Total Amount owed: \$50,350
- Date recorded: 4/8/2011 Book & Page: 47836,806-809

- 4) Number of days with a fine/total amount after hearing \$50
- 5) Owner was first notified on 8/18/2010
- 6) Personnel hours spent on this case 0
- 7) Expenses expended by the Town (i.e. postage, recording, etc.) \$68.35

Total the owner is requesting to pay 500 %