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TO: Christopher Kovanes, M.P.A., Town Administrator

THRU: Mark A. Kutney, AICP, Development Services Director

FROM: Daniel J. Stallone, Esq., Code Compliance Official

DATE: August 1, 2005

RE: Code Enforcement and Proposed Mitigation Policy Modifications

Please find herein the results of our mitigation review meetings, a summary of the town's current and past code enforcement mitigation policies along with our proposed mitigation policy modifications. Before elaborating upon the changes proposed herein, I will provide a short chronology of code enforcement, the statutory background upon which its procedures are founded, including mitigation and its purpose.

F.S. 162: LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS ACT

The "Local Government Code Enforcement Boards Act" is found in the Florida statutes within Chapter 162. F.S. section 162.01 states that "the intent of the Act is to promote, protect and improve the health, safety and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist." The statute provides the requisite administrative procedures for operating a code compliance program. From the manner and content which dictates the creation and delivery of a notice of code violation to the hearing process, its resulting administrative fines and the recording of liens, all applicable legal guidelines are provided for application and enactment. The Act provides the method by which a municipality may enforce its police powers (i.e. zoning and land development codes) through the code enforcement process to promote compliance with its codes and regulations and encourage the maintenance of residential and commercial properties. It provides a valuable tool to prevent the onset of blight and eliminate those things detrimental to the health, safety and welfare of its residents.

CODE ENFORCEMENT HISTORY IN DAVIE

The Town of Davie utilized the grant of jurisdiction afforded it by F.S. 162, to adopt in April 1988, Ordinance No. 88-17, and add the code sections found in Chapter 6 of our town code as the procedures and regulations to be followed by our code enforcement division and its board. The passage of Ordinance No. 94-9 in February 1994 amended the town code and permitted the town to adopt the use of a special magistrate instead of the code enforcement board. Also, at this time, Ordinance 94-15 provided a procedure for the mitigation of code enforcement liens. At no time during the course of my research for this summary, have I identified the existence of codified mitigation guidelines, nor do they exist today in our applicable code sections. It is thereby inferred that such guidelines have been enacted by Town Council, either implicitly or through an informal administrative method short of passage by resolution or ordinance.

LACK OF A STATUTORY MITIGATION PROCESS IN F.S. 162

The Florida statutes in Chapter 162 do not provide significant guidance as to the methods of mitigation other than the reference found in Chapter 162.09(2)(c) which states, *"An enforcement board* (or the applicable 'special magistrate' in lieu thereof) *may reduce a fine pursuant to this section"* (italics added by author). In statutory construction, a binding legal doctrine, when the legal procedures are not provided by state legislative action (i.e. special law), a municipality under its home rule or charter powers may provide for such procedures through its own ordinances. Therein lies the basis for the promulgation of our Town code section 6-9.1 Mitigation of code enforcement liens. The ability of a violator/respondent to mitigate is not a right provided by statute, it is more specifically defined as a privilege, and as such it is defined in Black's law dictionary as "a particular and peculiar benefit or advantage enjoyed by a person, company or class, beyond the common advantages of other citizens." Therefore, it is a discretionary privilege afforded by the town to its citizens as may be determined in the course of the passage of legislation (law) by the Town Council and may be subject to their revision through such normal legislative protocols as may be used to pass town ordinances, regulations, etc.

CURRENT TOWN MITIGATION PROCESS AND GUIDELINES

In July 1999, the Town Council approved the passage of a revised set of mitigation guidelines offered by the Development Services Director on behalf of the Code Compliance Division. Prior to the approval and enforcement of those mitigation guidelines, the Code Compliance Division had used a basic reduction formula which recommended the reduction of fines or liens to twenty percent (20%) of the fine or lien amount as the mitigated amount. In the adoption of the 1999 amendments to the mitigation guidelines, the Town Council approved the current mitigation guidelines with the intention of "ensuring that a greater percentage of the fine is imposed to cover Town costs and to serve as a

deterrent for future code violations." Under our existing mitigation guidelines, an additional factor of two percent (2%) for every period of sixty (60) days of noncompliance was added to a gradually increasing scale determined in relation to the actual fine or lien amount that started at two and one half percent (2.5%) and increased to twenty percent (20%). The intent of deterring future code violations was evident by offering a lesser mitigated fine or lien amount to one who complied in a more expeditious manner. The addition of a mitigation base fee was provided for by deriving an actual cost analysis that considered the time and expenses incurred by the Town in administrating a code enforcement case. That amount, based upon the salaries and costs in 1999, was seven hundred and nine dollars and nineteen cents ($709.19). The mitigation base fee was added to the mitigation amount determined by the percentage of reduction formula as applied to the existing fine or lien amount and increased by the additional percent factor for period of noncompliance.

PROPOSED MITIGATION CHANGES

The expressed intent of the "Local Government Code Enforcement Boards Act" has earlier been stated in this memo as follows...to promote, protect and improve the health, safety and welfare of the citizens, and to provide an equitable, expeditious, effective, and inexpensive method of enforcing codes. That original intent has been and remains the goal of the Code Compliance Division in our enforcement efforts and in the process of mitigation., and within that guiding language there are three e's (3 Es): equitable, expeditious, and effective, which may be suitably applied to the code enforcement process and in their enactment be applied to the mitigation process.

The state law does not provide any certainty or guidance as to what the process of mitigation should be, but we must apply principles based in legal certainty, that the process is not intended to be arbitrary or capricious. Therefore, it is incumbent that the town, when it has chosen to create a mitigation procedure, to provide a procedure that will not be a liability for the Town by its enactment.

The establishment of mitigation guidelines must fairly and effectively address code enforcement violators and their fines or liens, both from the standpoint of the violator's perspective as well as the Town's. The present mitigation system is *equitable, expeditious and effective,* but to whom it is most equitable seems to be the relevant question we must ask. Several Town Council members have raised significant concerns over the last year as to whether the fines and liens in their final reduction amount, through and by the application of our current mitigation guidelines, may result in less than satisfactory results for the amount of staff time, accompanying costs and deterrence factors incurred thereby. Therefore, by reviewing the purpose behind the revised mitigation guidelines that were enacted in 1994, and restating its prudent insight and purposefulness, it remains as relevant now as then: "...cover Town costs and serve as a deterrent for future code violators."

List of Proposed Mitigation Policy Changes:

I. New Mitigation Guidelines
II. Incorporate a new ten percent (10%) increase to the existing factor structure with a minimum base fee equal to 10% of the original fine/lien amount as the mitigated amount
III. The increase of the existing mitigation guideline factors by a five percent (5%) increase
IV. The increase of the noncompliance factor in the mitigation guidelines by a factor increase equal to an increasing percent rate which starts at five percent and increases to a maximum amount equal to fifteen percent (15%) as based upon the original fine/lien amount
V. The application of documented Town costs incurred in the prosecution of the code enforcement case in their total amount to be added to the mitigation amount
VI. The recoupment of the Town Attorney's costs as may be incurred by the Code Compliance Division in the prosecution of the code enforcement case at a level no less than fifty percent (50%) of its total
VII. The application of a subjective determination, by the Code Compliance Official, shall be equal to ten percent (10%) of the original fine/lien amount

The method to be employed by the Code Compliance Official in the ten percent (10%) determination to ensure that appropriate consideration may be given to a violator/respondent may be based upon his/her prior dealings with the Town, if applicable. Such interaction with the Town could be on several levels, each equal to two and one half percent (2.5%), including but not limited to the following factors:

- Level of cooperation provided to the Town by the respondent historically (i.e. occupational license, building permit, neighborhood complaints, etc.)
- Is/Are the violation(s) first or repeat violation(s)?
- Prior or consistent performance in comparable compliance activities
- Costs incurred by respondent to remedy the violation, as evidenced by documentary sources (i.e. bills, receipts or contracts to perform remedial action in the correction of violations)

The use of the above mentioned factors may be applied by and through the discretion of the Development Services Department staff, either by the Code Compliance Official, or as designated by the Director, with the intention of being a factor in the mitigation decision. Each of the factors must be fully documented so as to ensure that there lies a basis for such a measure of reduction, and such documentation shall be provided with a mitigation packet for Town Council review.

CURRENT MITIGATION GUIDELINES

FINE AMOUNT	RECOMMENDATION
Fine to $10,000	2.5% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.
$10,000 - $20,000	5.0% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.
$20,001 - $30,000	7.5% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.
$30,001 - $40,000	10.0% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.
$40,001 - $50,000	12.5% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.
$50,001 - $60,000	15.0% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.
$60,001 - $70,000	17.5% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.
$70,001 - $80,000	20.0% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.
$80,001 - $90,000	22.5% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.
$90,001 - $100,000	25.0% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.
Over $100,000	30.0% of the amount plus an additional 2% For each sixty (60) days of violation plus actual costs incurred by the Town.

This schedule would be utilized for first time violators and repeat violators.

MITGATION BASE FEE (COST OF CASE ADMINISTRATION AND DEVELOPMENT) SHALL BE ADDED TO THE TOTAL DERIVED FROM APPLICATION OF ABOVE GUIDELINES. THE MITIGATION BASE FEE IS BASED UPON THE EXPENSES INCURRED BY TOWN EMPLOYEES AND ALL ACCOMPANYING COSTS.
MITIGATION BASE FEE* **$709.19**

*Subject to revision as per current staff salaries.

PROPOSED MITIGATION GUIDELINES

FINE AMOUNT	RECOMMENDATION
Fine to $10,000	**7.5% of the amount plus an additional 5% For each sixty (60) days of violation plus actual costs incurred by the Town.**
$10,000 - $20,000	**10.0% of the amount plus an additional 6% For each sixty (60) days of violation plus actual costs incurred by the Town.**
$20,001 - $30,000	**12.5% of the amount plus an additional 7% For each sixty (60) days of violation plus actual costs incurred by the Town.**
$30,001 - $40,000	**15.0% of the amount plus an additional 8% For each sixty (60) days of violation plus actual costs incurred by the Town.**
$40,001 - $50,000	**17.5% of the amount plus an additional 9% For each sixty (60) days of violation plus actual costs incurred by the Town.**
$50,001 - $60,000	**20.0% of the amount plus an additional 10% For each sixty (60) days of violation plus actual costs incurred by the Town.**
$60,001 - $70,000	**22.5% of the amount plus an additional 11% For each sixty (60) days of violation plus actual costs incurred by the Town.**
$70,001 - $80,000	**25.0% of the amount plus an additional 12% For each sixty (60) days of violation plus actual costs incurred by the Town.**
$80,001 - $90,000	**27.5% of the amount plus an additional 13%**

	For each sixty (60) days of violation plus actual costs incurred by the Town.
$90,001 - $100,000	**30.0% of the amount plus an additional 14% For each sixty (60) days of violation plus actual costs incurred by the Town.**
Over $100,000	**35.0% of the amount plus an additional 15% For each sixty (60) days of violation plus actual costs incurred by the Town.**

This schedule would be utilized for first time violators and repeat violators.

MITGATION BASE FEE (COST OF CASE ADMINISTRATION AND DEVELOPMENT) SHALL BE ADDED TO THE TOTAL DERIVED FROM APPLICATION OF ABOVE GUIDELINES. THE MITIGATION BASE FEE IS BASED UPON THE EXPENSES INCURRED BY TOWN EMPLOYEES AND ALL ACCOMPANYING COSTS.
MITIGATION BASE FEE* **$ 1010.98**

*Subject to revision as per current staff salaries.

NOTE: Increased mitigation base fee amount from $709.19 to $1010.98 is under review, but is indicative of the increase in current staff salaries, yet may be subject to modifications in the mitigation process and therefore not a final amount.

F.S. 162.09(2)(d) INCREASE CODE ENFORCEMENT FINES

Another measure that may be used to enhance the effectiveness of the code enforcement program is the increase of code enforcement fines as per allowances set forth in the Florida statutes. Such an increase in fines is permitted when a municipality has a population greater than fifty thousand (50,000) persons. The increase in the fine amounts shall consist of the following:

1. Minimum fine amounts for first violations may be increased from $250/violation to $1000/violation, and;
2. Repeat violations may be increased from $500/violation to $5,000/violation.

Please review the enclosed recommendations and advise me as to their application, acceptability and method of incorporation into our mitigation procedures.