TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Patricl Lynn/Police Chief/(954)693-8320

PREPARED BY: Police Administration/Code/af

SUBJECT: Resolution

AFFECTED DISTRICT: 1

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: MITIGATION - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A REQUEST FOR MITIGATION OF CODE COMPLIANCE LIENS IN CASE NO. 06-1225 FROM $178,000.00 IN AMOUNT TO $143,410.98; AND PROVIDING AN EFFECTIVE DATE. (tabled from June 3, 2009)

REPORT IN BRIEF: To authorize the approval for mitigation of a code compliance lien in case no. 06-1225 from $178,000.00 in amount to $143,410.98. The Town of Davie Code Compliance Division has determined the code violations of 11-17: Derelict Vehicle/Property, 8:16: Building Permit required, 12-33 (U): Nuisance, and 12-33 (S)(2): Landscape Maintenance issued on August 25, 2006. The property was re-inspected and in compliance on July 2, 2008. The code compliance mitigation guideline has proscribed the mitigation against Michael J. Emerson in the amount of $143,410.98. If this amount of $143,410.98 is not paid to the Town within 45 days of enactment of this resolution then the lien shall revert to the original amount of $178,000.00.

PREVIOUS ACTIONS: At the June 3, 2009 meeting, Council tabled this item to the June 17, 2009.

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve resolution

Attachment(s): Code Compliance Mitigation Synopsis Worksheet, Mitigation Application Form, Letters of Correspondence, Mitigation Worksheet, Mitigation Request Summary, Mitigation Guidelines,
and Mitigation Inspection Compliance.

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A REQUEST FOR MITIGATION OF CODE COMPLIANCE LIENS IN CASE NO. 06-1225 FROM $178,000.00 IN AMOUNT TO $143,410.98; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Michael J. Emerson have requested a mitigation of a code compliance lien from

$178,000.00; and

WHEREAS, the Town of Davie Code Compliance Division has determined that the violation of code sections 11-17, 8-16, 12-33(U) and 12-33(S)(2) have been corrected; and

WHEREAS, the Town of Davie Code Compliance Division mitigation guideline has proscribed a mitigation amount equal to $143,410.98; and

WHEREAS, the Town Council is agreeable to such mitigation of the code compliance lien.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the certain code compliance lien arising out of Case No. 06-1225 in the amount of $178,000.00 against Michael J. Emerson, is herby mitigated in amount to
$143,410.98.

SECTION 2. That this mitigated amount of $ 143,410.98 be paid to the Town within 45 days of the enactment of this Resolution. Should this amount of $143,410.98 not be paid within the specified time the lien shall revert to the original amount of $178,000.00.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF_____, 2009

_____

MAYOR/COUNCILMEMBER

ATTEST:

_____

TOWN CLERK

APPROVED THIS _____ DAY OF_____, 2009

Code Compliance Mitigation Synopsis: Case 06-1225

1. Town Council District Number:	1
2. Property Location:	4240 SW 63 Avenue
3. Notice of Violation Issuance Date:	August 25, 2006
4. Code Violation Sections:	11-17: Derelict Vehicle / Property 8-16: Building Permit Required 12-33 (U): Nuisance 12-33 (S)(2): Landscape Maintenance
5. Notice of Violation Hearing Date: Special Magistrate issued Final Order with 30 days to comply.	September 5, 2006
6. Non-Compliance Notice of Violation Issuance Date:	March 23, 2007
7. Non-Compliance Hearing Date: Special Magistrate Order Imposing Code Enforcement Fines for 178 days of Non-Compliance (10-06-2006 thru 4-02-2007).	April 3, 2007
8. Total Fine: Four (4) violations fined $250/day/violation equals $1000/day multiplied by 178 days for total.	$178,000.00
9. Mitigation Guideline Amount: Respondent not in agreement with Town guideline amount.	$143,410.98
10. Special Magistrate Mitigation Hearing: Requested by Respondent.	February 24, 2009
11. Special Magistrate Recommends:	$2,000.00
12. Town Base Fee Costs:	$1010.98
13. Attachments:	1. Michael Emerson (owner) Letter 2. Brian Head (manager) Letter 3. Special Magistrate Advisory Opinion

RESOLUTION NO._____

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PASSED AND ADOPTED THIS _____ DAY OF_____, 2009

_____

MAYOR/COUNCILMEMBER

ATTEST:

_____

TOWN CLERK

APPROVED THIS _____ DAY OF_____, 2009

TOWN OF DAVIE
CODE COMPLIANCE DIVISION
MITIGATION APPLICATION REVIEW FORM

SECTION 1: (To be completed by Code Compliance Supervisor)

1. Name of Respondent(s)/Applicant(s): Michael J. Emerson
2. Case Number: Code Compliance Case no. 06-1225
3. Total amount of Code Compliance Lien(s)/Administrative Fine(s): $178,000.00
4. Is Respondent(s)/Applicant(s) in compliance with applicable Town Code Sections? X Yes ____ No
   (If the answer to Question 4 is no, do not complete Question 5, as compliance is a prerequisite to further processing.)
5. Mitigation amount recommended by the Town Council approved guidelines: $143,410.98

SECTION 2: (To be completed by Respondent(s)/Applicant(s)

1. Please state any and all reasons why the Town should agree to mitigate the Code Compliance Lien(s)/Administrative Fines:

   Please see attached letter from MR. Emerson

   Signature:_____ Date: 1-23-09

2. Please indicate the amount which you request the Code Compliance Lien(s) be mitigated to: $ 2000.00 total

NOTE: The Code Compliance Division will submit your request to the Town Council to either accept or deny your mitigation amount; if your request is less than the mitigation guideline amount, the Code Compliance Division Compliance Division shall automatically make a recommendation to deny your mitigation request. In the event you do not agree with the mitigation guideline amount as set forth in Section 1 above, the matter will be referred to a Special Magistrate who will make a recommendation to the Town Council. The decision to grant or deny the request for mitigation will be made by the Town Council. In the event the Town approves your mitigation request, you must pay the mitigated amount to the Town of Davie within 45 days of Town Council approval or the Code Compliance Lien(s)/Administrative Fine(s) will remain in effect in the original amount.

SECTION 3: (To be authorized by Department Director)

The Code Compliance Division recommends that the specific mitigation request made by the Respondent(s)/Applicant(s), in Section 2, to mitigate the Code Compliance Lien(s)/Administrative Fine(s) in Case Number # 06-1225 from a total of $178,000.00 to the amount requested by the Respondent(s)/Applicant(s) which is $ 2000.00, should or should not be accepted.

Daniel J. Stallone 1/22/09
Code Compliance Official Date

_____ _____
Department Director Date

RE: 4240 SW 63 AVE
1/23/2009

Dear Town of Davie

At the beginning of this process, the property was worth $130,000. According to my realtor, it is now worth $50,000-$70,000, if we could find a buyer.

I have to pay money out of my pocket each month to make the payment. I owe $90,000 on the property and have spent well over $20,000, bringing it to code (after demolishing 2 sheds, 2 sections of the home and other things).

Therefore, I'm trying to decide whether to walk away from the house and give it back to the bank or do my best to resolve this fine.

There is NO way I will be able to pay $143,000.

If we are unable to reach an agreement that I can afford to pay, I'm going to have to give the property back to the bank and it will probably sit vacant for years until they can unload it.

The property is in reasonably good repair and I would like to keep it and maintain it, but when I when I have $120,000 investment, that is worth $ 50,000- $70,000, my options are limited.

The most I can afford to pay is $1000.00-$2000.00. I understand if that doesn't fit in the parameters of what you are able to do. I would like to find a solution to put this nightmare behind us.

As you are already aware, I live in North Carolina and rarely get to come to the area and this is why I have Brian Head as my property manager to take care of things for me. With the exception of him missing the first hearing, he has been great with coordinating the work and making sure it was done properly. I know the property has been in compliance for over 6 months now and he has been trying to work with your office to resolve this, but he keeps getting put off and told he will be contacted and then nothing happens.

Thank you for your consideration in this matter.

Sincerely,

Mike Emerson

Mike Emerson
828-337-3032

PG. 1

January 23, 2009

Town of Davie:
RE: 4240 Sw 63 Ave- Emerson

I am the property manager for the above referenced property, as most of you are aware. When first notified about the compliance issues, I did respond and handled the things that were easy for me to take care of without a huge expense on the owner's behalf.
The other issues were quite major (in expense and required workmanship) and I needed time to find the right people to do the job, get the necessary permits, etc. Quite frankly, this was my first experience with such a HUGE task. In the beginning, I didn't fully understand the jargon used on the citations and didn't realize we needed to demolish to sections of the home.
I was aware we needed to demolish the sheds and that was another huge job and the demolition companies we quoting me $12,000 or more to do the job...it was absurd.
I finally got a referral of a guy that did the job for much less and we did an owner/builder permit for it and got it done.
I explained to the code enforcement, the house was this way when Mr. Emerson bought it and I was trying to find an original survey of the home to see how it was when built. The town of Davie, Broward Co, and Mr. Emerson had no such records. We decided to go ahead and demolish those sections and this involved several permits, a licensed plumber, licensed electrician and was VERY expensive. We also needed to put sod in the front yard and remove a tree stump in the back. At this point I had to hit the owner up for more than $20,000.00.
As you know, most people that have a wood frame house like this one (and they already owe more than what it is worth), could never afford to spend this type of money to repair a home that is functionally obsolete and not desirable to most buyers.
It was a huge mistake on my part to miss the initial hearing, as I recorded the date as one week later in my planner on accident. I did call the Town of Davie the next week to set up a new one and appreciated they did. Of course, the house still was not in compliance, given the huge amount of work that we had to do.
Once I finished everything, the inspector (David Knotman) came out and said....it looks really good, but you need a couple more things....and this happened 4 times before he put the property into compliance. The property was put into full compliance well over 6 months ago and I have been

Re: 4240 SW 63 AVE Pg. 2

trying since then, to get an updated amount of the fine or some sort of hearing to put this issue to rest.
After numerous calls over this period, I finally got the fax this morning with the amount of the fine, which is at least 2.5 times more than what the property is worth....maybe even 3 times.
If you look at the property now, it has a nice curb appeal and appears to be much nicer than some of the homes close by.

I don't think Mr. Emerson should be so heavily penalized for something I was trying my best to handle for him. We NEVER imagined anyone would try to collect such an enormous amount and not give us an option of a reasonable fine first.

I really hope there is something we can do to resolve this and I think that Mike Emerson has be penalized A LOT already, by sinking more than $20,000 in less than one year into a property he already owes $90,000 on. We all know how the market is right now and you would be much better off for him to hold onto the property and pay a reasonable fine, instead of him letting it go into foreclosure.

Regards,

Brian Head
954 599 6100

MEAH ROTHMAN TELL, P.A.
11081 N.W. 12 Drive
Coral Springs, Florida 33071
Tel: (954) 733-5000
Fax: (954) 733-2320

J.D./M.B.A. Columbia University
LL.M. Taxation

Certified Civil Circuit and Family
Court Mediator

February 28, 2009

Daniel Stallone, Esq.
Town of Davie
Police Department
1230 South Nob Hill Road
Davie, Florida 33324

Re: Michael J. Emerson-Mitigation Request
4240 SW 63rd Avenue, Davie, Florida
Case No. 06-1225

Dear Mr. Stallone:

This mitigation request was heard on February 24, 2009. All violations of the Davie Town Code were corrected at the time of the final hearing. The fines have accumulated to the amount of $178,000.00

The Respondent resides in North Carolina and has had to rely on Mr. Brian Head, his property manager to maintain his property. According to Mr. Emerson, the property has a value of between $50,000 to $70,000 if it can be sold, and an outstanding mortgage of $90,000.00. Mr. Emerson would prefer to keep the property and maintain it and not turn it over to the lender, but he cannot afford to pay the lien. If Mr. Emerson retains ownership of the property it is anticipated that it will be maintained by Mr. Head and that there will not be any further code enforcement issues.

Mr. Head testified that there were approximately $20,112.40 in total expenses incurred by Mr. Emerson in bringing the property into compliance. This included repairs to the interior and exterior, the necessity of obtaining electrical, plumbing and demolition permits, demolition of two buildings and two portions of the home, and the loss of rental income due to the construction. It appears that when Mr. Emerson bought the property it was not in compliance with the Town of Davie Code 8-16, but this was unknown to him at the time of purchase. The original survey of the property could not be located by Mr. Head or the Town of Davie.

Unfortunately, Mr. Head did not appear at the Code Enforcement Hearing at which the lien was imposed due to an emergency at another property for which he was responsible, and, apparently, did not request a continuance of the matter.

According to Mr. Head, Mr. Emerson relied upon Mr. Head to handle the code enforcement issues for him. Most of the delay in compliance appears to be related to the time in which it took for Mr. Head to bring the property into compliance due to construction related delays. Mr. Head notes that on at least four occasions the Code Enforcement Inspector advised him that additional work need to be done to bring the property in compliance, and that he remained in touch with the Code Compliance Division trying to achieve compliance.

Mr. Emerson has requested that the lien be mitigated to $2,000.00.

Based upon the foregoing, it appears that the lien should be mitigated to the amount of $2,000.00. This should cover the actual administrative costs of the Town of Davie and should keep the property out of foreclosure.

Sincerely,

Meah R. Tell, Esq.

TOWN OF DAVIE CODE COMPLIANCE
MITIGATION WORKSHEET
CASE #06-1225

Respondent(s): Michael J. Emerson

Address: 4240 SW 63 Avenue
Davie, FL 33314

Fine/Lien Amount: $178,000.00

Mitigation Recommendation:
(as per approved mitigation guidelines)

A) 35% of $178,000 = $ 62,300.00

Plus

B) 15% of $178,000 = $26,700.00
for each (3) periods of 60 days of non-compliance
For a total of 178 days or part thereof = $ 80,100.00

c) Mitigation Base Fee = $ 1,010.98
(Town costs incurred by
Code Compliance)

Total = $ 143,410.98

MITIGATION REQUEST SUMMARY

DATE: January 7, 2009

NAME: Michael J. Emerson

ADDRESS: 4240 SW 63rd Avenue
Davie, FL 33314

CASE: 06-1225

SUMMARY:

Date respondent cited:	August 25, 2006	
Date of Final Order:	September 5, 2006	
Non-Compliance Hearing(s):	March 23, 2007	
Fine/Lien(s) Imposed:	April 5, 2007	$ 178,000.00

Department Guideline recommended mitigation amount:	$ 143,410.98
Amount the respondent desires to pay:	$ 143,410.98

The property owner was cited for the following violations of the Town of Davie Code:

11-17	Derelict Property Prohibited
8-16	Building Permit Required
12-33(U)	Nuisance
12-33(S)(2)	Landscape Maintenance

The mitigated amount will cover the Town expenses and the recommended mitigated amount of $143,410.98 should be considered and approved by the Town Council and the respondent given 45 days to pay the mitigated amount.

DANIEL J. STALLONE
CODE COMPLIANCE OFFICIAL

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* $1,300.00

*Subject to revision as per current staff salaries.

DEVELOPMENT SERVICES DEPARTMENT
CODE COMPLIANCE DIVISION
6591 ORANGE DRIVE • DAVIE, FLORIDA 33314-3399
PHONE: 954.797.1121 • FAX: 954.797.1119 • WWW.DAVIE-FL.GOV

FINAL ORDER INSPECTION REPORT

CASE NO. 06 - 1225

DATE FINAL ORDER ISSUED: 9/5/06 RE-INSPECTION DATE July 2, 2008

RESPONDENT(S) Michael J. Emerson

PROPERTY ADDRESS 4240 SW 63 Avenue

VIOLATIONS ...✓... COMPLIED ..... NOT COMPLIED (check one)

NON-COMPLIANCE HEARING REQUEST (DATE) _____

LIST VIOLATIONS NOT COMPLIED: _____

1. _____

2. _____

3. _____

4. _____

INSPECTOR SIGNATURE [signature] DATE July 2, 2008

REVIEWED BY _____ DATE _____

DJS/MM 5/04