

AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
01/19/2022

Agenda Item:

Consider a code enforcement lien mitigation request from DK Realty Group – SUB, LLC relating to the property at 9170 Estero River Circle, located in The Estates at Estero River.

Description:

The current owner acquired the residential property at 9170 Estero River Circle in October of 2021 through a Foreclosure/Sheriff sale. The previous owner was cited in February of 2019 for Pool Maintenance. The case was heard before the Special Magistrate on February 21, 2019. The owner was not present. The Special Magistrate imposed a fine beginning on March 20, 2019. A code enforcement lien in the amount of \$240,000.00 plus \$296.85 in administrative costs for a total of \$240,296.85 has accrued based on 960 days of lien accumulation at \$250.00 a day.

The new owners have brought the Swimming pool into compliance shortly after taking possession of the property.

Pursuant to prior direction of Council, liens exceeding \$100,000 must be approved by the Village Council. The case for fine review with the new owner was heard by the Special Magistrate on December 16, 2021. The new property owners did not attend the Special Magistrate hearing; however, contact was made by the respondents through legal representation to inquire about the Special Magistrate hearing formalities. Correspondence between the respondent's attorney and the Village of Estero indicates that the new property owners are in the process of selling the property and have requested the mitigation for that purpose.

The Special Magistrate recommended that the mitigation be heard by The Village Council for determination. The Special Magistrate did not make a lien recommendation for this case.

Statutorily, local governments must consider the following factors in determining the amount of a fine: (1) The gravity of the violation; (2) Any actions taken by the violator to correct the violation; and (3) Any previous violations committed by the violator. The Village has currently adopted a very low tolerance stance in seeking compliance with our codes.

Action Requested:

Per Village of Estero legal counsel, approve the lien mitigation request from DK Realty Group-Sub, LLC releasing any outstanding liens against the Property in exchange for payment of a reduced fine of \$2,000.00 and \$296.85 for administrative costs.

Financial Impact:

The Village will recover its out-of-pocket costs for the Code Enforcement Case against the Property.

Attachments:

1. Code Enforcement Case Overview
2. Request for Fine Review
3. Special Magistrate Order Finding Violation
4. Special Magistrate Order of Imposition of Fine

Case Overview

Property/Incident Information

Owner	Address	Site Address
DORCHAK DARYL R	9170 ESTERO RIVER CIR ESTERO, FL 33928	9170 ESTERO RIVER CIR , ESTERO, FL 33928

Legal Description

ESTATES AT ESTERO RIVER PB 76 PGS 82-85 LOT 86

Description

Swimming pool is not being maintained - Black, dirty water

Case Status Closed **Case #** 19010002

Notes Swimming pool is not being maintained - Black, dirty water

Pool must be maintained, pump must be in working order
please correct the issues and notify me when corrected

Thank you,

Stanley Knight
knight@estero-fl.

Documents Issued

<u>Date Issue</u>	<u>Document Type</u>
12/11/2018	Complaint
12/11/2018	Courtesy Notice
12/26/2018	Affidavit of Non-Compliance
1/4/2019	Notice of Violation
1/4/2019	Notice of Hearing
2/6/2019	Affidavit of Non-Compliance
2/19/2019	Affidavit of Non-Compliance
2/21/2019	Notice of Hearing
2/21/2019	Final Order
3/21/2019	Order of Imposition/Liens
11/4/2021	Affidavit of Compliance
11/18/2021	Notice of Hearing

Violations

Ordinance/Regulation	Section	Description	Date Complied
CHAPTER 6 - BUILDINGS AND BUILDING REGULATIONS	Section 6-115(c)(1). - Maintenance.	Maintenance required. Buildings, structures, pools, electrical, gas, mechanical and plumbing systems, both existing and new, and all parts thereof, must be maintained in a safe and sanitary condition. Devices and safeguards that are required by the technical codes when constructed, altered or repaired, must be maintained in good working order. The owner, or his designated agent, will be responsible for the maintenance of buildings, structures, pools, electrical, gas, mechanical and plumbing systems.	11/4/2021

Case Overview

Fines

<u>Fine Type</u>	<u>Section</u>	<u>Fine Type</u>	<u>Date Complied</u>	<u>Total Fine</u>
Individual Violation	Section 6-115(c)(1). - Maintenance.	Individual Violation	11/4/2021	\$240,000.00
Admin Fixed		Admin Fixed		\$296.85
			Total Fines	\$240,296.85

Payments

<u>Date</u>	<u>Payment Type Name</u>	<u>Amount</u>
	Total Payments	\$0.00
	Fees Outstanding	\$240,296.85



REQUEST FOR VILLAGE OF ESTERO SPECIAL MAGISTRATE CODE ENFORCEMENT LIEN REDUCTION

This form is for applicants seeking to reduce the fine or assessed costs resulting from a Code Enforcement Order by the Village of Estero Special Magistrate. This form may only be used if the violation has been corrected. The process cannot be used to reduce liens imposed for other Code Enforcement processes (such as lot mowing, securing pools, or lot clean-up).

Submit this form by email to knight@estero-fl.gov

Name of Applicant:	DK REALTY GROUP – SUB 3, LLC
Mailing Address:	9841 NW 26 TH ST
City, State, Zip:	DORAL, FL 33172
Phone Number:	305-281-5506
Email Address:	Upstate1234@att.net

Code Enforcement Case Number (shown on recorded Order):	19010002
Provide a copy of the recorded document OR provide an instrument number or the Official Records Book and Page numbers below.	
INSTR # or Official Records Book/Page (shown on recorded Order):	2019000082729
Property Address:	9170 ESTERO RIVER CIRCLE, ESTERO, FL 33928
STRAP Number:	344625E1120000860

Relationship of Applicant to the property:

- Owner of the property or Owner's Representative
- Contract Purchaser
- Other (specify): _____

Relationship of Applicant to the violation resulting in the Order:

- Applicant was the owner of the property at the time of violation
- Applicant acquired the property after the imposition of the fine/costs
- Purchased property from: Lee County foreclosure auction
- Seeking to purchase the property
- Other (specify): _____

Has the Division of Code Enforcement verified the violation has been corrected? Yes No

- Who corrected the violation?**
- Respondent
 - New Owner
 - County
 - Unknown

The burden is on the Applicant to show why the fine/costs should be reduced.

SUMMARIZE YOUR REQUEST FOR FINE REVIEW, INCLUDING THE FACTORS TO BE CONSIDERED BY THE SPECIAL MAGISTRATE (Attach additional pages, if necessary):

Subject property was purchased through the foreclosure auction. When we bought it, the property was abandoned, deteriorated and filthy. Our crew, me and my wife have been working around the clock to bring this property into compliance and make it safe, healthy and livable and better the neighborhood as well. We are requesting a fine reduction because the code enforcement lien is high, and we cannot afford to pay it. Please consider we had to pay a delinquent water bill, large association fee, attorney's fees, high costs supplies and labor for repairs.

Thank you in advance.

Applicant's Signature: 

Date: 11/11/21



**OFFICE OF THE SPECIAL MAGISTRATE
ORDER FINDING VIOLATION**

**Village of Estero
9401 Corkscrew Palms Circle
Estero, FL 33928**

Case #: 19010002

Certified #: 7014 3490 0000 4831 4468

Petitioner,

Vs

**DORCHAK DARYL R
9170 ESTERO RIVER CIR
ESTERO, FL 33928**

Respondent(s)

IN RE: Case 19010002

STREET ADDRESS: 9170 ESTERO RIVER CIR ESTERO, FL 33928

FOLIO: 344625E1120000860

LEGALDESCRIPTION: ESTATES AT ESTERO RIVER PB 76 PGS 82-85 LOT 86

The Village of Estero Special Magistrate, having heard testimony under oath and argument at a Public Hearing, in reference to the above-described property, held Thursday **February 21, 2019**, after due notice to the Respondent(s):

AS AND FOR MY FINDINGS OF FACT:

1. The Respondent(s) is/are the owner(s) of record, and is/are responsible for the subject property.
2. The respondent(s) has/have received proper notice of this hearing by Posting to the property of the alleged existence of certain conditions on the property described as violations, and that those conditions constituted a violation(s) of a Village of Estero Ordinance.
3. The Respondent(s), despite proper notice of this hearing, have failed to appear or otherwise participate in today's hearing, and are in default of having appeared.
4. The notice(s) previously given to the Respondent(s) specified that certain violations existed at the subject premises and what actions to abate the alleged violations were to be taken by a time certain, but the Respondent(s) has/have failed to complete such actions in a timely manner.

The following condition(s) is/are found to exist on the subject property located at **9170 ESTERO RIVER CIR ESTERO, FL 33928**, as reported by the Village's Code Compliance Manager in the Notice of Violation:

	Ordinance / Regulation	Violation Description / Correction	Order Date to Comply by
1	Chapter 6 - BUILDINGS AND BUILDING REGULATIONS Section 6-115(c)(1). - Maintenance.	Maintenance required. Buildings, structures, pools, electrical, gas, mechanical and plumbing systems, both existing and new, and all parts thereof, must be maintained in a safe and sanitary condition. Devices and safeguards that are required by the technical codes when constructed, altered or repaired, must be maintained in good working order. The owner, or his designated agent, will be responsible for the maintenance of buildings, structures, pools, electrical, gas, mechanical and plumbing systems.	March 20, 2019

The conditions testified to by the Village's Code Compliance Manager are found to have existed as the date and time of this hearing upon the subject property located at **9170 ESTERO RIVER CIR , ESTERO, FL 33928,**

That same constitute(s) a violation(s) under **CHAPTER 6 – BUILDINGS AND BUILDING REGULATIONS Section 6-115(C)(1) – Maintenance**

Due to the refusal or failure on the part of the Respondent(s) to remedy the conditions(s) which exist on the subject property, it may be necessary for the Petitioner/Village of Estero to take any and all steps necessary to remedy the conditions.

AS AND FOR MY CONCLUSIONS OF LAW:

Respondent(s), by reason of the foregoing, is/are in violation of the Village of Estero's Ordinances, as specified above.

THEREFORE, I HEREBY ORDER:

1. That Respondent(s) shall correct or abate the aforesaid violations in the manner set forth in the official Notice of Violation **PRIOR to 5:00 P.M., on March 20, 2019**
2. That Respondent(s) shall pay to the Village of Estero, Florida, the sums determined to be due for the Village's actual costs of prosecution of this case in the amount of **\$296.85**, and shall deliver payment of same to the Village Clerk's office no later than 10 days from the date of this Order; and if not paid, may also constitute a lien against the above-referenced property which may also be actionable by law.

In the event that the violation(s) is/are not corrected or abated as indicated above prior to 5:00 pm on **March 20, 2019**, additional fines of \$250.00 per day shall be imposed against Respondent(s), beginning on that date and continuing for each day that the aforesaid violations continue to exist.

In the event the sums awarded herein are not paid, such sums will become a lien, which may attach to all real and personal property owned by the Respondent(s) upon being recorded in the Public Records of Lee County, even if the violations have been subsequently abated in accordance with this Order.

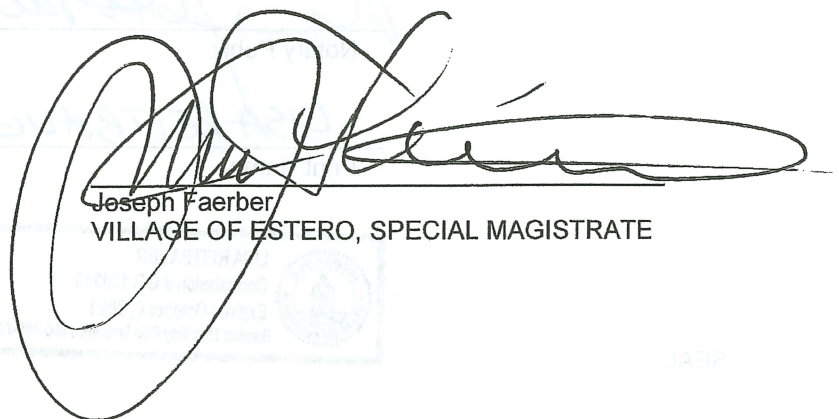
If the owner(s) fail(s) to comply, an Order Imposing Fine in the amounts shown above for every day that the violation continues to exist commencing on the dates shown above will be entered and a certified copy shall be recorded in the Public Records of Lee County, Florida and shall constitute a lien against the above-described real property or personal property owned by the violator. (Section 162.09, Florida Statutes). This Order may be enforced like a court judgment. Repeat violations can be fined up to \$500.00 per day. (Section 162.09, Florida Statutes). Property owner(s) has/have 30 days from date this Final Order is executed to file an appeal in circuit court. (Section 162.11, Florida

Statutes). The property owner must contact the Code Compliance Department to advise when compliance has been reached.

3. In determining the amount of such fine(s), I have considered the gravity of the violation(s); any actions, or lack thereof, to correct the violation(s); and, any previous violation(s) committed by the Respondent(s).
4. When the violation(s) has/have been abated, the Respondent(s) **MUST CALL THE VILLAGE OF ESTERO CODE ENFORCEMENT MANAGER – STANLEY KNIGHT, AT (239) 319-2815, AND REQUEST A RE-INSPECTION.** UPON SUCH RE-INSPECTION, IF SUCH VIOLATION(S) ARE FOUND TO HAVE BEEN ABATED, SUCH FINES SHALL CEASE RUNNING.
5. The Village of Estero is hereby authorized, in its discretion, to enter onto the subject premises and to itself abate, clear and remove all violation(s) (or specific items listed in Finding of Fact), found to still exist at the subject premises on or after February 20, 2019, or as soon thereafter as practicable in the event the Respondent(s) has/have not abated the violations. In addition to the amount of fines, and the Village's costs of prosecution, as imposed herein, all costs of such abatement, clearing and removal shall be recovered by the Village of Estero and shall accrue and increase the cost lien provided for herein.
6. Compliance by the Respondent(s) shall be considered at a subsequent Hearing before the undersigned Hearing Examiner/Special Magistrate to be held on **March 21, 2019**, at 1:00 p.m., at the Village Hall Council Chambers, 9401 Corkscrew Palms Circle, Estero, FL 33928.
7. You may also have other rights which are set forth in Article VI - Code Enforcement Board of the Village of Estero Code of Ordinances.
8. Respondents may appeal any decision with respect to any matter considered by the Village of Estero Special Magistrate. An appeal must be filed within (30) days of the execution of the Order to be appealed. If a person decides to appeal any decision, such person will need a record of the proceedings and that, for this purpose, such person may need to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence upon which the appeal is to be based. Section 286.0105, Florida Statutes.

DONE AND ORDERED in the Village of Estero, Lee County, Florida this 21st Day of February, 2019.

OFFICE OF THE SPECIAL MAGISTRATE
VILLAGE OF ESTERO, FLORIDA

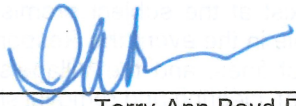


Joseph Faerber
VILLAGE OF ESTERO, SPECIAL MAGISTRATE

SPECIAL MAGISTRATE CLERK AFFIDAVIT

Dated on February 21, 2019

Village of Estero Special Magistrate Clerk

By: 
Terry-Ann Boyd-Reynolds

I certify that, under the penalty of perjury that the above written statements are true and accurate to the best of my knowledge.

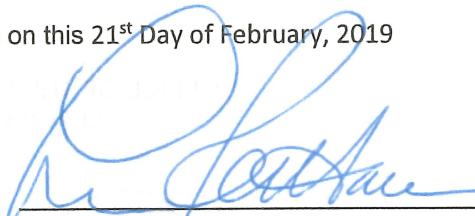
STATE OF FLORIDA)

)ss:

COUNTY OF LEE)

Terry-Ann Boyd Reynolds stated personally before me that they have personal knowledge of the facts stated herein:

Sworn or affirmed before me on this 21st Day of February, 2019


Notary Public

LISA REITBAUER
Print Name



SEAL:



OFFICE OF THE SPECIAL MAGISTRATE
ORDER OF IMPOSITION OF FINE & CLAIM OF LIEN

Village of Estero
9401 Corkscrew Palms Circle
Estero, FL 33928

Case #: 19010002

Certified #:

Petitioner,

Vs

DORCHAK DARYL R
9170 ESTERO RIVER CIR
ESTERO, FL 33928

Respondent(s)

The Village of Estero Special Magistrate, having reviewed evidence and sworn testimony by Affidavit, enters the following Findings of Fact:

- 1. That the Village of Estero Special Magistrate did issue on the 21st day of February, 2019 an Order finding Violation in the above captioned case commanding the Respondent to bring the violations specified in said Final Order into compliance or be subject to a fine in the amounts shown below commencing on the dates shown below plus an additional fine to cover costs incurred by the Village in the amount of \$296.85.

Ordinance/Regulation	Violation Description/Correction	Order Date to Comply by	Date Complied	Daily Fine
Chapter 6 - BUILDINGS AND BUILDING REGULATIONS Section 6-115(c)(1) - Maintenance.	Maintenance required. Buildings, structures, pools, electrical, gas, mechanical and plumbing systems, both existing and new, and all parts thereof, must be maintained in a safe and sanitary condition. Devices and safeguards that are required by the technical codes when constructed, altered or repaired, must be maintained in good working order. The owner, or his designated agent, will be responsible for the maintenance of buildings, structures, pools, electrical, gas, mechanical and plumbing systems.	03/20/2019		\$250.00

- 2. That said violations occurred on the following described real property situate, lying and being in the Village of Estero, Florida, to-wit:

FOLIO#: 344625E1120000860

LEGAL DESCRIPTION ESTATES AT ESTERO RIVER PB 76 PGS 82-85 LOT 86 STREET ADDRESS:
9170 ESTERO RIVER CIR ESTERO, FL 33928

- 3. That the Respondent did not comply with the Final Order on or before the date specified therein.

Upon complying with this Final Order, the Respondent **SHALL NOTIFY STANLEY KNIGHT**, The Code Enforcement Compliance Manager, who shall have the property inspected and notify the Special Magistrate Clerk if compliance has occurred.

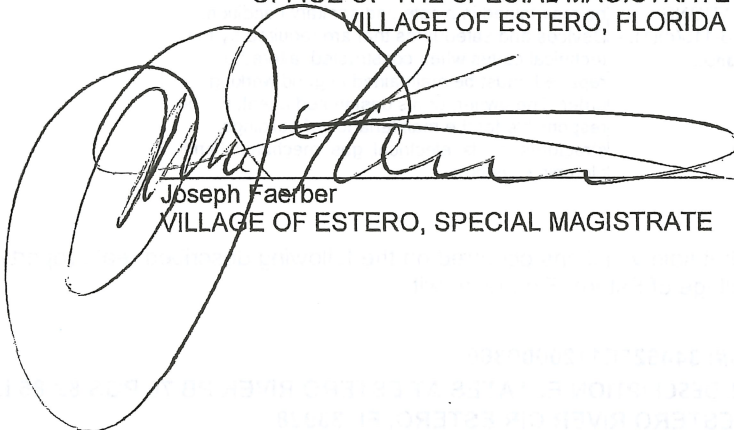
4. A fine in the amounts shown above commencing on dates shown above is hereby confirmed and imposed. This fine shall continue to accrue until such time as the property is brought into compliance at which time the Respondent shall notify the Code Compliance Manager. **Additionally, a fine of \$296.85 to cover costs incurred in the prosecution of this matter is confirmed and imposed.**
5. The fine and costs shall constitute a lien against the above-described real property pursuant to Chapter 162, Florida Statutes and Article VI – Code Enforcement of the Village of Estero Code of Ordinances, as currently enacted or as may be amended from time to time. The Special Magistrate Clerk is directed to record a true copy of this order in the Public Records of Lee County, Florida. Any such lien which accrues more than (90) days after the date it is recorded and which remains unpaid, may be referred to a collection agency which shall result in the imposition of additional collection fees.

You may request, in writing, a hearing before the Special Magistrate to contest the finding of non-compliance and imposition of fines. Said hearing shall be limited to consideration of whether the violations were timely complied. A written request for a hearing MUST BE MADE TO THE OFFICE OF THE SPECIAL MAGISTRATE AND RECEIVED WITHIN TWENTY (20) DAYS OF THE DATE OF THIS NOTICE. You will be notified of a hearing date and time. If no timely request is received, this Order Imposing Fine and Claim of Lien entered by the Special Magistrate will be recorded in the Public Records of Lee County, constituting a lien on the subject real property.

Respondents may appeal a final administrative order of the Special Magistrate for the Village of Estero to the Circuit Court. An appeal must be filed within thirty (30) days of the execution of the Order to be appealed.

DONE AND ORDERED in the Village of Estero, Lee County, Florida this 21st Day of March, 2019

OFFICE OF THE SPECIAL MAGISTRATE
VILLAGE OF ESTERO, FLORIDA



Joseph Faerber
VILLAGE OF ESTERO, SPECIAL MAGISTRATE

SPECIAL MAGISTRATE CLERK AFFIDAVIT

Dated on March 21, 2019

Village of Estero Special Magistrate Clerk

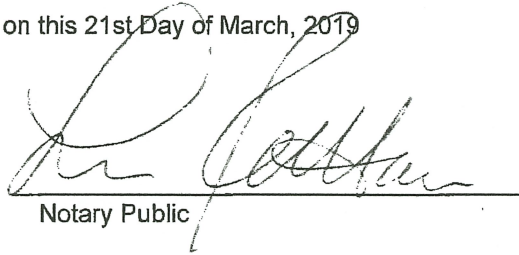
By: 
Terry-Ann Boyd-Reynolds

I certify that, under the penalty of perjury that the above written statements are true and accurate to the best of my knowledge.

STATE OF FLORIDA)
)ss:
COUNTY OF LEE)

Terry-Ann Boyd-Reynolds stated personally before me that they have personal knowledge of the facts stated herein:

Sworn or affirmed before me on this 21st Day of March, 2019


Notary Public

LISA REITBAUER
Print Name

SEAL:



