

TAB 5



City of Palmetto Agenda Item

Meeting Date

6/6/2011

Presenter: Mark P. Barnebey

Department: City Attorney

Title: Consideration of Foreclosure Action on 706 13th Street West (Rutledge)

BACKGROUND:

Since 1977, the City has had various code enforcement actions to City intervention to clear the vacant lot at 706 13th Street West from May 1997 through the present. The current property owner appears to be Rutledge Trust.

The most recent Code Enforcement action was initiated on a May 20, 2008 complaint from Commissioner Lancaster regarding people congregating on this vacant lot. The Commissioner reported the City previously partially fenced this lot, and she requested the lot be secured and posted "No Trespassing".

The Department of Public Works has cleared the property whenever overgrowth issues have been identified by Code Enforcement. According to Bill Strollo, the costs of the lot clearing have been included in the liens on this property.

There has been no response from the owner of record to a letter from Code Enforcement dated May 28, 2008. The certified copy of the Notice of Nuisance issued July 8, 2008 was returned unclaimed. A copy of this Notice had been posted on the property and at City Hall on July 8, 2008.

The Clerk's office indicates the current City lien amounts total \$8,568.94 through May 31, 2011, but the last lien was October, 2001.

This lot is adjacent to a vacant commercial building. The owner of that building at 710 13th Street West, Dan Snyder, has repeatedly complained regarding vagrants camping on the property; he also stated the lot is serving as a local watering hole. There are numerous discarded beer cans and bottles on the property suggesting ongoing problems.

Tax certificates have been issued for unpaid taxes since 2004.

DISCUSSION:

Our firm is also encountering some hurdles trying to communicate with the owners of the property at issue.

The named trustee owner of this property Gus Rutledge is, upon information and belief, deceased. I was able to locate a woman, Mary Rutledge, who identified herself as the trustee's widow. According to this woman, the trustee has been dead for 12 years, but she has not sent us a copy of the trust agreement. Thus, we have been unable to identify the successor trustee or any of the trust's beneficiaries.

A wild curator's deed was recorded in Manatee County in 2002, executed by Brenda D. McCaslin to Harold Spearman. Nonetheless, Code Enforcement letters to the Grantor, Brenda D. McCaslin, and the Grantee, Harold Spearman, were returned to sender marked "insufficient address" and "attempted-not known" respectively.

Tax certificates are a first lien against property and supersede governmental liens. These certificates have been sold to different people and entities. As a result, we are not likely to be able to readily work out some sort of resolution of these certificates. (Given the amount of fines Palmetto has levied against the property, it is unlikely anyone will apply for a tax deed because Fla. Statute Section 197.552, provides that unsatisfied governmental liens survive the issuance of a tax deed.)

There is not a clearly superior approach to resolve this issue. The City's intent is to obtain a responsive property owner to maintain the property in a safe manner. In light of the foregoing, the City should consider foreclosing upon the subject property with its most junior lien. Palmetto will likely take ownership of the property at the foreclosure sale because the pending tax certificates will make the property unattractive to another purchaser. The result of the City becoming the owner on its prior liens is not certain. Should Palmetto then lose the property to a tax certificate holder because its prior liens are invalidated or "merged" into its legal title, the new owner will be identifiable and someone who wants to be a property owner in Palmetto.

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Additional Budgetary Information:

Costs for foreclosure will be from County Litigation Account. The City may recover its fees and costs if the property is subsequently sold, but this is unlikely with the existing tax liens on the property, which could be foreclosed upon as discussed above.

Funding Source(s):

Sufficient Funds Available: Yes No

Budget Amendment Required: Yes No

Source:

City Attorney Reviewed:

Yes
 No
 N/A

Advisory Board Recommendation: For Against N/A

Consistent With: Yes No N/A

Potential Motion/ Direction Requested:

Authorize the City Attorney to file suit and proceed with an action for foreclosure of the property located at 706 13th Street West, Palmetto.

Staff Contact:

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| Mark P. Barnebey, Esquire | | |
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Attachments: