

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: 12/02/14

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY
Submitted For: PLANNING, ZONING, & BUILDING

I. EXECUTIVE BRIEF

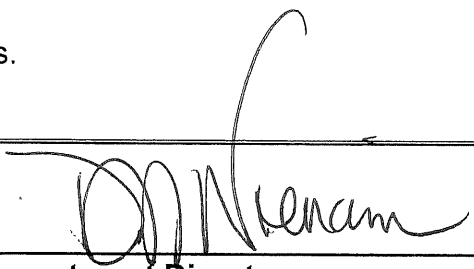
Motion and Title: Staff recommends motion to: approve a settlement of a code enforcement Order and the appeal of that Order by Westchester Square LLC ("Westchester") for code violations found at Westchester's property located at 2800 N. Military Trail in West Palm Beach.

Summary: This settlement requires Westchester to execute a Restrictive Covenant prohibiting similar code violations in the future. The Restrictive Covenant will be recorded following Board approval of this settlement. Westchester will then dismiss the pending appeal of the code enforcement Order and pay a reduced fine amount of \$75,000 to the County. An initial payment of \$25,000 will be due 15 days after Board approval of the settlement. The remaining \$50,000 will be due in annual \$10,000 payments beginning July 1, 2015 and each July 1st thereafter until the \$50,000 balance due is paid. The code enforcement lien will remain on the property until the entire \$75,000 settlement amount is paid in full. District 7(PFK)

Background and Justification: Staff believes Board approval of this code enforcement settlement is in the best interests of the County and the property owner.

Attachment:

- 1. Settlement documents.

Recommended by:  Date 11/10/14
Department Director Date

Approved by: N/A Date _____

II. FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact

| Fiscal Years | 2015 | 2016 | 2017 | 2018 | 2019 |
|--|-----------------|-----------------|-----------------|-----------------|-----------------|
| Capital Expenditures | — | — | — | — | — |
| Operating Costs | — | — | — | — | — |
| External Revenues | <u>(35,000)</u> | <u>(10,000)</u> | <u>(10,000)</u> | <u>(10,000)</u> | <u>(10,000)</u> |
| Program Income (Co.) | — | — | — | — | — |
| In-Kind Match (County) | — | — | — | — | — |
| NET FISCAL IMPACT | <u>(35,000)</u> | <u>(10,000)</u> | <u>(10,000)</u> | <u>(10,000)</u> | <u>(10,000)</u> |
| # ADDITIONAL FTE POSITIONS (Cumulative) | — | — | — | — | — |

Is Item Included in Current Budget? Yes ___ No X

Budget Account No.: Fund 000 Department 600 Unit 6241 Object 5900

Reporting Category ___

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Susan Neary 11/12/14
 2/0 11/10
 1/12 11/12
 OFMB

Dr. J. Jacobson 11/14/14
 Contract Dev. and Control
 11-14-14 (B) heeler

B. Legal Sufficiency:

Paul F. [Signature] 11/10/14
 Assistant County Attorney

C. Other Department Review:

 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.



September 26, 2014

Denise M. Njeman
County Attorney

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West Palm Beach, FL 33402-1989
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Sent via Electronic & Regular Mail
Keith M. Poliakoff, Esq.
Arnstein & Lehr LLP
200 East Las Olas Boulevard
Suite 100
Fort Lauderdale, FL 33301

Re: Westchester Square LLC v. Palm Beach County – Case
No. 50 2014 CA001668 XXXX MB AY

FOR SETTLEMENT PURPOSES ONLY

Dear Mr. Poliakoff:

This letter contains a revised settlement proposal for the code enforcement order concerning Westchester Square LLC's ("Westchester") property located at 2800 N. Military Trail in West Palm Beach. After consulting with County staff, I believe the dispute in the above case may be resolved, following approval by the Board of County Commissioners ("Board"), on the following terms:

1. Westchester will execute and send to the undersigned Restrictive Covenant in the form attached to this letter. The executed Restrictive Covenant will be held by the County Attorney's Office and then be recorded after Board approval of the settlement.
2. Westchester will file a notice of dismissal of the appeal in the above case upon Board approval of the settlement.
3. Westchester will pay a reduced fine amount of \$75,000 to the County. An initial payment of \$25,000.00 will be due within 15 days of Board approval of the settlement. Thereafter, annual payments of \$10,000.00 will be due beginning July 1, 2015 and then on each July 1st thereafter until the \$50,000.00 balance due is paid in full. Payments

■
**Palm Beach County
Board of County
Commissioners**

Priscilla A. Taylor, Mayor

Faulette Burdick, Vice Mayor

Hal R. Valeche

Shelley Vana

Steven L. Abrams

Mary Lou Berger

Jess R. Santamaría

County Administrator

Robert Weisman

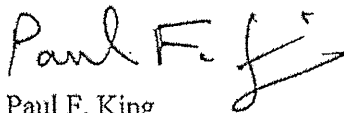
"An Equal Opportunity
Affirmative Action Employer"

printed on recycled paper

shall be made payable to Palm Beach County, Board of County Commissioners, c/o County Collections Coordinator, OFMB, 7th floor, 301 N. Olive Avenue, West Palm Beach, Florida 33401. The code enforcement lien will not be satisfied until the entire \$75,000.00 settlement amount has been paid. If those payments are not made by Westchester the fine amount will revert to its present amount of \$175,000, plus accrued interest.

I await your prompt response to the County's revised settlement offer in this case.

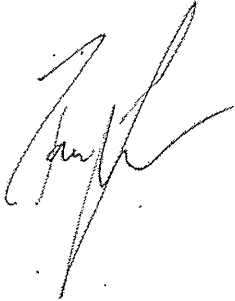
Very truly yours,



Paul F. King
Sr. Assistant County Attorney

PFK/lb

cc: Donna Raney, Chief Assistant County Attorney
Shannon Fox, Assistant County Attorney
Leonard W. Berger, Chief Assistant County Attorney



This instrument was prepared by and returned to:
Paul F. King, Sr. Assistant County Attorney
Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

RESTRICTIVE COVENANT

This Restrictive Covenant, made and executed this 29th day of Oct, 2014,
by WESTCHESTER SQUARE, LLC (the "Owner").

WITNESSETH:

Whereas, the Owner is the owner of that property, as legally described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

Whereas, a portion of the Property has been used by Owner's tenants in violation of the Palm Beach County Unified Land Development Code (the "ULDC") as to its use and hours of operation; and

Whereas, the Owner intends to ensure that portion of the Property shall not again be used in violation of the ULDC as to hours of operation and use.

NOW, THEREFORE, the Owner, its successors, heirs and assigns, covenant to relinquish any current vested rights for hours of operation of any business or venture in bays 121 through 123 at the Property. Bays 121 through 123 shall comply with the hours of operation as delineated in, or may be obtained in conformity with the ULDC, as may be amended from time to time. This restriction shall be deemed to be a covenant running with the land. Any person or business seeking to operate in bays 121 through 123 of the Property shall comply with all relevant codes and ordinances then in existence. In the event that this property is annexed into a municipality, this Restrictive Covenant shall be deemed to be null and void and of no further force or effect.

In witness, Owner hereunder executes this Restrictive Covenant the day and year first written above.

WESTCHESTER SQUARE, LLC
a Florida limited liability company

ATTEST
[Signature]
(Witness)

Ham. Sanchez
(Print Witness Name)

[Signature]
(Witness)

Amabel Ferris Baruel
(Print Witness Name)

By: [Signature]
Manager

STATE OF FL
COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this 29th day of Oct, 2014, by Paul F. King, Sr. as Manager of Westchester Square, LLC, a Florida Limited Liability Corporation. He/she is personally known to me or has produced _____ as identification.

Witness me and my official seal this 29th day of Oct, 2014

[Signature]
Notary Public

State of FL at Large
My Commission Expires: _____

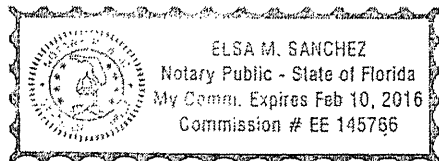


EXHIBIT "A"

Tract "A", Westchester Townhouses, according to the plat thereof, recorded in Plat Book 42, Page 187, of the Public Records of Palm Beach County, Florida.

Parcel Control Number (PCN): 00-42-43-24-19-000-0010