

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Code Enforcement Lien, Case # 05-66-CEB, – Kirkman Properties, LLC, 910 Spring Valley Rd, Altamonte Spring – Determination Regarding Receipt of late payment

DEPARTMENT: Planning and Development **DIVISION:** Planning

AUTHORIZED BY: Dori L. DeBord **CONTACT:** April Boswell **EXT.** 7339

Agenda Date 01/9/07 **Regular** **Consent** **Work Session** **Briefing**
Public Hearing – 1:30 **Public Hearing – 7:00**

MOTION/RECOMMENDATION:

(A) Do not accept the late payment of the reduced lien (\$840.93) received from Kirkman Properties, LLC, 910 Spring Valley Road, Altamonte Springs, and require the entire lien (\$3,250.00) to be paid within 60 days, and upon payment in full, authorize the Chairman to execute the Satisfaction of Lien (Staff Recommendation); or

(B) Accept the late payment of \$840.93 and authorize the Chairman to execute the Satisfaction of Lien.

Commissioner Henley – District 4

April Boswell – Planning Manager

BACKGROUND:

On June 13, 2006, the Board of County Commissioners approved a reduction of the Code Enforcement lien from \$3,250.00, to the estimated administrative costs of \$840.93, for processing Case # 05-66-CEB, on the property located at 910 Spring Valley Road, Altamonte Springs, and required these costs be paid within 30 days (on or before July 13, 2006) or the lien would revert to its original amount of \$3,250.00.

The Respondents' Representative was present at this meeting and had personal knowledge of the decision of the Board of County Commissioners.

On June 13, 2006, the Clerk to the Code Enforcement Board mailed a certified letter to the Respondents, confirming the decision of the Board of County Commissioners and the deadline date for payment of on or before July 13, 2006. On June 16, 2006, the Clerk received the certified card signed by the Registered Agent and on June 19, 2006, the Clerk received the certified card signed by the Respondents, both of which verified receipt of this letter.

Reviewed by: _____
Co Atty: KET
DFS: _____
Other: _____
DCM: _____
CM: CAC

File No. rpd01

On July 17, 2006, the Clerk to the Code Enforcement Board mailed a certified letter to the Respondents advising that, because payment had not been received within the time specified by the Board of County Commissioners, the lien reverted to the original amount of \$3,250.00. On July 20, 2006, the Clerk received the certified cards signed by the Respondents and their Registered Agent, both of which verified receipt of this letter.

On August 15, 2006, the Clerk to the Code Enforcement Board received, via certified mail, a check for \$840.93 in payment of the reduced lien. Therefore, payment of this reduced amount was received 33 days late.

STAFF RECOMMENDATION:

Staff recommends that the lien be reverted to the original amount of \$3,250.00, on the property located at 910 Spring Lake Road, Altamonte Springs, based on the following facts:

1. The Respondents' Representative was present at the Board of County Commissioners meeting and had personal knowledge of the Board's decision of the time limit for payment of the reduced lien. However, their Representative did not fill out a "Request to Speak" form and their name is not known.
2. The Respondents and their Registered Agent received, via certified and regular mail, a letter from the Clerk to the Code Enforcement Board confirming the Board's decision and confirming the deadline date for payment of the reduced lien.
3. The Respondent has not provided a compelling reason for the late payment.

Staff further recommends that this amount **(\$3,250.00)** be paid within 60 days and upon payment in full; authorize the Chairman to execute the Satisfaction of Lien.

Attachments:

Copy of Check # 1013 for \$840.93 dated 8/1/06 (received 8/15/06 via certified mail)
Signed certified receipt cards dated 7/20/06
Letter to Respondents dated 7/17/06
Affidavit of Mailing letter dated 7/17/06
Signed certified receipt cards dated 6/16/06 and 6/19/06
Letter to Respondents dated 6/13/06
Affidavit of Mailing letter dated 6/13/06
Agenda Memorandum with supporting documents dated 6/13/06
BCC Minutes from the 6/13/06 meeting

KIRKMAN PROPERTIES LLC 06/2002
6703 MOTT AVENUE
ORLANDO, FL 32810-4159

1013

63-215/631

8/1/06

Date

© HARLAND STILE 28 PRESTIGE

Pay to the Order of

Code Enforcement Board Seminole Co \$40.93

~~Richard J. ...~~

Dollars



33
Security
Detailed
Return
Info

SUNTRUST
SunTrust Bank

ACH RT 061000104

For 05-66-028

⑆063102152⑆

1013

MP

CERTIFIED MAIL



EMERGENCY
SERVICES

6703 Mott Avenue
Orlando, Florida 32810



7006 0100 0004 0132 0938



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32771

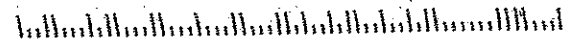
U.S. POSTAGE
PAID
ORLANDO, FL
32810
AUG 14, '06
AMOUNT

\$4.64
00054188-27

Code Enforcement Board of Seminole County
1101 East First Street
Seminole, FL 32771

Recd
Aug 15, 2006

3277181458 0008



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

05-66-CEB LIEN INFORMATION
 KIRKMAN PROPERTIES LLC
 6703 MOTT AVENUE
 ORLANDO FL 32803

2. Article Number
 (Transfer from service label)

7006 0810 0003 5194 2600

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 B. Hall 7/18/06

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

07-20-06P12:46 RCVD

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

05-66-CEB LIEN INFORMATION
 MICAH BASS
 REGISTERED AGENT
 6703 MOTT AVENUE
 ORLANDO FL 32803

2. Article Number
 (Transfer from service label)

7006 0810 0003 5194 2617

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 B. Hall 7/18/06

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

07-20-06P12:46 RCVD

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PLANNING AND DEVELOPMENT DEPARTMENT



CODE ENFORCEMENT

COPY

July 17, 2006

Kirkman Properties LLC
6703 Mott Avenue
Orlando, Florida 32803

Micah Bass, Registered Agent
6703 Mott Avenue
Orlando, Florida 32803

RE: CASE # 05-66-CEB
PARCEL I.D. # 22-21-29-506-0E00-0740

Dear Sirs:

As you know, on June 13, 2006, the Board of County Commissioners reduced your lien in the amount of \$3,250.00 to the administrative costs of \$840.93, if paid within 30 days (on or before July 13, 2006). To-date, payment has not been received.

Therefore, the lien in the amount of **\$3,250.00** imposed against your property on October 27, 2005, remains in full effect and payment of the reduced amount is no longer an option.

If you have any questions, please feel free to give me a call at 407-665-7403.

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

Connie R. DeVasto
Clerk to the Code Enforcement Board

Cc: John C. Englehardt, PA, Attorney at Law
Code Enforcement Officer Joann D. Tamulonis

**CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA**

SEMINOLE COUNTY, a political subdivision of the State of Florida,

CASE NO. 05-66-CEB

Petitioner,
vs.

**KIRKMAN PROPERTIES LLC;
MICAH BASS, REGISTERED AGENT
PARCEL I.D. # 22-21-29-506-0E00-0740**

Respondents

AFFIDAVIT OF SERVICE/MAILING

BEFORE ME, the undersigned authority, personally appeared Connie R. DeVasto, for Planning Division/Code Enforcement, who, after being duly sworn, deposes and says:

I certify that on the 17th day of July 2006, I mailed a true and correct copy of the Courtesy Letter advising Respondents that payment of reduced amount was not received within the time specified by the BCC and lien reverts back to original amount to: John C. Englehardt, P.A., Attorney at Law, 1524 E Livingston Street, Orlando, Florida, 32803, Kirkman Properties LLC, 6703 Mott Avenue, Orlando, Florida, 32803 and Micah Bass, Registered Agent, 6703 Mott Avenue, Orlando, Florida, 32803.

Connie R. DeVasto

Connie R. DeVasto

STATE OF FLORIDA)

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT <small>(Domestic Mail Only; No Insurance Coverage Provided)</small>		Postmark Here
For delivery information visit our website at www.usps.com		
OFFICIAL USE		
Postage	\$	
Certified Fee		
Return Receipt Fee <small>(Endorsement Required)</small>		
Restricted Delivery Fee <small>(Endorsement Required)</small>		
Total 05-66-CEB LIEN INFORMATION		
Sent To MICAH BASS		
Street, or PO Box 6703 MOTT AVENUE		
City, State, ZIP+4® ORLANDO FL 32803		

personally known
if July 2006.

Notary State My cr

7006 0810 0003 5194 2600

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT <small>(Domestic Mail Only; No Insurance Coverage Provided)</small>		Postmark Here
For delivery information visit our website at www.usps.com		
OFFICIAL USE		
Postage	\$	
Certified Fee		
Return Receipt Fee <small>(Endorsement Required)</small>		
Restricted Delivery Fee <small>(Endorsement Required)</small>		
Total 05-66-CEB LIEN INFORMATION		
Sent To KIRKMAN PROPERTIES LLC		
Street, or PO Box 6703 MOTT AVENUE		
City, State, ZIP+4® ORLANDO FL 32803		

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>[Signature]</i>	
1. Article Addressed to: <p style="text-align: center;">05-66-CEB BCC PAY DUE MICAH BASS REG AGENT 6703 MOTT AVENUE ORLANDO FL 32803</p>	B. Received by (Printed Name) <i>Pagan, I.</i>	C. Date of Delivery
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No <p style="text-align: center;">06-16-06P12:32 RCVD</p> 3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7005 0390 0001 9299 7533		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>[Signature]</i>	
1. Article Addressed to: <p style="text-align: center;">05-66-CEB BCC PAY DUE KIRKMAN PROPERTIES LLC 6703 MOTT AVENUE ORLANDO FL 32803</p>	B. Received by (Printed Name) <i>I. Pagan</i>	C. Date of Delivery
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No <p style="text-align: center;">06-19-06A11:25 RCVD</p> 3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7005 0390 0001 9299 7519		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

PLANNING AND DEVELOPMENT DEPARTMENT

CODE ENFORCEMENT



COPY

June 13, 2006

Kirkman Properties LLC
6703 Mott Avenue
Orlando, Florida 32803

Micah Bass, Registered Agent
6703 Mott Avenue
Orlando, Florida 32803

RE: CASE # 05-66-CEB
PARCEL I.D. # 22-21-29-506-0E00-0740

Dear Sirs:

As you know, at the Board of County Commissioners meeting held today, your lien in the amount of \$3,250.00 was reduced to the administrative costs of **\$840.93**. The Board requires that this reduced amount be paid within **30 days (July 13, 2006)** or the lien will revert to the original amount of \$3,250.00.

You may make your payment in person, or by mail, at the address listed below. If you are paying by check, please make the check payable to the "BCC" and send it to my attention. Upon timely payment of this amount, a Satisfaction of Lien will be signed by the Chairman and forwarded to you.

If you have any questions, please feel free to give me a call at 407-665-7403.

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

A handwritten signature in cursive script that reads "Connie R. DeVasto".

Connie R. DeVasto
Clerk to the Code Enforcement Board

Cc: John C. Englehardt, PA, Attorney at Law
Code Enforcement Officer Joann D. Tamulonis

**CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA**

SEMINOLE COUNTY, a political subdivision of the State of Florida,

CASE NO. 05-66-CEB

Petitioner,
vs.

**KIRKMAN PROPERTIES LLC;
MICAH BASS, REGISTERED AGENT
PARCEL I.D. # 22-21-29-506-0E00-0740**

Respondents

AFFIDAVIT OF SERVICE/MAILING

BEFORE ME, the undersigned authority, personally appeared Connie R. DeVasto, for Planning Division/Code Enforcement, who, after being duly sworn, deposes and says:

I certify that on the 13th day of June 2006, I mailed a true and correct copy of the Courtesy Letter advising Respondents of the reduced amount ordered by BCC to: John C. Englehardt, P.A., Attorney at Law, 1524 E Livingston Street, Orlando, Florida, 32803, Kirkman Properties LLC, 6703 Mott Avenue, Orlando, Florida, 32803 and Micah Bass, Registered Agent, 6703 Mott Avenue, Orlando, Florida, 32803.

Connie R. DeVasto

Connie R. DeVasto

**STATE OF FLORIDA)
COUNTY OF SEMINOLE)**

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Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Post	05-66-CEB BCC PAY DUE MICAH BASS REG AGENT 6703 MOTT AVENUE ORLANDO FL 32803	
Sent To		
Street, Apt. or PO Box		
City, State		

personally known
of June 2006.

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State
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For delivery information visit our website at www.usps.com

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Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total	05-66-CEB BCC PAY DUE KIRKMAN PROPERTIES LLC 6703 MOTT AVENUE ORLANDO FL 32803	
Sent To		
Street, Apt. or PO Box		
City, State		

6552 6626 7000 04FN 6007

6552 6626 7000 04FN 6007

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Code Enforcement Lien, Case # 05-66-CEB, Request for Reduction of Penalty – Kirkman Properties, LLC, 910 Spring Valley Rd, Altamonte Spring, FL, 32714.

DEPARTMENT: Planning and Development **DIVISION:** Planning

AUTHORIZED BY: Dan Matthys *(Signature)* **CONTACT:** April Boswell *(Signature)* **EXT.** 7339

Agenda Date <u>06/13/06</u>	Regular <input checked="" type="checkbox"/>	Consent <input type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

(A) Deny a reduction to the Code Enforcement Board lien in the amount of \$3,250.00 on the property located at 910 Spring Valley Road, Altamonte Springs – Kirkman Properties LLC, Case # 05-66-CEB, and require this amount to be paid within 30 days, and upon payment in full, authorize the Chairman to execute the Satisfaction of Lien (Staff recommendation); or

(B) Approve a reduction to the Code Enforcement Board lien which totals \$3,250.00, on the property located at 910 Spring Valley Road, Altamonte Springs – Kirkman Properties LLC, Case # 05-66-CEB, to an amount set by the Board of County Commissioners and require the reduced amount to be paid within 30 days, or the lien will revert to its original amount (\$3,250.00) and upon payment in full, authorize the Chairman to execute the Satisfaction of Lien; or

(C) Approve a reduction to the Code Enforcement Board lien from \$3,250.00 to the estimated administrative costs of \$840.93 for processing Case # 05-66-CEB on the property located at 910 Spring Valley Road, Altamonte Springs – Kirkman Properties, LLC, and require these costs to be paid within 30 days or the lien will revert to its original amount (\$3,250.00) and upon payment in full, authorize the Chairman to execute the Satisfaction of Lien or:

(D) Approve the request to waive the Code Enforcement Board lien, which totals \$3,250.00, on the property located at 910 Spring Valley Road, Altamonte Springs – Kirkman Properties, LLC, Case # 05-66-CEB and authorize the Chairman to execute the Satisfaction of Lien.

Commissioner Henley – District 4 April Boswell – Assistant Planning Manager

BACKGROUND:

In response to a complaint, on August 11, 2005 the Code Enforcement Officer observed the following violation located at 910 Spring Valley Road, Altamonte Springs: Unsecured pool not completely enclosed by permanent fencing in violation of Seminole County Code Section 95.4, as defined in Section 95.3 (o). The timeline on this violation is below:

Reviewed by:	
Co Atty:	<u>KFT</u>
DFS:	
Other:	<u>AB</u>
DCM:	<u>AB</u>
CM:	<u>OC</u>
File No.	<u>rpdp01</u>

DATE	ACTION	RESULT
August 11, 2005	Notices of Violation issued to Respondent.	Violation remains.
August 11, 2005	Statement of Violation and Request for Hearing.	Filed by Code Enforcement Officer.
August 12, 2005	Notice of Hearing mailed to both the Respondent and their Registered Agent.	Signed for and received by the Respondent, Kirkman Properties, LLC and the Registered Agent, Micah Bass on August 17, 2005.
August 15, 2005	Posted Notice of Hearing	
August 25, 2005	Code Board Hearing – Findings of Fact, Conclusions of Law and Order.	Entered by Code Enforcement Board giving a compliance date of August 30, 2005, or fine of \$250.00 per day will accrue. ***DEEMED A SERIOUS THREAT TO THE HEALTH, SAFETY, AND WELFARE OF SEMINOLE COUNTY. The Respondent and/or their Registered Agent were NOT present at this hearing.
August 29, 2005	Findings of Fact, Conclusions of Law and Order mailed to both the Respondent and their Registered Agent.	Signed for and received by the Respondent, Kirkman Properties, LLC and the Registered Agent, Micah Bass on August 31, 2005.
August 31, 2005	Affidavit of Non-Compliance and Re-inspection by Code Enforcement Officer.	Violation remains.
September 13, 2005	Re-inspection by Code Enforcement Officer.	Compliance obtained.
September 15, 2005	Affidavit of Non-Compliance and notice of Lien Hearing mailed to the Respondent, Kirkman Properties, LLC and the Registered Agent, Micah Bass.	Clerk to the Board did not receive green cards back. Also, did not receive regular mail back.
October 5, 2005	Affidavit of Compliance	Filed by Code Enforcement Officer
October 18, 2005	Affidavit of Compliance and reminder letter mailed to Respondent, Kirkman Properties, LLC advising that though the property is in compliance, they will still be taken to the Code Enforcement Board for imposition of a lien for 13 days of non-compliance, scheduled for October 27, 2005.	Signed for and received by the Respondent, Kirkman Properties, LLC and the Registered Agent, Micah Bass on October 19, 2005.
October 27, 2005	Code Board Lien Hearing	Entered by Code Enforcement Board, Order Finding Compliance and Imposing a Lien in the amount of \$3,250.00, at \$250.00 per day for 13 days of non-compliance from August 31, 2005 through September 12, 2005. The Respondent and/or their Registered Agent were NOT present at this hearing.
November 7, 2005	Order Finding Compliance and Imposing Lien mailed to both Respondent and their Registered Agent.	Signed for and received by the Respondent, Kirkman Properties, LLC and the Registered Agent, Micah Bass on November 9, 2005.
April 19, 2006	Request for Reduction of Penalty received from Respondent and Attorney	Kirkman Properties, LLC, Respondent and John C. Englehardt, Attorney At Law. ¹

¹ John C. Englehardt, Attorney At Law is representing the Respondent and is requesting that the lien imposed against the property on October 27, 2005, be waived stating that this amount was assessed contrary to the provisions of Federal Law.

The Board considers the individual facts of each case when determining whether to reduce a lien. In addition, the Board adopted the following guidelines on February 9, 1999 to use when considering lien reductions:

1. If an individual has acquired a property in which the lien was recorded and the individual bought the property with this knowledge, a waiver or reduction in lien should not be granted. In such cases, the lien should have been considered in reaching a purchase price.
2. If a lien is not considered when a title insurance policy is issued, a reduction of the lien to provide relief to a title insurer should not be granted. To do so would place the County in the position indemnifying an insurance company against its losses, which are reflected in premium charges.
3. If a lien has previously been reduced, and another request is received for a lien reduction, whether from the original property owner or new owner, a reduction or waiver should not be granted. If the BCC grants relief to a violator, its action should be final and conclusive.
4. When considering a request and in developing a recommendation to the BCC, staff should evaluate the amount of the lien compared to the value of the property and the actions the violator did or did not take in attempting to resolve the code violation. Per the Property Appraiser information, the assessed value of the property is **\$97,618.00**. The lien totals **\$3,250.00**.
5. When liens are satisfied as a result of either full payment or reduced/eliminated payment as directed by the BCC, the lien satisfaction instrument will be provided to the property owner who shall be responsible for recording the instrument in the land records.

STAFF RECOMMENDATION:

Staff recommends that the Board deny a reduction of the lien in the amount of \$3,250.00, on the property located at 910 Spring Lake Road, Altamonte Springs, based on the following facts:

- 1) On August 17, 2005, the Respondent and their Registered Agent received due process pursuant to Florida Statutes §162.06(2), in that they signed for and received the Board letter which stated that "if the violation is corrected and then recurs or if the violation is not corrected by the time specified by the Code Officer, the case may be presented to the Enforcement Board even if the violation has been corrected prior to the hearing".

- 2) On August 17, 2005, the Respondent and their Registered Agent received due process pursuant to Florida Statutes §162.06(2), in that they signed for and received a Notice of Hearing which advised the Respondent and their Registered Agent that "if they decide to appeal any decisions made at these meetings/hearings, they will need a record of the proceedings and for such purpose, they may need to insure that a verbatim record of the proceedings is made, which includes the testimony and evidence upon which the appeal is based, per Section 285.0105".
- 3) On August 25, 2005, this case was heard by the Code Enforcement Board. The Board found that their violation of an **unsecured pool** posed an "imminent threat to the safety, health and welfare of the residents of Seminole County". Due to this fact, the Board ordered compliance within five (5) days in an attempt to prevent the possibility of the accidental drowning of a child or adult. The Respondent and/or their Registered Agent did not attend this meeting. Pursuant to Florida Statutes §162.11, the Respondent has 30 days from the execution of a Code Enforcement Board Order to appeal to the Circuit Court. This action was not taken by the Respondent and/or their Registered Agent.
- 4) Florida Statutes §162.09(1) states that, "if there is a finding that the violation and the order demanding compliance has not been met by the date in the order, the Board may render an order imposing the fine without a hearing". As a courtesy to the Respondent and their Registered Agent, a letter was sent to them advising that "even though they were in compliance, this matter would be taken to the Code Enforcement Board on October 27, 2005 for their 13 days of non-compliance". The Respondent and their Registered Agent received due process pursuant to Florida Statutes §162.06(2), in that they signed for and received this courtesy letter on October 19, 2005.
- 5) On October 27, 2005, this case was heard by the Code Enforcement Board. The Board found that this property was presently in compliance and imposed a lien in the amount of \$3,250.00 for 13 days of non-compliance. The Respondents and/or their Registered Agent did not attend this meeting.
- 6) On November 9, 2005, the Respondent and their Registered Agent received due process pursuant to Florida Statutes §162.06(2), in that they signed for and received a certified copy of the Order Finding Compliance and Imposing Fine/Lien. Pursuant to Florida Statutes §162.11, the Respondent has 30 days from the execution of a Code Enforcement Board Order to appeal to the Circuit Court. This action was not taken by the Respondent and/or their Registered Agent.

Staff further recommends that this amount **(\$3,250.00)** be paid within 30 days and upon payment in full; authorize the Chairman to execute the Satisfaction of Lien.

Attachments: Board Letter (8/12/05)
Notice of Hearing (8/12/05)
Affidavit of Mailing Board Letter and Notice of Hearing with signed certified mail receipts (8/12/05)
Findings of Fact, Conclusions of Law and Order (8/25/05)
Affidavit of Mailing Findings of Fact with signed certified mail receipts (8/29/05)
Affidavit of Non-Compliance (8/31/05)
Affidavit of Compliance (9/13/05)
Courtesy letter with second notice of lien hearing and Affidavit of Compliance (10/18/05)
Affidavit of Mailing Courtesy letter and Affidavit of Compliance with signed certified mail receipts (10/18/05)
Order Finding Compliance and Imposing Fine/Lien (10/27/05)
Affidavit of Mailing Order Finding Compliance and Imposing Fine/Lien with signed certified mail receipts (11/07/05)
Letter from Respondent's Attorney (03/29/06)
Request for Reduction of Penalty (04/19/06)
Property Appraiser Database Information
Estimated Costs for processing Case # 05-66-CEB (Planning Division)
Estimated Costs for processing Case # 05-66-CEB (SCSO)

PLANNING AND DEVELOPMENT DEPARTMENT

CODE ENFORCEMENT



August 12, 2005

COPY

KIRKMAN PROPERTIES LLC
6703 MOTT AVE
ORLANDO, FL 32810

MICAH BASS, Registered Agent
6703 MOTT AVE
ORLANDO, FL 32810

CASE NO - 05-66-CEB
PARCEL I.D. #22-21-29-506-0E00-0740

The Seminole County Code Enforcement Board was created by Chapter 53 of the Seminole County Code as authorized by Chapter 162, Florida Statutes. The purpose of this Board is to facilitate the enforcement of the codes in force in Seminole County by means of a Board composed of seven citizens who can quickly and fairly reach decisions concerning alleged violations of these codes.

Seminole County has requested that you be called before this Board to determine whether you are in violation of its codes as alleged in the enclosed Statement of Violation and Request for Hearing. A Notice of Hearing is also enclosed setting the time, date and place of the public hearing.

You may appear at the hearing in person or you may be represented by counsel to present your side of the case. You have the right to call witnesses on your behalf and will have an opportunity to cross-examine all other witnesses. If you do not appear, the Board may proceed without you. Should the Board determine that a violation exists, it has the power to issue orders to take whatever steps are necessary to bring a violation into compliance, including the power to fine you and create a lien on your property up to two hundred and fifty dollars (\$250.00) for each day the violation continues past the date set for compliance by the Board's order. **If the violation is corrected and then recurs or if the violation is not corrected by the time specified by the Code Officer, the case may be presented to the Enforcement Board even if the violation has been corrected prior to the hearing.**

Any inquiries concerning this matter may be made by calling (407) 665-7403, in Sanford, Seminole County, Florida.

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

Sarah Kersey
Clerk to the Code Enforcement Board

Enclosures: Statement of Violation/
Request for Hearing
Notice of Hearing

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

SEMINOLE COUNTY, a political subdivision
of the State of Florida,

CASE NO. 05-66-CEB

Petitioner,

vs.

**KIRKMAN PROPERTIES LLC;
MICAH BASS, REGISTERED AGENT
PARCEL I.D. # 22-21-29-506-0E00-0740**

COPY

Respondents.

NOTICE OF HEARING

To: KIRKMAN PROPERTIES LLC
6703 MOTT AVE
ORLANDO, FL 32810

MICAH BASS, Registered Agent
6703 MOTT AVE
ORLANDO, FL 32810

NOTICE is hereby given that the Code Enforcement Board of Seminole County, Florida, intends to hold a public hearing at 1:30 PM, or as soon thereafter as possible, at its regular meeting on Thursday, the 25th day of August 2005, at the Seminole County Services Building, BCC Chambers, 1101 East First Street, Sanford, Florida, to consider whether a violation of the Codes or Ordinances of Seminole County exists on the above-named party's property, specifically:

(1) UNSECURED POOL. NOT COMPLETELY ENCLOSED BY PERMANENT FENCING.

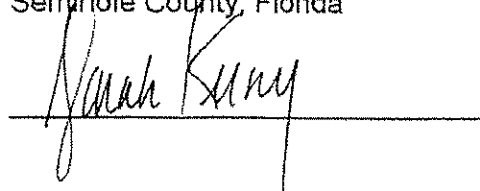
FOR ADDITIONAL INFORMATION REGARDING THIS NOTICE, PLEASE CONTACT THE PLANNING OFFICE (407) 665-7403.

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE EMPLOYEE RELATIONS DEPARTMENT ADA COORDINATOR 48 HOURS IN ADVANCE OF THE MEETING AT 665-7941.

PERSONS ARE ADVISED THAT IF THEY DECIDE TO APPEAL ANY DECISIONS MADE AT THESE MEETINGS/HEARINGS, THEY WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, THEY MAY NEED TO INSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED, PER SECTION 285.0105.

DATED this 12nd day of August 2005.

Sarah R. Kersey
Clerk to the Code Enforcement Board
Seminole County, Florida



CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

SEMINOLE COUNTY, a political
subdivision of the State of Florida,

CASE NO. 05-66-CEB

Petitioner,
vs.


KIRKMAN PROPERTIES LLC;
MICAH BASS, REGISTERED AGENT
PARCEL I.D. # 22-21-29-506-0E00-0740

Respondent
_____ /

AFFIDAVIT OF MAILING

BEFORE ME, the undersigned authority, personally appeared Sarah Kersey, for **Planning Division/Code Enforcement**, who, after being duly sworn, deposes and says:


I certify that on the 12th day of August 2005, I mailed a true and correct copy of the Board Letter, Notice of Hearing and Request for Hearing to: KIRKMAN PROPERTIES LLC, 6703 MOTT AVE, ORLANDO, FL 32810, and to MICAH BASS, Registered Agent, 6703 MOTT AVE, ORLANDO, FL 32810



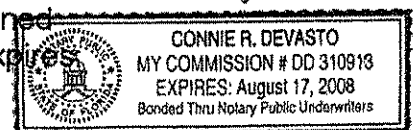
Sarah Kersey

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 12th day of August 2005, by Sarah Kersey, who is personally known to me.



Notary Public in and for the County and
State Aforementioned
My commission expires



7003 3110 0003 4839 1962

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OFFICIAL USE

Postage \$		Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total F	NOH/BRD LTR/RQST 05-66-CEB	
Sent To	KIRKMAN PROPERTIES LLC	
Street, A or PO Box	6703 MOTT AVE	
City, State	ORLANDO FL 32810	

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature X <i>B.A.</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Beverly Hall</i></p> <p>C. Date of Delivery 8/17/05</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>08-18-05PT 113 RLV0</p>
<p>1. Article Addressed to:</p> <p>NOH/BRD LTR/RQST 05-66-CEB KIRKMAN PROPERTIES LLC 6703 MOTT AVE ORLANDO FL 32810</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7003 3110 0003 4839 1962</p>

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7003 3110 0003 4839 1962

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Postage \$		Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total F	NOH/BRD LTR/RQST 05-66-CEB	
Sent To	MICAH BASS	
Street, A or PO Box	6703 MOTT AVE	
City, State	ORLANDO FL 32810	

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature X <i>B.A.</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Beverly Hall</i></p> <p>C. Date of Delivery 8/17/05</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>08-18-05PT 113 RLV0</p>
<p>1. Article Addressed to:</p> <p>NOH/BRD LTR/RQST 05-66-CEB MICAH BASS 6703 MOTT AVE ORLANDO FL 32810</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7003 3110 0003 4839 1962</p>

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

SEMINOLE COUNTY, a political
subdivision of the State of Florida,

CASE NO. 05-66-CEB

Petitioner,

vs.

KIRKMAN PROPERTIES LLC;
MICAH BASS, REGISTERD AGENT
PARCEL I.D. # 22-21-29-506-0E00-0740

Respondents.

CERTIFIED COPY
CLERK OF THE
CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA
By: Micah Bass
Date: 8-29-05

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Based on the testimony and evidence presented in case number 05-66-CEB, it is determined that the Respondents are:

- (a) the owners of record of the property (Tax Parcel ID # 22-21-29-506-0E00-0740) located at 910 Spring Valley Rd, Altamonte Springs, located in Seminole County and legally described as follows:

LEG LOT 74 BLK E SPRING VALLEY FARMS SEC 8
PB 15 PG 50

- (b) in possession or control of the property; and
- (c) in violation of Seminole County Code Chapter 40, Section 40.164 and Chapter 95, Section 95.4 as defined in Section 95.3(o).

It is hereby ordered that the Respondents correct the violation on or before August 30, 2005. In order to correct the violation, the Respondents shall take the following remedial action:

SECURE THE POOL ACCORDING TO SEMINOLE COUNTY CODE AS THIS VIOLATION POSES AN EMINENT THREAT TO THE SAFETY, HEALTH AND WELFARE OF THE RESIDENTS OF THE COUNTY.

If the Respondents do not comply with the Order, a fine of \$ 250⁰⁰ will be imposed for each day the violation continues, or is repeated after compliance past August 30, 2005. The Respondents are further ordered to contact the Seminole County Code Officer to arrange for an inspection of the property to verify compliance. Any fine imposed shall continue to accrue until such time as the Code Officer inspects the property and verifies compliance with this Order.

MARYANNE MORSE, CLERK OF CIRCUIT COURT SEMINOLE COUNTY, CFN 2005149875 BK 06683 PGS 02-02-02-03 RECD 09/01/2005 09:13:58 AM RECD BY G.H.H.

This Order shall be recorded in the official land records of Seminole County and shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the Respondents.


DONE AND ORDERED this 25th day of August, 2005, in Seminole County, Florida.

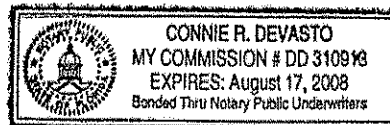
CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA


TOM HAGOOD, CHAIR

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

The foregoing instrument was acknowledged before me this 25th day of August, 2005, by Tom Hagood, who is personally known to me.


Connie R. DeVasto
Notary Public to and for the
County and State aforementioned.
My Commission Expires



CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

SEMINOLE COUNTY, a political
subdivision of the State of Florida,

CASE NO. 05-66-CEB

Petitioner,
vs.

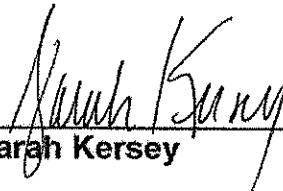
KIRKMAN PROPERTIES LLC;
MICAH BASS, REGISTERED AGENT
PARCEL I.D. # 22-21-29-506-0E00-0740

Respondent
_____ /

AFFIDAVIT OF MAILING

BEFORE ME, the undersigned authority, personally appeared Sarah Kersey, for Planning Division/Code Enforcement, who, after being duly sworn, deposes and says:


I certify that on the 29th day of August 2005, I mailed a true and correct copy of the Findings of Fact, Conclusions of Law and Order to: KIRKMAN PROPERTIES LLC, 6703 MOTT AVE, ORLANDO, FL 32810, and to MICAH BASS, Registered Agent, 6703 MOTT AVE, ORLANDO, FL 32810.



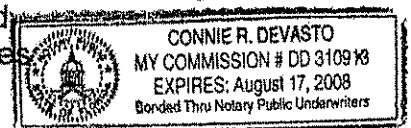
Sarah Kersey

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 29th day of August 2005, by Sarah Kersey, who is personally known to me.



Notary Public in and for the County and
State Aforementioned
My commission expires



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OFFICIAL USE

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total		

Sent To: FOF 05-66-CEB
 KIRKMAN PROPERTIES LLC
 6703 MOTT AVE
 ORLANDO FL 32810

Street or PO: _____
 City, St: _____

PS Form 3800, June 2002 See Reverse for Instructions

7003 3110 0003 4839 2273

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FOF 05-66-CEB
 KIRKMAN PROPERTIES LLC
 6703 MOTT AVE
 ORLANDO FL 32810

2. Article Number:
 (Transfer from service label) 7003 3110 0003 4839 2273

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 B. Bass Agent Addressee

B. Received by (Printed Name) *Bowen Bass* C. Date of Delivery *8/3/04*

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

09-01-05 P03:00 RCVD

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

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Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total		

Sent To: FOF 05-66-CEB
 MICAH BASS
 REGISTERED AGENT
 6703 MOTT AVE
 ORLANDO FL 32810

Street or PO: _____
 City, St: _____

7003 3110 0003 4839 2273

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FOF 05-66-CEB
 MICAH BASS
 REGISTERED AGENT
 6703 MOTT AVE
 ORLANDO FL 32810

2. Article Number:

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 B. Bass Agent Addressee

B. Received by (Printed Name) *Bowen Bass* C. Date of Delivery *8/3/04*

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

09-01-05 P03:00 RCVD

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

CEB NO. 05-66-CEB

SEMINOLE COUNTY, a political
Subdivision of the State of Florida

Petitioner,
Vs.

Kirkman Properties LLC
Respondent.

CERTIFIED COPY
CLERK OF THE
CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA
By: Joann Davids
Date: 10-18-05

AFFIDAVIT OF COMPLIANCE

BEFORE ME, the undersigned authority, personally appeared Joann Davids,
Code Enforcement Officer for Seminole County Sheriff's Office, who, after being duly sworn,
deposes and says:

1. That on August 25, 2005, the Board held a public hearing and issued its Order in the above-styled matter.
2. That, pursuant to said Order, Respondent was to have taken certain action by or before August 30, 2005
3. That a re inspection was performed and the Respondent was in compliance on September 13, 2005
4. That the re-inspection revealed that the corrective action ordered by the Board has been taken in that the pool is secured.

FURTHER AFFIANT SAYETH NOT.

DATED this 5th day of October, 2005

Joann Davids
Joann Davids, Officer

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

The foregoing instrument was acknowledged before me this 5th day of October, 2005 by
Joann Davids, who is personally known to me and who did take an oath.

Christine Smith
Notary Public in and for the County and
State aforementioned

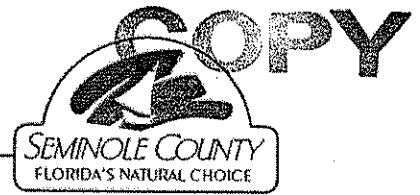
My commission expires:



MARYANNE MORSE, CLERK OF CIRCUIT COURT
SEMINOLE COUNTY
BK 05959 PG 0547
CLERK'S # 2005191749
RECORDED 10/19/2005 02:23:29 PM
RECORDING FEES 10.00
RECORDED BY B HAYFORD

PLANNING AND DEVELOPMENT DEPARTMENT

CODE ENFORCEMENT



October 18, 2005

KIRKMAN PROPERTIES LLC
6703 MOTT AVE
ORLANDO, FL 32810

MICAH BASS, Registered Agent
6703 MOTT AVE
ORLANDO, FL 32810

CASE NO - 05-66-CEB
PARCEL I.D. #22-21-29-506-0E00-0740

Enclosed for your records is a certified copy of Affidavit of Compliance, as filed by the Code Enforcement Officer.

Although you have brought the property located at 910 Spring Valley Road, Altamonte Springs into compliance, your case will still be heard by the Code Enforcement Board at its regularly scheduled meeting on **Thursday, October 27, 2005, at 1:30 pm**, at the County Services Building, Room 1028, located at 1101 E First Street, Sanford FL, notice of which has been previously provided you by letter dated September 15, 2005.

The period of noncompliance ran for 13 days, from August 31, 2005 through September 12, 2005, at \$250.00 per day, which totals **\$3,250.00**. Seminole County will be requesting the Board to issue an order imposing a lien in the amount of \$3,250.00 against the subject property to be recorded in the County land records.

ANY PERSONS WISHING TO ADDRESS THE BOARD IN THIS MATTER
MUST CHECK IN WITH THE CLERK BY 1:25 PM.

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA


Sarah Kersey
Clerk to the Code Enforcement Board

Enclosure

cc: CEO Joann Davids

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

SEMINOLE COUNTY, a political
subdivision of the State of Florida,

CASE NO. 05-66-CEB

Petitioner,
vs.


KIRKMAN PROPERTIES LLC;
MICAH BASS, REGISTERED AGENT
PARCEL I.D. # 22-21-29-506-0E00-0740

Respondent
_____ /

AFFIDAVIT OF MAILING

BEFORE ME, the undersigned authority, personally appeared Sarah Kersey, for **Planning Division/Code Enforcement**, who, after being duly sworn, deposes and says:

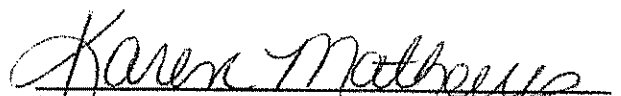
I certify that on the 18th day of October 2005, I mailed a courtesy letter enclosing certified copy of Affidavit of Compliance, and restating case to be heard at October 27, 2005 CEB hearing to: KIRKMAN PROPERTIES LLC, 6703 MOTT AVE, ORLANDO, FL 32810, and to MICAH BASS, Registered Agent, 6703 MOTT AVE, ORLANDO, FL 32810.



Sarah Kersey

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 18th day of October 2005, by Sarah Kersey, who is personally known to me.



Notary Public in and for the County and
State Aforementioned
My commission expires:



Karen Mathews
My Commission DD144950
Expires August 26, 2006

7005 0390 0001 9300 8054

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Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		

Total Po: _____

Sent To: AFF OF COMPLY 05-66-CEB
 KIRKMAN PROPERTIES LLC
 6703 MOTT AVE
 ORLANDO FL 32810

Street, Apt or PO Box
 City, State

PS Form 3800, June 2002 See Reverse for Instructions

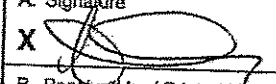
SENDER: COMPLETE THIS SECTION

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 AFF OF COMPLY 05-66-CEB
 KIRKMAN PROPERTIES LLC
 6703 MOTT AVE
 ORLANDO FL 32810

2. Article Number
 (Transfer from service label) 7005 0390 0001 9300 8054

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 X 

B. Received by (Printed Name) C. Date of Delivery
 WASS, STEVE 12/19/05

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7005 0390 0001 9300 9310

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Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		

Total Po: _____

Sent To: AFF OF COMPLY 05-66-CEB
 MICAH BASS
 REGISTERED AGENT
 6703 MOTT AVE
 ORLANDO FL 32810

Street, Apt or PO Box
 City, State

PS Form 3800, June 2002 See Reverse for Instructions

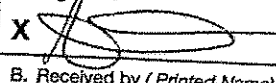
SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 AFF OF COMPLY 05-66-CEB
 MICAH BASS
 REGISTERED AGENT
 6703 MOTT AVE
 ORLANDO FL 32810

2. Article Number
 (Transfer from service label) 7005 0390 0001 9300 8054

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
 X 

B. Received by (Printed Name) C. Date of Delivery
 STEVE WASS 12/19/05

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

M. ANNE MORSE, CLERK OF CIRCUIT COURT
SEMINOLE COUNTY
BK 05987 PGS 1736-1737
CLERK'S # 2005194013
RECORDED 11/08/2005 02:43:04 PM
RECORDING FEES 18.50
RECORDED BY G Harford
CASE NO. 05-66-CEB

SEMINOLE COUNTY, a political
subdivision of the State of Florida,

Petitioner,
vs.

KIRKMAN PROPERTIES LLC;
MICAH BASS, REGISTERD AGENT
PARCEL I.D. # 22-21-29-506-0E00-0740

Respondents.

CERTIFIED COPY
CLERK OF THE
CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

By: [Signature]
Date: 11-7-05

ORDER FINDING COMPLIANCE AND IMPOSING FINE/LIEN

The Respondents are the owners of record of the property (Tax Parcel ID # 22-21-29-506-0E00-0740) located at 910 Spring Valley Rd, Altamonte Springs, located in Seminole County and legally described as follows:

LEG LOT 74 BLK E SPRING VALLEY FARMS SEC 8
PB 15 PG 50

This case came on for public hearing before the Code Enforcement Board of Seminole County on August 25, 2005 after due notice to the Respondents. The Board, having heard testimony under oath and having received evidence, issued its Findings of Fact, Conclusions of Law, and Order.

Said Order found Respondents in violation of Seminole County Code, Chapter 95, Section 95.4 as defined in Section 95.3(o).

Said Order stated that a fine in the amount of \$250.00 per day would be imposed if the Respondents did not take certain corrective action by August 30, 2005.

An Affidavit of Non-Compliance has been filed with the Board by the Code Officer, which Affidavit certifies under oath that the required action had not been obtained as of August 31, 2005.

An Affidavit of Compliance has been filed with the Board by the Code Officer, which Affidavit certifies under oath that the required action had been obtained as of September 13, 2005.

Accordingly, it having been brought to the Board's attention that Respondent has complied with the Order dated August 25, 2005, the Board orders that a fine of **\$3,250.00**, for 13 days of non-compliance at \$250.00 per day from August 31, 2005 to and including September 12, 2005, is imposed against the property.

This Order shall be recorded in the public records of Seminole County, Florida, and shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the Respondents.

DONE AND ORDERED this 27th day of October 2005, in Seminole County, Florida.

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

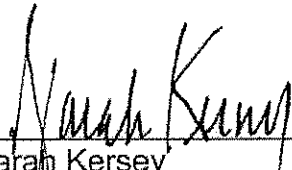


TOM HAGOOD, CHAIR

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

The foregoing instrument was acknowledged before me this 27th day of October 2005, by Tom Hagood, who is personally known to me.





Sarah Kersey
Notary Public to and for the County and
State aforementioned.
My Commission Expires:

CODE ENFORCEMENT BOARD
SEMINOLE COUNTY, FLORIDA

SEMINOLE COUNTY, a political
subdivision of the State of Florida,

CASE NO. 05-66-CEB

Petitioner,
vs.

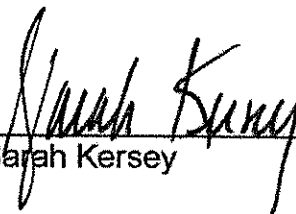
KIRKMAN PROPERTIES LLC;
MICAH BASS, REGISTERED AGENT
PARCEL I.D. # 22-21-29-506-0E00-0740

Respondent
_____ /

AFFIDAVIT OF MAILING

BEFORE ME, the undersigned authority, personally appeared Sarah Kersey, for Planning Division/Code Enforcement, who, after being duly sworn, deposes and says:


I certify that on the 7th day of November 2005, I mailed a certified copy of **Order Finding Compliance and Imposing Fine/Lien** to: KIRKMAN PROPERTIES LLC, 6703 MOTT AVE, ORLANDO, FL 32810, with a copy to MICAH BASS, Registered Agent, 6703 MOTT AVE, ORLANDO, FL 32810.



Sarah Kersey

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 7th day of November 2005, by Sarah Kersey, who is personally known to me.



Notary Public in and for the County and
State Aforementioned
My commission expires:



Karen Mathews
My Commission DD144950
Expires August 26, 2006

7005 0390 0001 9299 3313

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
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OFFICIAL USE

Postage \$		Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total		

Sent To: ORDER COMPL FINE/LIEN 05-66-CEB
 KIRKMAN PROPERTIES LLC
 6703 MOTT AVE
 ORLANDO FL 32810

Street, Apt or PO Box
 City, State

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

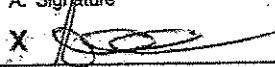
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 ORDER COMPL FINE/LIEN 05-66-CEB
 KIRKMAN PROPERTIES LLC
 6703 MOTT AVE
 ORLANDO FL 32810

2. Article Number
(Transfer from service label) 7005 0390 0001 9299 3313

PS Form 3811, February 2004 Domestic Return Receipt 102585-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X  Agent
 Addressee

B. Received by (Printed Name)
 STEPHAN WADE

C. Date of Delivery
 11/9/05

D. Is delivery address different from item 1? Yes
 No
 If YES, enter delivery address below:

NOV 14 2005

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

7005 0390 0001 9299 3320

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Postage \$		Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Po		

Sent To: ORDER COMPL FINE/LIEN 05-66-CEB
 MICAH BASS
 REGISTERED AGENT
 6703 MOTT AVE
 ORLANDO FL 32810

Street, Apt or PO Box
 City, State

SENDER: COMPLETE THIS SECTION

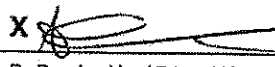
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 ORDER COMPL FINE/LIEN 05-66-CEB
 MICAH BASS
 REGISTERED AGENT
 6703 MOTT AVE
 ORLANDO FL 32810

2. Article Number
(Transfer from service label) 7005 0390 0001 9299 3320

PS Form 3811, February 2004 Domestic Return Receipt 102585-02-M-1540

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NOV 14 2005

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

John C. Englehardt, P. A.
Attorney at Law

1524 East Livingston Street
Orlando, Florida 32803-5495
Telephone 407-896-1138
Facsimile 407-896-7370

March 29, 2006

Seminole County Board of Code Enforcement
1101 East First Street
Sanford, FL 32771
Attn: Mr. Tom Hagood

Re: Seminole County
v. Kirkman Properties, LLC
Case No.: 05-66-CEB

Dear Mr. Hagood:

Please be advised that I represent Kirkman Properties, LLC in regard to the above referenced matter. The purpose of this letter is to request that the matter be placed on the next appropriate docket for my client's request for a reduction in the find assessed on October 27, 2005.

My client was in compliance; a fine was assessed contrary to the provisions of Federal Law.

Enclosed please find a copy of Wilson v. Orange County, 881 So. 2d 265, (Fla 5th DCA 2004).

Please call me, if you have questions.

Yours truly,


John C. Englehardt

JCE/ds

enc.

cc: Kirkman Properties, LLC

SEMINOLE COUNTY
CODE ENFORCEMENT BOARD
CASE NO. _____

REQUEST FOR REDUCTION OF PENALTY

BY COMPLETING THIS FORM, YOU ARE MAKING STATEMENTS UNDER OATH

INSTRUCTIONS: Please fill in both sides of this form completely. Be specific when writing your statement. Please return this form to the Clerk to the Code Enforcement Board. The REQUEST FOR REDUCTION OF PENALTY will then be presented to the Board of County Commissioners at their next regularly-scheduled hearing, or as soon thereafter as possible, and you will be notified in writing of the Board's decision within 10 days after the hearing. If you are claiming medical or financial hardship, attach supporting documentation (i.e., a doctor's statement or proof of income). If you have any questions, please call the Clerk at (407) 665-7403.

Property Owner's Name: Kirkman Properties, LLC

Property Address: 910 Spring Valley Road
Altamonte Spgs, FL

Phone number(s) where you can be reached during the day: 407-896-1138

Is the property now in compliance? YES X NO _____
(If No, explain in detail) _____

Are you claiming a financial hardship? YES _____ NO X

Are you claiming a medical hardship? YES _____ NO X

If the property owner is unable to complete this form, list the name of the person who is legally authorized to act for the property owner and his/her relationship to the property owner:

Name: John C. Englehardt

Relationship: Attorney

RETURN COMPLETED, SIGNED AND NOTARIZED FORM TO:
CLERK, SEMINOLE COUNTY CODE ENFORCEMENT
1101 EAST FIRST STREET, SANFORD, FLORIDA 32771-1468

I, John C. Englehardt, Esq., do hereby submit this REQUEST FOR REDUCTION OF PENALTY to request a reduction in the total amount of penalty imposed and in support offer the following statement:

See attached letter

Date: 4/17/06

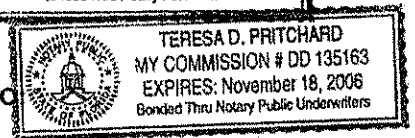
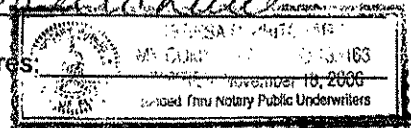
Signed: [Signature]
Print Name: John C. Englehardt
Attorney

STATE OF FLORIDA
COUNTY OF ~~SEMINOLE~~ Orange

PERSONALLY appeared before me, the undersigned authority duly authorized to administer oaths and take acknowledgments, John C. Englehardt, who after first being duly sworn, acknowledged before me that the information contained herein is true and correct. He is not personally known to me and has produced _____ as identification and did take an oath.

Date: 4/17/06

Teresa D. Pritchard
Notary Public
My commission expires: _____



John C. Englehardt, P. A.
Attorney at Law

1524 East Livingston Street
Orlando, Florida 32803-5495
Telephone 407-896-1138
Facsimile 407-896-7370

March 29, 2006

Seminole County Board of Code Enforcement
1101 East First Street
Sanford, FL 32771
Attn: Mr. Tom Hagood

Re: Seminole County
v. Kirkman Properties, LLC
Case No.: 05-66-CEB

Dear Mr. Hagood:

Please be advised that I represent Kirkman Properties, LLC in regard to the above referenced matter. The purpose of this letter is to request that the matter be placed on the next appropriate docket for my client's request for a reduction in the fine assessed on October 27, 2005.

My client was in compliance; a fine was assessed contrary to the provisions of Federal Law.

Enclosed please find a copy of Wilson v. Orange County, 881 So. 2d 265, (Fla 5th DCA 2004).

Please call me, if you have questions.

Yours truly,



John C. Englehardt

JCE/ds

enc.

cc: Kirkman Properties, LLC

West Reporter Image (PDF)

881 So.2d 625, 29 Fla. L. Weekly D1800

District Court of Appeal of Florida,
Fifth District.
Raleigh WILSON, Sr., et al., Appellants,
v.
COUNTY OF ORANGE, Appellée.
No. 5D03-4065.
Aug. 6, 2004.
Clarification Denied Sept. 17, 2004.

Background: Owners of trailer park brought action against county, alleging violations of due process and excessive fines under § 1983, and facially challenging constitutionality of statutes and ordinances governing fines for code violations. The Circuit Court, Orange County, Janet C. Thorpe, J., dismissed complaint with prejudice. Owners appealed.

Holdings: The District Court of Appeal, Pleus, J., held that
(1) owners stated claim under § 1983;
(2) owners could seek declaratory relief on constitutionality of statutes and ordinances;
(3) owners did not fail to exhaust administrative remedies; and
(4) action was not barred by res judicata.

Reversed and remanded.

West Headnotes

[1] [KeyCite Notes](#)



↔ [30 Appeal and Error](#)

↔ [30XVI Review](#)

↔ [30XVI\(F\) Trial De Novo](#)

↔ [30k892 Trial De Novo](#)

↔ [30k893 Cases Triable in Appellate Court](#)

↔ [30k893\(1\) k. In General. Most Cited Cases](#)

The standard of review of an order granting a motion to dismiss is de novo.

[2] [KeyCite Notes](#)



↔ [307A Pretrial Procedure](#)

↔ [307AIII Dismissal](#)

↔ [307AIII\(B\) Involuntary Dismissal](#)

↔ [307AIII\(B\)6 Proceedings and Effect](#)

↔ [307Ak679 k. Construction of Pleadings. Most Cited Cases](#)

↔ [307A Pretrial Procedure KeyCite Notes](#)



↔ [307AIII Dismissal](#)

↔ [307AIII\(B\) Involuntary Dismissal](#)

- ◊307AIII(B)6 Proceedings and Effect
- ◊307Ak681 k. Matters Considered in General. Most Cited Cases

Examination of a complaint for purposes of dismissal must be limited to the four corners of the complaint, and the allegations in the complaint must be taken as true and in the light most favorable to the pleader.

[3] KeyCite Notes 

- ◊307A Pretrial Procedure
 - ◊307AIII Dismissal
 - ◊307AIII(B) Involuntary Dismissal
 - ◊307AIII(B)2 Grounds in General
 - ◊307Ak561 Affirmative Defenses, Raising by Motion to Dismiss
 - ◊307Ak561.1 k. In General. Most Cited Cases

Dismissal should not be granted on the basis of an affirmative defense, except when the face of the complaint is sufficient to demonstrate the existence of that defense.

[4] KeyCite Notes 

- ◊78 Civil Rights
 - ◊78III Federal Remedies in General
 - ◊78k1392 Pleading
 - ◊78k1395 Particular Causes of Action
 - ◊78k1395(3) k. Property and Housing. Most Cited Cases

Owners of trailer park stated claim against county under § 1983 by alleging that, pursuant to statutes and ordinances, county imposed liens and excessive fines without a hearing and based solely upon an affidavit, conducted warrantless searches, and did not train inspectors to avoid these violations; complaint did not contain bald statements without factual basis, but rather explained in detailed terms the statutory scheme as well as the specific actions taken by county. U.S.C.A. Const.Amends. 8, 14; 42 U.S.C.A. § 1983; West's F.S.A. § 162.09(1).

[5] KeyCite Notes 

- ◊78 Civil Rights
 - ◊78III Federal Remedies in General
 - ◊78k1342 Liability of Municipalities and Other Governmental Bodies
 - ◊78k1343 k. In General. Most Cited Cases

A county falls within the definition of "person" under § 1983, and may therefore be sued for monetary, declaratory or injunctive relief. 42 U.S.C.A. § 1983.

[6] KeyCite Notes 


- ◊118A Declaratory Judgment
 - ◊118AIII Proceedings
 - ◊118AIII(D) Pleading
 - ◊118Ak312 Complaint, Petition or Bill
 - ◊118Ak315 k. Statutes and Ordinances. Most Cited Cases

Owners of trailer park stated claims raising jurisdiction for declaratory judgment on facial constitutionality of statutes and ordinances governing imposition of fines for code violations, by alleging that county imposed thousands of dollars in fines and caused owners to lose significant rental income. West's F.S.A. § 162.09(1).

[7] KeyCite Notes 

- ↳ 118A Declaratory Judgment
 - ↳ 118AII Subjects of Declaratory Relief
 - ↳ 118AII(E) Statutes
 - ↳ 118Ak122 Statutes in General
 - ↳ 118Ak123 k. Validity of Statutes and Proposed Bills. Most Cited Cases

Generally speaking, individuals may challenge the validity of a statute in a declaratory judgment action.

[8] KeyCite Notes 

- ↳ 118A Declaratory Judgment
 - ↳ 118AIII Proceedings
 - ↳ 118AIII(D) Pleading
 - ↳ 118Ak312 Complaint, Petition or Bill
 - ↳ 118Ak312.1 k. In General. Most Cited Cases

The test for the sufficiency of a complaint for declaratory judgment is not whether the plaintiff will succeed in obtaining the decree he seeks favoring his position, but whether he is entitled to a declaration of rights at all.


[9] KeyCite Notes 

- ↳ 118A Declaratory Judgment
 - ↳ 118AI Nature and Grounds in General
 - ↳ 118AI(A) In General
 - ↳ 118Ak4 k. Right to Declaratory Relief in General. Most Cited Cases

To activate jurisdiction, the party seeking a declaration must show that he is in doubt as to the existence or nonexistence of some right, status, immunity, power, or privilege, and that he is entitled to have such doubt removed.

[10] KeyCite Notes 

- ↳ 118A Declaratory Judgment
 - ↳ 118AI Nature and Grounds in General
 - ↳ 118AI(A) In General
 - ↳ 118Ak4 k. Right to Declaratory Relief in General. Most Cited Cases

- ↳ 118A Declaratory Judgment KeyCite Notes 
 - ↳ 118AI Nature and Grounds in General

- ◀ [118AI\(D\) Actual or Justiciable Controversy](#)
- ◀ [118AK61 k. Necessity. Most Cited Cases](#)

Declaratory judgment plaintiff must show a bona fide, actual, present, and practical need for the declaration.



[11] [KeyCite Notes](#)

- ◀ [92 Constitutional Law](#)
- ◀ [92II Construction, Operation, and Enforcement of Constitutional Provisions](#)
- ◀ [92k44 Determination of Constitutional Questions](#)
- ◀ [92k46 Necessity of Determination](#)
- ◀ [92k46\(1\) k. In General. Most Cited Cases](#)

Trailer park owners did not fail to exhaust administrative remedies in challenging facial constitutionality of statutes and ordinances governing fines for code violations; failure to exhaust was an affirmative defense not apparent on face of complaint, appeal to Circuit Court was not administrative remedy, and constitutional challenge could not be raised in administrative proceedings. West's F.S.A. §§ 162.09(1), 162.11.



[12] [KeyCite Notes](#)

- ◀ [228 Judgment](#)
- ◀ [228XXII Pleading Judgment as Estoppel or Defense](#)
- ◀ [228k948 Pleading in General](#)
- ◀ [228k948\(2\) k. Raising Question by Demurrer or Motion. Most Cited Cases](#)

In trailer park owners' action against county under § 1983, and their facial constitutional challenge to statutes and ordinance governing fines for code violations, county could not raise res judicata on motion to dismiss, as this was an affirmative defense not apparent on face of the complaint. 42 U.S.C.A. § 1983; West's F.S.A. § 162.09(1).



[13] [KeyCite Notes](#)

- ◀ [198H Health](#)
- ◀ [198HII Public Health](#)
- ◀ [198Hk390 Unsafe or Unhealthful Premises](#)
- ◀ [198Hk392 k. Buildings, Structures, and Building Components. Most Cited Cases](#)

Trailer park owners' action facially challenging constitutionality of statutes and ordinances governing fines for code violation, was not barred by res judicata; former action was code enforcement procedure, and thus, cause of action was not the same. West's F.S.A. § 162.09(1).

*627 Charlie S. Martin of McLeod, McLeod, McLeod, P.A., Apopka, for Appellants.
Gretchen R.H. Vose and Wade C. Vose, Vose Law Firm, LLC, Winter Park, for Appellee.

PLEUS, J.

The Wilsons appeal the dismissal with prejudice of their five-count Second Amended Complaint ("complaint"). They argue that the lower court erred in dismissing Count I because the allegations were sufficient to establish a claim under 42 U.S.C. § 1983. They also argue that the lower court improperly dismissed the remaining counts for declaratory relief, in which they challenged the facial constitutionality of certain statutes and ordinances dealing with code violation procedures. We agree

and reverse as to all five counts.

Factual Allegations in the Complaint

According to the allegations in the complaint, the Wilsons owned a trailer park in Orange County. In 1996, the Wilsons began evicting a tenant for unpaid rent. A county code inspector, whom they had seen coming and going from the same tenant's trailer, argued with the Wilsons and told them if they moved forward with the eviction, he would "cause them many problems." Immediately thereafter, the Wilsons found red tags on every trailer in the park. The tags informed each tenant they had 48 hours to move out because the trailers were unsafe and uninhabitable.

In January, 1997, the code inspector conducted warrantless searches of three trailers in the park, purported to find code violations and issued citations to the Wilsons giving them 45 days to correct the violations. In August, code inspectors prepared statements of violation and requests for hearing for the three trailers. In September, the Wilsons received a notice of hearing advising that a hearing would be held before the Code Enforcement Board ("CEB") regarding the violations on the three trailers.

On October 15, the CEB held a hearing and found the violations existed on the properties. The violation orders gave the Wilsons 30 days to correct the violations *628 and established what work needed to be done. The orders also provided that fines of \$100 per residence would be imposed for each day the violations remained uncorrected after November 15, 1997.

The Wilsons allege they timely completed the work required. Nevertheless, in March 1998, a code inspector filed affidavits of noncompliance with the October 15 orders. Relying solely on the affidavit of noncompliance and without conducting any further hearing, the CEB entered three orders imposing fines of \$300 per day until the properties were brought into compliance. In June 1997, the orders were recorded in the public records as a lien against the Wilsons' real and personal property.

In January 1999, a code inspector filed an affidavit of compliance regarding the three trailers. Based on the dates involved, the county imposed fines of \$117,100. In May 2000, the CEB entered an amended order reducing the fines by 80% to \$23,420, which the Wilsons promptly paid.

In Count I of the complaint, the Wilsons sought damages pursuant to 42 U.S.C. § 1983, alleging that the County (1) violated their Fifth Amendment right to procedural due process by imposing fines and a lien on their property without notice and an opportunity to be heard; (2) violated their Fifth Amendment right to substantive due process by imposing fines and a lien against their property based solely upon a one-sided affidavit of noncompliance; and (3) violated their Eighth Amendment right against excessive fines.

In Counts II through V, the Wilsons sought declaratory relief, challenging the facial constitutionality of various code enforcement statutes and ordinances. Specifically, Count II alleged that section 162.09 (1), Florida Statutes^{FN1} and section 11-37(a), Orange County Code, were facially unconstitutional for authorizing imposition of fines and liens against property without providing for notice and an opportunity to be heard. Count III alleged that sections 162.07 and 162.09(1), Florida Statutes, and sections 11-35 and 11-37(a), Orange County Code, were facially unconstitutional for authorizing the imposition of fines and liens based solely upon the affidavit of a code inspector. Count IV alleged that section 162.09(1), Florida Statutes, and section 11-37(a), Orange County Code, were facially unconstitutional for authorizing imposition of excessive fines. Count V alleged that section 28-41, Orange County Code,^{FN2} was facially unconstitutional for authorizing warrantless searches of property without any guidelines or standards.

FN1. Section 162.09(1), Florida Statutes (1997) provided in pertinent part:

An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time ... may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance... If a finding of a violation ... has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine.

Section 11-37(a), Orange County Code (1997), was virtually identical to the above statute.

FN2. Section 28-41, Orange County Code (1997) provided:

No person shall oppose, obstruct or resist and code inspector or any person authorized by the code inspector in the discharge of his duties as provided in this article.

The County filed a motion to dismiss alleging that the complaint failed to state sufficient ultimate facts to support its causes of action and the constitutional challenges were barred by the failure to *629 exhaust administrative remedies and res judicata. Without explanation in this record, the lower court dismissed the complaint with prejudice.

Standard of Review

[1] [2] [3] The standard of review of an order granting a motion to dismiss is de novo. *Pondella Hall For Hire, Inc. v. Lamar*, 866 So.2d 719, 721 (Fla. 5th DCA 2004). Examination must be limited to the four corners of the complaint and the allegations in the complaint must be taken as true and in the light most favorable to the pleader. *Id.* Dismissal should not be granted on the basis of an affirmative defense, except when the face of the complaint is sufficient to demonstrate the existence of that defense. *Scovell v. Delco Oil Co.*, 798 So.2d 844, 846 (Fla. 5th DCA 2001).

Count I: The 42 U.S.C. § 1983 Claim

[4] The Wilsons argue that the lower court erred in dismissing Count I because they sufficiently alleged a cause of action under 42 U.S.C. § 1983. That section states, in pertinent part: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. In *Rankin v. Colman*, 476 So.2d 234 (Fla. 5th DCA 1985), this Court stated that "[t]o adequately state a cause of action under this statute, the plaintiff must allege only that a person acting under color of state law deprived him of rights protected by the United States Constitution or federal statutes." *Id.* at 236. The complaint must contain ultimate facts supporting each element of the cause of action. *Id.*

Orange County argues that the Wilsons' allegations are insufficient to meet the requirements of *Rankin* because they do not allege ultimate facts supporting each element of the cause of action. Instead, the County characterizes the allegations as "bald statements" without a factual basis. We disagree.

[5] The Wilsons sued Orange County, not the individual code inspectors. A county falls within the definition of "person" under 42 U.S.C. § 1983 and may therefore be sued for monetary, declaratory or injunctive relief. *Southern Alliance Corp. v. City of Winter Haven*, 505 So.2d 489 (Fla. 2d DCA 1987); *Elder v. Highlands County Bd. of County Com'rs*, 497 So.2d 1334, 1336 (Fla. 2d DCA 1986). The complaint alleged that all actions of Orange County "were taken pursuant to Florida state statutes, § 162.01, Fla. Stat., et. seq., and Orange County, Florida ordinances, Chapter 11, Orange County Code ... and therefore under color of state law." More specifically, it alleged that pursuant to these statutory and code sections, the County (1) procured the "entry and recordation of CEB orders imposing fines and liens ... without a hearing"; (2) imposed fines and a lien based solely upon an affidavit; (3) imposed excessive fines; (4) conducted warrantless searches; (5) failed and refused with deliberate and reckless indifference to "cause its code inspectors and the CEB to desist from their actions which led to the deprivation of [the Wilson's] constitutional rights"; and (6) failed with deliberate and reckless indifference "to put in place a policy that would have required all inspectors ... to have received training in the code enforcement scheme and the limitations posed by the requirements of the Constitution of the *630 United States." The complaint explains in detailed terms

the statutory scheme as well as the specific actions taken by the code inspectors and the CEB. On the deprivation element, the Wilsons alleged that these actions violated their constitutional rights (1) not to be deprived of property without sufficient notice and opportunity to be heard prior to such deprivation, in violation of procedural due process under the Fifth Amendment; (2) not to be deprived of property based upon an irrebuttable presumption without proof, in violation of substantive due process under the Fifth Amendment; and (3) not to be subjected to excessive fines, in violation of the Eighth Amendment.

The Mathews Test

Orange County argues that the allegations in Count I are belied by the exhibits attached to the complaint. They argue that the exhibits to the complaint demonstrate as a matter of law that sufficient notice and an opportunity to be heard was given to the Wilsons under the test stated in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). *Mathews* requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.

Orange County concedes that imposing a lien on someone's property "may be sufficient to merit due process protection." However, the County attempts to minimize the significance of this interest by arguing that: (1) there is no automatic procedure for collecting the fine; (2) the Wilsons have "ample opportunity" to challenge the imposition, validity and amount of the fine assessed; and (3) the fine may be vacated or reduced should the Wilsons succeed in challenging it. The County argues that the risk of an erroneous deprivation is low because the code inspectors are skilled professionals who are trained to determine complex and technical code violations. They also contend that the government's interest in protecting the public through code enforcement is high and the administrative burden of requiring additional hearings would be great.

We do not believe these arguments can be decided by a motion to dismiss, but are more properly decided after a jury has had the benefit of hearing evidence and argument from both parties on these issues.^{FN3} Accordingly, we conclude that the Wilsons' allegations sufficiently alleged a cause of action under 42 U.S.C. § 1983.

FN3. We note that the Wilson's allegations, if proven, are strikingly similar to the facts in *Massey v. Charlotte County*, 842 So.2d 142 (Fla. 2d DCA 2003). In his well reasoned opinion for the court in *Massey*, Chief Judge Altenbernd analyzed the *Mathews* factors and concluded that the property owners' procedural due process rights were violated.

Counts II through V: The Constitutional Challenges



[6] The Wilsons argue that the lower court erred in dismissing Counts II through V because those counts attacked the facial constitutionality of statutes and ordinances. Orange County argues that the trial court properly dismissed these counts because (1) the counts fail to allege sufficient ultimate facts to support a cause of action; (2) the Wilsons failed to exhaust all of their administrative remedies; and (3) these constitutional challenges could have been raised in an appeal of the CEB *631 final order and are therefore barred by res judicata.

Sufficiency of the Pleadings




[7] [8] [9] [10] Generally speaking, individuals may challenge the validity of a statute in a declaratory judgment action. *Martinez v. Scanlan*, 582 So.2d 1167 (Fla.1991). The test for the sufficiency of a complaint for declaratory judgment is not whether the plaintiff will succeed in obtaining the decree he seeks favoring his position, but whether he is entitled to a

declaration of rights at all. *Platt v. General Dev. Corp.*, 122 So.2d 48 (Fla. 2d DCA 1960), cert. dismissed, 129 So.2d 143 (Fla. 1961). Thus, to activate jurisdiction the party seeking a declaration must show that he is in doubt as to the existence or nonexistence of some right, status, immunity, power, or privilege and that he is entitled to have such doubt removed. *Flagship Real Estate Corp. v. Flagship Banks, Inc.*, 374 So.2d 1020 (Fla. 2d DCA 1979); *Hiialeah Race Course, Inc. v. Gulfstream Park Racing Ass'n*, 210 So.2d 750 (Fla. 4th DCA 1968)]. In this regard, the plaintiff must show a bona fide, actual, present, and practical need for the declaration. *Platt*, 122 So.2d at 50, citing *May v. Holley*, 59 So.2d 636 (Fla. 1952).


X Corp. v. Y Person, 622 So.2d 1098, 1101 (Fla. 2d DCA 1993).

We conclude the allegations were sufficient to invoke the circuit's jurisdiction to determine the constitutionality of the challenged statutes and ordinances. The Wilsons alleged an "immediate, substantial and actual justiciable controversy" between themselves and Orange County. The factual allegations support this assertion. Acting pursuant to the challenged statutes and ordinances, the County imposed thousands of dollars in fines and caused the Wilsons to lose significant rental income. These allegations were sufficient to demonstrate a "bona fide, actual, present, and practical need" for a declaration of their rights, vis-a-vis the challenged statutes and ordinances.


Failure to Exhaust Administrative Remedies

[11]  Orange County argues that these challenges were properly dismissed because of the Wilsons' failure to exhaust administrative remedies. Specifically, the County alleges that the Wilsons failed to appeal the CEB's final order imposing fines and a lien. This argument fails for several reasons. First, failure to exhaust administrative remedies is an affirmative defense that is not apparent on the face of the complaint. Thus, it cannot be a valid basis for dismissal. *Scovell*. Second, failure to file an appeal to the circuit court pursuant to section 162.11, Florida Statutes, is not technically an administrative remedy. Third, even if this defense was applicable and apparent on the face of the complaint, it would not preclude a facial challenge to the constitutionality of the statute or ordinance being implemented. It is well established that the facial constitutionality of a statute may not be raised in an administrative proceeding. *Key Haven Associated Enterprises, Inc. v. Board of Trustees of Internal Imp. Trust Fund*, 427 So.2d 153, 157 (Fla. 1982), superseded by statute on other grounds as noted in *Bowen v. Florida Dep't of Env'tl. Regulation*, 448 So.2d 566 (Fla. 2d DCA 1984); *Florida Public Employees Council 79, AFSCME v. Department of Children and Families*, 745 So.2d 487 (Fla. 1st DCA 1999). For these reasons, we conclude that the Wilsons' facial constitutional challenges cannot be barred by failure to exhaust administrative remedies.

Res Judicata

[12]  We do not mean to imply that the Wilsons could not have raised their facial *632 challenges in an appeal to the circuit court of the order imposing fines. Section 162.11, Florida Statutes, provides for an appeal of CEB final orders, which has been held to be the proper forum to address constitutional claims. See *Holiday Isle Resort & Marina Associates v. Monroe County*, 582 So.2d 721, 721 (Fla. 3d DCA 1991) (holding that appeal under section 162.11 was proper forum to raise both facial and as applied constitutional challenges to code enforcement procedure). Accordingly, the Wilsons could have raised their constitutional challenges on appeal to the circuit court.

Because this option was available, Orange County argues that their constitutional challenges are barred by the doctrine of res judicata. We disagree. Res judicata is also an affirmative defense not apparent on the face of the complaint, and therefore, not cognizable on a motion to dismiss.

[13]  Even if it was apparent on the face of the complaint,^{FN4} res judicata would not bar these challenges. Orange County correctly argues that res judicata applies not only to matters previously raised, but also to matters which could have been raised, citing *AGB Oil Co. v. Crystal Exploration and Production Co.*, 406 So.2d 1165, 1167 (Fla. 3d DCA 1981). However, as the supreme court in *Albrecht v. State*, 444 So.2d 8 (Fla. 1984), superseded by statute on other grounds as noted in *Bowen*

v. Florida Dept. of Environmental Regulation, 448 So.2d 566 (Fla. 2d DCA 1984), noted:

FN4. We note that on appeal, the Wilsons conceded they failed to appeal the order imposing fines.

[T]his principle only applies when the elements of res judicata are present and the doctrine is properly applied. Where the second suit is upon the same cause of action and between the same parties as the first, res judicata applies. The first judgment is conclusive as to all matters which were or could have been determined. It has been well settled by this Court that several conditions must occur simultaneously if a matter is to be made res judicata: identity of the thing sued for; identity of the cause of action; identity of parties; identity of the quality in the person for or against whom the claim is made. It is also a settled rule that when the second suit is between the same parties, but based upon a different cause of action from the first, the prior judgment will not serve as an estoppel except as to those issues actually litigated and determined in it. Therefore, if the cause of action is not the same there will be no estoppel as to those issues which could have been litigated in the previous action. The determining factor in deciding whether the cause of action is the same is whether the facts or evidence necessary to maintain the suit are the same in both actions. Albrecht, 444 So.2d at 11-12 (citations omitted). In the instant case, there is no identity of the causes of action. The original action was a code enforcement proceeding against the Wilsons. In the second action, the Wilsons sued Orange County for deprivation of rights under 42 U.S.C. § 1983 and also challenged the facial constitutionality of the applicable statutes and ordinances. These are different actions and the facts necessary to support them are different. In the first action, the county must present facts to prove that a code violation exists and later, must file an affidavit alleging facts showing that the violation has not been corrected. In the second action, the Wilsons must present *633 evidence in Count I showing that they have been deprived of their rights by a person acting under color of state law. In Counts II through V, the Wilsons must present evidence showing that the applicable statutes and ordinances, on their face, work a deprivation of certain due process rights. The evidence of a code violation and failure to cure the violation in the first action is not essential to the second action. Thus, the actions are not the same and one of the threshold elements of res judicata has not been met.

Two other cases provide additional support for this conclusion. In Seminole Entertainment, Inc. v. City of Casselberry, 866 So.2d 1242 (Fla. 5th DCA 2004), this Court held that res judicata may bar challenges to the facial constitutionality of a statute or ordinance if they were previously litigated, but it does not bar facial challenges that could have been raised. Instead, raising such claims by a separate declaratory judgment action in the circuit court is appropriate. Id. at 1244. Likewise, in Key Haven Associated Enterprises, Inc. v. Board of Trustees of Internal Imp. Trust Fund, 427 So.2d 153 (Fla. 1983), superseded by statute on other grounds as noted in Bowen v. Florida Dept. of Environmental Regulation, 448 So.2d 566 (Fla. 2d DCA 1984), the supreme court held that a party aggrieved by agency action may attack the facial constitutionality of the statute being implemented by the agency in two ways. It may exhaust its administrative remedies and then raise the constitutional challenges in its appeal to the district court of the agency action. Or, it may bypass the administrative remedies and raise the constitutional challenge in a separate proceeding in the circuit court. Id. at 157.

Therefore, we conclude that although the Wilsons could have raised their facial challenges in an appeal of the fines, they can also raise them in a separate declaratory action. Accordingly, we reverse the dismissal with prejudice as to all five counts of the complaint and remand for further proceedings. REVERSED and REMANDED.

MONACO, J., and DAVIDSON, L., Associate Judge, concur.

Fla.App. 5 Dist., 2004.
Wilson v. County of Orange
881 So.2d 625, 29 Fla. L. Weekly D1800

END OF DOCUMENT

West Reporter Image (PDF)

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DAVID JOHNSON, CFA, ASA PROPERTY APPRAISER SEMINOLE COUNTY FL 1101 E. FIRST ST SANFORD, FL 32771-1468 407-665-7508																																																																					
GENERAL Parcel Id: 22-21-29-506-0E00-0740 Owner: KIRKMAN PROPERTIES LLC Mailing Address: 6703 MOTT AVE City,State,ZipCode: ORLANDO FL 32810 Property Address: 910 SPRING VALLEY RD ALTAMONTE SPRINGS 32714 Subdivision Name: SPRING VALLEY FARMS SEC 08 Tax District: 01-COUNTY-TX DIST 1 Exemptions: Dor: 01-SINGLE FAMILY		2005 WORKING VALUE SUMMARY Value Method: Market Number of Buildings: 1 Depreciated Bldg Value: \$26,051 Depreciated EXFT Value: \$6,998 Land Value (Market): \$45,000 Land Value Ag: \$0 Just/Market Value: \$78,049 Assessed Value (SOH): \$78,049 Exempt Value: \$0 Taxable Value: \$78,049 Tax Estimator																																																																			
SALES <table border="1"> <thead> <tr> <th>Deed</th> <th>Date</th> <th>Book</th> <th>Page</th> <th>Amount</th> <th>Vac/Imp</th> </tr> </thead> <tbody> <tr> <td>WARRANTY DEED</td> <td>07/2004</td> <td>05385</td> <td>1664</td> <td>\$375,000</td> <td>Improved</td> </tr> <tr> <td>WARRANTY DEED</td> <td>06/1987</td> <td>01857</td> <td>1634</td> <td>\$172,500</td> <td>Improved</td> </tr> <tr> <td>WARRANTY DEED</td> <td>06/1978</td> <td>01175</td> <td>1329</td> <td>\$112,500</td> <td>Improved</td> </tr> <tr> <td>WARRANTY DEED</td> <td>01/1975</td> <td>01063</td> <td>0917</td> <td>\$98,500</td> <td>Improved</td> </tr> </tbody> </table> Find Comparable Sales within this Subdivision		Deed	Date	Book	Page	Amount	Vac/Imp	WARRANTY DEED	07/2004	05385	1664	\$375,000	Improved	WARRANTY DEED	06/1987	01857	1634	\$172,500	Improved	WARRANTY DEED	06/1978	01175	1329	\$112,500	Improved	WARRANTY DEED	01/1975	01063	0917	\$98,500	Improved	2004 VALUE SUMMARY 2004 Tax Bill Amount: \$2,991 2004 Taxable Value: \$176,984 DOES NOT INCLUDE NON-AD VALOREM ASSESSMENTS																																					
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NOTE: Assessed values shown are NOT certified values and therefore are subject to change before being finalized for ad valorem tax purposes. *** If you recently purchased a homesteaded property your next year's property tax will be based on Just/Market value.																																																																					

Estimate of Costs
CEB Case # 05-66-CEB
KIRKMAN PROPERTIES, LLC
MICAH BASS, REGISTER AGENT

<u>Postage</u>			
Regular	12	\$.39	\$4.68
Certified	11	\$ 4.64	\$51.04
			\$55.72
<u>Processing Time for Code Enforcement and BCC Action</u>			
Code Board Secretary	2 hours	\$ 13.13	\$26.26
Code Board Attorney	1 hour	\$100.00	
Planning Manager's Review	1 hour	\$ 40.00	
Planning and Development Director's Review	1 hour	\$ 50.00	
Deputy County Manager's Review	1 hour	\$ 60.00	
County Attorney's Review	1 hour	\$100.00	
			\$376.26
Other associated costs not captured:			
Fleet expense, Phone expense, Utilities, Computer Support			
Costs for Recording Documents -			\$49.00
# of first page docs - 5 # of additional page docs -			\$188.00
(\$10.00 first page, \$8.50 each additional page)			
<u>ESTIMATED COST FOR PROCESSING CASE # 05-66 -CEB</u>			\$668.98
<u>By the Planning Division</u>			
<u>ESTIMATED COST FOR PROCESSING CASE # 05-66 -CEB</u>			\$171.95
<u>By the Seminole County Sheriff's Office</u>			
<u>TOTAL COST FOR PROCESSING CASE # 05-66- CEB</u>			\$840.93

SEMINOLE COUNTY SHERIFF'S OFFICE

**Affidavit For Reimbursement of Code Enforcement Officers Administrative Costs
Case#2004CE001096**

The Seminole County Sheriff's Office requests that the Department of Planning and Development petition the Board of County Commission to enter an order requiring the Respondent in the above-styled case to pay the costs of investigation incurred by this office during the investigation and presentation of said case. The below items detail the activities and associated costs for investigating this case.

Code Enforcement Officer: Joann Davids

DATE	DESCRIPTION	HOURS
08-09-05	Inspected property and observed valid complaint of an unsecured pool. Photos taken and processed..	1
08-11-05	Inspection of property. Pool remains unsecured.	1/2
08-11-05	Research property ownership and registered agent. Mailed Notice of Violation	1
08-16-05	Property posted with Notice of Hearing documents. Re inspect pool. Photos taken. Affidavit of Posting filed.	1
08-25-05	Code Enforcement Board Hearing 05-66-CEB	1
08-31-05	Re Inspection for Boards Order. Photos taken and processed. Affidavit of non compliance filed	1 1/2
09-06-05	Re Inspection. Still no compliance. Photo taken and processed.	1
09-13-05	Call from Neta for Mike Bass stating kiddy fence is now installed. Re inspected. Filed affidavit of compliance. Photo taken and processed..	1 1/2
TOTAL HOURS		8 1/2
		x \$20.23
TOTAL PERSONNEL COSTS		\$ 171.95

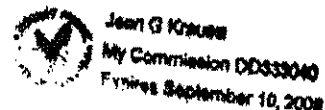
The Seminole County Sheriff's Office has incurred actual costs in the amount of \$171.95 during the investigation and prosecution of the defendant in this case. Said costs are supported and documented as listed above. Personnel costs are calculated at a rate of \$20.23 per hour, as determined by the Financial Services Section of the Seminole County Sheriff's Office. Tangible goods and contractual services are indicated as required and at a direct cost to the Office.

Signature of Deputy / Investigator: Joann Davids 10-27-05

Date

Attested to this 27 day of OCT., 2005, by JOANN DAVIDS
A Code Enforcement Officer

Jean G. Krause
10-27-05



JUNE 13, 2006

with the hoteliers. He said he believes the agreement spells out how the Board expects the money to be spent and he thinks they need to continue to monitor that and the efforts being made to raise money from private sources rather than continuing to increase the government's contribution every time.

Districts 1, 2, 3, 4 and 5 voted AYE.

Speed Thomas, Interim Director of Administrative Services, addressed the Board to introduce Angi Thompson, Principal Analyst, who presented the request for direction on increasing the maximum allowable fees in the Seminole County Towing and Transport of Vehicles Ordinance. She stated staff is recommending the Class "A" storage fees be increased from \$15 to \$20 and the administrative fee be increased from \$30 to \$35. She said these fees are in line with the surrounding counties.

Motion by Commissioner Van Der Weide, seconded by Commissioner Dallari, to approve the staff recommendation to increase the Class "A" storage fees from \$15 to \$20 and increase the administrative fee from \$30 to \$35; and approve the County Attorney's Office to prepare the Ordinance and advertise for a public hearing.

Districts 1, 2, 3, 4 and 5 voted AYE.

April Boswell, Assistant Planning Manager, addressed the Board to present the request for reduction of penalty for Code Enforcement Lien (Case #05-66-CEB), property located at 910 Spring Valley Road, Altamonte Springs, FL, Kirkman Properties, LLC. She stated staff is recommending denial of the reduction of the lien totaling \$3,250 and that the Board require the lien be paid within 30 days. Upon payment in full, authorize the

JUNE 13, 2006

Chairman to execute the Satisfaction of Lien. Ms. Boswell stated the request received from the property owners' representative stated they believe due process was not issued in this case and, therefore, the lien was placed against federal law requirements. Ms. Boswell gave the history of the case. She said staff is ruling that due process was issued because the respondent received notice on August 17 for the August 25, 2005, hearing and also received notice for a later hearing on October 27, 2005. Staff also knows that the respondent received the notice of November 9, 2005. Therefore, staff is recommending denial of the reduction of lien.

District Commissioner Henley said it concerns him that the individual received the letter after the deadline had expired and staff did not go back to determine whether the violation had been corrected until September 13 and it could have been corrected by August 31. For these reasons, he has problems with supporting the staff recommendations. He recommended the lien be reduced to the actual cost to the County.

Motion by Commissioner Van Der Weide, seconded by Commissioner Morris, to approve a reduction to the Code Enforcement Lien (Case #05-66-CEB), property located at 910 Spring Valley Road, Altamonte Springs, FL, Kirkman Properties, LLC, to the actual cost to the County (estimated administrative costs of \$840.93); with the caution that the property owner is expected to maintain the safety precaution required by code.

Districts 1, 2, 3, 4 and 5 voted AYE.

The Board considered the request to appoint an Audit Committee for the primary purpose of assisting the Board in selecting an auditor to conduct the annual financial audit in