

Memo

To: Mayor and Town Council
Via - Kirk Blouin
cc: Ben Alma & Carla Marcote
From: John C. Randolph, Esq.
Date: June 9, 2022
Re: Foreclosure Proceedings re 226 & 287 Pendelton Avenue

Dear Mayor and Town Council,

The Code Enforcement Board has recommended that the Town Council authorize foreclosure proceedings relating to liens imposed against 287 Pendelton Avenue, owned by Susan Lee and 226 Pendelton Avenue, owned by Susan Gibson. The recommendations from the Code Enforcement Board are attached in your backup to the agenda.

Under Florida Statute 162.09 the enforcement board may authorize the local governing body attorney to foreclose on a lien imposed by the board. No lien created pursuant to 162.09 may be foreclosed on real property which is homestead under S.4, Article X of the State Constitution. That section provides, in part, that homestead property shall be exempt from forced sale. Homestead property within a municipality is limited to the residence of the owner or the owner's family. This exemption shall inure to the surviving spouse or heirs of the owner.

Mrs. Lee, the owner of 287 Pendelton is deceased, and her sole surviving heir is Susan Gibson. The homestead exemption did not die. The exemption passed on to Mrs. Lee's daughter, Susan Gibson. Therefore, the homestead exemption still applies to 287 Pendelton to the extent it is the residence of Susan Gibson and foreclosure is not appropriate on this property.

As to 226 Pendelton, it is my understanding that Susan Gibson no longer resides at that property, nor has she for some time. If she is claiming the homestead exemption for 287 Pendelton, I do not believe she can claim the homestead exemption for 226 Pendelton. I, therefore, believe that foreclosure is authorized for the lien filed against 226 Pendelton.

In providing its recommendations to foreclose on both properties, statements were made by CEB members that if there is any question as to whether a property is homestead, and therefore exempt from foreclosure, the Town should file a complaint for foreclosure and let the court decide. This is problematic in light of provision of section 162.10, Florida Statutes, which provides, "In an action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action." Therefore, in any action to foreclose, the Town should be comfortable with

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its position since, if it does not prevail, it will be responsible not only for its own attorney's fees and costs but the attorney's fees and costs of the defendant property owner.

Based on the above, it is my recommendation that the Town not proceed with foreclosure at this time on the 287 Pendelton property but that it proceed to foreclosure on the 226 Pendelton liens. If, upon further investigation, we learn that Susan Gibson does not claim the 287 Pendleton property as her residence, this matter can be reconsidered.

John C. Randolph, Esq.