



**Date:** December 1, 2015

**To:** Thomas Bonfield, City Manager

**Through:** Keith Chadwell, Deputy City Manager

**From:** Constance Stancil, Director  
Neighborhood Improvement Services Department

**Subject:** Request for Lien and Civil Penalty Waiver or Cancellation for  
Properties at 2401 and 2403 Owen Street

### **Executive Summary**

In May 2010, the City Council amended Chapter 10, Article VI the Durham City Code, captioned "Housing Code" by adding a provision authorizing a reduction or cancellation of demolition liens in certain circumstances. Durham City Code Section 10-239(m). This provision supports the City's commitment to increase access to safe, decent and affordable housing by providing incentives and opportunities for affordable housing development on properties where the City has placed a lien due to City remediation.

Council amended the housing code, in March 2012, to limit the amount of civil penalties that could be imposed on an owner. The City Code provides that the maximum cumulative civil penalty shall not exceed \$5,000. Section 10-241(b)(1).

Habitat for Humanity is a key affordable housing provider for the Durham community and is committed to building and stabilizing neighborhoods. NIS values the partnership that it has with Habitat in improving Durham neighborhoods and seeks to be supportive of its efforts. Habitat has identified properties at 2401 and 2403 Owen Street ("Owen Street properties") as ideal candidates for assisting in stabilizing the East Durham neighborhood and providing affordable homeownership opportunities. Habitat is working with Mr. William C. Boyce Jr., owner, to acquire the now vacant lots to build affordable housing. Conveyance of the property at 2401 Owen Street to Habitat is predicated upon the City waiving or reducing the civil penalties of \$43,280 and canceling of Weedy Lot and Board and Clean (WBC) liens totaling \$2,935.22. Conveyance of the 2401 Owen Street property requires cancellation WBC liens totaling \$2,880.94.

Habitat wants to acquire the Owen St. properties and build affordable housing. The above owner started accumulating civil penalties on 2401 Owen St. prior to enactment referenced above which caps civil penalties at \$5,000.

Habitat reports that the owner is willing to convey the Owen St. properties to Habitat as a gift on the condition that the owner is no longer responsible for the outstanding civil penalties referenced above.

Habitat proposes that when the owner conveys the Owen Street properties to Habitat that the City reduce the civil penalties to \$5,000 and cancel all WBC liens. Habitat has agreed to pay the \$5,000 assessment to the City when it acquires the property. The City in turn will remit the civil penalty fees collected to Durham Public Schools (DPS) as required by State law.

### **Recommendation**

Authorize the City Manager to enter a settlement agreement with William C. Boyce Jr. ("Boyce") and Habitat for Humanity ("Habitat") that upon proof that Boyce conveys 2401 Owen Street and 2403 Owen Street to Habitat, the City Manager will:

- Reduce Boyce's housing code civil penalties from \$43,280 to \$5,000; Habitat shall pay the \$5,000 civil penalty debt; and
- Cancel the existing removal of trash and undergrowth liens attached to 2401 Owen Street in the amount of \$2,880.94 after Habitat builds affordable housing on the property and obtains a certificate of compliance; and
- Cancel the existing removal of trash and undergrowth liens attached to 2403 Owen Street in the amount of \$2,935.22 after Habitat builds affordable housing on the property and obtains a certificate of compliance.

### **Background**

The City of Durham is committed to strengthening the foundation, enhancing the value and improving the quality and sustainability of neighborhoods as articulated in Goal 3 of the City's Strategic Plan. In support of this goal, the Department of Neighborhood Improvement Services (NIS) enforces the Durham Minimum Housing Code, engages residents in neighborhood projects and where required abates nuisances on private property.

NIS works with property owners in violation to gain compliance with the Durham Minimum Housing Code and nuisance and abatement ordinances. In some circumstances NIS is not able to gain owner compliance with the ordinances and that results in the assessment of fees and penalties. Such is the case for property located at 2401 and 2403 Owen Street. Over the course of several years, 2401 Owen Street had violations related to the Minimum Housing Code and Trash and Undergrowth Ordinance and 2403 Owen had several violations under the Trash and Undergrowth Ordinance. During the time of non-compliance, the City remediated trash and undergrowth violations associated with both properties. Also, pursuant to the Durham City Code the owner was assessed civil penalties for failing to comply with ordinance requirements to remediate conditions at the dwelling located at 2401 Owen Street. This resulted in civil penalties totaling \$43,280. The structure was subsequently demolished by the City and

a demolition lien of \$9,355.31 was placed on the property. The two now vacant parcels located at 2401 and 2403 Owen Street currently have a tax assessed value of \$14,704 and \$6,210 respectively.

Listed below are the fines and penalties relevant to each property:

AR CODE	FOR/LOCATION	UNPAID BALNC	BOOK-PAGE	DATE
DEM	2401 OWEN ST. PARCEL ID #14440	<b>\$9,355.31</b>	6673-739	2/24/2011
WBC	2401 OWEN ST. PARCEL REF #114400	\$555.12	6867-995	12/20/2011
WBC	2401 OWEN ST PARCEL REF #14440 BK6528 PG:568	\$1,799.88	6528-568	7/29/2010
WBC	2401 OWEN ST PARCEL REF # 14440 DB:7534 PG:948	\$525.94	7534-948	7/23/2014
		<b>\$2,880.94</b>		
WBC	2403 OWEN ST PARCEL ID #14441	\$1,326.95	6524-553	7/23/2010
WBC	2403 OWEN ST PARCEL ID #14441	\$577.46	6867-985	12/20/2011
WBC	2403 OWEN ST PARCEL ID #14441 DB: 7534 PG:941	\$428.43	6103-1	12/4/2008
WBC	2403 OWEN ST PARCEL REF #114441 DB:7534 PG:941	\$602.38	7534-941	7/23/2014
		<b>\$2,935.22</b>		
	<b>CIVIL PENALTIES:</b>			
HOU	2401 OWEN ST	<b>\$43,280.00</b>		

Assisting Habitat in its ability to acquire these properties will not only strengthen the City's partnership with this organization, but it will also further the City's Strategic Plan Goal 3 objective of promoting increased access to a diversity of housing options that are safe and affordable.

### Issues/Analysis

Habitat is requesting that the City reduce the civil penalties of \$43,280 to \$5,000 and cancel all WBC liens.

The key issues presented in this request are: 1) the City has not yet adopted an ordinance allowing cancellation of Weedy Lot and Board and Clean liens encumbering real property when affordable housing is developed on the subject property; 2) accrual of civil penalties on the property at 2401 Owen occurred prior to current Civil Penalty Amendment to the Durham City Code; and 3) discharge of certain penalties deemed uncollectible after good faith efforts have been made to collect such penalties.

Unlike demolition lien cancellation authority, the City does not have an ordinance or policy that provides authorization for cancelling WBC liens. It is the intent of NIS to bring forth a policy for City Council consideration authorizing the City Manager or his designee to cancel WBC liens. This type of lien cancellation would be handled in the same manner as the demolition lien cancellation. In the absence of a policy at this time, it is requested that the WBC liens on 2401 and 2403 Owen Street be granted in the same manner as demolition liens in this special circumstance.

At the time that Mr. Boyce was being assessed civil penalties for non-compliance, there was no limit on the amount of penalties (\$43,280) that could accrue, as there is now. As of this date, the City has not been able to collect civil penalties in the amount of \$43,280 that has been assessed against Mr. Boyce. City of Durham Finance Department has exhausted all collection efforts without any success. See Section 10-241. Reducing civil penalties to \$5,000 in this case would bring the assessment in line with the current policy which Habitat has agreed to pay at the time of conveyance. The Finance Department deems the remainder of \$38,280 which exceeds the \$5,000 to be uncollectable.

Any civil penalties collected in association with the 2401 Owen Street property per the State Constitution must be remitted to Durham Public Schools (DPS). Habitat proposes to pay \$5,000 in civil penalties to the City as a part of the property acquisition from Mr. Boyce. The City in turn would remit those fees to DPS per State law.

### **Alternatives**

The City Council may choose not to reduce civil penalties in this case or provide for the cancellation of WBC liens. The City could continue its efforts to try to collect the penalties and fees that are currently assessed.

### **Fiscal Impact**

Habitat has requested that civil penalties associated with 2401 Owen Street in the amount of \$43,280 be reduced to \$5,000. Habitat proposes to pay \$5,000 to the City of Durham when it acquires the property from the current owner. Per **GS 115c-437** the City can retain the actual cost of collection, not to exceed 10 percent of the amount collected. As such, the City has the potential to receive a nominal amount of the civil penalties fees collected.

The demolition lien for this property is \$9,355.31. Under current NIS policy this lien may be cancelled. WBC liens on 2401 Owen Street total \$2,880.94. This proposal seeks to include the WBC liens as well resulting in a total lien cancellation request of \$12,236.25.

This proposal also requests cancellation of the WBC liens on 2403 Owen which total \$2,935.22.

The overall fiscal impacts to Habitat for Humanity acquiring and developing housing on the two now vacant lots are: 1) increase in tax value; 2) stabilization of East Durham neighborhood; and 3) increased supply of affordable housing and strengthened community partnerships.

**SDBE**

Not applicable.