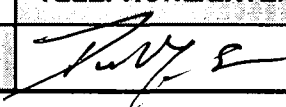


MANATEE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT	Breathe Easy Air, Inc. Code Enforcement Case CE2006080901	TYPE AGENDA ITEM	Consent
DATE REQUESTED	February 22, 2011	DATE SUBMITTED/REVISED	February 9, 2011
BRIEFINGS? Who?	None Required	CONSEQUENCES IF DEFERRED	None
DEPARTMENT/DIVISION	Neighborhood Services Department/Code Enforcement Division	AUTHORIZED BY TITLE	Cheri Coryea, Director <i>CRC 2/11/11</i>
CONTACT PERSON TELEPHONE/EXTENSION	Joe Fenton, Division Manager Ext. 6854	PRESENTER/TITLE TELEPHONE/EXTENSION	Joe Fenton, Division Manager, Ext. 6854
ADMINISTRATIVE APPROVAL			

ACTION DESIRED

INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED

Motion to reduce the fines for this case to a total of \$1,500.00, (as previously recommended by the Special Magistrate on January 26, 2011), subject to the following conditions:

1. The reduced fines shall be paid within 30 days of the closing, the closing to take place 60 days following the action of the BOCC and six months to complete the work to bring the violations into compliance. If these conditions are not met within the time periods, the fines will revert back to the original fine amount of \$240,800.00 for CE2006080901.
2. Recording fees need to be collected, which total \$20.00.
3. The Neighborhood Services Department Director is authorized to sign satisfactions of liens if the reduced fines are paid.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy

APPROVED IN OPEN SESSION

Section 162.09, Florida Statutes (2007)

FEB 22 2011

BACKGROUND/DISCUSSION

**BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA**

Below is a summary of Code Enforcement Case CE2006080901 – Breathe Easy Air, Inc., 1944 60th Place East, Bradenton (DP#1847140159):

- On February 28, 2005 the Building Department posted the building with Stop Work Order #4230 for building an interior second floor without a building permit which is a violation of Section 104.7.2 (Permit(s) Required/Posted) of the Manatee County Building Code.
- On October 10, 2006, the Stop Work Order case was turned over to Code Enforcement and the property was cited for interior construction without a permit or certificate of occupancy in violation of Section 512 (Building Permits) and Section 513 (Certificate of Occupancy) of the Manatee County Land Development Code. The notice of violation was mailed to the owner on October 12, 2006.

- On October 26, 2006, a second inspection was conducted. The property was still in violation and there were no permits applied for. The officer scheduled this case for the November 22, 2006, Special Magistrate hearing.
- On April 10, 2007, a Notice of Hearing was sent to the owner for the May 23, 2007, Special Magistrate Hearing. During this time frame the officer did not have service for the hearing notices and when staff did make contact with the owner he had hired a contractor to start the permitting process.
- On May 18, 2007, the Notice of Hearing was hand served at the business office and was signed for by Ms. Mallory Militella. The communication with the owner had stopped at this point and there was no movement on obtaining a building permit.
- On June 27, 2007, the Special Magistrate continued the case to the July hearing date because the building staff that took the photos did not appear at the hearing to testify to the authenticity of the photos.
- On July 20, 2007, the zone officer hand served the Notice of Hearing to a Stephanie Baxter at the office of the business.
- On July 25, 2007 the Special Magistrate found the owner to be in violation of Section 512 (Building Permits) of the Manatee County Land Development Code and ordered a compliance date of September 21, 2007 or a minimum fine of \$250.00 and a daily fine of \$150.00 would be imposed and found the owner to be in violation of Section 513 (Certificate of Occupancy) of the Manatee County Land Development Code and ordered a compliance date of October 19, 2007, or a minimum fine of \$250.00 and a daily fine of \$150.00 would be imposed.
- On September 27, 2007, the zone officer conducted an inspection and found the property to still be in violation of Section 512 and signed an Affidavit of Non-Compliance, imposing the fines as ordered.
- On October 25, 2007 the zone officer conducted an inspection and found the property to still be in violation of Section 513 and signed an Affidavit of Non-Compliance, imposing the fines as ordered.
- On October 19, 2010 staff stopped the fines for Section 512 and Section 513 as of December 15, 2009, because the property had been foreclosed and sold back to the bank as of that date. The fines total \$240,800.00 and have stopped running, however, the property is still in violation.
- On January 13, 2011, staff received a letter from the property owner's attorney requesting to go before the Special Magistrate for a possible fine reduction.
- On January 26, 2011, this case went before the Special Magistrate for a possible fine reduction. The owner has a buyer for the property that is willing to bring the building into compliance. However, they can't sell the building with an outstanding lien of \$240,800.00 on it. Staff agrees with the recommendation to the Board of County Commissioners that the fine be reduced to \$1,500.00 with the following stipulations: The fine is to be paid within 30 days of the closing and the closing is to take place within 60 days following the Board of County Commissioners action and the renovation to bring the building back into compliance is completed within six months.
- Staff costs for this case are approximately \$1,500.00.

COUNTY ATTORNEY REVIEW

Check appropriate box

REVIEWED

Written Comments:

Attached

	<input type="checkbox"/> Available from Attorney (Attorney's initials: _____)
<input checked="" type="checkbox"/>	NOT REVIEWED (No apparent legal issues.)
<input type="checkbox"/>	NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)
<input type="checkbox"/>	OTHER:

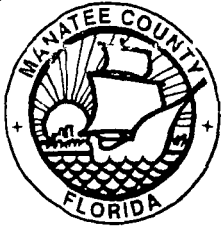
ATTACHMENTS: (List in order as attached)		INSTRUCTIONS TO BOARD RECORDS:	
<ol style="list-style-type: none"> 1. Stop Work Order #4230 2. Photographs of Property (3) 3. Corrective Orders Imposing Fines (2) 4. Letter from Attorney Robert Schermer 5. Order of Referral 		Please forward a stamped copy of agenda to the Code Enforcement Division following disposition.	
COST:	None	SOURCE (ACCT # & NAME):	N/A
COMMENTS:	None	AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)	N/A

2/23/11 *AS*

APPROVED IN OPEN SESSION

FEB 22 2011

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA



**MANATEE COUNTY
GOVERNMENT
BUILDING DEPARTMENT**
"TO SERVE WITH EXCELLENCE"

February 28, 2005

Breathe Easy Air, Inc.
13614 2nd Ave NE
Bradenton, Florida 34212

RE: Stop Work Order No.: #4230
Location: 1944 60th Street East, Bradenton, Florida
Parcel: #18471.4015/9

Dear Sir/Madam,

It has come to our attention that work has proceeded without the proper permit(s) on building an interior second floor located at 1944 60th Place East, Bradenton, FL. This constitutes a violation of the Manatee County Building Code, Section 104(Permit(s) Required/Posted).

All work must stop immediately until the proper permit has been obtained. Continuing to work, subsequent to this notice, shall result in a violation and will be reported to the Manatee County Licensing Board and/or State Attorney's Office for further investigation.

When working commences without the proper permit(s), in accordance with Section 104.7.2, of the Manatee County Building Code, you are subjected to a penalty fee. Permit applications may be obtained at the Manatee County Building Department. This letter must be presented at the time you submit your application.

If you fail to comply within **thirty (30) days** of the receipt of this letter, the matter will be turned over to the Code Enforcement Division for further action.

Sincerely,

Aaron R. Hartsfield, CBO, BOAF
Construction Inspections Manager

ARH/wjb

CC: Arthur W. Ricker Jr., Construction Review Coordinator
Dennis Force, Licensing/Construction Investigator
<swo#4230>

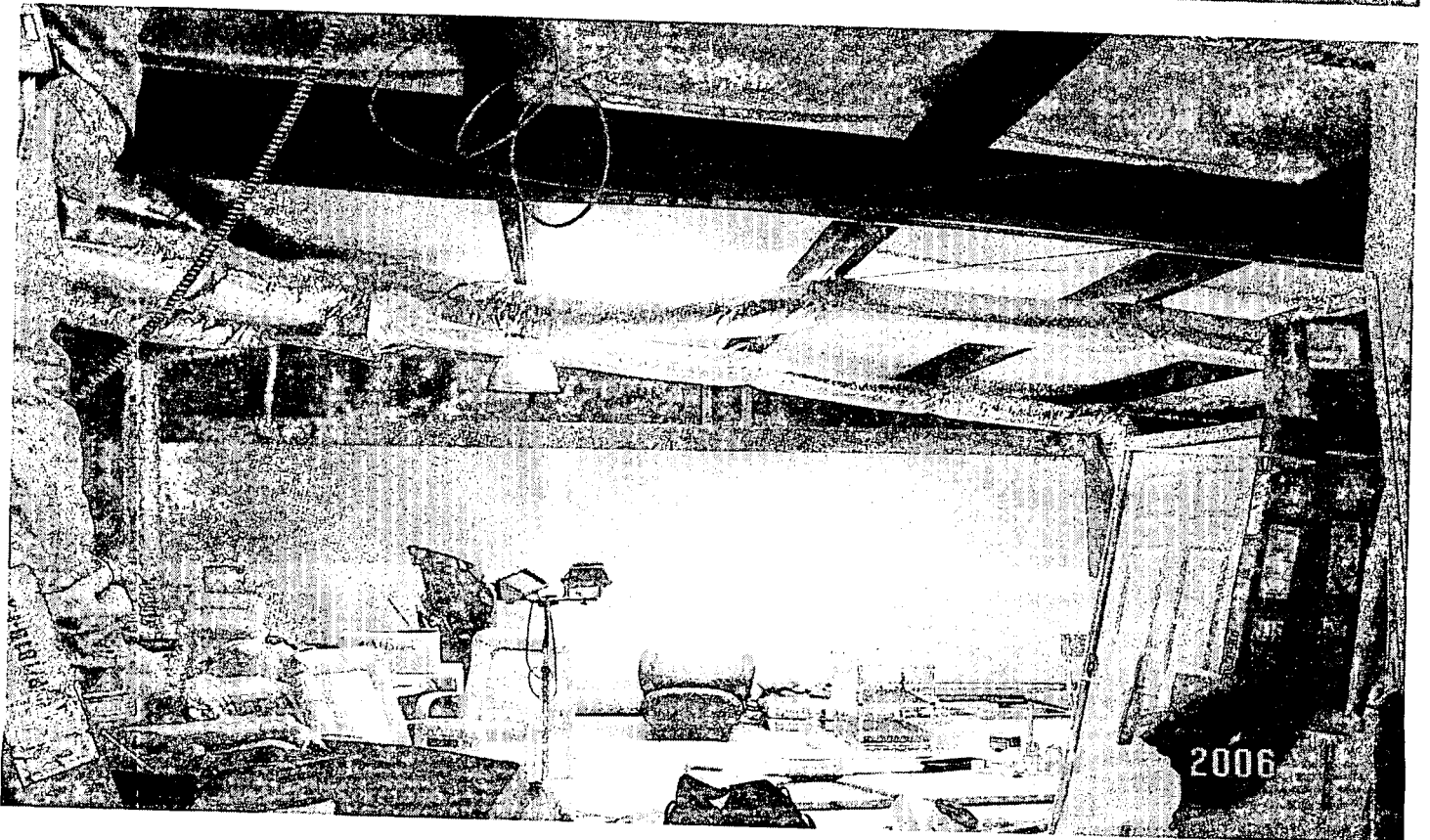
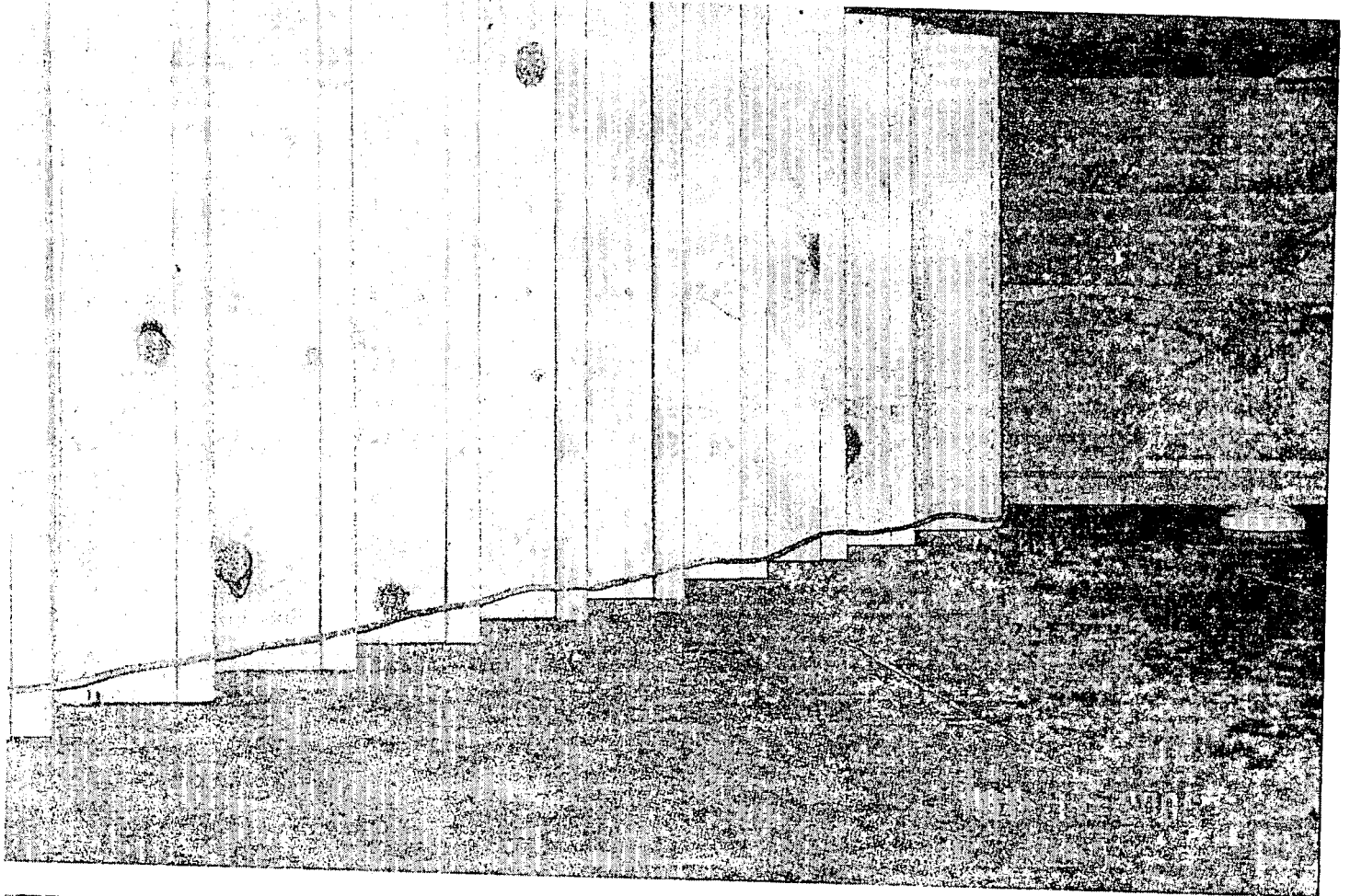
CE2006080901
VIOLATION OF 512 & 513

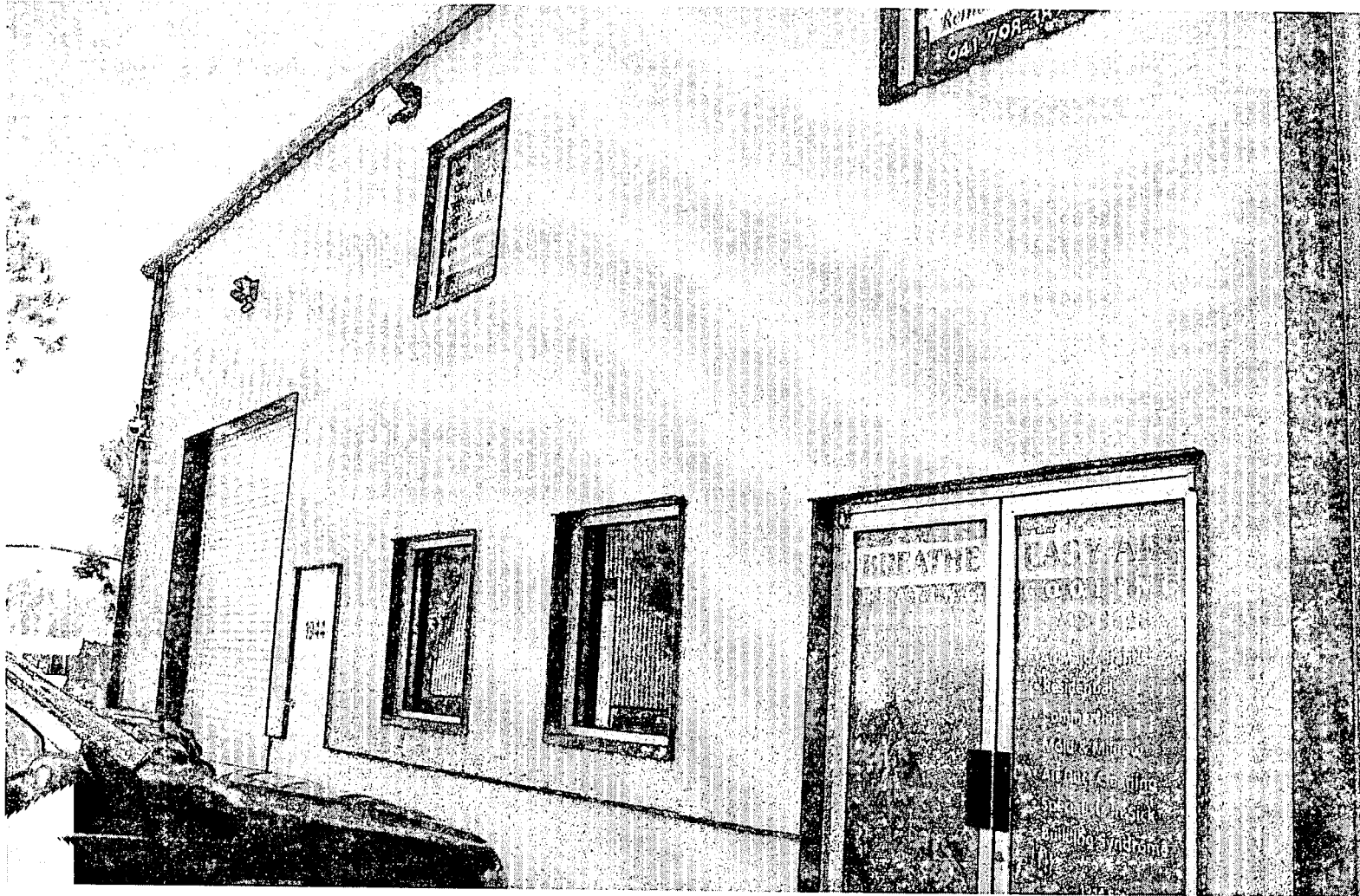
Arms Free



1944 60th Place E., Bradenton

S 4493 § 4230





2006080901
1944 Coth A/E, B. J. J.
A.C.

9/27/2007 4:25:36 PM



**MANATEE COUNTY CODE ENFORCEMENT SPECIAL MAGISTRATE
MANATEE COUNTY, FLORIDA**

FILED FOR RECORD
R. B. SHORE

**MANATEE COUNTY, a political subdivision
of the State of Florida,**
Petitioner,

Case No. CE2006080901 **2007 AUG 10 PM 2:08**

vs.

CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

BREATHE EASY AIR, INC.,
Respondent(s),

CORRECTIVE ORDER IMPOSING FINE

THIS CAUSE came on for public hearing before the Code Enforcement Special Magistrate on July 25, 2007, and the Special Magistrate having heard testimony under oath, received evidence, and heard arguments respective to all appropriate matters, and thereupon issues the Findings of Fact, Conclusions of Law, and Order as follows:

FINDINGS OF FACT

1. That **Breathe Easy Air, Inc.**, hereinafter referred to as Respondent is the owner of record of the subject property.
2. That notice was served on Respondent and no one was present at the hearing.
3. That previous notifications of the violation(s) of the Manatee County Land Development Code **Section 512** were made and served on Respondent(s) by hand delivery.
4. That the property located at **1944 60th Place East, Bradenton, FL, DP#1847140159**, has a violation of Manatee County Land Development Code **Section 512** because **interior renovations were made to the building without the required building permit.**
5. That Respondent(s) is in violation of **Section 512** for renovating the interior of a building without the required building permit.

CONCLUSIONS OF LAW

1. That Respondent is in violation of Manatee County Land Development Code **Section 512.**

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority granted in Chapter 162, Florida Statutes, and Manatee County Land Development Code, it is hereby ORDERED:

1. THAT the Respondent(s) correct the violation(s) of Manatee County Land Development Code **Section 512.**
2. THAT if this Order is not complied with on or before **September 21, 2007**, it is hereby ordered that Respondent(s) shall pay a minimum fine of **\$250**, plus **\$150*** per day for each and every day any violation(s) described herein continue(s) past **September 21, 2007.**
3. Failure to Comply with this Order within the specified time will result in the recordation of this Order Imposing Fine, which constitutes a lien upon any real or personal property owned by the violators and may be foreclosed, and your property sold to enforce this lien. If such lien is filed, you will be assessed all costs incurred in recording and satisfying this lien.
4. The Code Enforcement Special Magistrate also authorizes the County Attorney or his/her designee to foreclose, collect or settle said lien using any legal or equitable remedies available to collect any liens which remain unpaid.
5. This Order becomes self-executing upon an Affidavit of Non-compliance being filed with the Clerk of Circuit Court Board Records Section, and a hearing shall not be necessary.
6. That pursuant to Section 305.5.7 of the Land Development Code, should (a) violation(s) exist(s) beyond the date set for compliance, the Special Magistrate shall impose a minimum fine of \$65.

Ordered July 25, 2007, and executed this 10th day of August, 2007.

*This Order corrects the daily fine from \$100 to \$150.

ATTEST: R. B. Shore
Clerk of Circuit Court

By: Wendi Jessner
Deputy Clerk



Carl L. Frederick
Manatee County Code Enforcement
Special Magistrate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order has been furnished to the Respondent, **BREATHE EASY AIR, INC., 13614 2ND AVENUE NORTHEAST, BRADENTON, FL 34212**, by U.S. mail and to the Manatee County Code Enforcement Division, this 13th day of August, 2007.

R. B. SHORE
Clerk of Circuit Court
Manatee County, Florida

By: Wendi Jessner
Deputy Clerk



This is to certify that the foregoing is a true and correct copy of the documents on file in my office. Witness my hand and official seal this 11th day of November, 2007.
R.B. Shore
Clerk of Circuit Court
By: Dennis E. Volkman D.E.



**MANATEE COUNTY CODE ENFORCEMENT SPECIAL MAGISTRATE
MANATEE COUNTY, FLORIDA**

**FILED FOR RECORD
R. B. SHORE**

2007 AUG 10 PM 2: 09

Case No. **CE2006080901**

CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

**MANATEE COUNTY, a political subdivision
of the State of Florida,**
Petitioner,

vs.

BREATHE EASY AIR, INC.,
Respondent(s),

CORRECTIVE ORDER IMPOSING FINE

THIS CAUSE came on for public hearing before the Code Enforcement Special Magistrate on July 25, 2007, and the Special Magistrate having heard testimony under oath, received evidence, and heard arguments respective to all appropriate matters, and thereupon issues the Findings of Fact, Conclusions of Law, and Order as follows:

FINDINGS OF FACT

1. That **Breathe Easy Air, Inc.**, hereinafter referred to as Respondent is the owner of record of the subject property.
2. That notice was served on Respondent and no one was present at the hearing.
3. That previous notifications of the violation(s) of the Manatee County Land Development Code **Section 513** were made and served on Respondent(s) by hand delivery.
4. That the property located at **1944 60th Place East, Bradenton, FL, DP#1847140159**, has a violation of Manatee County Land Development Code **Section 513** because **interior renovations were made to the building without obtaining the required Certificate of Occupancy.**
5. That Respondent(s) is in violation of **Section 513** for renovating the interior of a building without obtaining the required Certificate of Occupancy.

CONCLUSIONS OF LAW

1. That Respondent is in violation of Manatee County Land Development Code **Section 513.**

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority granted in Chapter 162, Florida Statutes, and Manatee County Land Development Code, it is hereby ORDERED:

1. THAT the Respondent(s) correct the violation(s) of Manatee County Land Development Code **Section 513.**
2. THAT if this Order is not complied with on or before **October 19, 2007**, it is hereby ordered that Respondent(s) shall pay a minimum fine of **\$250**, plus **\$150*** per day for each and every day any violation(s) described herein continue(s) past **October 19, 2007.**
3. Failure to Comply with this Order within the specified time will result in the recordation of this Order Imposing Fine, which constitutes a lien upon any real or personal property owned by the violators and may be foreclosed, and your property sold to enforce this lien. If such lien is filed, you will be assessed all costs incurred in recording and satisfying this lien.
4. The Code Enforcement Special Magistrate also authorizes the County Attorney or his/her designee to foreclose, collect or settle said lien using any legal or equitable remedies available to collect any liens which remain unpaid.
5. This Order becomes self-executing upon an Affidavit of Non-compliance being filed with the Clerk of Circuit Court Board Records Section, and a hearing shall not be necessary.
6. That pursuant to Section 305.5.7 of the Land Development Code, should (a) violation(s) exist(s) beyond the date set for compliance, the Special Magistrate shall impose a minimum fine of \$65.

Ordered July 25, 2007, and executed this 10th day of August, 2007.
*This Order corrects the daily fine from \$100 to \$150.

ATTEST: R. B. Shore
Clerk of Circuit Court

By: Vicki Jassner
Deputy Clerk



Paul H. Fredericks
Manatee County Code Enforcement
Special Magistrate

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order has been furnished to the Respondent, **BREATHE EASY AIR, INC., 13614 2ND AVENUE NORTHEAST, BRADENTON, FL 34212**, by U.S. mail and to the Manatee County Code Enforcement Division, this 13th day of August, 2007.

R. B. SHORE
Clerk of Circuit Court
Manatee County, Florida

By: Vicki Jassner
Deputy Clerk



STATE OF FLORIDA COUNTY OF MANATEE
This is to certify that the foregoing is a true and correct copy of the documents as file in my office.
Witness my hand and official seal this 13th day of November, 2007.
James E. Hollman D.E.

ATTENTION: It is your responsibility to notify Code Enforcement at 941-748-4501, extension 6909 and satisfactorily demonstrate that the violation(s) has/have ceased. Release of this lien cannot occur until Code Enforcement verifies that the violation(s) no longer exist(s).

GREENE HAMRICK PERREY QUINLAN & SCHERMER, P.A.

ATTORNEYS AT LAW

601 TWELFTH STREET WEST
BRADENTON, FLORIDA 34205
TELEPHONE: (941) 747-1871
FACSIMILE: (941) 747-2991

LISA A. BELL *
PATRICK G. BRYANT
JANELLE L. ESPOSITO *
ROBERT F. GREENE
MICHAEL M. HAMRICK *

- Board Certified Wills, Trusts & Estates Lawyer
- Board Certified Real Estate Lawyer
- * Also admitted in Illinois, Kansas and Missouri
- ▲ Also admitted in Georgia
- ◆ Certified Family Mediator

WEBSITE: www.manateeclegal.com

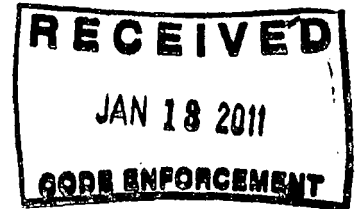
Sender's email address:
rschermer@manateeclegal.com

JAMES E. JOHNSON II
PHILIP E. PERREY *
JOHN V. QUINLAN
KATHY W. SCHERMER *
ROBERT C. SCHERMER *

MAILING ADDRESS:
POST OFFICE BOX 551
BRADENTON, FL 34206

January 6, 2011

Mr. Joe Fenton
Code Enforcement Division Manager
Manatee County Administration Building
1112 Manatee Avenue West
Bradenton, Florida 34205



hand del.
3:08 p.m.

Re: Code Enforcement Liens on Property located at
1944 60th Place East, Bradenton, Florida

Dear Mr. Fenton:

The undersigned represents First Bank, the current owner of the above-referenced property. The undersigned as counsel for First Bank foreclosed this property on behalf of First Bank against the former owner, Breathe Easy Air, Inc., and in that foreclosure, Manatee County was named as a defendant and Manatee County's liens, recorded in O.R. Book 2224, at Page 204, and O.R. Book 2234, at Page 205, Public Records of Manatee County, Florida, were foreclosed. Those liens had been entered in your case No. CE2006080901, a copy of the liens being attached for your convenience ("Lien").

As you can see from the attached Lien, the fine was imposed for renovating the interior of a building without the required building permit. I understand that this violation is still not in compliance and my client First Bank has entered into a contract to sell the property to a corporation that has agreed to correct any violations and bring the property into compliance, whether it is obtaining the proper permit or otherwise.

Mr. Joe Fenton
January 6, 2011
Page Two

On behalf of my client, I would request that the above-referenced Code Enforcement Liens be released and no new liens be imposed until such time as the purchaser has had an opportunity to correct this situation.

Please take this up with the Magistrate at the January 26, 2011 meeting such that it can go before the Board at a meeting in February because my client is anxious to get this sale closed and the property transferred into a responsible party. Thank you for your attention in this respect, and if you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert C. Schermer", with a long horizontal flourish extending to the right.

Robert C. Schermer

RCS:s

enclosure

MANATEE COUNTY CODE ENFORCEMENT SPECIAL MAGISTRATE
MANATEE COUNTY, FLORIDA

FILED FOR RECORD
R. B. SHORE

2011 FEB -1 AM 10: 10

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

Petitioner,
vs.

Case No. CE2006080901

CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

BREATHE EASY AIR, INC.,
Respondent,

ORDER OF REFERRAL TO THE BOARD OF COUNTY COMMISSIONERS

By letter dated October 12, 2006, the Special Magistrate informed the Respondent Breathe Easy Air, Inc., hereinafter referred to as Respondent, of having violations of Sections 512 and 513 of the Manatee County Land Development Code.

The Code Inspector advised the Special Magistrate on July 25, 2007, that the Respondent had neither corrected the violations nor brought the subject of the violations into compliance with the Manatee County Code.

Consequently, by Order dated July 25, 2007, the Special Magistrate assessed a minimum fine of \$250 in addition to a daily fine of \$100 for each violation, for each day the violations were present.

At the hearing on January 26, 2011, the Code Inspector advised the Special Magistrate that the property was foreclosed, certificate of title was turned over to First Bank and the fines were stopped. IT IS HEREBY ORDERED by the Special Magistrate:

1. That as of this date, fines imposed against the Respondent total \$240,800, for which a notice of lien has been recorded in the public record of Manatee County, Florida against Respondent.
2. That said sum represents fines imposed from September 22, 2007, to December 15, 2009 for Section 512.
3. That said sum represents fines imposed from October 20, 2007, to December 15, 2009 for Section 513.
4. That justification exists for this case to be referred to the Manatee County Board of County Commissioners for a fine reduction to \$1,500 with Stipulations: The fine to be paid within 30 days of the closing, the closing to take place 60 days following the action of the Board of County Commissioners and six months to complete the work to bring the violations into compliance.

Ordered January 26, 2011, and executed this 1ST day of February, 2011.

[Signature]
Manatee County Code Enforcement
Special Magistrate



R. B. SHORE
CLERK OF CIRCUIT COURT

By: *[Signature]*
Deputy Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order has been furnished to the Respondent, BREATHE EAST AIR, INC., 13614 2ND AVENUE NORTHEAST, BRADENTON, 34212, by U.S. mail and to the Manatee County Code Enforcement Division, this 1st day of February, 2011.

R. B. SHORE
Clerk of Circuit Court, Manatee County, Florida

By: *[Signature]*
Deputy Clerk