



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: October 3, 2017

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Settlement Agreement for Comins Development

Background: In Accordance With F.S. 70.51, a Settlement Agreement between the City and Comins Development has been reached. A draft was presented to the Council by the City Attorney at the September 19 Council Meeting for review. The City Council suggested modifications and no action was taken at the September 19 meeting. Since that time, the City Attorney has changed and the new attorney, Dan Langley made additional changes that are in line with Council's direction.

Staff Recommendation: Continue to discuss the Agreement to insure that it meets Council approval and answers the concerns of Council.

Suggested Motion: I move to approve the Settlement Agreement between the City and Comins Development and direct the City Clerk to advertise for a public hearing to be held on October 17, 2017.

Alternatives: Do not approve the Settlement Agreement

Fiscal Impact: Undetermined at this time.

Attachments: Revised Settlement Agreement

PROCEEDING PURSUANT TO SECTION 70.51, FLORIDA STATUTES,
IN AND FOR BELLE ISLE, FLORIDA

COMINS DEVELOPMENT I, LLC, a
Florida limited liability company,

Petitioner,

vs. BELLE ISLE, FLORIDA,

File No. _____

Respondent.

_____ /

SETTLEMENT AGREEMENT

COMINS DEVELOPMENT I, LLC, a Florida limited liability company, (hereinafter called "Petitioner"), and the CITY OF BELLE ISLE, FLORIDA, a municipal corporation formed and existing under the laws of the State of Florida (hereinafter called the "City"), hereby enter into this Settlement Agreement and agree to the following facts, terms and conditions:

1. The City Manager shall present this Settlement Agreement to the Belle Isle City Council (the "City Council") for approval on ~~September 19~~October 3, 2017, or as soon thereafter as can be reasonably accomplished. If the City Council approves this Settlement Agreement, it will proceed to schedule and conduct a public hearing to-for consideration for approval of e the Revised PD (as defined herein) which if approved will be a final resolution of the proceeding filed by Petitioner pursuant to Section 70.51, Florida Statutes. If the City Council fails to approve the Settlement Agreement or the Revised PD (as hereafter defined), this proceeding shall continue pursuant to Section 70.51, Florida Statutes, and a hearing will be scheduled before Lewis W. Stone, Esq., the Special Magistrate appointed in this matter.

2. On June 1, 2017, Petitioner filed a Request for Relief under Section 70.51, Florida Statute regarding the City's denial of a Planned Development / Preliminary Concept Plan (collectively, the "Original PD") for the proposed Silver Isles Townhome Project comprised of two parcels owned by Petitioner and a larger parcel owned by 7710 Daetwyler LLC. Without waiving any defense or claim, City in this settlement agreement has treated the three parcels as one (the "Properties").

3. The Properties are located on Daetwyler Drive in the City and have approximately 350 feet of frontage on Lake Conway.

4. Portions of the Properties were formerly used as a mobile home park, a restaurant and a single family home. Three docks and one boat ramp exist on the Properties.

5. The Properties have a Medium Density Future Land Use Map designation that requires a development density of between 5.6 and 10 dwelling units per acre. The Properties are currently zoned R-2, which allows multiple-family dwelling units at that density. The City's Planned Development District also allows multiple-family dwelling units at that density.
6. On April 25, 2017, the City's Planning and Zoning Board recommended approval of the Original PD with specific conditions.
7. On May 2, 2017, the City Council denied the proposed preliminary concept plan and thereby the Original PD, and this proceeding was timely filed within thirty (30) days following the denial.
8. On August 29, 2017, a mediation between the Petitioner and the City was conducted by the Special Magistrate. At the mediation, the Petitioner presented a revised preliminary concept plans/PD district concept plan ("Concept Plan") and conceptual architectural renderings (the "Architectural Concepts") for consideration by the City's representatives at the mediation. Attached hereto as Exhibit "A" and Exhibit "B" respectively. The following terms of this Settlement Agreement were negotiated at the mediation and will be considered for approval by the City Council (collectively sometimes herein the "Revised PD"):
 - A. The Concept Plan is acceptable with the following modifications:
 - (i) Add a note to the Concept Plan establishing the minimum size of the townhome units at 2,000 s.f. and requiring that each unit have a double car garage.
 - (ii) Remove the twelve (12) parallel parking spaces north and south of the pool area and replace them with the maximum number of angled parking spaces (potentially 18-22 spaces) that can be provided using accepted engineering practices without decreasing the minimum square footage of any townhome unit or the total number of townhome units.
 - (iii) The location of buildings shown on the Concept Plan are approved unless they need to be shifted to accommodate the angled parking.
 - (iv) The City shall coordinate the Orange County Fire Department's review and approval of the street layout in the Concept Plan.
 - (v) Depict the location of any dumpsters / recyclers on the Concept Plan and include a note stating they will be screened by a wall and gate.
 - (vi) The two (2) Architectural Concepts attached to this Settlement Agreement as Exhibit "B" shall be part of

the PD approval and the Concept Plan. The Petitioner shall develop the site with buildings that include the elements from the Architectural Concepts for the design of the townhome units.

(vii) The nine (9) townhome units facing the lake shall not exceed a thirty foot (30') height limit; the twenty-one (21) non-lakefront townhome units shall not exceed a thirty-five foot (35') height limit.

(viii) The recreational open space areas located on either side of the center lakefront building shown on the Concept Plan shall include hardscape elements and a landscape planting plan substantially similar to the depiction on Exhibit "C" attached hereto and incorporated herein by reference, which shall be used to mask the first floor of the buildings across the street and also to add trees to visually soften or break up the view of the buildings from the lake. The ultimate type and description of landscaping shall be included in the Development Plan.

(ix) Add a note on the Concept Plan requiring the Properties to be platted at one time in a single plat.

(x) Add a note on the Concept Plan stating that copies of the State Department of Environmental Protection ("DEP") and Orange County permits issued for lakefront clearing shall be provided with the Development Plan submittal.

B. The following conditions shall apply to the dock and fishing/observation piers:

(i) Dock permitting shall occur only after platting and creation of the homeowners' association (the "HOA") for the PD.

(ii) The applicant for any dock or fishing/observation piers shall be the HOA.

(iii) The dock and fishing/observation piers shall be owned by the HOA. The HOA may lease boat slips to individual owners of the townhome units in the PD.

(iv) No boathouses shall be allowed on the dock or on the fishing/observation piers.

(v) No storage lockers shall be located on the dock or the fishing/observation piers.

(vi) No dock or fishing/observation pier shall be located within thirty feet (30') from the residential property to the north or twenty feet (20') from the property to the south.

(vii) No overnight mooring, or other mooring more than 1 hour in during a 24-hour period, shall be allowed on a fishing/observation pier. Drop-off and pick-up of boat passengers from the southern fishing/observation pier is allowed.

(viii) The length and location of the dock and the fishing/observation piers shall be governed by the City Code permitting process; provided, however, that the size of the dock and of the fishing/observation piers

shall comply with the following conditions set forth below that were recommended by the Planning and Zoning Board on April 25, 2017. In the event of a conflict between the City Code and the conditions set forth in this Settlement Agreement, the conditions set forth in the Settlement Agreement shall control.

(ix) The existing boat docks and boat ramp on the Properties shall be removed prior to installation of the proposed 10-slip boat dock and the fishing/observation piers;

(x) The proposed 10-slip boat dock shall not be permitted by the City nor constructed before 25% of the total number of units approved within this PD have been permitted, constructed, and issued a certificate of occupancy;

(xi) The 10-slip boat dock shall be deed restricted to use only by residents/property owners within the PD and shall not be utilized for commercial lease or profit;

(xiii) The location, length and layout and design of the boat dock and fishing/observation piers shall be determined through a separate Belle Isle permitting process in accordance with the Belle Isle boat dock regulations, except that the terminal platform of the fishing/observation piers shall be no larger than ten feet by twenty feet (10' X 20'), the height of the dock and the fishing/observation piers shall be no greater than five feet (5') above the Normal High Water Line ("NHWL"), and the maximum size of the 10-slip boat dock terminal platform shall be 3,600 square feet.

9. The first reading of the Revised PD; with ~~these the aforesaid~~ conditions and the revised Concept Plan, shall be scheduled for hearing before the City Council as soon as reasonably possible following the City Council's approval of this Settlement Agreement and after the Petitioner submitting a complete application package containing all the required documentation and information for consideration of the Revised PD.
10. The Petitioner shall reimburse the City for legal review of all agreements related to this proceeding or the Revised PD, not to exceed \$4,000.00. The City shall send an invoice to the Petitioner for the amount owed and include reasonable detail of the legal work performed for which reimbursement is requested.
11. The Petitioner and the City shall each pay one-half (1/2) of an invoice to be sent by the Special Magistrate for his services within twenty (20) days following receipt of the invoice.
12. The Petitioner acknowledges and agrees that the City, through the Police Department or the Code Enforcement Officer, shall have authority to enter the properties at any time, present or in the future, to enforce the terms and conditions set forth in this Settlement Agreement and Revised PD once approved

by the City Council.

13. The Petitioner acknowledges and agrees that the City cannot contractually agree to rezone the Property and that this Settlement Agreement does not do so and that all rezonings (including the Revised PD contemplated herein) are subject to an evaluation after a properly noticed and held public hearing to determine whether the applicable approval criteria set forth in the City's Comprehensive Plan and land development regulations have been satisfied. The City Council's approval of this Settlement Agreement shall not obligate the City or the City Council to approve the Revised PD contemplated herein. If the Revised PD is not approved by the City Council, this Settlement Agreement shall be null and void and the Section 70.51, Fla. Stat. proceeding shall proceed to hearing. Nothing in this Settlement Agreement shall: (i) constitute a waiver of or be construed as a restriction on or release of the City's police power and zoning authority and regulations, or (2) constitute or be deemed to require the City to issue any development order, development permit or any legislative, quasi-judicial or administrative approval or particular decision.
14. If the City Commission approves the Revised PD contemplated herein or any version of the Revised PD for which Petitioner consents as acceptable, Petitioner agrees that it thereby waives and releases the City and its officials, officers and employees from any and all petitions for writ of certiorari, Bert J. Harris Act claims, § 70.51, Florida Statutes proceedings, appeals, damages, causes of action, claims and lawsuits arising out or relating to the City Council's denial of the Original PD.
15. This Settlement Agreement and the City Council's consideration of this Settlement Agreement and the Revised PD constitutes a good faith attempt to resolve a disputed matter in a § 70.51, Fla. Stat. proceeding. If this Settlement Agreement and the Revised PD are not approved by the City Council, then this Settlement Agreement and the City Council meeting to consider this Settlement Agreement and hearing to consider the Revised PD and any record containing or referring to this Settlement Agreement, the Revised PD and Concept Plan and the related settlement discussions shall not be used by either party as evidence or be admissible in any judicial or administrative proceeding for any purpose. If the City Council rejects this Settlement Agreement or denies the Revised, Petitioner acknowledges and agrees that such decision by the City Council constitutes a rejection of a settlement proposal and is not reviewable or appealable (via petition for writ of certiorari or otherwise) to a court of law through an action brought by Petitioner.

AGREED TO AS OF THE LATEST DATE INDICTED BELOW.

PETITIONER

Comins Development I, LLC, a Florida

limited liability company

By: Its:

Dated:

[Signatures Continue on Following Page] 6

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CITY OF BELLE ISLE, FLORIDA

Lydia Pisano, Mayor This _____ day of _____, 2017. ATTEST:

Clerk

Approved as to form and legality:

Thomas P. Callan, Assistant City Attorney

Exhibit "A"
(Concept Plan)

Exhibit "B"
("Architectural Concepts")



Silver Isles Townhomes
 Belle Isle, Orange County, Florida

Elevation - West Side
 3-3-3 Units Buildings - Lake View - Elevation A



Lake View Elevation

Building 3

Building 2

Building 1



Lake View Elevation Building 3

Lake View Elevation Building 2

Lake View Elevation Building 1

Silver Isles Townhomes
 844 sq. ft., Orange County, Florida

Elevation - West Side
 3-3 Units Buildings - Lake View - Elevation 3

Exhibit "C"

(Hardscape and Landscape Concepts for Lakefront Open Spaces Between Buildings)