



# TOWN OF HIGHLAND BEACH

## AGENDA MEMORANDUM

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**MEETING TYPE:** Town Commission Meeting

**MEETING DATE** *July 18, 2023*

**SUBMITTED BY:** Leonard G. Rubin, Town Attorney

**SUBJECT:** Request to Amend Settlement Agreement with Highland Beach Real Estate Holdings, Inc. (Milani – Eastern Parcel 10E **Non-Park Property**)

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### SUMMARY:

#### Background:

At its May 16, 2023 meeting, the Town Commission considered a request by Lucia Milani (“Milani”) for a ten-year extension of a portion of the 1995 Settlement Agreement between the Town and Highlands Beach Real Estate Holdings, Inc. (“Agreement”). The Agreement stipulates the right to, and extent of, development of three parcels of land at the southern end of the Town (Lots 9W and 10W on the western side of A1A and Lot 10E on the eastern side of A1A) (“Lots”). Under the terms of the Agreement, the Lots must be developed by April 21, 2025 or the Agreement terminates. Milani requested a ten-year extension of the deadline for Lot 10E, which is currently improved with a single-family home she occupies during the winter months.

In response to this request, the Commission raised various concerns regarding the procedure by which the extension could be granted, the standards for consideration of the request, and the ramifications of granting the requested modification.

#### **A. The Town has the authority to approve a modification of the Agreement without Circuit Court approval.**

The terms of the Agreement expressly contemplate that the parties may amend, supplement, and modify the Settlement Agreement by written instrument executed by both parties. In this case, the Settlement Agreement was not incorporated into a judgment entered by the circuit court; rather, the circuit court dismissed the case with prejudice based on the execution of the Agreement. Under Florida law, the parties may modify the terms of a settlement agreement not expressly incorporated into a judgment. The circuit court retains jurisdiction solely for the purposes of the enforcement of the terms of the Agreement.

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**B. If the Commission wished to entertain Milani's request, it should follow the same procedures applicable to the Commission's initial approval of the Agreement.**

As indicated above, any modification must be in the form of a written instrument executed by both parties. While neither the Agreement itself nor the provisions of the Town Code address the modification of a previously executed settlement agreement, this office strongly recommends that the Town Commission adhere to the procedures set forth in Section 30-10 of the Town Code. Section 30-10 applies to the settlement of any pending litigation arising out of the interpretation or application of Chapter 30 (Zoning Code) and requires consideration of the following criteria:

- A determination that the proposed settlement agreement is in the public interest and in the best interest of the residents and citizens of the Town (and approval of a resolution stating same); and
- A determination that the proposed settlement is consistent with the Land Use Element of the Town's Comprehensive Plan or that adequate provision to amend the Comprehensive Plan is included within the agreement.

Section 30-10 also requires the Town Commission to conduct a duly advertised public hearing on the proposed settlement agreement, and that the agreement include the nature of the proposed development and the specific differences between the settlement plan and any existing town development standards affected by the settlement agreement.

While there is an argument that the Commission could modify the Agreement without going through this process, such a procedure would undermine the purpose and intent of Section 30-10, i.e., to ensure that settlement is in the public interest and that members of the public are notified of the terms of the settlement.

**C. If the Commission wished to entertain Milani's request, it should require some additional benefit to the Town.**

The procedures set forth above require that any settlement agreement be in public interest, as well as in the best interest of the residents and citizens of the Town. It is unclear how the Town's unilateral extension of the deadline for Lot 10E is in the public interest without Milani providing some type of additional consideration in return. By way of example, the Commission could require the payment of impact fees waived in the Agreement, narrow the permitted uses of the property, or modify the setback requirements.

**D. The approval of an extension of the Agreement generally would not constitute "spot zoning."**

Spot zoning is generally defined as the piecemeal rezoning of small parcels of land to a greater density for the benefit of a particular property owner, leading to disharmony with the surrounding area. So long as the Commission follows its public notice and hearing requirements and any decision to extend the terms of the Agreement is not pre-determined before the notice and hearing process, it is unlikely that a court will consider the requested extension spot zoning. Courts recognize that local governments must have the ability to settle litigation, and the Commission already approved the enhanced entitlements for the Lots when

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it approved the Agreement back in 1995. Milani is only seeking an extension of the term of the Agreement as it applies to one of the Lots, not additional development entitlements.

**E. The Commission's approval of any modification of the Agreement is subject to legal challenge.**

Section 30-10(e) of the Town Code grants any person substantially affected by a settlement agreement approved by the Town Commission to seek review in the circuit court. Prior to seeking such review, the affected person must raise his or her objections at the public hearing before the Town Commission to give the Commission an opportunity to consider the nature of the objection. Based on the foregoing, if the Commission "reopens" the Agreement, substantially affected persons (most likely adjacent property owners) have a renewed ability to object to the terms of the Agreement.

**Conclusion:**

In conclusion, the Town Commission may (but is not required to) entertain Milani's request for an extension of the Settlement Agreement as it applies to Lot 10E. If the Commission wishes to consider the request, it should follow the same procedures it followed when approving the Agreement back in 1995. While the grant of extension likely would not be considered spot zoning, the Commission would need to determine that the extension serves the public interest and is in the best interest of the residents of the Town. The Town should also require some form of additional consideration. Finally, the approval of any modification of the Agreement would reopen its terms to legal challenge by substantially affected persons.

Should you have any additional questions, please do not hesitate to contact me.

It is also important to note that Ms. Milani is also seeking an amendment to increase the building height on Lot 9W and Lot 10W that would allow the proposed building to be 5 to 6 feet higher. This amendment will require to follow the same process as outlined above. It would also require a finding of public benefit, and amendment to the existing settlement agreement and setting a public hearing.

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**FISCAL IMPACT:**

N/A

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**ATTACHMENTS:**

Letter from Ms. Lucia Milani dated April 27, 2023 related to the 10 year extension (includes *Resolution No. 662 and Settlement Agreement*)

Aerial Maps

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**RECOMMENDATION:**

Commission discussion.

