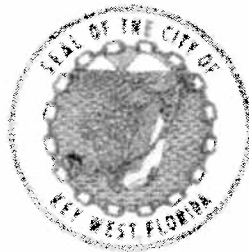


Executive Summary



To: James K. Scholl, City Manager

From: Larry R. Erskine, Chief Assistant City Attorney

Date: July 19, 2010

Subject: Approval of Settlement Agreement in Bert Harris Act claim
13 Hilton Haven Drive/William Grosscup

Action Statement:

This is a request for the City Manager and Commission to consider and approve the attached Settlement Agreement in the matter referenced above.

Background:

In April of 2005, the improvements located on William R. Grosscup's property at 13 Hilton Haven Drive were destroyed by fire. City records, as well as aerial photographs, indicate that a floating home and a pile-supported, two-story structure existed on the property at the time of the fire. In July of 2005, the Florida Department of Environmental Protection (DEP) approved the replacement of the pilings located on the bay bottom adjacent to the property. Sometime prior to February of 2006, Mr. Grosscup began construction of a single family dwelling approximately 3,200 square feet in size on concrete support pilings located partially over the bay bottom. On February 8, 2006, the City's Code Compliance Department issued a stop work order based on Mr. Grosscup's failure to obtain a building permit from the City.

In March of 2006, Mr. Grosscup applied to DEP for a permit to construct the dwelling which was the subject of the stop work order on pilings located partially over the bay bottom. The Florida Department of Community Affairs (DCA) objected to the permit, which DEP later denied. In November of 2006, Mr. Grosscup provided notice to DEP and DCA of his intention to file a claim pursuant to Section 70.001, Florida Statutes, more commonly known as the Bert Harris Act. Mr. Grosscup alleged that the actions of DEP and DCA caused an inordinate burden to him. At that time, the City was not made a party to the claim. The provisions contained in the Bert Harris Act require government entities to make good faith settlement offers in response to claims. DCA offered a settlement which called for Mr. Grosscup to rebuild the original dock structure with a second story facility used exclusively for storage and to allow the replacement of the floating home, both in the original footprint. In its response, DEP indicated that it needed additional information in order to properly analyze the proposed project. On May 22, 2007, Mr. Grosscup rejected the settlement proposed by DCA and DEP, and filed suit in circuit court. The City was not a party to the litigation at that time.

In April of 2008, Mr. Grosscup presented the City Planner a proposal to construct the dwelling which was the subject of the stop work order. On April 16, 2008, the City Planner provided Mr. Grosscup with a memorandum outlining the City Planning Department's analysis of the proposed development which outlined the steps necessary to permit the structure which was the subject of the stop work

order. That same day, Mr. Grosscup requested to move forward as outlined in the memorandum. On May 20, 2008, the City Commission passed Resolution No. 08-157, granting permission to initiate a development agreement for the proposed project. However, on May 28, 2008, Mr. Grosscup forwarded the City Planner an email objecting to a number of the issues discussed in her memorandum. The City Planner responded to that email, which Mr. Grosscup attempted to appeal to the City Commission as an administrative interpretation. It was the position of City staff that the City Planner's response was not appealable. However, Mr. Grosscup obtained an order from the Circuit Court directing the City Commission to consider his appeal of the City Planner's determination. After a public hearing on the matter, the Commission upheld the City Planner's interpretation.

On October 24, 2008, Mr. Grosscup provided the City his notice of intention to file a claim pursuant to the Bert Harris Act. In his claim, Mr. Grosscup alleged that the City's failure to recognize his build-back rights constituted a denial of his vested rights, a denial of his right to due process, and also caused an inordinate burden to him and his property. The Bert Harris Act defines "inordinate burden" or "inordinately burdened" as a governmental action which "has directly restricted or limited the use of the real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large."

Pursuant to the provisions of the Bert Harris Act, after receipt of the notice of Mr. Grosscup's claim, the Commission approved a settlement offer which called for Mr. Grosscup to replace the preexisting pilings as well as the floating structure. The offer also called for him to replace the preexisting storage structure without expansion.

On May 28, 2009, Mr. Grosscup rejected the City's settlement offer and filed his circuit court action against the City. Thereafter, Mr. Grosscup's lawsuit against DCA and DEP was consolidated with his cause of action against the City. In addition, earlier this year, Mr. Grosscup filed suit in federal court against, DCA, DEP, the City, and the Army Corp of Engineers based on the same allegations present in the circuit court action.

From the beginning, the parties have acknowledged that Mr. Grosscup has the right to build back the improvements which existed prior to the 2005 fire. However, DCA, DEP, and the City did not initially agree with Mr. Grosscup's position regarding the size of the demolished storage structure. Mr. Grosscup's initial offer to settle the lawsuits called for him to rebuild a storage structure which DCA, DEP, and the City believed to be larger than the original structure. Further, the proposed structure was to be located almost entirely over water. However, as the litigation progressed, Mr. Grosscup reduced the size of the proposed storage structure several times. DCA, DEP, and City staff believe that the storage structure depicted in Mr. Grosscup's last revision is approximately the same size as the original structure.

The proposed settlement agreement provides that Mr. Grosscup may construct a pile supported concrete deck structure with a total footprint not to exceed 1250 square feet with a non-habitable storage enclosure on the deck with a footprint not to exceed 650 square feet. In addition, he may rebuild his dock and replace the houseboat which previously existed. The agreement calls for Mr.

Grosscup to execute a deed restriction in perpetuity in favor of the City, preventing use of the storage space for living, sleeping, or cooking. Further, he would be required to dismiss with prejudice his state and federal lawsuits against DCA, DEP, and the City, with each party liable for its costs and attorneys' fees. DCA and DEP have agreed to the proposed settlement.

Recommendation:

Approve the attached Settlement Agreement.