



MINUTES

Friday, June 20, 2014

**FORT MYERS BEACH TOWN COUNCIL
SPECIAL MEETING
TOWN HALL – COUNCIL CHAMBERS
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931**

I. CALL TO ORDER

Mayor Cereceda called to order the June 20, 2014 Special Meeting of the Town Council at 11:33 a.m. Present along with Mayor Cereceda: Vice Mayor Andre and Council Members Hosafros, Mandel, and Stockton. Also Present: Town Manager Stilwell, Town Attorney Rooney, Special Counsel Ebelini, and Town Clerk Mayher.

II. Settlement Agreement in *Orlandini vs. the Town of Fort Myers Beach*, Lee County Circuit Court Case No. 14-CA-000148 and Case No. 14-CA-000319.

Mayor Cereceda reported the Special Meeting met the notice of hearing requirements for a Special Meeting of Town Council and the purpose of the Special Meeting was to discuss the Settlement Agreement in *Orlandini vs. the Town of Fort Myers Beach*, Lee County Circuit Court Cases No. 14-CA-000148 and No. 14-CA-000319.

Town Attorney Rooney expounded that the Settlement Agreement and General Release in the aforementioned court cases was now being presented to Council for action. He noted that the Agreement reflected the Council's unanimous counteroffer terms discussed at the May 29th Executive Session in response to the initial terms reached between the Plaintiffs and the Town Manager. He recommended that, if Council approved the Agreement today, they should:

- Authorize the Mayor or Vice Mayor to sign the document after the Town received the final signature or notice that that particular Plaintiff had dismissed with prejudice any claims against the Town;

- One minor clarification on the plans was a reference between two sections of the plans and to revise that in a Supplemental Plan as Exhibit "A" which Mr. Orlandini had agreed to do so. [Profile of the deck to illustrate that it was vacant beneath the balcony.]

Public Comment opened.

Tracey Gore, resident, questioned the basis for allowing the owner of the residence at 301 Palermo Circle to have many non-conforming items on the subject property and to pay the Plaintiff \$250,000. She offered her opinion of the proposed Settlement Agreement and General Release and on the subject structure and accessory uses at 301 Palermo Circle.

Public Comment closed.

Mayor Cereceda reported she spoke with many of the Palermo Circle residents yesterday and described her hope for a positive resolution and closure of the matter.

MOTION: Council Member Mandel moved to approve the proposed Settlement Agreement and General Release with the amendments stated by Town Attorney Rooney; second by Council Member Hosafros.

Council Member Stockton discussed the following aspects of the proposed Settlement Agreement and General Release:

- The name "LYLE L. ~~KLNE~~" should be corrected to "LYLE L. KLINE" in the subject document.
- Why was Carl and Kathleen Gallo included in the Settlement Agreement – when the cases were originally filed they were noted as Plaintiffs and even though they do not currently own the property there was a potential for a claim and they must release the claim.
- Expressed her dissatisfaction with the scheduling of today's Special Meeting; however, Mayor Cereceda discussed scheduling and explained the importance of having all five Council Members present for this important matter.
- Discussed the use of the word 'may' versus 'can' in "...no accessory structure may exceed the height of the principal structure".
- Discussed the amount of the proposed settlement funds.

Vice Mayor Andre discussed his views on the amount of the proposed settlement funds.

Discussion ensued regarding the amount of the proposed settlement funds and how to prevent similar problems in the future.

Council Member Stockton questioned sections of the proposed Settlement Agreement [301 Palermo Circle] as it pertained to:

- #7b, Page 3 – Existing deck: Attorney Ebelini noted it was an existing deck and there was no pool at this time and that the plans indicated what would be removed; discussion was held regarding what accessory structures would be removed.

- #16, Page 5 – Amendment: Town Attorney Rooney explained if the Council made changes today to the proposed Agreement the Town would be sending a counter-offer back to the Plaintiff and he also discussed waivers or amendments.

Council Member Hosafros discussed her legal experience as it pertained to settlement funds and future attorney fees. She noted #21 in the proposed Agreement which was the Non-Disparagement Clause.

Mayor Cereceda talked about the subject balcony at 301 Palermo Circle as it pertained to the view corridor from the neighboring property. She explained the motion was to approve the proposed Settlement Agreement with the profile illustration.

Town Attorney Rooney recommended that if Council approved the Agreement they should include:

- Authorize the Mayor or Vice Mayor to sign the document after the Town received the final signature or notice that that particular Plaintiff [Gallo] had dismissed with prejudice any claims against the Town;
- One minor clarification on the plans was a referenced between two sections of the plans and to revise that in a Supplemental Plan as Exhibit “A” which Mr. Orlandini had agreed to do so. [Profile of the deck to illustrate that it is vacant beneath the balcony.]

VOTE: Motion approved; 4-1 (Council Member Stockton dissenting).

Mayor Cereceda reported that the Local Planning Agency and Planning staff would be working during the summer to clarify the Town’s existing codes.

III. ADJOURNMENT

Mayor Cereceda adjourned the meeting at 11:55 a.m.

Adopted 8-18-14 With/Without changes. Motion by Cesar Mandel

Vote: 5-0


Michelle D. Mayher, Town Clerk

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