



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

MEMORANDUM

TO: Honorable Mayor and Town Council of the Town of Miami Lakes

FROM: Matthew Mandel, Esq., Matthew Ramenda, Esq., and Haydee Sera, Esq.

DATE: October 18, 2017

RE: Proposed settlement of *F71-1, LLC and F69-1, LLC v. Town of Miami Lakes* (Case No.: 2016-015279-CA-01) (the "Breach of Contract Lawsuit") and the following lawsuits (the "Public Records Lawsuits"):
F71-1, LLC v. Ceasar Mestre (Case No.: 2017-006866-CA-01);
F71-1, LLC v. Manny Cid (Case No.: 2017-006887-CA-01);
F71-1, LLC v. Tim Daubert (Case No.: 2017-006885-CA-01);
F71-1, LLC v. Tony Lama (Case No.: 2017-006891-CA-01);
F71-1, LLC v. Frank Mingo (Case No.: 2017-006892-CA-01); and
F71-1, LLC v. Nelson Rodriguez (Case No.: 2017-006900-CA-01)

Recommendation:

It is recommended that the Town of Miami Lakes (the "Town") Council adopt a Resolution approving and ratifying a Settlement Agreement and Release among the Town, F71-1, LLC and F69-1, LLC ("F71-1, LLC and F69-1, LLC"), Jose M. Herrera, Jose-Trelles Herrera, Lennar Homes LLC, and Jose M. Herrera, P.A.

Background:

On March 28, 2011, the Town Council adopted Resolution No. 11-883, which approved a Chapter 163, Florida Statutes, Development Agreement (the "Development Agreement") concerning the future development of certain Property more particularly defined therein as "Parcel A," "Parcel B," and "Parcel C," which Property is generally located at the northeast and northwest corners of NW 154th Street and NW 87th Avenue.

Pursuant to Sections 9 and 10 of the Development Agreement, the first developer (“First Developer”) of any of the three parcels identified in the Development Agreement is required to complete the following roadway infrastructure improvements (“Roadway Improvements”):

1. construction of an additional southbound left-turn lane at NW 82nd Avenue and NW 154th Street;
2. construction of an exclusive westbound right-turn lane at NW 82nd Avenue and NW 154th Street;
3. construction of an exclusive eastbound right-turn lane at NW 82nd Avenue and NW 154th Street;
4. construction of an additional eastbound through lane on NW 154th Street from NW 79th Court to NW 77th Court;
5. construction of an additional southbound left-turn lane at NW 154th Street and NW 79th Avenue; and,
6. construction of an exclusive northbound right-turn lane at NW 138th Street and NW 87th Avenue.
7. completion of construction of NW 154th Street to 60 feet west of NW 89th Avenue prior to issuance of the first building permit, and
8. completion of landscaping of NW 87th Avenue adjacent to its property (including medians).

Parcel A was acquired by Lennar Homes LLC (“Lennar”) who became the “First Developer” under the Development Agreement.

On June 7, 2016, the Town Council, pursuant to Resolution 15-1336 and Ordinance 16-192, adopted a Resolution confirming that Lennar could satisfy the Town’s transportation concurrency requirements for the residential development of the Property by paying the applicable mobility fee. Pursuant to Resolution 15-1336 and Ordinance 16-192, the First Developer and the Town have agreed to dispense with the required construction of Item Nos. 1 through 5 of the Roadway Improvements in exchange for the First Developer paying a mobility fee. Item No. 6 of the Roadway Improvements is not within the jurisdiction of the Town. Lennar has agreed to perform and is in the process of completing Item No. 7 of the Roadway Improvements and Miami-Dade County has agreed to perform and is in the process of completing Item No. 8 of the Roadway Improvements.

On June 23, 2016, F71-1, LLC and F69-1, LLC filed a lawsuit against the Town alleging breach of the Development Agreement. The lawsuit is pending in Miami-Dade Circuit Court as *F71-1, LLC and F69-1, LLC v. Town of Miami Lakes* (Case No.: 2016-015279-CA-01) (the “Breach of Contract Lawsuit”).

On March 22, 2017, F71-1, LLC filed six separate lawsuits against Town Councilmembers alleging violations of Chapter 119, Florida Statutes (Florida’s Public Records Act). The lawsuits are pending in Miami-Dade Circuit Court as follows: *F71-1, LLC v. Ceasar Mestre* (Case No.: 2017-006866-CA-01); *F71-1, LLC v. Manny Cid* (Case No.: 2017-006887-CA-01); *F71-1, LLC v. Tim Daubert* (Case No.: 2017-006885-CA-01); *F71-1, LLC v. Tony Lama* (Case No.: 2017-006891-CA-01); *F71-1, LLC v. Frank Mingo* (Case No.: 2017-006892-CA-01); and *F71-1, LLC v. Nelson Rodriguez* (Case No.: 2017-006900-CA-01) (collectively, the “Public Records Lawsuits”). F71-1, LLC later amended the Public Records Lawsuits to include the Town as a defendant.

Over the last several months, the Town, F71-1, LLC, and F69-1, LLC have been involved in settlement negotiations to resolve the Breach of Contract Lawsuit and the Public Records Lawsuits. At the July 25, 2017 Town Council meeting, the Town Council adopted Resolution No. 17-1467 approving and ratifying the terms and conditions of a settlement agreement in the Breach of Contract Lawsuit and the Public Records Lawsuits. Although the Town Council approved the settlement agreement, it was not executed by the parties who felt further, substantive revisions should be made to the settlement agreement.

As such, since the July 25, 2017 meeting, the parties have conducted further settlement negotiations and have revised the settlement agreement, which is attached to the proposed Resolution as Exhibit “A” (the “Settlement Agreement”). The substantive changes to the revised Settlement Agreement are as follows:

1. The parties have agreed to modify the Development Agreement to reflect the changes contemplated in the Settlement Agreement (i.e., to reflect and confirm the actions taken by the Town and/or the First Developer with respect to the Roadway Improvements as described in Resolution No. 16-1383 and the Settlement Agreement).
2. The parties have agreed that the amendments and/or modifications of the Development Agreement will be considered for approval at two public hearings pursuant to Section 163.3225, Florida Statutes. The hearings will take place within forty-five days of the execution of the Settlement Agreement, if approved by the Town Council.
3. The parties have agreed that the Town will pay or cause F71-1, LLC and F69-1, LLC to be paid \$86,575.94 in full settlement of the Breach of Contract Lawsuit and the Public Records Lawsuits.
4. The parties have agreed that the Settlement Agreement must also be agreed to by Lennar Homes LLC, as well as Jose M. Herrera, P.A., Jose M. Herrera, individually, and Jose-Trelles Herrera, individually.

The proposed Resolution and revised Settlement Agreement are attached for the Town Council’s consideration at the October 18, 2017 Town Council Special Call Meeting.

Attachments:

1. Resolution
2. Resolution - Exhibit A: Settlement Agreement and Release