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2015 APR 17 PM 4:08

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April 17, 2015

Mayor John P. "Jack" Seiler
Vice Mayor Robert L. McKinzie
Commissioner Bruce G. Roberts
Commissioner Dean J. Trantalis
Commissioner Romney Rogers

Re: Hearing on Compliance Determination for Resolution 14-44 Relating Property at 704 NE
20th Avenue

Dear Mayor and Commissioners:

I am co-counsel for Shawn and Jennifer Benyo, the owners of the above referenced property. Please accept this letter as the owners' formal objection to the hearing scheduled for April 21, 2015 and to the entire process referenced in the agenda item as a "Compliance Determination". We request that this letter be made part of the record before the City Commission in this case.

The "Compliance Determination" hearing is inappropriate and any determination made by the Commission as a result of this hearing would be a violation of Mr. and Mrs. Benyo's due process rights. There are no provisions in the City code which would allow for a "compliance determination" by the City Commission in this case and there is certainly no foundation in the City code ("Code") that would allow for the recession of the waiver granted to the owners by the adoption of Resolution 14-44. The Code has many examples of various permits and licenses that can be revoked by the City Commission, City Manager and in some cases the City Engineer but the waiver granted by the City Commission to Mr. and Mrs. Benyo does not fall within any of those examples.

The Code does provide a mechanism for addressing code violations through the code enforcement process. This process ensures that proper charging documents are filed against a suspected violator who then has legal rights to respond and an opportunity for a complete and fair hearing under legally established standards. Alleged violations of conditions of any approval granted under the ULDR are prosecuted in the same manner as any other code violation. This is the process that should have been followed in this case if the City felt that conditions of approval have been violated.

Staff Memorandum of March 17, 2014

The proper code enforcement process was initially followed in this case as outlined in detail in the March 17, 2015 staff memorandum to the City Commission that was from the City Manager but authored by the

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Code Compliance Manager. The memo goes into great detail about the code enforcement review of the property and the status of all of the permits and conditions. Code Enforcement opened two code enforcement cases and Mr. and Mrs. Benyo opened the property to a full team of code inspectors on January 14, 2015. The results of those inspections are detailed in the memorandum. The memorandum also details a meeting the Code Compliance Officer had with Mr. Benyo and the boat captain on January 16, 2015. It appears from the memorandum that the code enforcement division has done and continues to do exactly what it is supposed to do when complaints are received.

The staff memorandum is also evidence of how unusual this process is. The City's Code Compliance Manager goes into great detail regarding the department's actions and findings but it is not the City that is pursuing and prosecuting this matter. In fact the City specifically has not found sufficient evidence to pursue any actions at this time. The City, it appears, has delegated its prosecutorial authority to a complaining neighbor and his attorney. The City is providing a platform for a complaining neighbor to demand the rescission of an approval granted under the ULDR and to prosecute that demand before the City Commission. This is highly unusual to say the least and it sets a dangerous precedence for future neighborhood grievances.

The March 4, 2014 Hearing and Adoption of Resolution 14-44

Attached are the minutes of the March 4, 2014 waiver hearing obtained from the City's webpage. I have sent the actual video recording from the City's webpage to the City Attorney and I will forward that link to each of you. We are requesting that the full record of the March 4, 2014 hearing be made part of the record for the April 21, 2015 hearing.

At the March 4, 2014 hearing, the issue of how to treat violations of the conditions was fully discussed. A summary form of the discussion can be found starting on the second page of the attachment (page 18 of the full minutes). The actual discussion as evidenced by the video recording goes into much greater detail. At the beginning of the discussion, Mr. Dunckel, sitting as the City Attorney, was asked if the waiver could be rescinded if the conditions were violated. Mr. Dunckel responded that the right of rescission was not included in the Resolution but could be inserted if that was the Commission's wish. Mr. Dunckel informed the Commission that any violation of a condition of an approval granted under the ULDR would be a violation of the ULDR and prosecuted as a code enforcement violation. There was a complete discussion on whether the right to rescind the waiver should be included in the resolution with the determination finally being made that, for all of the reasons discussed by the Commission, it was not good policy to include the right of rescission in the resolution. The Commission felt that it was more appropriate to rely on the code enforcement process to enforce the conditions.

At the end of the discussion a motion was made to approve the waiver subject to the conditions suggested by the owner's attorney and the City Manager. The Mayor interjected that the approval would be, "...as Mr. Dunckel made clear...", subject to code enforcement for any violations. The exact language can be heard on the recording. The maker of the motion was heard to concur by saying "right" and then the vote was taken. The written resolution does not contain the last stipulation that violations would be subject to code enforcement. Accordingly, please accept this letter as a formal request of the City to correct the written resolution to properly reflect the code enforcement stipulation.

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This letter will be hand delivered to the Commission and also sent by email with the link from the City webpage containing the video recording of the March 4, 2014 meeting so that each Commissioner may review the exact contents of the discussion without edits or summaries.

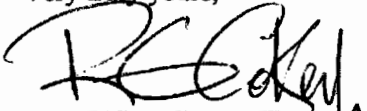
Equitable Estoppel in Reliance Upon Waiver Approval

Mr. and Mrs. Benyo have spent a great deal of money in reliance upon the City's approval of the waiver application including the part of the approval where it was confirmed that the waiver could not be rescinded. Mr. Benyo is preparing a list of the improvements made to the property and the costs of those improvements. The City is precluded under the doctrine of equitable estoppel to rescind the waiver and to modify its interpretation of the Code from the interpretation acknowledged by the Commission at the March 4, 2015 hearing relating to the code enforcement process as the remedy for any violation of the conditions.

If you follow the logic of argument for the rescission of this waiver, you would have to apply that logic to all approvals granted under the ULDR except for those approvals which specifically provide for rescission. A special exception or site plan approved subject to conditions would be subject to rescission under this logic. Could the approval be rescinded after the site work was completed, the pad was installed, the first floor built etc...? There is no difference in concept between the Benyo waiver and other approvals granted under the ULDR. This is one of the reasons why this process is flawed and must fail from a legal perspective.

As stated above, please include this letter along with the entire record of the proceedings before the Commission on March 4, 2014 as part of the record for the April 21, 2015 hearing. Thank you for your review and consideration of these matters.

Very truly yours,


RICHARD G. COKER, JR.
For the Firm

cc: Mr. Lee Feldman, City Manager
Ms. Cynthia Everett, Esquire
City Clerk's Office

Robert Dean (Commissioner Trantalis)
Jimmie Harrison (Commissioner Trantalis)
Jack Newton (Commissioner Trantalis)

Sustainability Advisory Board

Jim Wood (Commissioner Trantalis)

Commissioner DuBose introduced the resolution, which was read by title only.

ADOPTED

Aye: 5 - Commissioner Rogers, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Mayor Seiler

PUBLIC HEARINGS

PH-1 14-0313 QUASI-JUDICIAL - RESOLUTION - WAIVER OF LIMITATIONS OF UNIFIED LAND DEVELOPMENT REGULATIONS, SECTION 47-19.3.D for construction of nine triple-pile clusters extending a maximum of 125 feet from property line into Middle River - 704 NE 20 Avenue

Applicant: Shawn and Jennifer Benyo

All individuals wishing to speak on this matter were sworn in.

Members of the Commission announced with whom they had spoken and/or site visits made concerning this matter.

Mayor Seiler reviewed the procedure for the public hearing and opened the floor for public comment.

Attorney Tyler Chappell of The Chappell Group, representing the Applicant, advised that the Applicant went before the Marine Advisory Board in December 2013 and received unanimous approval for a 166-foot mooring pile cluster. At the request of the Commission, the Applicant returned to the Marine Advisory Board and received unanimous approval for a reduced 125-foot cluster. The item was deferred from the Commission's February 18 meeting because there was a need to clarify the minutes of the two board meetings. The residence will be occupied by a tenant or renter who will be the owner or owner's representative of the vessels moored behind the residence. All activity of the house must conform with the neighborhood as outlined in the City's Code of Ordinances. Parking will be confined to the property, not on the street or in the right-of-way. The Applicant has received 10 letters of support, including letters from adjacent property owners to the north and south and to the west across NE 20 Avenue. Additionally, he met with the City Manager and confirmed that the owner will ensure that the tenants conform with the code. Some revisions were made to provisions outlined in correspondence with Commissioner Trantalis to ensure that the house and activity would conform with Chapter 9 of the Code of Ordinances. Additionally all work that would be performed on the vessels at a shipyard would not be allowed.

In response to the City Manager, Chappell said that the Applicant did not agree to limiting occupancy to four adults. With it being a three-bedroom home, such a limitation would not be in conformance with the Code of Ordinances or the housing code. It is understood there would not be numerous individuals residing at the property. Discussion ensued as to an occupancy limitation. The City Manager pointed out that the housing code would allow for an occupancy of 12 which he felt is excessive. Mayor Seiler wanted to limit occupancy to no more than six unrelated adults, which would allow two individuals per bedroom. There also are six parking spaces. The Applicant agreed to that condition.

Charles King, 105 North Victoria Park Road, said he is a real estate agent and lives in this neighborhood. He opposes the item. He discussed property values in this neighborhood. He would like the Commission to change the zoning and develop a plan to improve this area so that this does not continue. He questioned who decided that there are six parking spaces at this residence. This is a derelict home. No one would think this is a waterfront property, but because there is space for a massive boat, it has value. He questioned whether the two boats to be docked at this property would be owned by the same individual. He advocated for developing a plan for this area and changing the zoning to townhouses, for example.

There being no other individuals wishing to speak on this matter, a **motion** was made by Commissioner Trantalis and seconded by Vice-Mayor Roberts to close the public hearing. Roll call showed: AYES: Commissioner Rogers, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Mayor Seiler. NAYS: None.

Commissioner Trantalis raised the issue of enforcement. The City Manager said he is unsure about an enforcement mechanism. If staff believes there to be more than six adults in the house, a search warrant must be obtained, which would be a cumbersome task. Assistant City Attorney Bob Dunckel said this waiver is being granted under the Unified Land Development Regulations (ULDR) and therefore, attached conditions, if violated, can be prosecuted before the Code Enforcement Board. Commissioner Trantalis said it appears the City has a weakened stance in terms of enforcement. The survey shows a 60-foot-wide lot that may not accommodate more than four or five vehicles. The complexion of the street is changing, which is not necessarily a bad thing. They have discussed increasing opportunities for dock space. The concern is about impact in the neighborhood. He appreciates the Applicant's promise, but that may not be the case with a future owner of the property. The City Manager did not believe there is an easy answer if any. Commissioner Rogers agreed that the complexion of the street has changed and it is positive for the marine industry which is the city's largest industry. As long as it does not negatively impact the surrounding property, it will be OK. The restrictions lend themselves to responsible ownership and oversight. It is no different than when conditions are imposed on other uses. The decision should be based on the facts presented. The property is in terrible condition and this owner will improve it. He felt it will be a positive change. In response to Commissioner Trantalis, Dunckel said a clause outlining that a violation of conditions would result in forfeiture of the waiver could be added.

Vice-Mayor Roberts and Mayor Seiler commented that they have no concerns related to the current property owner. Discussion turned to protection for the future. Commissioner Rogers felt that adding the marine dimension to the property is positive. The imposition of removing the waiver would remove that positive aspect. Mayor Seiler pointed out that if the waiver is revoked and the property is converted back to its current condition because there is no dockside activity, then the purpose is defeated because the property could deteriorate again. Vice-Mayor Roberts was not aware of any issues with other waivers that were granted. Commissioner Trantalis said there have been complaints about a "party house" nearby on 20 NE Avenue.

Chappell added that there is an ongoing revitalization effort on this street. There have been numerous waivers issued and most of the homes are being renovated. There are other residents on the street that have spent hundreds of thousands of dollars and will not turn their properties into something detrimental to the neighborhood. An opportunity will be lost if the Applicant is not allowed to sell the property with its marine use. There is one problem property, but that owner's actions should not have an adverse impact on the other property owners on this street.

Mayor Seiler felt the district commissioner should remain vigilant as to what is occurring on this street and any violations. This Applicant has shown a willingness and ability to do the right thing.

Vice-Mayor Roberts introduced the resolution subject to provide if the residence is non-owner occupied, it shall be occupied by a tenant/renter who will be the owner or owner's representative of the vessels moored behind the residence. Tenant will be leasing a single-family residence and all activity must conform with the neighborhood and applicable to the code of ordinances. All parking will be confined to the property with occupancy limited to six adults over the age of 18. No work would be performed at the residence that would be performed at a shipyard or commercial facility. All conditions of the resolution were which was read by title only, were accepted by the Applicant.

ADOPTED AS AMENDED

Aye: 5 - Commissioner Rogers, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Mayor Seiler

PH-2 14-0271

QUASI-JUDICIAL -SECOND READING OF ORDINANCE - CONRAD FORT LAUDERDALE BEACH RESORT - application of prior zoning regulation to the calculation of gross floor area - Unified Land Development Regulations, Section 47-2.2C - Site Plan Level IV Development Permit - Case 75R13

All individuals wishing to speak on this matter were sworn in.

Members of the Commission announced with whom they had spoken and/or site visits made concerning this matter.

Mayor Seiler opened the floor for public comment.

Art Seitz, 1905 North Atlantic Boulevard, said there are a lot of impediments on State Road A1A that need to be removed. He hopes that they add bicycle racks and palm trees on the east side of A1A. Widening A1A should be a goal of every new development or redevelopment. Ten feet should be the minimum for a sidewalk. There needs to be a safe way to get people attending events on the beach home. He supports impact fees. More palm trees are needed on the beach. Many have been washed away and they need to be replaced, especially north of Sunrise Boulevard.

There being no other individuals wishing to speak on this matter, a **motion** was made by Commissioner Trantalis and seconded by Commissioner Rogers to close the public hearing. Roll call showed: **AYES:** Commissioner Rogers, Commissioner Trantalis, Commissioner DuBose and Mayor Seiler. **NAYS:** None. **NOT PRESENT:** Vice-Mayor Roberts

Commissioner Trantalis introduced the ordinance, which was read by title only.

In response to Commissioner Trantalis, Director of Transportation and Mobility Diana Alarcon said staff is working on a variance request through the Florida Department of Transportation that would allow for trees to line the east side of the roadway. There is not a designated project for this area. However the Beach Master Plan includes trees lining the entire A1A corridor in streetscape improvements and a variance has been submitted for this if the opportunity arises.

ADOPTED ON SECOND READING

Aye: 5 - Commissioner Rogers, Vice-Mayor Roberts, Commissioner Trantalis, Commissioner DuBose and Mayor Seiler