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Town of Ponce Inlet

Town Council Special Meeting Minutes

March 27, 2019

1. **CALL TO ORDER:** Pursuant to proper notice, Mayor Smith called the meeting to order at 6:00 p.m. in the Council Chambers at 4300 South Atlantic Avenue, Ponce Inlet, Florida.

2. **PLEDGE OF ALLEGIANCE:** Mayor Smith led the Pledge of Allegiance.

3. **ROLL CALL:**

Town Council:

Mayor Smith, Seat #1

Councilmember Milano, Seat #2

Vice-Mayor Hoss, Seat #3

Councilmember Perrone, Seat #4

Councilmember Paritsky, Seat #5

Staff Members Present:

Mr. Jake Baker, Senior Planner

Ms. Cherbano, Human Resources Director/Deputy Clerk

Lt. Walker, Police Lieutenant

Mr. Gunter, Public Works Manager

Mr. Hooker, Code Compliance Manager

Mr. Irwin, IT Manager

Mr. Joulani, Director, Planning & Development

Chief Scales, Fire Chief

Atty. Shepard, Town Attorney

Ms. Witt, Town Manager

4. **ADDITIONS, CORRECTIONS OR DELETIONS TO THE AGENDA:** There were no changes.

5. **CONSIDERATION OF SETTLEMENT AND RELEASE AS TO ALL CLAIMS, AS PROPOSED BY PACETTA, LLC.** Attorney Shepard stated the Town's Codes, Ordinances, and Comprehensive Plan have all been challenged, but the Town has prevailed. He provided a history of the case and noted that the lawsuit has consisted of sixteen different proceedings including administrative proceedings, trials, trials and appeals in the state court, a Federal case and an appeal to the US Supreme Court. He explained that about four weeks ago, Mr. Heebner, Attorney for the Plaintiff's, stated his clients were ready to settle. From that discussion, came the document presented before Council this evening. He stated that the Settlement Agreement brings to an end nearly twelve years of current and pending litigation and becomes effective immediately upon execution by the Mayor, the Town Clerk, and myself. Attorney Shepard noted for the record that an Affidavit has been included in the packet that removes *Sea Love, Inc.* from any and all part of the litigation because it was erroneously included as a party plaintiff. He reiterated that this Settlement ends all Pacetta litigation past, present, and pending against the Town and releases

46 current and former individuals associated with and/or employed by the Town. He noted that by
47 signing the Settlement Agreement, no party has admitted to any wrong-doing and it indemnifies
48 the Town from future litigation arising from or relating to any matters associated with the suit. He
49 stated the legal significance is that it provides an end to the Pacetta lawsuit; but it does waive the
50 Town's right to seek reimbursement of legal fees. It also does not preclude the development of this
51 property by the current or future owner(s). Mayor Smith opened public comments - Betsy Patten,
52 70 Jennifer Circle asked if the other party has already signed the Settlement Agreement. Attorney
53 Shepard stated that the Johnsons have signed the Settlement Agreement. Ray Ferrari, 35 Coastal
54 Oaks Circle asked how certain the residents can be that there will be no other claims brought
55 forward that would result in the suit being resumed. Attorney Shepard noted that the Release
56 portion of this Agreement prevents that, and all case numbers, names, facts, and circumstances
57 spanning the past eleven years are covered by this Agreement. Tony Goudie, 4715 Dixie Drive
58 stated he was surprised by this offer and noted it would not have been possible without the
59 perseverance of this Council. He added that it was worth spending the monies to defend the Town's
60 Comprehensive Plan and we all should feel vindicated. Attorney Shepard stated that the lowest
61 settlement offer by Pacetta was either \$13 or \$15 million and included all entitlements of the
62 property. Barbara Davis, 4871 Sailfish Drive wondered what happened to Blue Water, LLC; stated
63 that the residents welcome whomever is going to develop this property and it is time for us to move
64 forward. Attorney Shepard stated that Blue Water, LLC bought the four lots with a mortgage (that
65 were in foreclosure) from BB&T. Councilmember Perrone commented that Attorney Shepard is
66 paid the least compared to the other trial attorneys; in addition, the uncertainty that lies ahead for
67 the pending suits is why this offer is so important. Paul Roxenberg, 119 Beach Street stated it pains
68 him to lose out on the money, but it is time to stop paying for litigation and using those monies for
69 other projects. Mayor Smith closed public comments. Councilmember Paritsky commented on the
70 risks involved with pursuing reimbursement of legal costs and not accepting this Settlement offer,
71 adding there are no "guarantees" and there are two pending cases that have not yet been decided.
72 She then noted the rewards for accepting the Settlement offer, notably - it offers finality; all past,
73 current and pending judgments, cases, filings, and appeals would be resolved. Councilmember
74 Perrone concurred and stated that the uncertainty and unexpected decisions are not worth the risk.
75 Attorney Shepard stated that in January one of the plaintiff's attorneys requested to withdraw from
76 the case due to non-payment; the Town did not oppose that request. Several weeks ago, Pacetta's
77 other attorney requested to withdraw from the case and the Town opposed that request – this
78 appears to be what brought about this settlement offer. Vice-Mayor Hoss stated that Council has
79 made numerous attempts over the years to settle this issue in the best interest of the Town. She
80 thanked those residents who contacted her to get the facts, dispelled rumors, and stated that
81 Council's action tonight determines the Town's future. Councilmember Milano concurred, adding
82 that he has been a part of this for over seven years and is pleased to see it come to an amenable
83 end. Mayor Smith stated he was bewildered by some of the decisions in this trial and believes
84 some of the misunderstandings can be attributed to media reporting. He stated that the Town was
85 repeatedly accused of "picking on a property owner" - which could not have been farther from the
86 truth. He noted that the Town did not change any of its rules since the time that Pacetta, LLC
87 purchased the properties. He stated his hopes that the community heals as it moves forward.
88 Councilmember Perrone reflected on a meeting he had with Ms. Johnson shortly after he was
89 elected to Council as he was trying to understand the issues and doing research.
90

91 Councilmember Paritsky moved to approve entering into the “Full and Final Settlement and
92 Release Agreement as to All Claims” as proposed by the Pacetta parties, and to authorize
93 execution of same; seconded by Vice-Mayor Hoss. The motion PASSED 5-0, with the following
94 vote: Councilmember Paritsky - yes; Vice-Mayor Hoss - yes; Mayor Smith - yes; Councilmember
95 Perrone - yes; Councilmember Milano - yes.

96
97 Mayor Smith called a recess at 6:48 p.m. to sign the Settlement and Release Agreement; the
98 meeting reconvened at 7:06 p.m. with all Council members present.

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100 **6. CONTINUATION OF THE CONSIDERATION OF REQUEST FROM DEAN**
101 **MAXWELL FOR A CODE ENFORCEMENT LIEN REDUCTION FOR HIS PROPERTY**

102 **LOCATED AT 4940 SOUTH PENINSULA DRIVE:** Mr. Hooker noted that Council continued
103 this item from last week’s meeting to allow Mr. Maxwell time to submit additional documentation
104 and that Mr. Maxwell is present to address Council. He reviewed the cases: Case 40334,
105 construction of a floating dock without permits or inspection approvals totals \$21,300; Case 45089,
106 construction of a ramp, decking and handrails without permits or inspection approvals totals
107 \$509,000 and was deemed a repeat violation. Mr. Hooker noted that in Case 45089, the date of
108 compliance could be amended to November 11, 2016 (207 days) as that was the date the permit
109 was issued; noting that if Council amends the compliance date, the amended fine would equate to
110 \$103,500. He clarified that the Town has spent \$2,500 prosecuting the cases, which is incorporated
111 into the lien amounts. Councilmember Perrone asked why the fine was \$500 per day; Mr. Hooker
112 explained that the Board is allowed to impose fines of up to \$500 per day for a repeat offense.
113 Councilmember Perrone asked if staff was satisfied with the owner’s reasons behind doing the
114 work without permits. Mr. Hooker stated the floating dock was installed before the hurricanes; the
115 ramp, decking and railings were constructed without permits so it was difficult to determine if the
116 damage was due to a hurricane. Mr. Maxwell thanked Council for this opportunity. He stated that
117 anything he did wrong was not done out of malice. He stated that his family has resided in Ponce
118 Inlet since 1963 and donated the Town’s first fire truck. Councilmember Paritsky asked Mr.
119 Maxwell if he recalled the three outstanding liens from Volusia County imposed in 2006. Mr.
120 Maxwell stated he does not own any property in Volusia County and does not recall any liens
121 being imposed by the County. Councilmember Paritsky noted for the record, Volusia County Case
122 CEB-05-443 lien dated May 17, 2006 for unpermitted work. Mr. Maxwell stated he and his ex-
123 wife owned property in Wilbur-by-the-Sea and sold it to the County; he recalled that the pool
124 company had not requested any inspections. Councilmember Paritsky referenced a 2014 lien held
125 by the City of Port Orange in the amount of \$82,000 and asked Mr. Maxwell if that issue had been
126 resolved. Mr. Maxwell stated the violations have been corrected and he met with Debra (Code
127 Enforcement Officer) from the City of Port Orange to discuss a reduction or abatement of the lien.
128 Councilmember Paritsky noted Mr. Maxwell’s ownership according to the warranty deed began
129 on November 26, 2002, and there have been numerous violations since, including a lien reduction
130 requested granted by the Town Council in 2005. She thanked Mr. Maxwell for providing the
131 documents and asked him if the letter of intent was still valid. Mr. Maxwell stated yes.
132 Councilmember Perrone questioned Mr. Maxwell about the various violations. He recommended
133 that the lien in case #40334 stand at \$21,300 and that the lien in case #45089 be calculated at \$100
134 per day for a total lien of \$42,000 in that case. Vice-Mayor Hoss commented that Mr. Maxwell
135 should be able to provide the proper documentation and paperwork supporting his businesses and
136 proof of hardships. She stated that it is the property owner’s responsibility to make corrections and

137 bring the property into compliance in a timely manner and therefore, would not support a reduced
138 fine. Councilmember Paritsky asked Attorney Shepard if a motion could include conditions and a
139 request for a Release. Attorney Shepard stated yes. Councilmember Paritsky suggested that
140 conditions be included in any motion. Mayor Smith asked for public comments – hearing none –
141 he closed public comments.

142
143 Councilmember Perrone moved to enforce the lien in case #40334 (\$21,300) and to reduce the
144 lien in case #45089 to \$51,750; the motion was amended by Councilmember Paritsky to include
145 the following conditions: first) payment shall be made by cash, certified funds or cashier's check;
146 second) payment shall be at the earlier of the closing of title of Hidden Treasures Restaurant out
147 of the proceeds from buyer Albert Jarrell to Dean Maxwell or within 90 days; third) Execution of
148 a General Release effective on the date of payment for any claim against the Town which may have
149 existed or does exist up to that date; and if any of these three conditions are not met, then the full
150 lien amount is due and payable. The motion and amendment were seconded by Councilmember
151 Milano. The motion FAILED 2-3 with the following vote: Councilmember Perrone - yes;
152 Councilmember Milano - yes; Mayor Smith - no; Vice-Mayor Hoss - no; Councilmember Paritsky
153 - no.

154
155 Councilmember Paritsky moved to not reduce the lien in case #40334 in the sum of \$21,300 and
156 to reduce the lien in case #45089 from \$509,000 to \$103,500 with the following conditions: first)
157 payment shall be made by cash, certified funds or cashier's check; second) payment shall be at
158 the earlier of the closing of title of Hidden Treasures Restaurant out of the proceeds from buyer
159 Albert Jarrell to Dean Maxwell or within 90 days; third) Execution of a General Release effective
160 on the date of payment for any claim against the Town which may have existed or do exist up to
161 that date; and if any of these three conditions are not met, then the full lien amount is due and
162 payable; seconded by Councilmember Milano. The motion PASSED 4-1, with the following vote:
163 Councilmember Paritsky - yes; Councilmember Milano - yes; Councilmember Perrone - no, Vice-
164 Mayor Hoss - yes; Mayor Smith - yes.

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166 **7. ADJOURNMENT** - Mayor Smith adjourned the meeting at 8:09 p.m.

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168 Respectfully submitted by:

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171 _____
172 Jeaneen Witt, CMC, Town Manager/Town Clerk
Peg Hunt, Board Secretary