



Broward County

Legislation Text

File #: 21-378, Version: 1

Broward County Commission Regular Meeting

Director's Name: Andrew J. Meyers

Department: County Attorney

Information

Requested Action

MOTION TO APPROVE Settlement Agreement ("Settlement Agreement"), attached hereto as Exhibit 1, in Broward County vs. Historic Westside School, LLC, et al., Case No. CACE-15-020215(04), in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida.

Why Action is Necessary

Board approval is required for Broward County to enter into the Settlement Agreement.

What Action Accomplishes

Approves the Settlement Agreement.

Is this Action Goal Related

No

Previous Action Taken

Summary Explanation/Background

On May 10, 2006, the County entered into a 39-year ground lease ("Ground Lease") with Historic Westside School, LLC ("Historic Westside"), for property located at 301 S.W. 13th Avenue, Fort Lauderdale, Florida (the "Historic School"), for the purpose of housing the County's Historical Commission at the Historic School. Pursuant to the Ground Lease, the County agreed to pay an upfront, lump sum of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000) as rent ("Rent") to Historic Westside. Two Million Dollars (\$2,000,000) of the Rent was to be placed in a segregated account, held by the County, for the proposed restoration of the Historic School ("Renovation Work"). The remaining balance of the Rent was to be used in connection with the construction of an affordable housing facility consisting of 37 artist live/work lofts ("Artist Lofts") on land ("Lofts Site") owned by Sailboat Bend Limited Partnership ("SBLP"). In addition, the County provided Artspace Projects, Inc. ("Artspace"), an entity affiliated with Historic Westside, with an advance of Four Hundred Twenty-eight Thousand Seventy Dollars (\$428,070) to further assist with costs associated with the Renovation Work (the "Advance"). The Advance was to be repaid to the County with interest pursuant to a Pledge and Assignment of Interest in Developer's Fee executed by Artspace in favor of the County ("Pledge Agreement"). The County moved into the Historic School in late 2009. Shortly after moving into the Historic School, the County began experiencing certain problems with the property, including buckling floors, moisture in the drywall, and floor debonding.

As a result of these conditions, in 2015 the County filed a lawsuit ("Lawsuit") that is currently pending against Historic Westside, Artspace, SBLP, Village at Sailboat Bend Master Association, Inc. ("Association"), and Lennar Homes, LLC ("Lennar") (collectively, the "Parties"). The County alleged in the Lawsuit, among other things, that site development activities in connection with the development of the Sailboat Bend community, the development of the Artist Lofts upon the Lofts Site, and/or the Renovation Work on the Historic School altered grading and drainage flow upon the land immediately surrounding the Historic School such that surface water now flows towards and beneath the Historic School, causing conditions that have rendered the Historic School uninhabitable. On or about July 2, 2018, Historic Westside filed a Counterclaim against the County in the Lawsuit for alleged breach of the Ground Lease and for declaratory relief, alleging that the County failed to comply with its maintenance obligations under the Ground Lease.

After extensive negotiations, the Parties have agreed, subject to approval by the Board, to resolve the Lawsuit by entering into the Settlement Agreement attached hereto as Exhibit 1. The Settlement Agreement contains, among other things, the following terms:

(a) Termination of the Ground Lease, with the County promptly turning over possession of the Historic School to Historic Westside.

(b) Historic Westside and Artspace shall, within eighteen (18) months after the execution of the Settlement Agreement, perform certain repairs to the Historic School.

(c) The County shall be entitled to temporarily or permanently display certain artifacts and items in certain portions of the Historic School.

(d) To the extent possible, Historic Westside and Artspace shall ensure that the Historic School retains all historic designations in perpetuity.

(e) The County shall be entitled, in perpetuity, to use the community room of the Historic School once per month to host a meeting for one of the County's art, historic, or cultural-related agencies, divisions, boards, or groups.

(f) Historic Westside must record a declaration of restrictive covenants in the Public Records of Broward County which imposes certain restrictions related to the Historic School.

(g) The County will agree to the termination of the Pledge Agreement. The termination of the Pledge Agreement will result in the County discharging Artspace from the obligation to repay the County the Advance and accrued interest, which amount currently totals approximately Six Hundred Fourteen Thousand Three Hundred Seventy Dollars (\$614,370).

(h) Dismissal of the Lawsuit and a broad mutual release between the Parties, with each Party bearing its own attorney's fees and costs.

(i) Replacement of the County's current right of first refusal agreement with an amended and restated

version that grants the County the right to buy the Artist Lofts after May 1, 2056 (which is near the time the affordability restrictions for the Artist Lofts expire), if the owner of the Artist Lofts receives a bona fide offer that the owner intends to accept. If the County exercises its right under the amended and restated right of first refusal agreement, the County's purchase price will be the lesser of (i) 75% of the third-party offer or (ii) the appraised value (derived pursuant to the methodology specified in the amended and restated right of first refusal agreement) of the Artist Lofts.

This Settlement Agreement will not disturb the 50-year affordable housing restrictions currently in place for the Artist Lofts.

Source of Additional Information

Michael J. Kerr, Deputy County Attorney, 954 357-7600

Fiscal Impact

Fiscal Impact/Cost Summary

The termination of the Pledge Agreement will result in the County discharging Artspace from the obligation to repay the County the Advance and accrued interest, which amount currently totals approximately Six Hundred Fourteen Thousand Three Hundred Seventy Dollars (\$614,370).