

TREASURE COAST REGIONAL PLANNING COUNCIL

MEMORANDUM

To: Council Members

AGENDA ITEM 9

From: Staff

Date: April 17, 2015, Council Meeting

Subject: Authorization to Retain Litigation Counsel

Introduction

The Council received the attached public records request on March 19, 2015 (the "Request"). Council staff has responded to the Request by providing various public records. Councilmembers, including alternates and ex officio members have also been asked to provide the Executive Director with any information they have in regard to the Request.

The Council did consulting and planning work for the City of Delray Beach. The City adopted Ordinance No. 02-15, which the Request states reduced allowable building height on Atlantic Avenue between Swinton Avenue and the Intracoastal Waterway. The entities on whose behalf the public records Request was filed apparently view the Ordinance as adversely affecting their properties.

Conclusion

While we do not know whether litigation will be commenced in connection with the Request or whether other litigation may be commenced that relates to work that the Council did for the City or that relates in some way to our relationship with the City, it is prudent at this point in time to authorize the executive director to engage and hire litigation counsel as deemed necessary.

Recommendation

Council should authorize the Executive Director, in consultation with the Council Attorney, to engage and hire litigation counsel as deemed necessary.

Attachment

PUBLIC RECORDS REQUEST

DATE: March 19, 2015

REQUESTEE: Treasure Coast Regional Planning Council (“Council”)

REQUESTOR: 60 ½ LLC and DHBH Atlantic, LLC

REQUESTOR’s REQUEST IDENTIFICATION NUMBER: DHBH Ord. 02-15-2

REQUESTOR’s CONTACT INFORMATION: E-mail: jeubanks@blesmlaw.com; mrodriguez@blesmlaw.com; c/o John R. Eubanks, Jr., Esquire, Breton, Lynch, Eubanks & Suarez-Murias, P.A., 605 N. Olive Avenue, 2d Floor, West Palm Beach, Florida 33401; Telephone: 561-721-4000; Facsimile: 561-721-4001.

DOCUMENTS REQUESTED:

1. Any and all documents (including electronic documents), including, but not limited to, any e-mails, texts, memoranda, and/or correspondence discussing, regarding or relating to those provisions of Ordinance No. 02-15 of the City of Delray Beach (“City”) reducing the allowable building height on Atlantic Avenue between Swinton Avenue and the Intracoastal Waterway (known as the “Atlantic Avenue Limited Height Area”).
2. Any and all documents (including electronic documents), including, but not limited to, any e-mails, texts, memoranda, and/or correspondence discussing, regarding or relating to the relationship between the City and the Council (including, but not limited to, any contractual and/or financial arrangements between the City and the Council, as well as the capacity in which the Council was presenting to and/or acting on behalf of the City) with regard to those provisions of Ordinance No. 02-15 of the City reducing the allowable building height on Atlantic Avenue between Swinton Avenue and the Intracoastal Waterway (known as the “Atlantic Avenue Limited Height Area”).
3. Any and all communications (including electronic communications), including, but not limited to, any e-mails, texts, memoranda, and/or correspondence between the Council (including, but not limited to its Members, Alternates, Chairman, Vice Chairman, Secretary/Treasurer, Gubernatorial Appointees, Executive Director and/or Staff) and the City discussing, regarding or relating to those provisions of Ordinance No. 02-15 of the City reducing the allowable building height on Atlantic Avenue between Swinton Avenue and the Intracoastal Waterway (known as the “Atlantic Avenue Limited Height Area”).
4. Any and all documents (including electronic documents), including, but not limited to, any e-mails, texts, memoranda, presentations, studies, and/or correspondence from any experts, (including, but not limited to, Architects, Engineers, Urban Planners, and/or Historians) providing a basis for and/or supporting the City’s proposal to reduce the allowable building height on Atlantic Avenue between Swinton Avenue and the Intracoastal Waterway, (known as the “Atlantic Avenue Limited Height Area”).

5. Any and all documents (including electronic documents), including, but not limited to, any e-mails, texts, memoranda, presentations, studies, correspondence and/or surveys from any experts, (including, but not limited to, Surveyors, Architects, Engineers, Urban Planners and/or Historians) providing a basis for and/or supporting the specific limitations in height within the Atlantic Avenue Limited Height Area to a maximum overall building height of 38 feet and three stories.

6. Any and all documents (including electronic documents), including, but not limited to, any e-mails, texts, memoranda, presentations, studies, correspondence and/or surveys from any experts, (including, but not limited to, Surveyors, Architects, Engineers, Urban Planners and/or Historians) providing the basis for and/or supporting the specific location and inclusion of properties “within 125 feet north or south of the Atlantic Avenue right-of-way line between Swinton Avenue and the Intracoastal [sic] Waterway” to be included within the Atlantic Avenue Limited Height Area.

7. Any and all documents (including electronic documents), including, but not limited to, any e-mails, texts, memoranda, and/or correspondence regarding, reflecting or consisting of the official application, submission or “written request” by the City for those amendments reducing the allowable building height on Atlantic Avenue between Swinton Avenue and the Intracoastal Waterway (known as the “Atlantic Avenue Limited Height Area” contained in Ordinance No. 02-15.

8. Any and all documents (including electronic documents), including, but not limited to, any e-mails, texts, memoranda, correspondence, reports, graphs, evaluations or other documents regarding or providing any analysis of those amendments reducing the allowable building height on Atlantic Avenue between Swinton Avenue and the Intracoastal Waterway (known as the “Atlantic Avenue Limited Height Area”) proposed by Ordinance 02-15 and its potential impacts (whether positive or negative), including any and all supporting documentation such as exhibits, graphs and citations to similar ordinances from other municipalities.

THIS REQUEST IS MADE PURSUANT TO: CHAPTER 119 OF THE FLORIDA STATUTES, THE COMMON LAW RIGHT TO KNOW AND TO ACCESS TO PUBLIC RECORDS; AND TO ANY STATUTORY RIGHT TO KNOW OF HAVE ACCESS TO PUBLIC RECORDS. THE REQUEST IS ALSO MADE PURSUANT TO REQUESTOR'S RIGHTS UNDER THE FLORIDA AND UNITED STATES CONSTITUTIONS.

IN THE EVENT ANY PRIVILEGE IS CLAIMED A LOG SHOULD BE PROVIDED INDICATING THE SPECIFIC IDENTITY OF ANY DOCUMENT BEING WITHHELD AND THE LEGAL BASIS FOR THE CLAIMED PRIVILEGE.

PLEASE COMPLY IN ELECTRONIC FORM. IF THIS IS NOT POSSIBLE, THEN PLEASE USE 11 X 17 PAPER. COPIES SHOULD BE TWO SIDED WHEN POSSIBLE AND CHARGES BILLED IN ACCORDANCE WITH CONTROLLING LAW, F.S. § 119.07(4)(a)(2). ELECTRONIC COPIES SHOULD BE SENT BY E-MAIL DELIVERY.

PLEASE PROVIDE AN ESTIMATE OF THE COSTS, IF ANY, TO COMPLY WITH THIS PUBLIC RECORDS REQUEST IN ADVANCE. IT IS REQUIRED THAT THE REQUESTOR APPROVES IN ADVANCE ANY COSTS BEING IMPOSED ON THE REQUESTOR.

YOU ARE CAUTIONED THAT THE FAILURE OF THE REQUESTEE TO FULLY COMPLY MAY RESULT, INTER ALIA, IN THE INSTITUTION OF LITIGATION, THE REQUEST FOR APPOINTMENT BY THE COURT OF INDEPENDENT REVIEW AND AN AWARDED OF ATTORNEY'S FEES AND COSTS TO REQUESTOR'S LEGAL COUNSEL.

THE ABOVE REQUEST SHALL INCLUDE TEXT MESSAGES AND EMAILS FROM PRIVATE ACCOUNTS.

COURTESY COPY PROVIDED TO: Roger Saberson, Esquire, Council Attorney, 70 SE 4th Ave., Delray Beach Florida 33483-4513.