



Town Council Agenda Report

SUBJECT: Resolution

CONTACT PERSON/NUMBER: Monroe Kiar, 584-9770; Chris Wallace, 797-1050

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT AGREEMENT IN THE CASE STYLED IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA, CASE NUMBER 93-12985 (02), RALPH SESSA, ET AL, VS. TOWN OF DAVIE, FLORIDA, A MUNICIPAL CORPORATION, ETC., INVOLVING A SPECIAL ASSESSMENT AND PERMITTING THE PARTIES TO PROCEED TO A BINDING AND PARTIAL HEARING TO DETERMINE WHETHER THE SUBJECT PROPERTIES ARE SUBJECT TO THE SPECIAL ASSESSMENT AND WHETHER THE SUBJECT PROPERTIES SPECIALLY BENEFITED FROM THE SPECIAL ASSESSMENT AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF:

Settlement Agreement between property owners and the Town regarding a lawsuit filed in 1993 over the 47th Avenue Roadway Special Assessment. The settlement agreement requires the Town to enter into binding arbitration. The Town Attorney is recommending taking this matter to binding arbitration.

PREVIOUS ACTIONS:

The Town Council previously approved a special assessment in the 47th Avenue area. Subsequently, many of the grievances filed by property owners were settled through binding arbitration.

CONCURRENCES:

The Town Attorney and the Budget and Finance Department recommend approval of the settlement agreement.

FISCAL IMPACT:

Has request been budgeted? n/a

RECOMMENDATION(S):

Motion to approve the resolution.

Attachment(s):

Resolution

Settlement Agreement

Item No.

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT AGREEMENT IN THE CASE STYLED IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA, CASE NUMBER 93-12985 (02), RALPH SESSA, ET AL, VS. TOWN OF DAVIE, FLORIDA, A MUNICIPAL CORPORATION, ETC., INVOLVING A SPECIAL ASSESSMENT AND PERMITTING THE PARTIES TO PROCEED TO A BINDING AND PARTIAL HEARING TO DETERMINE WHETHER THE SUBJECT PROPERTIES ARE SUBJECT TO THE SPECIAL ASSESSMENT AND WHETHER THE SUBJECT PROPERTIES SPECIALLY BENEFITED FROM THE SPECIAL ASSESSMENT AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie is a party in an action styled in the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, Case Number 93-12985 (02), Ralph Sessa, et al vs. Town of Davie, Florida, a Municipal Corporation, etc.; and

WHEREAS, the Town of Davie and the property owner have previously entered into that one certain Settlement Stipulation dated November 12, 1985; and

WHEREAS, the Town desires the Settlement Agreement which is attached, to be in the best interest of the Town of Davie and its residents.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Davie, Florida:

SECTION 1. That the Settlement Agreement, a copy of which is attached as Exhibit "A", is hereby approved by the Town Council for the Town of Davie.

SECTION 2. That the Mayor is hereby authorized to execute said Agreement and to proceed in accordance with the terms set forth therein.

SECTION 3. This Resolution shall take effect immediately upon the execution of this Settlement Agreement by all parties to the Agreement, as stated in and contemplated by paragraph 15 of said Agreement.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2000

SETTLEMENT AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2000, by and between the TOWN OF DAVIE, a municipal corporation located in Broward County, Florida, and M. AUSTIN FORMAN, as Agent ("the FORMANS") with all of the above parties to this agreement being referred to collectively as "the settling parties".

WHEREAS, the settling parties are parties in a certain action disputing a Special Assessment in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, entitled RALPH SESSA, et al. vs. TOWN OF DAVIE, etc., Case No. 93-12985 (02) (the "litigation"); and

WHEREAS, the settling parties have asserted various claims in the course of the litigation and desire now, by and through this agreement, to resolve the differences and disputes amicably in the litigation by settlement and compromise, all subject to the terms of this agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the settling parties, intending to be legally bound, hereby agree as follows:

1. **IMPARTIAL HEARING:** The FORMANS and the Town's attorney will appear at an impartial hearing before the Honorable Gerald Mager to determine whether because of that certain Settlement Stipulation dated as of November 12, 1985 between the settling parties, (the Settlement Stipulation") Resolutions R 87-70 and R 91-65 are applicable or inapplicable to Parcels 75, 76, 77, 77A, 127-129 and 134-137 identified in Exhibit "A" to Town of Davie Resolution No. 91-65 ("the FORMAN Properties") and if they are applicable, whether those properties have specially benefited from the work which is the subject of the disputed Special Assessment (and identified in the attachment hereto).

2. **RESULTS BINDING:** The results of this hearing will be final and binding upon the settling parties.

3. **HEARING OFFICER:** The mediator in this case, Gerald Mager, shall serve as the neutral hearing officer for the aforementioned hearing.

4. **RESULTS OF HEARINGS:** If the Settlement Stipulation is deemed to provide an exemption in this particular instance, then the Special Assessment will be void as to the FORMAN Properties.

If the Settlement Stipulation is deemed not to provide an exemption in this particular instance, but any of the parcels of land mentioned in paragraph 1 are found not to have specially benefited from the work which is the subject of the disputed Special Assessment, then the Special Assessment will be void as to those specific parcels only. The amount of Special Assessment from these voided parcels may be redistributed for collection as the Town of Davie sees fit, but in no instance will these redistributed amounts be added or combined with amounts owing for the special assessment from any parcel which is owned by any other party to this litigation. This paragraph shall not apply in the event a new special assessment is commenced by the Town.

If the Settlement Stipulation is deemed not to provide an exemption in this particular instance, but any of these parcels of land mentioned in paragraph 1 are found to have specially benefited from the work which is the subject of the disputed Special Assessment, then all interest and penalties incurred through the date of the hearing officer's order shall be waived. The owner of the parcel found to have specially benefited shall choose within twenty (20) days of the order to pay the amount of the Special Assessment in full or to pay the amount of the Special Assessment amortized in sixty (60) consecutive monthly payments at a rate of eight percent (8%) simple interest with no prepayment penalty.

5. **ATTORNEYS' FEES AND COSTS:** Notwithstanding the results of the hearing, each party agrees to bear their own attorney's fees and costs as previously agreed between that party and its respective counsel.

6. **DISMISSALS:** Within ten (10) business days of the executing of this Settlement Agreement, the settling parties will execute the attached Joint Stipulation and Order of Dismissal so that the litigation between the settling parties will be dismissed, with prejudice.

7. **REPRESENTATIONS AND WARRANTIES:** In connection with the execution and validity of this Agreement, and the confirmation of the transaction set forth herein, each of the settling

parties represents and warrants to each other that it has not relied upon any statement, communication, representation, warranty, covenant or agreement made by, on behalf of, or about a settling party, except those specifically set forth herein.

8. **COVENANT OF NO FURTHER ACTION:** Each of the settling parties covenants and agrees that it shall not take any action before any governmental agency, regulatory or licensing body or commission, or otherwise assert or allege any complaint in any form against any of the settling parties arising, in whole or in part, as a result of or in connection with the Special Assessment, unless such action arises from and is related to a settling party's breach of this agreement.

This Agreement does not affect, settle, waive, or otherwise relate to any other claims, suits, actions or other matters in which the Settling Parties are involved, or may be involved in the future unrelated to the Special Assessment. This Agreement does not relate to any other persons or entities affected by the Special Assessment.

9. **NO ADMISSION OF LIABILITY:** This Agreement is made solely for the purpose of expeditiously and economically resolving the differences among the settling parties addressed herein, and nothing in this agreement shall be construed as or constitutes an admission of the validity or enforceability of any claims or demands of the litigation or described in this Agreement.

10. **COVENANT NOT TO SUE:** Each of the settling parties agrees and covenants that they will not commence, file, bring, cause to be brought or participate in, directly or indirectly, any lawsuit, action or proceeding against or adverse to the other settling party as to the Special Assessment or this Settlement Agreement, except to enforce this Agreement.

11. **USE OF THIS AGREEMENT:** This Settlement and all negotiations, statements and proceedings in connection therewith shall not in any way be offered, construed as or deemed to be evidence of an admission or concession on the part of any settling party of any liability or wrongdoing on their part, which liability or wrongdoing is hereby expressly denied and disclaimed.

12. **BINDING EFFECT:** This Agreement shall be binding upon and inure to the benefit of, the settling parties and their respective successors and assigns. In addition thereto, this Agreement shall

be binding upon any receiver, liquidator, rehabilitator, conservator, supervisor and any other person or entity (governmental or non-governmental) exercising or seeking to exercise the powers of the entities or persons named above.

13. **CAPTIONS AND SECTION HEADINGS:** Captions (other than case or civil action captions) used herein are for convenience only and are not parts of this Agreement.

14. **GOVERNING LAW:** This Agreement shall be governed by, construed in accordance with the law of the State of Florida.

15. **FINAL EXECUTION:** This Agreement shall be deemed finally executed when it has been signed by all the parties to this Agreement.

16. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement shall be deemed effective and finally executed when counterparts, which when taken together, bear the signature of all parties hereto, have been delivered to all settling parties.

17. **EXECUTED:** This day in the year first above written.

18. **NO WAIVER:** The settling parties hereby agree that nothing contained in this Agreement shall in any manner whatsoever, detract from any rights that the FORMANS have to contest any other future or pending Special Assessments. The settling parties acknowledge that this Settlement Agreement does not interpret the Settlement Stipulation and all parties reserve all their respective rights. This Agreement shall not be construed as a waiver of either party's rights in any way whatsoever.

WITNESS OUR HANDS AND SEALS this _____ day of _____ 2000.

~~Signature of Witness~~

Signature of Witness

~~Barbara J. Hubchman~~
Barbara J. Hubchman
(Witness print name)

Signature of Witness

Barbara J. Hubchman
(Witness print name)

By: M. Austin Forman
M. AUSTIN FORMAN, as Agent
Dated: _____

TOWN OF DAVIE

Signature of Witness

(Witness print name)

Signature of Witness

(Witness print name)

By: _____
HARRY VENIS, MAYOR

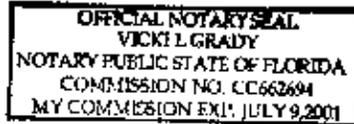
STATE OF FLORIDA]
] .SS.
COUNTY OF BROWARD]

I HEREBY certify that on this day before me, an officer duly authorized to administer oaths and take acknowledgments, in the State and County aforesaid, appeared M. AUSTIN FORMAN, as Agent, who is personally known to me ~~or who has produced~~ identification, who executed the foregoing Settlement Agreement, and acknowledged before me and the witnesses whose signatures appear above, that he has read and fully understands its contents.

SWORN TO and SUBSCRIBED before me this 1st day of September, 2000.

My Commission Expires:

Vicki L. Grady
Notary Public
Vicki L. Grady
(Print Name of Notary)



STATE OF FLORIDA]
]SS.
COUNTY OF BROWARD]

I HEREBY certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, in the State and County aforesaid, HARRY VENIS, Mayor of the Town of Davie, who is personally known to me or who has produced _____ as identification and who executed the foregoing Settlement Agreement on behalf of the Town of Davie, and acknowledged before me and the witness whose signature appears above that he/she has read and fully understands its contents.

SWORN TO and SUBSCRIBED before me this _____ day of _____ 2000.

My Commission Expires:

Notary Public

(Print Name of Notary)

1. **Parcels 75, 76**
Owner – Sandra - Forman Seims, WH & C.R. Forman et al.
Folio No. 0137-01-112-0
(new Folio in "The Foundation Plat Two" includes Folio
Nos. 0124-17-0010, 0124-17-0011, 0124-17-0012 & 0124-17-0014)
2. **Parcels 77, 77A**
Owner - Miles A. Forman, et al.
Folio Nos. 0137-01-092-1, 0137-01-092-3
(new folio in "The Foundation Plat Two" includes folio
nos. 0124-17-0010, 0124-17-0011, 0124-17-0012 & 0124-17-0014)
3. **Parcels 127 - 129**
Owner - Sandra Forman Seims, et al.
Folio Nos. 504124-10-001-0, 504124-10-002-0 & 504124-10-003-0
4. **Parcels 134 - 137**
Owner - H.C. Forman & C.R. Forman, Co-Execs.
Folio Nos. 0124-10-010-0, 0124-10-011-0, 0124-10-012-0, 0124-10-013-0