



Legislation Text

File #: 17-231, Version: 1

TO: Mayor and Commissioners
FROM: R. Max Lohman, City Attorney
DATE: March 1, 2017

ATLANTIC CROSSING SETTLEMENT AGREEMENT - EDWARDS CDS, LLC VS. THE CITY OF DELRAY BEACH (*ADDENDUM*)

Recommended Action:

Motion to Approve the omnibus settlement agreement between Edwards CDS, LLC and the City of Delray Beach related to the Atlantic Crossing development.

Background:

Edwards Atlantic and Edwards Intracoastal, as successor in title to CDS Delray and CDR Atlantic, own certain property located in the City and subject to certain vested development approvals granted by the City to Edwards as the applicant for a mixed-use development project ("Atlantic Crossing"), including the Conditional Use approved by the City Commission on December 4, 2012 ("Conditional Use") and the site plan approved by the City Site Plan Review and Appearance Board in November and December 2013 and further approved by the City Commission on January 21, 2014 (the "2013 Approved Site Plan").

The Plaintiffs or their predecessors in interest have filed a lawsuit regarding their rights in connection with Atlantic Crossing in the United States District Court for the Southern District of Florida styled *Edwards CDS, LLC, et al., v. City of Delray Beach*, Case No. 9:15-CV-81405-DMM (the "Federal Lawsuit").

On July 26, 2016, the Court granted the City's Motion to Dismiss on the federal damages claims and remanded the remaining causes of action to the Florida state court in the matter styled *Edwards CDS, LLC v. City of Delray Beach*, 2015 CA 007155 ("State Lawsuit"), which remains pending along with the appeal of the dismissal of the federal court claims in the matter styled *Edwards CDS, LLC, et al., v. City of Delray Beach*, 16-15693 (11th Cir.) ("Federal Appeal"). The parties agree they cannot use, and will not use, this Agreement or any action taken by any party under this Agreement as a basis for staying or delaying the State Lawsuit, the Federal Lawsuit, and/or the Federal Appeal;

The State Lawsuit among other things, seeks a declaration as to the ownership of certain property including two former platted alleys that were previously vacated and a portion of N.E. 7th Avenue ("Former Platted Alleys" and "N.E. 7th Avenue") and of rights to certification of the 2013 Approved Site Plan. The City, by and through the City Commission, has raised concerns regarding traffic circulation based on the 2013 Approved Site Plan, and in aid of settlement, Plaintiffs are willing to submit for consideration a proposed Class II Modification to, in addition to other small changes, provide a two-way, ingress and egress surface street from the Atlantic Crossing central core at N.E. 7th Avenue to U.S. Highway One and change the location of an entrance to one of the parking

garages, subject to the terms and conditions of this Settlement Agreement.

The terms of the proposed Settlement Agreement will resolve all outstanding litigation matters between the parties. The Settlement Agreement, as presented, has been drafted pursuant to the discussions that took place during the attorney-client session that was held on February 21, 2017. The Plaintiff has not executed the Settlement Agreement as of this date.

The Settlement Agreement sets forth a processing schedule for the Site Plan modification and final plat certification as well as the requirement for the City to execute and record certain documents in order to release its reservation of rights related to N.E. 7th Ave. and certain abandoned alleys. The Settlement Agreement also clarifies and satisfies certain existing Site Plan requirements, to wit:

1. Shuttle Bus Contribution. Plaintiffs agree to contribute to the operation of a shuttle bus by contributing an amount of \$175,000.00 to the City prior to issuance of the Certificate of Occupancy for the first vertical, above-ground building permit.
2. Bus Shelter Funding. Prior to the issuance of a Certificate of Occupancy for the first vertical, above-ground building permit, Plaintiffs shall pay all costs and expenses to design, construct and install a bus shelter along U.S. 1 as depicted on the Site Plan.
3. Off Site Improvements and Signalization.
 - a. Intersection of N.E. 1st Street and N.E. 6th Avenue. Plaintiffs agree to fund, prior to the issuance of the first site development permit, the cost to design, permit, and construct, a mast arm signal and associated roadway improvements, located at the intersection of N.E. 1st Street and N.E. 6th Avenue, subject to issuance of construction permits by FDOT and the City.
 - b. N.E. 7th Avenue - Closure. Upon issuance of the first building permit (above or below-ground) for the Project, Sequence 4 at N.E. 7th Avenue (North of N.E. 1st Street) will be completed and N.E. 7th Avenue will be temporarily closed. Within one year of the issuance of the last Certificate of Occupancy, the City shall evaluate area traffic patterns to determine, in the City's sole discretion, whether N.E. 7th Avenue is to be permanently closed, partially closed or left open with the installation of traffic calming, as identified in the approval, at the Plaintiff's sole cost and expense and subject to the review and approval by the City Engineer.
 - c. Sequence 5. Plaintiffs also agree to fund improvements and signalization, to be paid prior to issuance of the first vertical, above-ground building permit, for Sequence 5 at N.E. 1st Street and both of the following intersections along the north side (1st Street & N.E. 6th Ave) and (N.E. 7th Ave & East Atlantic Ave) where the work was part of the conditions of approval, but has not been fully designed.
 - d. South-side of Atlantic. Prior to issuance of the first vertical, above-ground building permit, Developers shall design, permit, and install, at their sold cost and expense, the improvements along the south side of East Atlantic Avenue between N.E. 6th Avenue and Veterans Park (Sequence 6), subject to the approval of FDOT, the City Engineer, and the Senior Landscape Planner.
4. Palm Square/Marina Historic District Traffic Calming. Developer shall complete all improvements consistent with Exhibit "B", consistent with the City's standards for construction of traffic calming, in the Palm Square/Marina Historic District from S.E. 6th Avenue to Marine Way, from Atlantic Avenue to S.E. 2nd Street, including all boundary streets, as modified by the City Engineer at the City's sole discretion, to the extent that such modifications by the City do not materially increase the cost of the improvements over those originally proposed in Exhibit "B". Such improvements shall be completed prior to issuance of a Certificate of Occupancy

related to any vertical, above-ground building. Developer shall ensure that all construction traffic is properly routed and shall not utilize streets south of Atlantic Avenue within the Marina Historic District for construction traffic or parking.

5. Easements. Developer shall provide a dual purpose vehicular and pedestrian perpetual public access easement for the east-west road between N.E. 6th Ave/U.S. 1 and N.E. 7th Avenue as identified on the site plan modification.
6. U.S. 1 Beautification Contribution. Prior to the issuance of a Certificate of Occupancy for each building of Buildings I, III, and IV, Developer shall install, at its sole cost and expense, hardscape and landscape improvements, contiguous to each such building, in accordance with the Site Plan along the U.S.1 Corridor as provided as a condition of approval of the Site Plan approved the City Commission on January 21, 2014 and subject to those modifications required by the Senior Landscape Planner and the Planning, Zoning, & Building Director to ensure consistency with the existing U.S. 1 Beautification Improvements. The complete and satisfactory installation of all required improvements shown on the Site Plan, as reasonably determined by the City, shall satisfy the requirement for beautification contribution on U.S. 1.
7. Sidewalk Cafés. The City agrees that certain areas are eligible to receive Sidewalk Café Permits as set forth in the Existing Zoning and LDRs. Should the Developers desire to provide Sidewalk Cafés in the Project, Developers agree to locate Sidewalk Cafés only within Private property and submit such required application(s) to the City which shall be reviewed pursuant to the Existing Zoning and LDRs. Such Sidewalk Cafés shall comply with all requirements of the Existing Zoning and LDRs, except that, due to the intensity and proximity of the adjacent traffic lanes and to assure safe pedestrian travel, under no circumstances shall Plaintiff's or any sidewalk café operator provide for less than an eight foot (8') clear pedestrian path along Federal Highway or less than an eight foot (8') clear pedestrian path along Atlantic Avenue. A clear pedestrian path shall be measure as provided in Section 6.3.3 of the LDRs.
8. Traffic Signalization. Developers agree to fund, prior to issuance of final Certificate of Occupancy for Building II, the Cost to design, permit, and construct, improvements to the intersection of Atlantic Avenue and N.E. 7th Avenue to upgrade and replace the traffic signal to current City standard, including mast arm signalization, subject to FDOT and City approval.
9. Valet Plan. The Developers shall provide a valet plan for the valet station(s) located within the Project. The location of the valet station(s) shall be shown on the Site Plan. The valet plan shall include the appropriate drop-off areas, staffing requirements, designated valet spaces, a plan for timely vehicle drop-off and retrieval. If more than one valet station is anticipated or established, the valet station shall, to the extent necessary, coordinate operation with each other in order to promote service which is complimentary and harmonious.

Within ten (10) days of the later of (1) the expiration of all applicable appeal periods, (2) timeframes during which a third-party challenge can be filed, or (3) final disposition of any such challenges or appeals, the Plaintiff shall dismiss, with prejudice, the State Lawsuit, Federal Lawsuit, and Federal Appeal.

Special litigation counsel recommends approval of the Settlement Agreement as presented.