

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA BUILDING COMMISSION

BEACHLEN DEVELOPMENT COMPANY, LLC,

Petitioner,

v.

DOAH Case Nos: 13-000580RU
13-000769

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION AND
FLORIDA BUILDING COMMISSION,

Respondent.

SETTLEMENT STIPULATION

Beachlen Development Company, LLC ("Petitioner") and the Department of Business and Professional Regulation and Florida Building Commission (collectively "Respondent"), by and through their undersigned counsel enter into this Settlement Stipulation and state as follows:

1. The parties have conferred about the status of the above-referenced cases and agreed to a settlement as set forth in this Settlement Stipulation, and to the entry of a final order of the Florida Building Commission ("Commission") adopting this Settlement Stipulation.

2. Petitioner agrees not to oppose a Motion to Abate, which will be filed in DOAH Case Nos. 13-580 and 13-769, which will be filed by Respondent with the Division of Administrative Hearings regarding these two related cases.

3. Respondent agrees that it will not enforce or otherwise rely on proposed Binding Interpretation #91 ("Interpretation 91"), issued November 26, 2012, and the other agency statements challenged in DOAH Case No. 13-0580, against or to the detriment of Petitioner.

4. Petitioner and Respondent agree to the entry of a final order of the Commission invalidating Interpretation 91 on appeal pursuant to section 553.775(3)(c), Florida Statutes in DOAH Case No. 13-769, and challenged in DOAH Case No. 13-580. Furthermore, respondent agrees to remove Informal Interpretation Report Numbers 6821 (dated August 17, 2011) and 6853 (dated October 26, 2011) from the Building Code Information System.

5. Within two weeks of the filing of the final order adopting this Settlement Stipulation by the Commission, Respondent agrees to inform the Indian River County Building Official, in writing, that: a) The Florida Building Code, as written, does not contain specific provisions restricting how the space addressed in Interpretation 91 and nonbinding Informal Report Numbers 6821 and 6853 may be used; b) To date, the Commission has not issued a legally binding opinion or rule restricting how the space addressed in Interpretation 91 may be used, including the use of that space for media or exercise purposes; and c) The Commission recommends that the Indian River County Building Official review the decision set forth in the

Building Official's August 30, 2012 letter regarding the space addressed in Interpretation 91 and nonbinding Informal Report Numbers 6821 and 6853 to ensure that such decision was not made on the basis that the Florida Building Commission has already clarified or restricted the use of such spaces or on the basis of nonbinding Informal Report Numbers 6821 and 6853; and that the Commission further takes the position that the County should not rely on Interpretation 91 or nonbinding Informal Report Numbers 6821 and 6853 in making any subsequent decision regarding the space addressed in Interpretation 91.

6. Neither this Settlement Stipulation, nor any statement by either party made in furtherance of this Settlement Stipulation, may be used as evidence in any proceeding.

7. Upon the adoption of this Settlement Stipulation by the Commission, Petitioner expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Settlement Stipulation, and the Final Order of the Commission incorporating said Settlement Stipulation.

8. Upon the Commission's adoption of this Settlement Stipulation, the parties agree that each party will bear its own attorney's fees and costs resulting from prosecution and/or defense of these proceedings.

9. This Settlement Stipulation is executed by Petitioner and Respondent for the purpose of avoiding further administrative

action with respect to this cause. Should this Settlement Stipulation not be accepted by the Commission, it is agreed that presentation to and consideration of this Settlement Stipulation and other documents and matters by the Commission shall not unfairly or illegally prejudice the Commission or any of its members from further participation, consideration, or resolution of these proceedings.

10. It is expressly understood that this Stipulation is subject to the approval of the Commission and has no force and effect until the Commission enters a Final Order adopting same.

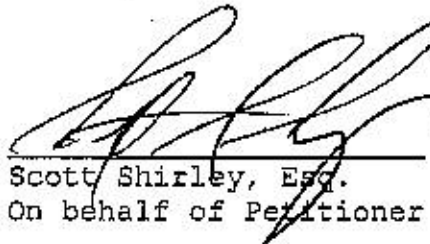
11. This Stipulation is to be construed and enforced according to the laws of the State of Florida and venue for any legal action related to this Stipulation is agreed by Petitioner and Respondent to be in Leon County, Florida.

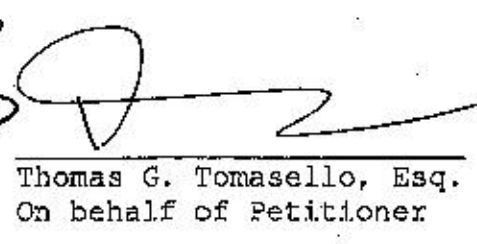
12. Should this Settlement Stipulation not be accepted in its entirety by the Commission, Petitioner's rights, and the remedies sought by Petitioner in DOAH Cases 13-580 and 13-769 are not in any way prejudiced.

WHEREFORE, the parties hereby request that the Florida Building Commission enter a Final Order accepting and implementing the terms contained herein.

<Signature Page Follows>


SIGNED this 18th day of March, 2013.


Scott Shirley, Esq.
On behalf of Petitioner


Thomas G. Tomasello, Esq.
On behalf of Petitioner

SIGNED this 18th day of March, 2013.

By delegation from the Secretary:



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