

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT

IN AND FOR LEE COUNTY, FLORIDA

CIVIL ACTION

MICHAEL B. MCGUIGAN,

Plaintiff,

vs.

Case No. 09-CA-5689

LEE COUNTY, FLORIDA,

Defendant.

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT**

Plaintiff, Michael B. McGuigan (“McGuigan”), and Defendant, Lee County, Florida (“County”), and their respective counsel, with full authority, voluntarily consent and agree to settlement of the above-referenced matter upon the following terms and conditions:

1. This agreement supersedes and replaces all prior Settlement Agreements or negotiations.
2. Approval of this Agreement is subject to approval by Lee County Board of County Commissioners.
3. McGuigan is entitled to file an application for a dock consistent with the location, specifications, and requirements shown in Exhibit “B” attached hereto and as further specified herein.
4. The dock may be constructed on the parcel more particularly described as Parcel Number 13-46-23-00-00004.0080, hereinafter the “Submerged Lot”.
5. Issuance of the dock permit will be conditioned on the following:
  - a. McGuigan must submit the required application materials required by County development regulations for issuance of a dock permit.
  - b. The dock is limited to 80’ in length.
  - c. The proposed northern finger pier must be aligned with the western most dock to the north of the Submerged Lot, which is identified as “Western Dock” on the attached Exhibit “A.”

- d. No portion of the dock structure, including finger piers may be closer than 63' from the southernmost piling used by the adjacent property owners to the North of the Submerged Lot, which is identified as "Piling A" on the attached Exhibit "A."
  - e. No boat may be moored, docked, parked, kept in a slip, or tied to the dock in such a manner as to allow a boat (or portion thereof) to be located within 63' of the Piling A.
  - f. The proposed southern finger pier may extend up to, but not more than, 12.5' over the Submerged Lot's southern property line.
  - g. Mooring piling numbers and locations must be in compliance with safe boating practices.
  - h. The dock may be replaced as needed but may not be expanded in the future. Improvements consistent with applicable Lee County regulations within the footprint of the dock, including, but not limited to, the installation of utilities, are not an expansion pursuant to this agreement. In addition, future reconfigurations of the dock that are consistent with the provisions of this agreement and all applicable Lee County regulations are not an expansion pursuant to this agreement.
  - i. The dock is limited to four (4) slips and one boat lift for each slip.
  - j. The dock may not be attached to the seawall.
  - k. The dock/ boat slips may only be used as an accessory structure to the Duplex Lot.
  - l. The dock/boat slips may not be sold, rented, or leased to individuals not related to the underlying property owner(s) of the Duplex Lot.
4. County agrees to issue a permit for a dock meeting the specifications on Exhibit "A" (as modified herein) within twenty (20) days of the date of filing of a complete application by McGuigan.
5. McGuigan agrees to subsequently modify the Corps of Engineers permit for the property to comply with the County dock permit described above.
6. Within thirty (30) days of issuance of the permit by County, McGuigan agrees to the following:
- a. Prepare and record a covenant that is acceptable to County which:
    - i. prohibits the use of the dock by any parties other than the owners, tenants, and their guests of the parcel currently identified as Parcel Number 13-46-23-00-00004.0040, hereinafter "Duplex Lot,"
    - ii. precludes the sale or alienation of the docks from the Duplex Lot; and,
    - iii. prohibits parking in the right of way in front of each of the two lots referenced above.
  - b. Combine the Submerged Lot with the Duplex Lot by requesting the appropriate approvals to "RE-STRAP" the Parcel Identification numbers for the two parcels into one Parcel Number. The Parcels must remain combined in perpetuity, or so long as the Submerged Lot has a dock.

7. Within ten (10) days of the date of the issuance of the County permit, McGuigan will dismiss Case No. 09-5689 with prejudice.

8. Within twenty (20) days of issuance of the dock permit by County, the Parties will issue a full and final release covering all known and unknown claims, promises, causes of action, or similar rights of any type, whether direct or indirect, that they may have against any released party, arising from or out of, the issuance of, or failure to issue, the dock permit that is the subject of this case.

9. Within fifteen (15) days after all necessary permits and extensions, as applicable, for the dock have been issued by County, the Army Corps of Engineers, and the Florida Department of Environmental Protection, McGuigan will convey the area shown on Exhibit "B" as "Land to be deeded to the public" by a quitclaim deed to the County, whose form must be acceptable to County.

10. The parties agree that this agreement is for settlement of pending litigation between the parties and may not be used as an admission against interest or considered as precedent or binding on County for other development applications and permits.

11. The Parties will bear their own costs and legal fees.

12. The prevailing Party in any action or proceeding to enforce any term of this Agreement shall be entitled to receive its reasonable attorney's fees and costs from the non-prevailing Party.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Michael B. McGuigan

\_\_\_\_\_  
Mary Gibbs, Director of Lee County  
Department of Community Development  
on behalf of Lee County, Florida

By: \_\_\_\_\_  
Matthew D. Uhle  
Counsel for Plaintiff

Board of County Commissioners  
Lee County, Florida

By: \_\_\_\_\_  
John S. Turner  
Counsel for Defendant