



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 1868, **Version:** 1

Subject:

Banana Riverfront, LLC

Fiscal Impact:

unk

Dept/Office:

Citizen Request / Kim Rezanka, Cantwell & Goldman, P.A.

Requested Action:

Request to allow Fla. Stat. 252.363 to act as a tolling of these permits, as set forth below, and/or to allow final approval of the project, per the Settlement Agreement, prior to the performance bond expiration on October 26, 2020.

Summary Explanation and Background:

RE: Banana Riverfront, LLC: Site Plan Application No. 19ER00037; Temporary CO PERMIT# 17BC10869; & Settlement Agreement dated March 21, 2017

On October 8, 2019, the County Commission voted to allow Banana Riverfront, LLC (a/k/a/ Squid Lips Cocoa Beach) nine months to complete all improvements required under the Settlement Agreement. That deadline is July 22, 2020. If the improvements are not completed by that date, County Staff is authorized to call the performance bond without further Board action. As we expect the work to be completed by the end of the July or early August (but not sure as to inspection timeline and approvals), it is imperative that we have guidance on whether these three (3) "permits" have been tolled, or if a formal extension of that deadline is required.

Since the meeting with staff on Oct 10, 2019, MBV Engineering made its initial Engineering Revision submittal in November of 2019. After four (4) more resubmittals, a combined site plan was approved on June 2, 2020. As MBV worked with the County Staff, there were new items (such as planting the ponds and regrading area on the site) that were never contemplated. Also, due to complete business shutdown at Squid Lips from the "safer at home" order and the unexpected death of Banana Riverfront's contractor, there have been challenges to completing the work finally approved on June 2nd.

Final site plan approval was granted on June 2, 2020. The contractor that had been hired to perform all work necessary passed away unexpectedly this Spring, and Mr. Underhill was required to get new bids, once the approval was final. The surveyor completed the grade staking (74 stakes) for the revised elevations of the ponds approximately 10-14 days ago. Mr. Underhill signed the contract for the grading and plant installation

on June 26th, and the work was planned to commence on Monday, July 6th. However, because of the continued rains, the ponds have been full of water so grading and planting could not take place in the ponds as anticipated. Some grading has been accomplished but work has been intermittent waiting for the ponds to sufficiently dry out to allow for the grading equipment to proceed.

The contractor anticipates 7-10 days to complete the grading and an additional 2 days to install the plants (assuming no rain or other delay). Without the delays due to rain, this work would have been completed by July 22nd (deadline for completion); but upon completion of the work the surveyor will need to complete an as-built, Bruce Moia will need to review and certify completion, then the County will need to inspect. These items will take the final approval beyond July 22nd.

The entire costs for the work and as-built is approximately \$10,000, and all should be substantially completed by July 22nd, weather permitting. For the County to pull the performance bond on July 22nd would be ineffective to cause the work to be completed.

With this as background, we are asking for confirmation that Governor DeSantis' March 1, 2020 Declaration of Emergency has tolled the period of time remaining for Banana Riverfront to exercise its rights of completion under the above three (3) permits/authorizations.

As support for this position, we have attached two documents, Fla. Stat. 252.363 and Fla. AGO 2012-13. Fla. Stat. 252.363 requires the tolling and extension of development orders following the declaration of a state of emergency by the Governor. We believe it is clear that the Site Plan and Temporary CO are permits which fall under this Statute and are tolled.

The more difficult question is whether the Settlement Agreement is an "authorization" or a "development order". We believe that it is and ask that you or the County Attorney's office so advise. While the term "development order" is not defined for purposes Sec. 252.363, that phrase is defined elsewhere in the statutes. As set out in Fla. AGO 2012-13, "development order" includes a development permit, which includes "any other official action of local government having the effect of permitting the development of land." Certainly, the Settlement Order had the effect of allowing the development of the land owned by Banana Riverfront. The case of Preserve Palm Beach PAC v. Town of Palm Beach, attached, is instructional on this issue and supports that the Settlement Agreement is a Development Order.

We request that the County Commission acknowledge that Fla. Stat. 252.363 applies to the three referenced permits, including the Settlement Agreement. Should the tolling extend past the performance bond expiration on October 26, 2020, Banana Riverfront, LLC will need to provide another bond to the County.

Contact: Kimberly B. Rezanka, Cantwell & Goldman, P.A., 321-639-1320, ext. 123

Clerk to the Board Instructions: