

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 9/12/06
Department Name: County Counsel
Department No.: 013
Agenda Date: 9/26/06
Placement: Administrative
Estimate Time:
Continued Item: YES
If Yes, date from: 9/12/06

TO: Board of Supervisors

FROM: Stephen Shane Stark, County Counsel
John Baker, Director, Planning & Development

STAFF CONTACT: Kevin E. Ready, Sr. Senior Deputy County Counsel
x, 3567

SUBJECT: Settlement of Thomas Claim/Threatened Litigation,
2375 Finney Street, Summerland 1st District

Recommendation(s):

That the Board of Supervisors:

1. Approve a Settlement Agreement with Tony Thomas (attached).

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 1. An Efficient Government Able to Respond Effectively to the Needs of the Community.

Executive Summary and Discussion:

On September 12, 2006, in Closed Session, your Board tentatively approved a Settlement Agreement with Tony Thomas regarding claims made involving the processing of land use approvals and zoning violations on his property at 2375 Finney Street, Summerland. The settlement involved a mutual agreement as to the process for future processing of land use permits, the resolution of past zoning violations and the release of claims the Thomas's may have against the County and its officers and employees.

County policy requires that litigation settlement agreements that would serve to implement what would otherwise be a discretionary land use decision must be given final approval in open session. Therefore, this matter is being brought to your Board for ratification of your earlier tentative approval in closed session. This settlement agreement will serve to resolve any past zoning violations that may have occurred on the subject property and this decision will be deemed to be final action by the County in exercise of its police power to enforce any zoning violations that may have occurred prior to the settlement. Although

the Settlement Agreement also discusses the processing of land use approvals for improvements to the residence on the subject property, those approvals will be subject to future action before the Planning Commission and your Board and are neither approved nor resolved in any way by the Settlement Agreement, other than an agreement to expedite those future approvals to the extent possible.

Mandates and Service Levels:

Fiscal and Facilities Impacts: None

Special Instructions: None

Concurrence:

**AMENDED
SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS**

1. Parties

1.1 The parties to this Amended Settlement Agreement and Mutual Release ("Agreement") are: C. Anthony Thomas ("Thomas") and the County of Santa Barbara ("County").

1.2 Thomas enters into this Agreement on his own behalf, on behalf of his heirs, beneficiaries, executors, administrators, agents, representatives, attorneys, successors, and assigns, and on behalf of all other persons and entities to whom any Claim (defined below under Recital 2.b) has accrued or may accrue. Thomas is referred to below as "Releasor," and each such reference, is intended to refer to him and his heirs, beneficiaries, executors, administrators, agents, representatives, attorneys, successors, and assigns, collectively, jointly, separately, and severally.

1.3 The COUNTY enters into this Agreement on its own behalf, on behalf of its past and present agents, servants, employees, officers, directors, administrators, representatives, elected officials, attorneys, departments, divisions, and agencies, and on behalf of all other persons and entities associated in any way with the County, whether acting independently, individually, on behalf of the County, or otherwise, against whom any Claim has been or may be made. The County and those others are referred to below as "Releasees," and each such reference is intended to refer to them collectively, jointly, separately, and severally.

2. Scope and Intent

This Agreement is made with reference to the following facts:

(a) Thomas owns a single-family residential property at 2375 Finney Street, Summerland, California ("Thomas Parcel"). Immediately to the west of the Thomas Parcel is a parcel of land designated on various County plans and maps as "Cary Place" (hereinafter "Cary Place Parcel"), but which has never been used as a public street.

(b) A dispute exists between Thomas and the County concerning a number of issues relating to the Thomas Parcel and Cary Place. Thomas' position on those issues ("Claims") is set forth in a letter from Thomas' counsel to the County dated April 12, 2005 ("Claim Letter").

(c) Without admitting liability and without validating or invalidating any argument or issue advanced by either party, Thomas and the County desire to settle their disputes on the terms and conditions stated in this Agreement.

(d) In order to resolve their disputes, on January 21, 2006, the Parties entered into a Settlement Agreement and Mutual Release ("Original Settlement Agreement")

which provided *inter alia* for the sale of the Cary Place Parcel to Thomas under certain terms and conditions.

(e) By its letter dated June 30, 2006, staff of the California Coastal Commission expressed certain concerns regarding the sale of the Cary Place Parcel to a private party. Based on that letter, the parties to this agreement have determined that pursuing the sale of the Cary Place will be a protracted process.

(f) The parties therefore wish to resolve their disputes by the following terms, which supersedes in full the terms of the Original Settlement Agreement.

3. Consideration and Agreement

In consideration for the respective and mutually conditional promises set forth in this Agreement, the parties agree as follows:

3.1 Effective Date. The Agreement shall be effective upon the date on which the last Party signed this agreement, as reflected on the signature page hereof, and the Agreement shall be effective on that date ("Effective Date").

3.2 Obligations of the Parties:

(a) The County has examined the garden walls, stairways and landscape features currently on the Thomas Parcel and the Cary Place Parcel including stairways from the residence to the beach which cross the Cary Place Parcel, stone steps and low profile stone wall, the area marked "Terrace" on the graphic exhibit to the Claim Letter, and the railroad ties which border the "Terrace." The County acknowledges past violations with respect to certain of these improvements. The County hereby exercises its discretion within its police power to deem all past violations resolved under the terms of this Amended Settlement Agreement. The County hereby rescinds all Notices to Thomas for past zoning violations. The County acknowledges historic use of the Cary Place Parcel for beach access by the owners of the Thomas Parcel which the County will not hereafter seek to impede or diminish.

(b) Upon submission of applications by Thomas for permits for the construction of a single family residence or remodel of the existing home and new landscape improvements on the Thomas Parcel, the County shall make every good faith effort to *expedite* the processing of these applications. The parties acknowledge and agree that the County cannot and does not prejudice or make any commitments regarding ultimate approval of the permit applications anticipated by this Agreement, which shall be processed in accordance with all applicable ordinances, resolutions, policies and statutes. Nothing herein shall be deemed to be waiver or infringement of the County's police power nor shall any part or all of this Agreement be construed on the part of the County as an obligation to grant any permits, entitlements or approval.

3.3 Effective Date of Mutual Release

The full mutual releases stated in Paragraph 4 of this Agreement shall be effective on the sixtieth (60th) day after the issuance by the County of Final Inspection for the new single family residence or remodel of the existing home and permits for landscape improvements hereafter to be constructed on the Thomas Parcel.

4. Mutual Releases of Claims

4.1 Thomas' Release. Upon the issuance of the final inspection for the new home or remodel of the existing home and permits for landscape improvements on the Thomas Parcel, Thomas shall execute and deliver to the County a release under which Thomas for himself and his employees and agents, fully and forever releases County, their officers, employees, governing members, agents and attorneys from any and all liability, claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action, whether known or unknown, foreseen or unforeseen, which directly or indirectly relate to any claims, facts or circumstances arising out of or alleged in the Claim Letter.

4.2 County's Release. The County for itself and its officers, governing members, employees and agents, fully and forever releases Thomas, his agents and attorneys from any and all liability, claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action, whether known or unknown, foreseen or unforeseen, which directly or indirectly related to any claims, facts or circumstances arising out of or alleged in the Claim Letter.

5. Waiver of the Benefits of Civil Code Section 1542.

All of the parties, having been fully apprised of the nature and effect of the provisions of section 1542 of the California Civil Code, waive all rights which they may have against the other, both known and unknown which might otherwise exist by virtue of the provisions of Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

6. Representations

All parties to this Agreement represent and warrant that they have been afforded adequate opportunity to and have in fact reviewed the contents of this Agreement with counsel of their own choosing and accept the terms and conditions hereof based upon such advice of counsel.

7. Remedies for Breach of Agreement

Should any party to this Agreement violate any term or condition herein, the non-breaching party shall retain all rights and remedies available under the law including, but not limited to, the Coastal Act, remedies arising under contract law. The breaching party shall retain the right to raise all applicable defenses in response to any claim brought by the non-breaching party.

8. Tolling of Statute of Limitations

The parties stipulate that all statutory deadlines, statutes of limitations or other deadlines or time limits applicable Thomas's right to file a judicial action raising Claims as defined herein shall be tolled during the pendency of this Agreement and until the effective date of mutual release as provided in Section 3.3. Thomas further stipulates that he shall not be entitled to collect or accrue damages during said stay period, apart from damages for breach of this instant Mutual Release of All Claims.

9. Interpretation

All parties acknowledge and agree that this Agreement shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects. The parties further agree that this agreement was prepared by counsel for both parties, with equal bargaining power, and that no presumption favoring one party or the other should be employed in interpreting it.

10. Merger and Integration

This Agreement constitutes the entire agreement of the parties pertaining to the dispute which gave rise to the submission of the Claim Letter and it supersedes all prior or contemporaneous understandings, representations, warranties and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof including the Settlement Agreement. This Agreement is entire in and of itself and may not be modified or amended except by an instrument in writing signed by all the parties. The terms of this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement. The parties hereto further intend and agree that no extrinsic evidence whatsoever may be introduced in any judicial proceeding or quasi-judicial proceeding, if any, in connection with the enforcement or interpretation of this agreement.

11. Execution in Counterpart

In order to more expeditiously implement the compromise and settlement terms set forth herein, the parties to this Agreement agree that the Agreement may be executed in two or more counterparts as if all parties signed one document and each executed counterpart shall be regarded as if it is an original document. The original executed counterparts shall be kept in the custody of the County Counsel..

12. **Amended Agreement Supersedes Original Settlement Agreement**

The terms of this Amended Agreement entirely supersede and replace the Original Settlement Agreement.

13. **Binding on Successors-in-Interest**

This Agreement is binding upon the parties, and their successors-in-interest, transferees and assignees.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

Date: _____

C. Anthony Thomas

Date: _____

COUNTY OF SANTA BARBARA

By: _____
Chair, Board of Supervisors

APPROVED AS TO FORM:

SHANE STARK, County Counsel

Date: _____

By: _____

Date: _____

Kathleen M. Weinheimer
Attorney for C. Anthony Thomas