

RESOLUTION NO. R-2022-57

BASTROP GROVE SETTLEMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING A MEDIATOR'S PROPOSAL REGARDING THE BASTROP GROVE LITIGATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT CONSISTENT WITH THE TERMS AND CONDITIONS STATED HEREIN

WHEREAS, on July 5, 2021, 71 Retail Partners, LP, sued the City of Bastrop and the Zoning Board of Adjustment of the City of Bastrop alleging a violation of Texas Local Government Code Chapter 245, which mandates the Uniformity of Requirements for certain development projects and effectively grandfathers (aka, *freezes* or *vests*) the application of future development regulations (in the District Court of Bastrop County, Cause #423-7941); and

WHEREAS, on July 8, 2021, MC Bastrop 71, LP, sued the City of Bastrop alleging an unconstitutional Taking of Private Property for public purposes, that property being a portion of the Agnes Street right-of-way (in the District Court of Bastrop County, Cause #1842-21); and

WHEREAS, on September 17, 2021, 71 Retail Partners, LP, sued the City of Bastrop and the Zoning Board of Adjustment of the City of Bastrop alleging violation of Texas Local Government Code Chapter 245 (in the District Court of Bastrop County, Cause #1916-335); and

WHEREAS, on October 15, 2021, MC Bastrop 71, LP, sued the City of Bastrop and the Zoning Board of Adjustment of the City of Bastrop alleging violation of Texas Local Government Code Chapter 245 (in the District Court of Bastrop County, Cause #1939-335); and

WHEREAS, through these four lawsuits (collectively, the "Grove Litigation"), MC Bastrop 71, LP and 71 Retail Partners, LP (collectively, "Plaintiffs") sought specificity regarding the application of municipal land development standards and infrastructure-related exactions for a mixed-use development endeavor generally referred to as the Bastrop Grove, more specifically Lots 7, 8, 9 and Section 5 of the Bastrop Grove located on the southwest corner of the intersection of Highway 71 and Highway 304, in the City Limits (collectively, the "Property"); and

WHEREAS, through its participation in these lawsuits the City of Bastrop and the Zoning Board of Adjustment of the City of Bastrop (collectively, the “City” and together with Plaintiffs referred to as the “Parties”) has sought more specificity about what the Plaintiffs propose to construct and/or develop in order to identify which regulations apply and what alternative standards would be sufficient to uphold the principles and priorities previously identified by the City Council; and

WHEREAS, on March 9, 2022, the Parties participated in their first mediation session, which yielded significant progress on achieving a mutual understanding of the Plaintiffs’ intentions for the Property as an owner and developer, and the City’s public interest concerns in its role as a planner and regulator; and

WHEREAS, following the first mediation, the Parties continued to converse and exchange documentation in an effort to find common ground that would allow responsible development to proceed on the Property, protect the public health, safety, and welfare, and thus make continued litigation unnecessary; and

WHEREAS, on June 24, 2022, the Parties conducted a second mediation session that concluded in a general consensus on the essential terms of a potential settlement, which at the time was memorialized as a Mediator’s Proposal that was executed by the attorneys for the Parties as a compromise sufficient to present to their respective clients for consideration (hereinafter the “Mediator’s Proposal” a copy of which is attached hereto as Exhibit “A”); and

WHEREAS, the City Council finds that a mediated settlement as explained herein is reasonable, necessary, and in the public interest.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

SECTION 1. Findings of Fact. The City Council finds that all of the recitals contained in this Resolution are true and adopts them as findings of fact by this governing body.

SECTION 2. Authorization. The City Council hereby authorizes the City Manager to execute a settlement agreement and release of claims with the Plaintiffs consistent with the Mediator’s Proposal, to resolve the following cases:

A. *71 Retail Partners, LP, v. the City of Bastrop and the Zoning Board of Adjustment of the City of Bastrop*, in the District Court of Bastrop County, Cause #423-7941 (July 5, 2021); and

- B. *MC Bastrop 71, LP, v. the City of Bastrop***, in the District Court of Bastrop County, Cause #1842-21 (July 8, 2021); and
- C. *71 Retail Partners, LP, v. the City of Bastrop and the Zoning Board of Adjustment of the City of Bastrop***, in the District Court of Bastrop County, Cause #1916-335 (September 17, 2021); and
- D. *MC Bastrop 71, LP, v. the City of Bastrop and the Zoning Board of Adjustment of the City of Bastrop***, in the District Court of Bastrop County, Cause #1939-335 (October 15, 2021).

SECTION 3. Terms & Conditions. In addition to the Mediator's Proposal, the City Council's authorization above shall include:

- A. No Admission.** The settlement agreement shall not be construed to represent an admission of wrongdoing by either Party; and
- B. Good Faith.** The settlement agreement constitutes a good faith compromise of willing parties represented by legal counsel; and
- C. Full & Complete.** The settlement agreement shall be a compromise and full release of all claims herein specified, whether past or future.
- D. Third Parties.** The settlement agreement shall not extend any rights or obligations to any persons not party to the cases listed above.

SECTION 4. City Attorney Approval. The settlement agreement must be in a form approved by the City Attorney. Accompanying the settlement agreement will be a Neighborhood Regulating Plan, which is to be consistent with the Mediator's Proposal and in a form approved by the City Attorney.

SECTION 5. Defendants. Any settlement effectuated in accordance with this Resolution shall be on behalf of the City of Bastrop and the Zoning Board of Adjustment of the City of Bastrop.

SECTION 6. Open Meeting. The meeting at which this Resolution was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act.

SECTION 7. Effective Date. This Resolution shall take effect immediately upon its passage, and it is so resolved.

DULY RESOLVED & ADOPTED by the City Council of the City of Bastrop on this, the 28th day of June 2022.

APPROVED:



Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

Attachment "A"

Mediator's Proposal