

RESOLUTION 2022-09

of the

Town Council

for the

Town of Windermere, Florida

Ratifying and Pertaining to the Prosecution and Defense of the Controversy Regarding the 3rd Avenue Boathouses

Whereas, the Town of Windermere was the landlord under five lease agreements, dated March 1, 2001, for the boathouses located on 3rd Avenue, all of which expired under their terms on February 28, 2021.

Whereas, at its December 8, 2020 meeting, the Town Council extended the lease agreements for a period of 6 months to August 28, 2021 to provide the Town with the opportunity to work with the boathouse tenants to negotiate new lease agreements.

Whereas, at the time of the August 10, 2021 meeting, the Town and boathouse tenants were still discussing a potential new lease agreement and the Town Council further extended the lease agreements from month-to-month with such extension automatically renewing until one party provided the other with a 30-day written notice of termination.

Whereas, on October 12, 2021 the parties had not reached an agreement on a new lease agreement and accordingly the Town Council voted to give the boathouse tenants a 60-day written notice of termination.

Whereas, on March 8, 2022, the Town Council reviewed and approved the 60-day notice of termination for the boathouse leases and the form of the termination notice to be signed by the Mayor and sent to the boathouse tenants.

Whereas, on March 8, 2022, the Town Council voted to leave the five boathouses empty for a “cooling down” period to allow the Town committees and Town Council the time to hold workshops and determine how the boathouses should be used in the future.

Whereas, on March 8, 2022 the Town Council also discussed the need for the repairs to be made by the Town to the boathouses after the boathouses were vacated because of the lack of maintenance and upkeep by several of the boathouse tenants.

Whereas, on April 22, 2022 the Town sent a termination of lease agreement, effectively terminating the boathouse leases on June 10, 2022.

Whereas, the Town Council, Town staff and Town representatives received “trespass notices” dated May 10, 2022 from the boathouse tenants threatening the Town with civil or criminal remedies if staff, agents, and officials of the Town were to enter the boathouses or curtilage which were subject to the expired lease agreements.

Whereas, pursuant to the boathouse leases, the boathouse tenants had until July 11, 2022 to vacate the boathouses and remove building materials, boat hoists and fixtures, provided such removal was not prohibited by law.

Whereas, the boathouse tenants have not vacated the boathouses.

Whereas, to exercise the Town's rights to retake possession and require the boathouse tenants to vacate the boathouses, Gray Robinson, P.A. (the "Town Attorney") filed complaints against each non-vacating tenant with the Orange County Circuit Court of the Ninth Judicial Circuit requesting relief from the court including eviction, breach of contract, and ejectment of the boathouse tenants.

Whereas, in response, counsel for the boathouse tenants filed motions to dismiss, claiming in part that the court lacks subject matter jurisdiction to consider the Town's complaints because the Town Attorney "did not first obtain and attach a resolution of the Town Council authorizing the filing and prosecution of the Complaint."

Whereas, Section 9.02 of the Town's Charter provides in part that the "The Town Council shall appoint a Town Attorney, who shall be a lawyer with at least five (5) years of experience and who . . . (c) When required to do so by resolution of the Town Council, shall prosecute and/or defend any complaints, suits and controversies in which the Town is a party. . . ."

Whereas, counsel for the boathouse tenants states in the motions to dismiss that the Town's complaints seeking relief from the court were unauthorized since "No resolution of the Town Council was adopted prior to the commencement of this action or attached to the Complaint that authorized the filing or prosecution of the Complaint."

Whereas, "resolution" has many meanings, including the act of finding an answer or solution to a conflict, the act of resolving something, the act of solving a problem, the act of determining an action, a determination, etc.

Whereas, the action of the Town Council was to terminate the leases and to leave the boathouses vacant for a period of time to be later determined, after the boathouses were repaired by the Town.

Whereas, actions taken to reobtain possession by way of a court order from the circuit court were consistent with the Town Council's direction, decisions, intent, and formal motions.

Whereas, in circumstances such as this, Section 9.02 of the Town's Charter does not require a "written" resolution, it does not require a resolution to be attached to a complaint, and even if determined otherwise, it does not provide that such "resolution" must be in writing and adopted prior to the Town Attorney prosecuting and/or defending any complaints, suits and controversies in which the Town is a party.

Whereas, in an abundance of caution regarding the work previously done by the Town staff and the Town Attorney, and with respect to legal work yet to be performed regarding the

boathouses, the Town Attorney recommends that the Town Council adopt a “resolution” in the form argued as necessary by the counsel for the boathouse tenants.

Whereas, the Town Council hereby ratifies all actions previously taken by the Town and the Town Attorney regarding the boathouse tenants and is hereby “requiring and directing” the Town Attorney to prosecute and/or defend any complaints, suits and controversies with respect to the boathouse tenants in line with the decisions and motions made by the Town Council.

Now Therefore, Be It Resolved by the Town Council of the Town of Windermere, Florida:

Section 1. Recitals. The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

Section 2. Prosecution and/or Defense of Complaints, Suits and Controversies. The Town Attorney was previously and is hereby confirmed to continue to be required and directed to prosecute and/or defend complaints, suits and controversies regarding the termination of the five 3rd Avenue boathouse lease agreements and to take, in consultation with the Town Manager, legal actions necessary and consistent with the direction provided by the Town Council that the boathouses be vacated and possession of the boathouses by the Town be reobtained.

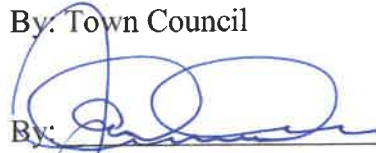
Section 3. Ratification. The Town Council hereby ratifies and approves all actions taken by the Town Attorney to prosecute and/or defend complaints, suits and controversies regarding the five 3rd Avenue boathouse lease agreements, including but not limited to, the filing of the five complaints with counts for eviction, breach of contract, and ejectment.

Section 4. Effective Date. This Resolution shall take effect immediately upon its adoption.

Resolved this 7th day of September, 2022.

Town of Windermere, Florida

By: Town Council

By: 
Jim O'Brien, Mayor

Attest:


Dorothy Burkhalter, MMC, FCRM
Town Clerk

