July 7, 2016

George Valdivia
7330 Owens Court
Hollywood, Florida 33024

Re: <u>Florida Statute Section 70.001 ("Harris Act") Claim by George Valdivia and Luis Valdivia ("Valdivia")</u>

Dear Mr. Valdivia:

As provided by Section 70.001(5)(a), Florida Statutes, the City of Hollywood ("City") hereby identifies the allowable uses to which the property referred to in your April 11, 2016 letter ("Letter") to City of Hollywood Mayor Peter Bober ("the Property") may be put. This letter is also intended to act as the City's written settlement offer to you pursuant to Section 70.001(4)(c), Florida Statutes.

The uses set forth herein are subject to all applicable development regulations, development approvals, and all related procedures. This letter does not operate, and is not intended to vest any rights to develop the Property. Furthermore, by issuing this letter, the City does not acknowledge or concede that your claims are ripe, valid or give rise to a cause of action that would entitle you to relief under Section 70.001, Florida Statutes, or any other applicable law. Nor does the City concede that the Harris Act is constitutional by issuing this letter. This letter is based on the City's good faith review and consideration of your claim. The City expressly reserves the right to raise or elaborate on any further arguments or grounds in favor of its position in the future.

<u>The Property and Its Uses</u>

The Property encompasses several lots, and is legally described below:

The West half (W1/2) of Tract Fifty-five (55) LESS the West Twenty-five feet (W25') and the South Twenty-five feet (S25') thereof for road right of way; said Tract 55 being in A.J. BENDLE SUBDIVISION of Section 3, Township 51 South, Range 41 East, according to the Plat thereof, recorded in Plat Book 1, Page 27 of the Public Records of Dade County Florida, (street address of 7330 Owens Street, Hollywood Florida

33024), Valdivia Plat Phase II 173-45 B Lots 2-17, presently known as "Owens Court", Hollywood, Florida,

Pursuant to Section 70.001(5)(a), Florida Statutes, the City must identify the uses to which the Property may be put.

The Future Land Use Plan Designation for the Property is **Residential**. The uses permitted in the Residential Land Use Designation are listed in Exhibit A, attached hereto. The permitted, conditional, and accessory uses allowed in the residential zoning district are listed on Exhibit B, attached hereto.

The Property has already been platted and/or developed with an approximate 17 lot layout with two separate phases. The Property's plat notes specify the level of development which was expected to occur at the time of platting. These limitations are contained in the plat notes agreed to and acknowledged by the owner on the face of the plat. None of the plat notes envision or permit the development of more than seventeen lots.

Valdivia's Harris Act Claim

The Letter alleges that initially a 21 lot layout was "presented [] to the [Subdivision Review Committee ("SRC")] and after preliminary meetings, the SRC agreed with the 21 lot layout site plan." It further states that after this preliminary approval, and without first obtaining final approval, you "then proceeded to build the first house in accordance with the 21 lot site plan" and only after "completion of the first house we returned to the City and resubmitted the 21 lot layout site plan to the SRC" but "the SRC would not issue any written recommendation." The Letter further claims that "this action by the City clearly inordinately burdened an existing use of real property and/or our vested right to a specific use of real property".

The Letter further contends that there were delays in the City's issuances of certificates of occupancy due to issues with the drainage design system and the installation and removal of a berm, which was required by the Central Broward Water Control District in 2005 and 2006. It then asserts that "[w]hile the City of Hollywood took issue with Central Broward Water Control District's requirement of the construction of a berm on Owens Court to retain water, this issue should not have been used to halt our ability to complete and construct houses on our property. During the 16 month period of inactivity caused by the City, we were unable to capitalize on the heightened real estate values as it was impossible for us to obtain any certificates of occupancy for any of our homes."

As a result of the foregoing "inordinate burdens" resulting from the City's approval of only 17 lots instead of 21 lots, and the alleged 16 month delay in the issuance of

certificates of occupancy, the Letter alleges the loss of future sales of unconstructed homes in the amount of $2,756,934.00.

City's Position re Valdivia's Claim

The following substantive and procedural infirmities with your claim will be raised in any action you may bring against the City related to this claim. This recitation is not intended to be a complete statement of all said matters, and the City hereby reserves the right to raise additional legal defenses to any such claim related to the Letter.

1. Failure to Attach a Bona Fide Appraisal

First, your Letter fails to comply with the requirements of the Harris Act. Section 70.001(4)(a), Florida Statutes, requires a "bona fide, valid appraisal that supports the claim…" Instead of a "bona fide, valid appraisal," your Letter attaches a brief summary of unsupported conclusions relating to a development scenario for the property. You then attach printouts from the property appraiser's website, which may or may not be comparable with any of the lots on your Property but certainly do not constitute a "bona fide, valid appraisal."

These are not "appraisals" by any definition of the term, no less a "bona fide, valid appraisal" as required by the Harris Act. Failure to attach a "valid, bona fide appraisal" bars any action under the Harris Act. *Osceola County v. Best Diversified,* 936 So. 2d 55, n.5 (Fla. 5th DCA 2006); *Sosa v. West Palm Beach,* 762 So. 2d 981 (Fla. 4th DCA 2000). The failure to comply with the procedural requirements of the Harris Act will require dismissal of any claim filed in court. *Wendler v. City of St. Augustine,* 2013 WL 1007290 (Fla. 5th DCA 2013).

2. Failure to Present Claim within One Year / Statute of Limitations Failure

In addition, your Letter was sent many years too late, and there is no basis to claim that the time for providing this letter has been tolled under section 70.001, Florida Statutes. According to section 70.001(11), Florida Statutes, "a cause of action may not be commenced under this section if the claim is presented more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue." *See Wendler v. City of St. Augustine*, 108 So. 3d 1141 (Fla. 5th DCA 2013) ("A Harris Act claim must be presented within one year from the time the law or regulation is first applied by the governmental entity to the subject property.") "Failure to comply with these procedural requirements will result in a dismissal of the lawsuit." *Id.* at 1144 (citing *Sosa v. City of West Palm Beach*, 762 So.2d 981 (Fla. 4th DCA 2000) (holding that complaint must be dismissed where property owner failed to comply with prerequisites for bringing suit under Harris Act)).

Moreover, even if the time had been tolled, you still failed to meet the one-year claim period and the four-year statute of limitations. Specifically, the time to bring a claim under the Harris Act is only tolled during the time where "an owner seeks relief from the governmental action through lawfully available administrative or judicial proceedings, … until the conclusion of such proceedings." Fla. Stat. 70.001(11)(b).

The 1-year claim period accrues either "upon enactment and notice as provided for in this subparagraph if the impact of the law or regulation on the real property is clear and unequivocal in its terms and notice is provided by mail to the affected property owner" or "when there is a formal denial of a written request for development or variance. *See* Fla. Stat. 70.001(a)(1)-(2). Accordingly, the one-year claim period accrued on or about the date the SRC approved the 17 lot site plan (which was in 2003) and/or the date that the berm issue with the County was resolved, or at least by March 8, 2008. *See* City correspondence of same date.

Pursuant to the statute, you were required to present your claim within one year of these dates, which you failed to timely do. While you filed suit for inverse condemnation proceedings on May 18, 2009, you did not present your Harris claims by that date, and the one-year claim period had already expired. *See, e.g., Wendler*, 108 So. 3d at 1145 ("Given the tolling provision found in section 70.001(11), only six months had elapsed (five months between the time of the citation and the first challenge in circuit court on May 23, 2008, and one month between their voluntary dismissal of their petition for writ of certiorari (April 5, 2010), and the presentation of the claim to the City)").

In addition, not only did you fail to present your Harris claim within one year, and no tolling provision applied, you also failed to file suit on your Harris claim within four years from the date of the "inordinate burden." "The statute of limitations to file suit under the Harris Act is four years, and begins from the date of the government action, which acts as the ordinate burden." *Id.* at 1145 (referencing *Russo Associates, Inc. v. City of Dania Beach Code Enforcement Board*, 920 So.2d 716 (Fla. 4th DCA 2006)). Consequently, under section 95.11(3)(f), Florida Statutes, you had four years to file your complaint under the Harris Act, which you failed to do. Your clear failure to timely present your claim and failure to timely file suit definitively precludes your proceeding under this statute.

3. Preliminary v. Final Approval

Also, your claim attempts to impose liability on the part of the City for preliminary meetings and discussions wherein the parties explored the *possibility* of platting either 20 or 21 lots. *See* Letter p. 3.

Any preliminary discussions prior to final approval were, by their very nature, <u>preliminary</u> and did not and could not have constituted final approval. The Letter

recognizes that the initial discussions with the SRC were conducted in "preliminary meetings." Indeed, you recognize your failure to have final approval, as your Letter specifically states that "we resubmitted the 21 lot layout site plan to the SRC" but "the SRC would not issue any recommendation approving or denying the 21 lot layout site plan." *See* Letter p. 3. Obviously, if the City had approved the 21-lot layout, you would not have had to submit (or resubmit) the site plan, as you would already have had approval. The fact that you were required to resubmit the plan is further evidence that no approval had been given.

Moreover, you have already admitted that you never received approval of 21 lots, and therefore you clearly had no vested interests or rights in a 21-lot layout. *See* Valdivia Deposition, page 43:14-44:1 ("Q. … Is that the master plan that you're referring to? A. Yes, that's the original 21 lots in the area that I submitted, yes. Q. And you submitted that to the Planning and Zoning Advisory Board? A. Yes. Q. <u>That plan was never submitted to commission, correct? A. Correct, never got there, right</u>. Q. And <u>that plan was never approved by the commission? A. Right. It wasn't submitted</u>.")

Without full and final approval, there is no vested right to any particular use or to any particular number of lots and no investment backed expectations to 21 lots could possibly have been created. The only approval you received for your Property was for 17 lots. Accordingly, any attempt to claim the value of these unapproved, undeveloped, speculative four lots is without merit and wholly untenable.

4. No Liability for Purported Delay in Issuing Certificates of Occupancy

To the extent there were issues with the Central Broward Water Control District and the berm installation, resulting in a suspension of certificates of occupancy, the City's building department is not and cannot be required to issue such certificates, nor is it responsible for any purported delay in the issuance of such certificates of occupancy, under prevailing law. *See, e.g., Akin v. City of Miami*, 65 So.2d 54 (Fla. 1953) ("Rejecting the contention" that "a municipality may be liable in an action for damages if in the pursuance of this lawful police power [referring to an alleged wrongful failure to issue a building permit] the municipality acts in an unlawful or unauthorized manner"); *Disser v. City of Tampa*, 2013 WL 3975759, *9 (M.D. Fla. 2013) (Holding that "a municipality cannot be liable for damages for any conduct or function related to the issuance of a permit"); *Paedae v. Escambia County*, 709 So.2d 575, 577 (1st DCA 1998) (rejecting claim for money damages when a local government wrongfully denied permits to build mobile homes because {t]here is also no cause of action for damages under state law"); *City of Cape Coral v. Landahl, Brown & Weed Associates*, 470 So.2d 25, 26 (Fla. 2d DCA 1985) (reversing judgment for money damages for wrongful revocation of a building permit, and noting "there is no cause of action for the manner in which a municipality exercises its governmental function of issuing or refusing to issue permits (citation omitted); *see also City of Live Oak v. Arnold*;

468 So.2d 410, 413 (Fla. 1st DCA 1985) (holding that "the liability of the city cannot be predicated simply upon its wrongful refusal to initially issue the permits, even if the trial court ultimately determines that the city's construction of its ordinances is incorrect as a matter of law). Thus, those actions of the City are immune from any lawsuit for damages for the alleged delay in the issuance of the certificates of occupancy.

5. No Existing or Vested Right

Your letter contends that you "purchased a vacant tract of land," and thereafter sought to subdivide the parcel by plat. The 21 lot proposed single-family residential layout was therefore neither an "existing use" of the property within the meaning of section 70.001(3)(b), Florida Statutes, nor did you have a "vested right" to the proposed subdivision, within the meaning of section 70.001(3)(a), Florida Statutes. *See, e.g., City of Jacksonville v. Coffield*, 18 So.3d 589 (Fla. 1st DCA 2009).

6. Not the Property Owner

While your letter is by no means clear on the subject, you have appended several excerpts from the records of the Broward County Property Appraiser's Office that indicate that individuals other than yourselves own at least some of the property subject to your claim. As to any such property, you are not the "property owner," within the meaning of section 70.001(3)(f), Florida Statutes.

<u>Settlement Offer</u>

Section 70.001(4)(c), Florida Statutes, requires the City to make a written settlement offer during the 150-day notice period. That period began on April 11, 2016, and runs on September 8, 2016. Specifically, subparagraphs (4)(c)(1)-(11) provide eleven options for settlement.

The City chooses option (11) "No changes to the action of the governmental entity," which means that the City is not offering any concessions from the ordinances and regulations and site plan approvals which were lawfully adopted and which presently apply to the Property. These regulations, including the seventeen lot plat approval and the effective variance for the berm which has been in effect for eight (8) years, provide sufficient development rights for the Property under the current residential zoning.

You have developed the Property into seventeen lots, as approved by the SRC. Despite your unhappiness with the site plan that was actually approved and your unhappiness with the timing of the certificates of occupancy, you cannot demonstrate any wrongdoing on the part of the City, and you have failed to comply with the requirements of the Harris Act. Accordingly, you cannot pursue any of your claims under the Harris Act.

Should you continue with these proceedings, the City will seek to recover its attorneys' fees and costs in having to defend these unmeritorious claims to the fullest extent available to it.

Very truly yours,

Mayor Peter Bober

Enclosures