

ANNE MILGRAM, ATTORNEY
GENERAL OF NEW JERSEY, et al.

Plaintiffs,

v.

D. LOBI ENTERPRISES, et al,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY

DOCKET NO. C-296-06

Civil Action

STIPULATION OF SETTLEMENT
BETWEEN PLAINTIFFS/THIRD PARTY
DEFENDANTS AND
DEFENDANT/COUNTERCLAIMANT
BOROUGH OF SEA BRIGHT

WHEREAS, in 1989, the State of New Jersey and the Borough of Sea Bright signed a State Aid Agreement for the Sea Bright portion of the Sandy Hook to Barnegat Inlet beach nourishment and replenishment project (the "Project"), a federal shore protection project authorized pursuant to the River and Harbor Act of 1958, the Water Resources Development Act (WRDA) of 1986, and the WRDA of 1988; and

WHEREAS, the State Aid Agreement did not modify the terms of WRDA, but set forth the cost-sharing arrangement between the State and the Borough for the non-federal obligations pursuant to WRDA and identified other State and Borough responsibilities for the Sea Bright portion of the Project; and

WHEREAS, the Borough contends that in 1993 it fully secured all of the required access agreements and land and easement acquisitions required under the State Aid Agreement and WRDA, except for the lands and properties of the commercial beach clubs within the Borough; and

WHEREAS, in 1993, the State, the Borough, and all of the commercial beach clubs in Sea Bright entered into three-party agreements in connection with the Project (the “1993 Agreements”); and

WHEREAS, in the 1993 Agreements, the State, the Borough, and the beach clubs agreed that the clubs would provide to the State the construction access easements necessary for the Project and that public use of the beach in front of the beach clubs would be limited to a 15-foot-wide transit corridor; and

WHEREAS, the Borough reported that it spent over one million three hundred thousand dollars (\$1,300,000.00) on land and easement acquisition for property throughout the Borough that would become either Supervised or Unsupervised Municipal Beaches or parking areas available for public use; and

WHEREAS, the Borough contends that it fully complied with all its duties, and obligations pursuant to WRDA, the State Aid Agreement, and the three-party agreements; and

WHEREAS, at the completion of the initial beach replenishment performed by the United States Army Corp of Engineers (USACE) in 1995, the non-federal entities (State and Borough) were not required to directly contribute funds over the amount of money expended by the State for construction of the Sea Bright-Monmouth Beach seawall and by the Borough for the money it contributed to the Seawall repair and for land and easement acquisition for the initial replenishment; and

WHEREAS, in 2003, USACE re-nourished the beaches in Sea Bright and sought reimbursement from the non-federal entities pursuant to WRDA for its share of the expense; and

WHEREAS, on September 22, 2006, Plaintiffs filed suit against the Borough and nine beach clubs in the Superior Court of New Jersey, Chancery Division, Monmouth County; and

WHEREAS, Counts I and II of the Plaintiffs' Complaint allege that the terms of the 1993 Agreements limiting public access to a 15-foot wide transit corridor are contrary to law and public policy, i.e., the Public Trust Doctrine as applied by the New Jersey Supreme Court's decision in Raleigh Ave. Beach Ass'n v. Atlantic Beach Club, Inc., 185 N.J. 40 (2005) and by other court decisions; and

WHEREAS, Counts I and II of the Plaintiffs' Complaint seek to reform the 1993 Agreements to obtain additional public access to the dry sand in front of the Defendant beach clubs; and

WHEREAS, Count IV of the Plaintiffs' Complaint alleges that, pursuant to the 1989 State Aid Agreement, Defendant Borough of Sea Bright was obligated to pay for its share of the 2003 re-nourishment which the State calculated and asserted to be \$556,270.92 and that the Borough has failed to pay this share; and

WHEREAS, the Borough of Sea Bright denied the State's allegation that any money was due and owing to the State for the re-nourishment, contending that the State failed to provide to the Borough the direct allocation of the credit for land and easement acquisition that the Borough was entitled to pursuant to WRDA; and

WHEREAS, the Borough of Sea Bright filed a counterclaim seeking the full credit, as outlined in the WRDA, for money spent on land and easement acquisition, that when offset by the cost of the re-nourishment totaled \$733,729.10; and

WHEREAS, Plaintiffs/Third Party Defendants State and Defendant/Counterclaimant Borough have engaged in an extensive mediation process conducted by former Chief Justice James Zazzali; and

WHEREAS, in the interest of resolving all claims between them in this litigation and avoiding the continued expense to the Borough for the costs of defending and prosecuting its claims, Plaintiff/Third Party Defendant State and Defendant/Counterclaimant Borough now agree to settle this matter in accordance with the following terms.

NOW THEREFORE, IT IS STIPULATED AND AGREED THAT:

1. Plaintiff/Third Party Defendant State and Defendant/Counterclaimant Borough will mutually dismiss their respective claims with prejudice. If either party fails to satisfy the terms and conditions under this Stipulation, either party may move to reinstate its claims, after good cause being shown.

2. In exchange for the mutual dismissals, the Borough will reconfigure its main Beach Parking area (the municipal parking lot and the Peninsula House lot) to maximize available parking at that location. The Borough will provide a copy of the reconfiguration plan that it will implement by May 15, 2010 to the State in advance of implementation.

3. Also in exchange for the mutual dismissals, the Borough will provide additional public access amenities within the Borough at a total cost of \$556,270.92, which amount shall be inclusive of funds collected and set aside from any source for reimbursement of the State's claim for shore protection funds. The Borough will submit to the State for its review the plans and estimated costs for the amenities that the Borough intends to use to satisfy the terms of this paragraph. The State will review the plans and the Borough's costs for the proposed amenities and will confirm in writing within thirty days of submission that the amenities are of a type and cost to satisfy the terms and conditions of this paragraph.

4. The Borough will satisfy its obligations under paragraph 3 by spending money for amenities that are related to providing public access to the beach. The type and kind of amenity

to be provided by the Borough that will satisfy the terms and conditions of paragraph 3 may include: (1) amenities that facilitate access to the beach by handicapped individuals (e.g., construction of handicapped-accessible walkways, provision of beach wheelchairs); (2) provision of additional parking within the Borough; (3) provision of public transit and other alternatives to automobiles (e.g., operation of a shuttle bus to the Ferguson Beach and North Beach areas, construction of a protected bicycle lane extending north of the Route 520 bridge); (4) construction of additional facilities to make beach badges available other than at the municipal beach and the municipal parking lot; (5) public portions of beach structures and facilities for life guard and rescue personnel, public lockers, restroom facilities, and public showers; (6) a public swimming facility/pool with changing rooms and lockers; and (7) public access ways. These amenities will serve to provide public access to and protection and preservation of the beach for the general public's use. The Borough will comply with the terms and conditions of paragraphs 3 and 4 by May 15, 2011.

5. Any monetary contributions received from the Defendant beach clubs pursuant to the Consent Judgments entered into by them with the State, which the Borough may be a signatory to, will be designated to a Sea Bright Public Access Fund. This Fund will be managed by the State and used to finance public-access improvements in the Borough. The improvements sought to be constructed will first be identified by the State, in coordination with the Borough and in consultation with Amici Curiae American Littoral Society and Citizens Right to Access Beaches, and representatives of the Sea Bright beach clubs, which will not exceed two in number. The Borough will have final input on acceptance of any amenity to be constructed on Borough property, and when construction is completed and accepted by the Borough Council by Resolution, the Borough will thereafter be responsible for long-term operation and maintenance

of the improvement. Improvements financed by the Sea Bright Public Access Fund are not contemplated by the parties to be used to satisfy the terms and conditions of Paragraph 3 of this stipulation.

6. The State shall provide appropriate assistance to the Borough or other entity taking action to construct public access and use improvements, to obtain all necessary CAFRA, Waterfront Development or other permits or approvals as needed, from any State agency, to insure that the spirit of this Stipulation and the public access improvements it contemplates will be completed in a timely, efficient, and cost-effective manner. The parties acknowledge that the application for any such permits or approvals is an extension of the settlement of this litigation and that this agreement intends that the public access improvements receive timely review. The State agrees to take all reasonable efforts to insure that the public access improvements that the Borough will make will receive prompt review and approval, recognizing that nothing in this paragraph shall be construed to exempt the Borough from complying with any of the requirements for any such permits or approvals. The New Jersey Department of Environmental Protection will allow the Borough of Sea Bright Public Works personnel to fix and replace in location the broken timbers that had been the bulkhead at the Alfred Ferguson Surfing Beach. The NJDEP will be notified of when the Borough will be repairing the bulkhead and will have a representative present to observe the repair work. So long as the work is a replacement in location of the broken timbers, no permit shall be needed.

7. Municipal beach badges will be required in public-use areas in front of the Defendant beach clubs that elect to provide lifeguards and beach cleaning services. The Borough shall take reasonable steps to ensure the availability of municipal beach badges on its website and at the municipal beach building. This reflects the limit of the Borough's

responsibility in this regard. Should the Borough and the Beach Clubs strike some additional arrangement for the sale of Municipal Beach Badges in the future, such arrangement is wholly voluntary.

8. The public-use area in front of the beach clubs will be considered unsupervised municipal beaches and will be governed by the rules that apply to supervised and unsupervised municipal beaches in the Borough of Sea Bright.

9. State approved signage must be installed and maintained in front of existing public-access points and any new public-access points.

10. No modification of this agreement will be effective without the written approval of the State and Borough.

11. This Agreement shall remain in full force and effect until October 15, 2039.

ANNE MILGRAM, ATTORNEY GENERAL,
STATE OF NEW JERSEY

Date: _____

By: _____

STATE OF NEW JERSEY, DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Date: _____

By: _____

BOROUGH OF SEA BRIGHT

Date: _____

By: _____