

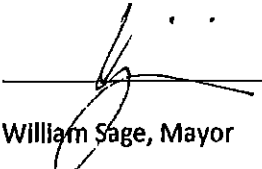
Town Board of Oriental
Closed Session Minutes
March 3, 2015

The Town Board went into Closed Session at 8:03 PM to discuss the Cox v. Town of Oriental lawsuit. A change was made to the February 3, 2015 closed minutes, to take out the word 'not' on line 4. Since the last meeting, David Cox reached out to the Town Attorney and offered to withdraw the case if the Town agreed to not seek sanctions. The Town Attorney strongly advised the Board to take the deal. After discussion, the Board agreed to not pursuing sanctions on the requirement that Mr. Cox sign an affidavit stating that he will not pursue further action in this suite and he will not aid or abet anyone looking to take up a similar case. It was agreed that Mr. Cox would be given 10 days to sign the affidavit and if not signed, the Town will seek sanctions.


Motion: Commissioner Summers motioned to authorize the Town Attorney to present the settlement to Mr. Cox and to authorize the Mayor to sign after Mr. Cox, provided there were no non-grammatical changes, Commissioner Overcash seconded. Motion passed 5-0.

Motion: Commissioner Venturi motioned to close the closed session, Commissioner Overcash seconded. Motion passed 5-0.

The closed session meeting adjourned at 8:27 PM.



William Sage, Mayor



Diane H. Miller, Town Manager

Released August 10, 2015



PAMLICO COUNTY

NORTH CAROLINA

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (“Agreement”), is made and entered into as of the 3rd day of March, 2015, by and between the TOWN OF ORIENTAL, a North Carolina municipal corporation (“Town”), and DAVID R. COX (“Cox”), collectively referred to as the “Parties.”

WITNESSETH:

THAT WHEREAS, on or about August 2, 2012, Cox filed his first lawsuit in the Pamlico County Superior Court (Case File 12-CVS-121) against the Town arising out of, among other things, the closing of Avenue A (“First Action”); and

WHEREAS, by orders dated April 6, 2013, Senior Resident Superior Court Judge Benjamin G. Alford dismissed Cox’s First Action, and Cox appealed; and

WHEREAS, on or about April 30, 2013, Plaintiff filed his second lawsuit in the Pamlico County Superior Court (Case File 13-CVS-67) against the Town arising out of, among other things, the closing of South Avenue (“Second Action”); and

WHEREAS, on or about July 1, 2014, the North Carolina Court of Appeals issued its published opinion, unanimously affirming Judge Alford’s April 6, 2013 Orders dismissing the First Action; and

WHEREAS, Cox did not petition for rehearing or otherwise seek further appellate review of the Court of Appeals’ decision; therefore, the Court of Appeals decision affirming Judge Alford’s April 6, 2013 Orders became final on August 5, 2014; and

WHEREAS, on or about December 1, 2014, Senior Resident Superior Court Judge Benjamin G. Alford dismissed Cox’s Second Action, and Cox appealed; and

WHEREAS, the Parties now wish to resolve all controversies existing between them in the above-referenced litigation matters to avoid the further uncertainty, costs, time, and expense of litigation, and each Party hereby voluntarily and knowingly enters into, executes and desires and agrees to be bound by the terms of this Release and Settlement Agreement with the express intention of effecting the extinguishment of any and all rights, claims, demands, or obligations, which they have, or may have, against each other on account of, in connection with, or arising out of any of the matters referred to in the litigation matters described above between the Parties.

NOW, THEREFORE, the Parties contract, settle, and agree as follows:

1. **Cox Obligations.** Within ten (10) days of the date of the execution of this Agreement, Cox shall dismiss with prejudice and withdraw all pending claims and causes of action against the Town, specifically including the Second Action and the appeal thereof. Said dismissal, with prejudice, shall be in substantially the form of the attached Exhibit A.

2. **Town's Obligations.** Conditioned upon the execution and filing of the aforementioned dismissal, with prejudice, the Town waives its right to pursue any claims against Cox for sanctions, damages or otherwise arising out of the First Action and the Second Action, and any appeals thereof. The Town will provide timely email notice to Judge Alford, with a copy to Cox, advising Judge Alford of this settlement, and further advising that the Town does not desire that the Court further consider or hear any motions for sanctions against Cox arising out of the First Action or the Second Action, or any appeals thereof.

3. **Cox Release.** Contingent upon the Town's valid execution of this Agreement, and consummation of the terms herein applicable to the Town, Cox does for himself, his heirs, assigns, successors in interest, representatives, and agents RELEASE, ACQUIT, HOLD HARMLESS, AND FOREVER DISCHARGE the Town, its agents, servants, employees, officers, representatives, council members, insurers, officials (elected or appointed), and attorneys, of and from any and all claims, actions or causes of action, demands, damages (actual, compensatory and punitive), injunctive relief, costs, judgments, expenses, interest, liabilities, attorneys' fees and legal costs, injunctive or declaratory relief, whether known or unknown, whether in law or in equity, whether in tort or contract, of any kind or character which Cox now has, or might otherwise have, against the Town arising as a result of or relating to any of the matters which form the basis of the pleadings in the First Action and the Second Action, and any matters which could have been asserted in said litigation. It is Cox's intent that all claims or matters that are, or might be, in controversy between the Parties and any other related persons or entities are forever put at rest, it being Cox's intention to forever discharge and release all past, present, and future claims against the Town and any other related persons or entities arising as a result of or relating to any of the matters which form the basis of the pleadings in the First Action and the Second Action, and any matters which could have been asserted in said litigation. As part of the consideration for this Agreement, Cox further agrees that neither Cox, nor any of Cox's heirs, legal representatives, or assigns, will make or file any claim, charge, or lawsuit, or

cooperate voluntarily in any investigation, suit, or legal or administrative proceeding involving any matter arising as a result of or relating to any of the matters which form the basis of the pleadings in the First Action and the Second Action, and any matters which could have been asserted in said litigation.

4. **Town Release.** Contingent upon Cox's valid execution of this Agreement, and consummation of the terms herein applicable to him, the Town does for itself, its assigns, successors in interest, representatives, and agents RELEASE, ACQUIT, HOLD HARMLESS, AND FOREVER DISCHARGE Cox, his agents, servants, employees, family members, and attorneys, of and from any and all claims, actions or causes of action, demands, damages (actual, compensatory and punitive), injunctive relief, costs, judgments, expenses, interest, liabilities, attorneys' fees and legal costs, injunctive or declaratory relief, whether known or unknown, whether in law or in equity, whether in tort or contract, of any kind or character which the Town now has, or might otherwise have, against Cox arising as a result of or relating to any of the matters which form the basis of the pleadings in the First Action and the Second Action, and any matters which could have been asserted in said litigation. It is the intent of the Town that all claims or matters that are, or might be, in controversy between the Parties and any other related persons or entities are forever put at rest, it being the Town's intention to forever discharge and release all past, present, and future claims against Cox and any other related persons or entities arising as a result of or relating to any of the matters which form the basis of the pleadings in the First Action and the Second Action, and any matters which could have been asserted in said litigation.

5. **Miscellaneous.**

5.1. This Agreement contains the entire agreement of the parties hereto. No modifications, amendment, change, or discharge of any term or provision of this Agreement shall be valid or binding unless the same is in writing and signed by both Parties. No waiver of any of the terms of this Agreement shall be valid unless signed by the Party against whom each such waiver is asserted. Any waiver of any provision of this Agreement in any instance shall not be a waiver in any other instance.

5.2. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina, and any action relating to this Agreement shall be instituted and prosecuted only in the courts of Pamlico County, North Carolina. The invalidity or

unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, which nevertheless shall continue in full force and effect.


5.3. This Agreement is binding upon the Town and Cox and their respective heirs, representatives, successors, and assigns, as applicable. Cox acknowledges that he has carefully read this Agreement, which contains a RELEASE, that he knows and understands the contents hereof and executes the same as his free act and deed, and that the terms of this Agreement are contractual and not a mere recital. Cox further acknowledges that this Agreement is effective as against him. This Agreement contains the entire understanding between the parties hereto as to the matters contained herein, and no conditions precedent or subsequent exist which are not contained herein.

5.4. Cox hereby expressly acknowledges that he has been advised that he has not been represented by the Town's attorney in this matter, and has been advised and has had the opportunity to seek separate legal counsel for advice in this matter.

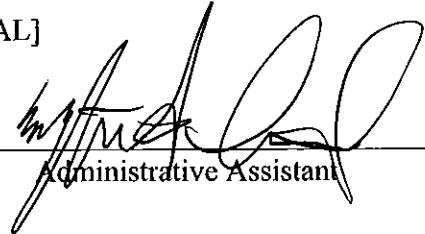
5.5. If a suit, action, arbitration or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights under this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses, including attorney's fees.

IN TESTIMONY WHEREOF, the Town has caused this instrument to be executed in its corporate name by its Mayor and its seal to be hereunto affixed and attested by its Administrative Assistant; and David R. Cox has hereunto set his hand and adopted as his seal the typewritten word "SEAL" appearing beside his name, all on the date first above written.

TOWN OF ORIENTAL

By:  _____ Mayor

[SEAL]

 _____
Administrative Assistant

 _____ (SEAL)
DAVID R. COX

NORTH CAROLINA

PAMLICO COUNTY

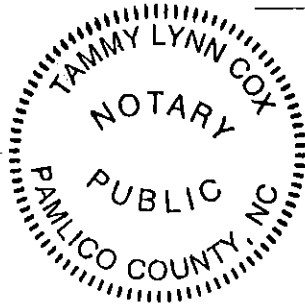
I, Tammy Lynn Cox, a notary public in and for said county and state, do hereby certify that on the 13th day of March, 2015, before me personally appeared WILLIAM SAGE, with whom I am personally acquainted, who, being by me duly sworn, says that he is the Mayor and that ELIZABETH DIMOND is the Administrative Assistant for the Town of Oriental, the municipal corporation described in and which executed the foregoing instrument; that he knows the common seal of said municipal corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the municipal corporation was subscribed thereto by the said Mayor; that the said common seal was affixed, all by order of the Board of Aldermen of said municipal corporation; and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and notarial seal, this 13th day of March, 2015.

Tammy Lynn Cox
Notary Public

My commission expires:

11-19-2016



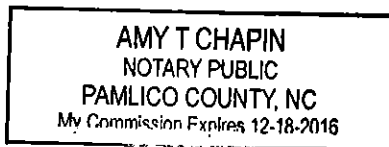
NORTH CAROLINA

PAMLICO COUNTY

I, Amy T. Chapin, a notary public in and for said county and state, do hereby certify that DAVID R. COX personally appeared before me this day and acknowledged the due execution of the foregoing Agreement for the purposes therein expressed.

WITNESS my hand and notarial seal, this 19th day of March, 2015.

Amy T. Chapin
Notary Public



My commission expires:

12/18/16