

A RESOLUTION

BY PUBLIC SAFETY & LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE
SETTLEMENT OF THE CLAIM OF KRIS
GUNDERSON AND LISA YEISER, B
SQUARE, LLC IN THE AMOUNT OF
\$37,950.00 AGAINST THE CITY OF
ATLANTA

01- R -0698

WHEREAS, KRIS GUNDERSON and LISA YEISER, B SQUARE, LLC has filed a claim against the City of Atlanta seeking damages arising out of sewer construction located at 1272 Murphy Avenue; and

WHEREAS, property owned by KRIS GUNDERSON and LISA YEISER, B SQUARE, LLC has been substantially damaged as a result of the City's failure to obtain a proper right of entry prior to commencing an excavation project of a sanitary sewer mainline; and

WHEREAS, the City of Atlanta has made an attempt, however unsuccessful, to abate said nuisance; and

WHEREAS, inasmuch as the facts disclosed indicate said claim is not based on a claim of negligence, but is a nuisance which is not subject to a defense of sovereign immunity under the laws of the State of Georgia; and

WHEREAS, the claimants have asserted damages in the amount of \$44,268.75 and has agreed to accept the sum of \$37,950.00 in full and complete satisfaction and settlement of their claim against the City of Atlanta; and

WHEREAS, the City Attorney has recommended that the claim of KRIS GUNDERSON and LISA YEISER, B SQUARE, LLC, be settled for the sum of \$37,950.00.

THEREFORE, BE IT RESOLVED that the Council of the City of Atlanta, Georgia that \$37,950.00 be paid by the City of Atlanta to KRIS GUNDERSON and LISA YEISER, B SQUARE, LLC, in satisfaction of any and all claims they may have stemming from damages sustained to their property on or before February 3, 2000, at 1272 Murphy Avenue, and that the City Attorney prepare appropriate releases.

BE IT FURTHER RESOLVED that the Chief Financial Officer is hereby authorized to pay the above mentioned sum from account number 2J01/529017/T31001.

A true copy,

Rhonda Daughin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
RETURNED WITHOUT SIGNATURE OF THE MAYOR
APPROVED as per City Charter Section 2-403

MAY 21, 2001

MAY 30, 2001

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L0178

Date: May 2, 2001

Claimant /Victim KRIS GUNDERSON and LISA YEISER, B SQUARE, LLC
BY: (Atty) (Ins. Co.)
Address: 1272 Murphy Avenue, Atlanta, Georgia 30039
Subrogation: Claim for Property damage \$ 44,268.75 Bodily Injury \$
Date of Notice: 12/7/00 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 2/3/00 Place: 1272 Murphy Avenue
Department PUBLIC WORKS Division SEWER OPERATIONS
Employee involved Aaron Beckhom Disciplinary Action: Verbal Admonishment

NATURE OF CLAIM: The claimants' business sustained substantial property damage by the City when it trespassed to replace a sewer line by entering the claimants' property without the claimants' consent. An investigation determined that the City failed to obtain a proper easement of the sewer line prior to proceeding with its excavation project. The claimants damages include mass destruction of vegetation, hardwood trees, and landscaping.

INVESTIGATION:

Statements: City employee X Claimant Others Written X Oral
Pictures Diagrams Reports: Police Dept Report Other X
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other Damages reasonable
City not involved Offer rejected Compromise settlement X
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent X Joint Claim Abandoned

Respectfully submitted,
Gwendolyn Burns
INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ 37,950.00 Adverse Account charged: 1A01 2J01 X 2H01
Claims Manager: Concur/date
Committee Action: Council Action

COUNCIL OF THE CITY OF ATLANTA
MUNICIPAL CLERK
City Hall
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

RE: CLAIM FOR DAMAGES

Reeves
03/20/00
JDU

Today's Date: MAR 10, 2000

03-13-00P05:20 RCV

ENTERED - 3-22-00 - SB
00L0178 - MIKE REEVES

Dear Municipal Clerk:

This is to notify the City of Atlanta that I have suffered damages in the amount sum of \$ 77,268.75 property and /or \$ _____ bodily injury for which I contend the City is liable.

1. Date of incident: FEB/3/2000 (month/day/year). 2. Time of Incident: N.A. 3. Police called: Yes Yes No
4. Location of incident (including street address): 1272-1278 MURPHY AVE
5. Name of your insurance company: N.A. Policy No. _____
6. State what and how incident occurred: PLEASE SEE ENCLOSED LETTER TO MR. WILLIAMS, SEWER OPERATIONS.

7. ALL ESTIMATES AND DAMAGES ARE SUBJECT TO INSPECTION. THE MAKING OF FALSE CLAIMS WILL RESULT IN YOUR CLAIM BEING DENIED AND MAY RESULT IN CRIMINAL PROSECUTION!

8. The registered owner must make the claim for vehicle damages, complete the following and attach two (2) estimates of repair and proof of ownership of your vehicle (copy of the current tag receipt or title).

Your vehicle: N.A. (Make) (Year) (Tag Number) (Driver's Name)

City vehicle: N.A. (Make) (City Driver's Name) (Department/Bureau)

9. Witness: _____ (Name) (Address) (Telephone Number)

10. The acknowledgement of this claim in no way waives the sovereign immunity of the City of Atlanta, as granted by State law, nor is it an admission of liability on behalf of the City of Atlanta and / or its employee(s).

11. This claim should be mailed immediately to the address shown above.

I HEREBY SWEAR OR AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND CORRECT.

KRIS GUNDERSON
(Print Claimant's Name)

KRIS GUNDERSON - BSQUARE LLC. 239 PETERS ST SW
(Address)

ATLANTA GA 30313
(City, State and Zip Code)

404 523 6801
(Work Number) (Home Number)

KRIS GUNDERSON
Signature of Claimant

GENERAL RELEASE AND INDEMNIFICATION

CLAIM NUMBER 00L0178

\$ 37,950.00

IN CONSIDERATION of the sum of THIRTY SEVEN THOUSAND NINE HUNDRED FIFTY DOLLARS AND NO/100 DOLLARS, to be paid by the CITY OF ATLANTA, the future receipt of which is hereby acknowledged, I do hereby, for myself, my heirs, executors, administrators, and assigns, release and forever discharge said City, its officers and employees, demands, actions, causes of action, suits, damages, loss and expenses, of whatsoever kind or nature for or on account of anything that has heretofore occurred, and particularly for or on account of a property damage incident which occurred on or about the 3rd day of February, 2000, at or near 1272-1278 Murphy Avenue

It is further understood and agreed that the payment of the above named sum is not to be considered as an admission on the part of the City, its officers, agents, servants or employees, of any liability whatsoever and the undersigned further covenants and agrees to indemnify and hold harmless the City of Atlanta, its officers, agents, servants and employees, from any and all claims, damages or costs which the said City of Atlanta, its officers, agents, servants and employees, may be called upon to make as a result of the event hereinbefore referred to.

And I now state that the only consideration for my signing this release and indemnification is the payment of the sum stated above; that no other promise or agreement of any kind or nature has been made to or with me by said City or its agents to cause me to sign this release, and that I fully understand the meaning and intent of this instrument.

WITNESS my hand and seal this May 02 day of _____, 2001

[Signature] (LS)
B Square, LLC (Kris Gunderson)

[Signature] (LS)
B, Square, LLC (Leisa Yeiser)
LISA [Initials]

The above release was read and explained to, and signed by the said KRIS GUNDERSON
LISA YEISER
(B Square, LLC)

in our presence on the date above written.

[Signature]
[Signature]
Witnesses

President Pro Tem Bond Presided

RCS# 2865
5/21/01
1:48 PM

Atlanta City Council

Regular Session

CONSENT

Pages 1 thru 16

ADOPT

YEAS: 12
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 2

SEE ATTACHED LISTING OF
ITEMS ADOPTED/ADVERSED
ON CONSENT AGENDA

NV McCarty	Y Dorsey	Y Moore	Y Thomas
B Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	Y Morris	Y Maddox	B Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM
CONSENT AGENDA

01-O-0721
01-O-0752
01-O-0753
01-O-0494
01-O-0712
01-R-0763
01-R-0765

CONSENT

**ITEMS ADOPTED
ON CONSENT
AGENDA**

1. 01-O-0582
2. 01-O-0583
3. 01-O-0584
4. 01-O-0585
5. 01-O-0586
6. 01-O-0587
7. 01-O-0742
8. 01-O-0748
9. 01-O-0715
10. 01-O-0723
11. 01-O-0751
12. 01-O-0754
13. 01-O-0755
14. 01-O-0756
15. 01-O-0106
16. 01-O-0495
17. 01-O-0496
18. 01-O-0497
19. 01-O-0498
20. 01-O-0567
21. 01-O-0568
22. 01-O-0569
23. 01-O-0616
24. 01-O-0638
25. 01-O-0643
26. 01-O-0665
27. 01-O-0716
28. 01-O-0759
29. 01-R-0667
30. 01-R-0669
31. 01-R-0670
32. 01-R-0656
33. 01-R-0675
34. 01-R-0676
35. 01-R-0725
36. 01-R-0744
37. 01-R-0750
38. 01-R-0758
39. 01-R-0456
40. 01-R-0654

**ITEMS ADOPTED
ON CONSENT
AGENDA**

41. 01-R-0757
42. 01-R-0698
43. 01-R-0699
44. 01-R-0700
45. 01-R-0764
46. 01-R-0649
47. 01-R-0658
48. 01-R-0659
49. 01-R-0661
50. 01-R-0662
51. 01-R-0673
52. 01-R-0677
53. 01-R-0678
54. 01-R-0679
55. 01-R-0680
56. 01-R-0681
57. 01-R-0682
58. 01-R-0683
59. 01-R-0760
60. 01-R-0684

**ITEMS ADVERSED
ON CONSENT
AGENDA**

61. 01-R-0685
 62. 01-R-0686
 63. 01-R-0687
 64. 01-R-0688
 65. 01-R-0689
 66. 01-R-0690
 67. 01-R-0691
 68. 01-R-0692
 69. 01-R-0693
 70. 01-R-0694
 71. 01-R-0695
 72. 01-R-0697
 73. 01-R-0761
 74. 01-R-0762
-

01- 2-0698
 (Do Not Write Above This Line)

A RESOLUTION
 BY PUBLIC SAFETY & LEGAL
 ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING
 THE SETTLEMENT OF THE
 CLAIM OF KRIS GUNDERSON
 AND LISA YEISER, B SQUARE,
 LLC IN THE AMOUNT OF
 \$37,950.00 AGAINST THE CITY OF
 ATLANTA

ADOPTED BY

By: Rosalind Rubens Nease
 Rosalind Rubens Nease
 Deputy City Attorney

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred _____
 Referred To: _____
 Date Referred _____
 Referred To: _____
 Date Referred _____
 Referred To: _____

First Reading

Committee _____
 Date _____
 Chair C.T. Monte
 Referred to _____

Committee PSUA
 Date 5/15/01
 Chair C.T. Monte
 Action: _____
 Fav, Adv, Hold (see rev. side) _____
 Other: _____
 Members: _____
 Refer To _____

Committee _____
 Date _____
 Chair _____
 Action: _____
 Fav, Adv, Hold (see rev. side) _____
 Other: _____
 Members _____
 Refer To _____

FINAL COUNCIL ACTION
 2nd
 1st & 2nd
 3rd
 Readings
 Consent
 V Vote
 RC Vote

CERTIFIED

CERTIFIED
 MAY 2 1 2001
Michael Rubin
 COUNCIL PRESIDENT PROTEM

CERTIFIED
 MAY 2 1 2001
Rosalind Rubens Nease
 MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

MAY 3 0 2001

WITHOUT SIGNATURE
 BY OPERATION OF LAW