

**A RESOLUTION
BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE**

A RESOLUTION AUTHORIZING THE SETTLEMENT OF AL **02-R-1369
CLAIMS IN THE CASE OF BOULEVARD LAND COMPANY,
LLC AND HARVEST MORTGAGE CO., INC. V. CITY OF
ATLANTA; CIVIL ACTION FILE NO. 2002CV50535; AND FOR
OTHER PURPOSES.**

WHEREAS, The Boulevard Land Company, LLC and Harvest Mortgage Co., Inc. filed a lawsuit against the City in the Superior Court of Fulton County, Georgia on March 21, 2002; and

WHEREAS, this action was brought by them to resolve problems with the City regarding permitting for a sewer tap and certificate of occupancy of a single family home constructed by Plaintiffs on Land Lot 53, 14th District, of Fulton County, otherwise known as 239 Glenwood Avenue; and

WHEREAS, the Plaintiffs obtained the necessary building permit from the City to construct the home; and

WHEREAS, following the substantial completion of the home the presence of an existing approximately 100 year old sewer line bisecting the property and running underneath the home was discovered; and

WHEREAS, the City maintains that the plans pursuant to which it issued the building permit contained inaccurate information concerning sewer infrastructure existing within and surrounding the property; and

WHEREAS, the Plaintiffs maintain that the City was remiss in approving the plans and issuing the building permit and failing to consult its own internal information concerning sewer infrastructure existing within and surrounding the property; and

WHEREAS, due to the sewer line running beneath the home, the City refused to issue Plaintiffs a sewer tap permit or a certificate of occupancy; and

WHEREAS, the Plaintiffs are, accordingly, unable to market or sell the home without obtaining a sewer tap permit or certificate of occupancy; and

WHEREAS, the Plaintiffs, in their lawsuit, seek an Order from the Court directing the City to remove the sewer line from the property, an entirely impractical alternative, giving the number of homes in the neighborhood served by the sewer line and the excessive cost associated with such removal; and

WHEREAS, the City, in any Answer it would file in the case, would seek an Order from the Court directing the Plaintiffs to move the home so that it does not encroach upon the sewer line,

another entirely impractical alternative, giving the cost to move the home and the lack of space on the property within which to move it; and

WHEREAS, The Plaintiffs and the City desire to compromise and settle all claims which have been asserted between them by entering into a Settlement Agreement in which:

- 1) The City will issue a sewer tap permit, a certificate of occupancy, and any other permits or certificates necessary to allow the home to be occupied, assuming compliance with other relevant City Code Sections; and
- 2) Plaintiffs will release the City from all liability arising from the City's approval and permitting of the construction of the home at 239 Glenwood Avenue; and
- 3) Plaintiffs will release the City from all liability arising from damages to the property or home caused by the existence of the sewer line that bisects the property; and
- 4) The City will release the Plaintiffs from liability for damages to the sewer line caused by the home, in its current, limited construction and configuration over the sewer line which bisects the property at 239 Glenwood Avenue; and
- 5) Plaintiffs will not be released from liability to the City for any future damages caused to the existing sewer line bisecting the property at 239 Glenwood Avenue resulting from additional construction, excavation or other similar activities on the property on which the home is located.

BE IT HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA that the Mayor is authorized to execute, on behalf of the City, a Settlement Agreement containing substantially the foregoing provisions in order to compromise and settle all claims that have been or may be asserted between The Boulevard Land Company, LLC and Harvest Mortgage Co., Inc. and the City.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA that the Settlement Agreement will not become binding on the City until it has been executed by The Boulevard Land Company, LLC and Harvest Mortgage Co., Inc., approved by the City Attorney as to form, executed by the Mayor, attested by the Municipal Clerk, delivered to The Boulevard Land Company, LLC and Harvest Mortgage Co., Inc., and the City has received from The Boulevard Land Company, LLC and Harvest Mortgage Co., Inc. a dismissal of their lawsuit with prejudice filed with the Clerk of the Superior Court of Fulton County.

A true copy,

Rhonda Daughin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

SEP 03, 2002
SEP 11, 2002

RCS# 3953
9/03/02
1:47 PM

Atlanta City Council

Regular Session

CONSENT I Pgs. 1-14; Except 02-R-1137; 02-R-1458

ADOPT

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
B Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	NV Woolard

CONSENT I

09/03/02 Council Meeting

**ITEMS ADOPTED ON CONSENT
AGENDA****ITEMS ADVERSED
ON CONSENT AGENDA**

- | | | |
|---------------|---------------|---------------|
| 1. 02-O-1455 | 43. 02-R-1492 | 59. 02-R-1418 |
| 2. 02-O-1456 | 44. 02-R-1347 | 60. 02-R-1419 |
| 3. 02-O-1457 | 45. 02-R-1461 | 61. 02-R-1420 |
| 4. 02-O-1460 | 46. 02-R-1462 | 62. 02-R-1421 |
| 5. 02-O-1454 | 47. 02-R-1471 | 63. 02-R-1422 |
| 6. 02-O-1336 | 48. 02-R-1484 | 64. 02-R-1423 |
| 7. 02-O-1337 | 49. 02-R-1486 | 65. 02-R-1424 |
| 8. 02-O-1339 | 50. 02-R-1363 | 66. 02-R-1425 |
| 9. 02-O-1340 | 51. 02-R-1364 | 67. 02-R-1426 |
| 10. 02-O-1341 | 52. 02-R-1365 | 68. 02-R-1427 |
| 11. 02-O-1342 | 53. 02-R-1412 | 69. 02-R-1428 |
| 12. 02-O-1343 | 54. 02-R-1413 | 70. 02-R-1429 |
| 13. 02-O-1226 | 55. 02-R-1414 | 71. 02-R-1430 |
| 14. 02-O-1446 | 56. 02-R-1415 | 72. 02-R-1431 |
| 15. 02-O-1465 | 57. 02-R-1416 | 73. 02-R-1432 |
| 16. 02-R-1370 | 58. 02-R-1417 | 74. 02-R-1433 |
| 17. 02-R-1371 | | 75. 02-R-1434 |
| 18. 02-R-1372 | | 76. 02-R-1435 |
| 19. 02-R-1373 | | 77. 02-R-1436 |
| 20. 02-R-1374 | | 78. 02-R-1437 |
| 21. 02-R-1375 | | 79. 02-R-1438 |
| 22. 02-R-1376 | | |
| 23. 02-R-1378 | | |
| 24. 02-R-1379 | | |
| 25. 02-R-1380 | | |
| 26. 02-R-1392 | | |
| 27. 02-R-1468 | | |
| 28. 02-R-1480 | | |
| 29. 02-R-1481 | | |
| 30. 02-R-1482 | | |
| 31. 02-R-1483 | | |
| 32. 02-R-1385 | | |
| 33. 02-R-1479 | | |
| 34. 02-R-1369 | | |
| 35. 02-R-1439 | | |
| 36. 02-R-1440 | | |
| 37. 02-R-1495 | | |
| 38. 02-R-1500 | | |
| 39. 02-R-1501 | | |
| 40. 02-R-1386 | | |
| 41. 02-R-1388 | | |
| 42. 02-R-1491 | | |

1st Consent I Vote: 14Yeas; 0 Nays (See RCS #3953)
Items Removed from Consent: 02-R-1137; 02-R-1458

02-R-1369
(Do Not Write Above This Line)

A RESOLUTION

BY: THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE SETTLEMENT OF ALL CLAIMS IN THE CASE OF BOULEVARD LAND COMPANY, LLC AND HARVEST MORTGAGE CO., INC. V. CITY OF ATLANTA: CIVIL ACTION FILE NO. 2002CV50535; AND FOR OTHER PURPOSES.

ADOPTED BY

SEP 03 2002

Received & Reviewed by
Municipal Clerk

- 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 _____
 Referred to _____

Committee <i>PLA</i>	Committee
Date <i>9-27-02</i>	Date
Chair <i>[Signature]</i>	Chair
Action: Fav, Adv, Hold (see rev. side)	Action: Fav, Adv, Hold (see rev. side)
Other:	Other:
Members <i>[Signatures]</i>	Members
Refer To	Refer To

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

FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd
- 3rd
- Readings
- Consent
- V Vote
- IRC Vote

CERTIFIED

CERTIFIED
 SEP 03 2002
 ATLANTA CITY COUNCIL PRESIDENT
Catherine W. Woodward

CERTIFIED
 SEP 03 2002
Rachel Douglas Johnson
 MUNICIPAL CLERK

MAYOR'S ACTION

Shirley Franklin
 SEP 11 2002
 MAYOR