

A RESOLUTION BY PUBLIC SAFETY AND LEGAL ADMINISTRATION
COMMITTEE

04- R -0190

A RESOLUTION AUTHORIZING: [i] THE SETTLEMENT OF A LAWSUIT BY BENJAMIN DANIEL WEST, AS EXECUTOR OF THE ESTATE OF THOMAS B. WEST. SR., AGAINST THE CITY OF ATLANTA; CIVIL ACTION FILE NO. 2001CV41120; SUPERIOR COURT; FULTON COUNTY, GEORGIA, IN THE TOTAL AMOUNT OF \$287,600; [ii] THE CITY ATTORNEY TO EXECUTE ANY NECESSARY SETTLEMENT AGREEMENT TO EFFECTUATE THE SETTLEMENT; AND [iii] FOR OTHER PURPOSES.

BACKGROUND:

The Plaintiff, as Executor of his deceased father's estate, holds in trust approximately 22 parcels of real property owned by the estate, located in the City of Atlanta and situated in Land Lot 23 of the 14th District, Fulton County, Georgia, bounded by Avondale Avenue, East Confederate Avenue and Lester Avenue;

On August 1, 2002, the Plaintiff filed a lawsuit (the "Lawsuit") against the City alleging that the City constructed a CSO Facility on approximately 5 of the estate's parcels of real property, notwithstanding that it did not have title to such parcels;

The Lawsuit alleged numerous state and federal causes of action against the City, including, trespass, inverse condemnation, ejectment, mense profits, and a claim under 42 U.S.C.A. § 1983;

On or about April 11, 2003, the Plaintiff Amended the Lawsuit to further allege that the City had, for a period of approximately 30 years, illegally deposited hazardous landfill materials (the "Landfill") on all of the parcels owned by the estate;

In addition to asserting the same causes of action attributed to the CSO Facility, the Plaintiff also asserted fraud, contribution and indemnity and punitive damages causes of action against the City concerning the alleged illegal Landfill;

Plaintiff's amended Lawsuit sought from the City a recovery of over \$25 million as a result of the estate's claims against the City concerning the CSO Facility and Landfill;

The Lawsuit was scheduled for trial in Superior Court commencing on January 5, 2004; prior to such trial, the City and Plaintiff engaged in settlement discussions and were successful in tentatively settling the Lawsuit on the terms set forth in this Resolution;

The City has determined that it is desirable and in its best interests to settle the Lawsuit on the terms outlined in this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the City Attorney is authorized to settle the Lawsuit under the following terms:

1. The Plaintiff will deed to the City the 5 parcels upon which the City built the CSO Facility (the actual parcels and specific property descriptions for such parcels to be determined by the City's Law Department and any necessary City representatives/real estate consultants, in concert with Plaintiff);
2. The City would waive its right to collect approximately \$7600 in current (years 2003 and prior) unpaid sanitary services charges attributed to the 22 parcels;
3. The City would pay Plaintiff up to \$180,000 and the Plaintiff would, in turn, utilize such monies to pay up to \$180,000 in current (years 2003 and prior) unpaid property taxes attributed to the 22 parcels or, alternatively, the City would pay the appropriate individual or entity responsible for collecting such taxes that amount directly;
4. The City would pay Plaintiff \$100,000; and
5. The Plaintiff would dismiss all claims concerning the CSO Facility with prejudice and all claims concerning the Landfill without prejudice;

BE IT FURTHER RESOLVED THAT the Chief Financial Officer is authorized to pay in settlement of the Lawsuit a total sum of \$287,600, in accordance with the terms of this Resolution and the City Attorney's directions, to be paid from Account No. 2J01529017T31001, on behalf of the City, in exchange for the Plaintiff's execution and delivery to the City of a:

1. Deed and, if deemed appropriate by the City Attorney, a Title Certificate for such 5 parcels, acceptable to City, conveying the 5 parcels upon which the CSO Facility is built;
2. a Settlement Agreement containing the terms of settlement outlined in this Resolution, and any other terms that the City Attorney deems appropriate;
3. a filed Notice of Voluntary Dismissal dismissing the CSO Facility claims in the Lawsuit with prejudice and the Landfill claims without prejudice; and

the City's execution and delivery:

1. to Plaintiff, or, alternatively, the appropriate individual or entity responsible for collecting such taxes, of a check in the amount of up to \$180,000, in payment of current (years 2003 and prior) outstanding property taxes on the 22 parcels;
2. to Plaintiff a check in the amount of \$100,000.

BE IT FURTHER RESOLVED THAT the City Attorney is authorized, on behalf of the City, to execute the Settlement Agreement with the Plaintiff;

BE IT FURTHER RESOLVED THAT the Settlement Agreement will not be binding upon the City and the City will incur no liability under it until it has been executed by the City Attorney, attested to by the Municipal Clerk, approved by the City Attorney as to form, duly executed by the Plaintiff and delivered to him.

A true copy,

Rhonda Dauphin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

FEB 16, 2004
FEB 24, 2004

RCS# 5425
2/16/04
2:56 PM

Atlanta City Council

Regular Session

CONSENT I CONSENT I PGS 1-12, EXCEPT:04-R-0242

RECONSIDER

YEAS: 12
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 1

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

CONSENT I

RCS# 5424
2/16/04
2:55 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I PGS 1-12, EXCEPT:04-R-0242

ADOPT

YEAS: 11
NAYS: 0
ABSTENTIONS: 1
NOT VOTING: 3
EXCUSED: 0
ABSENT 1

*Reconsidered
see
RCS# 5425*

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

CONSENT I

2-16-04 Council Meeting	
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT
1. 04-O-0049	33. 04-R-0207
2. 04-O-0125	34. 04-R-0208
3. 04-O-0126	35. 04-R-0209
4. 04-O-0143	36. 04-R-0210
5. 04-O-0144	37. 04-R-0211
6. 04-O-0035	38. 04-R-0212
7. 04-O-0067	39. 04-R-0213
8. 04-O-0233	40. 04-R-0214
9. 04-O-0235	41. 04-R-0215
10. 04-O-0251	42. 04-R-0223
11. 04-O-0231	43. 04-R-0224
12. 04-R-0188	ITEMS ADVERSED ON CONSENT
13. 04-R-0190	44. 04-R-0191
14. 04-R-0228	45. 04-R-0192
15. 04-R-0229	46. 04-R-0193
16. 04-R-0222	47. 04-R-0194
17. 04-R-0227	48. 04-R-0195
18. 04-R-0128	49. 04-R-0196
19. 04-R-0129	50. 04-R-0197
20. 04-R-0130	51. 04-R-0198
21. 04-R-0131	52. 04-R-0199
22. 04-R-0189	53. 04-R-0200
23. 04-R-0273	54. 04-R-0201
24. 04-R-0218	55. 04-R-0202
25. 04-R-0219	56. 04-R-0203
26. 04-R-0220	57. 04-R-0204
27. 04-R-0245	58. 04-R-0205
28. 04-R-0246	59. 04-R-0206
29. 04-R-0249	60. 04-R-0225
30. 04-R-0250	
31. 04-R-0274	
32. 04-R-0226	

