



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Susan M. Lancaster, Assistant City Attorney
DATE: April 11, 2007
SUBJECT: Troy v. Premium Construction

In October 2001, the City initiated a condemnation lawsuit to acquire a 15.28- acre parcel of property in Section 36. The defendant, Premium Construction, previously owned this property. The property was acquired by the City to be developed into a passive neighborhood park. The City acquired possession of the property on November 7, 2001, and the property was immediately added to the list of park development projects that have been prioritized and are currently waiting for additional funding.

As in all condemnation cases, the amount of the just compensation (or the price that the City would need to pay for the property) remained as the only issue to be litigated. It is not unusual for this litigation to be drawn out for several months after possession is obtained. Unfortunately, due to several reasons, including the death of the original judge and the death of the City's original appraiser, this case was substantially delayed. Oakland County Circuit Court Judge Mark Goldsmith entered his final opinion resolving the just compensation issue on February 3, 2006.

Just prior to the Court's opinion, there was a condemnation case from another public corporation (*Carrier Creek Drainage District*) that raised some of the same legal issues that we unsuccessfully raised in our condemnation case. According to the Court of Appeals decision in *Carrier Creek*, property owners are required to provide a condemning authority with timely notification of all factors impacting the value of property. The *Carrier Creek* case was submitted to the Michigan Supreme Court, and a decision affirming the Court of Appeals would have some application to our case, since we unsuccessfully argued in the trial court that the property owners (Premium Construction), failed to provide the City with timely notification that the wetlands should have been de-regulated by the MDEQ. In February 2006, the Troy City Council authorized an appeal of our case, which was based in part on the *Carrier Creek* case. Subsequently, the Michigan Supreme Court issued a decision in *Carrier Creek*, refusing to address the legal issues, since the November 2006 passage of the constitutional amendment on condemnation significantly altered the previous statutory provisions. The deadline for the City to file its brief on appeal is April 27, 2007.

In the interim, the parties have continued to negotiate a possible settlement of the case, which has been encouraged by the Court of Appeals facilitator, David Baumhart. Pursuant to these negotiations, the property owner, Premium Construction, has made a significant settlement offer for City Council consideration. In exchange for the City's dismissal of the appeal, Premium is willing to reduce the Court ordered attorney fees by **\$ 400,000**. Since the majority of cases at the Court of Appeals are affirmed, there are several risks in pursuing the appeal.

A proposed Stipulated Order Settling Reimbursement of Fees and Closing File is attached for City Council consideration. If Council approves this settlement, and authorizes execution of this document, then this long-standing condemnation case will be concluded. If you have any questions concerning the above, please let us know.

STATE OF MICHIGAN

OAKLAND COUNTY CIRCUIT COURT

CITY OF TROY, a Michigan
municipal corporation,
Plaintiff,

Case No. 01-035191-CC
Hon. Mark A. Goldsmith

v

PREMIUM CONSTRUCTION, L.L.C., a
Michigan Limited Liability Company.

Defendant.

CITY OF TROY-CITY ATTORNEY'S OFFICE
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Attorneys for Defendant Premium Construction, LLC,

**STIPULATED ORDER SETTLING REIMBURSEMENT OF FEES,
DISBURSING ESCROWED FUNDS, AND CLOSING THE CASE**

At a session of said Court, held in the
County of Oakland, Michigan
on _____

PRESENT: _____
CIRCUIT JUDGE

The Court, having noted the parties' stipulation through their counsel, having the authority to consider such stipulation pursuant to MCR 7.208(A)(2), and being otherwise fully advised in the premises;

1. The parties have agreed to settle this litigation and have entered a Stipulation to Voluntarily Dismiss the pending appeal in consideration of Plaintiff's payment, and Defendant's acceptance, of \$750,000 in lieu of the court's award for reimbursement of fees in its June 9, 2006, Opinion and Order Re: Attorney Fees of \$1,152,000.00. In addition, the parties have agreed that, in lieu of any statutory interest that would have accrued on the \$1,152,000.00 that Plaintiff placed into an escrow account in accordance with this Court's July 13, 2006 Stipulated Order Granting Plaintiff's Motion for Order of Stay of Proceedings and Order for Establishment of an Escrow Account, the only interest that shall apply to the \$750,000 payment is a pro rata or proportionate share of the accrued interest on the escrow account that was established by the City, which such interest shall be in lieu of any statutory interest that might otherwise apply from the date of the June 9, 2006 Opinion and Order. .

2. All other Judgments or Orders requiring payment between the parties shall be considered to be satisfied in full and are not modified in any manner as a result of this stipulated Order.

IT IS HERBY ORDERED that Plaintiff shall make payment to Defendant in the amount of \$750,000, plus the Defendant's pro rata or proportionate share of the accrued interest on the escrow account as set forth in Paragraph 1 of this Order as of the date of this Order;

This Order resolves the last pending claim and closes the case.

CIRCUIT JUDGE

**THE UNDERSIGNED HEREBY STIPULATE
AND AGREE TO ENTRY OF THE ABOVE
ORDER:**

CITY OF TROY

BERRY REYNOLDS & ROGOWSKI, PC

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