



TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: December 3, 2009
SUBJECT: Troy v. JMT Properties, LLC (Rochester Road Improvement Project)

As a part of the Rochester Road improvement project, the City needed a permanent public utility easement from the property at 3381 Rochester Road, in the City of Troy. The City was not able to voluntarily purchase this easement, and was therefore required to file a condemnation lawsuit for the property. Through a Court order, the City was granted possession of the property, and paid the estimated just compensation of \$1,100, which was the independent appraiser's valuation. The case is still pending, however, since the property owners are seeking more money for the property.

Defendant JMT Properties, LLC has proposed settling the case for a total sum of \$7,500, which includes the estimated just compensation that was previously paid, costs and attorney fees. As proposed, the City would not be required to pay any costs associated with Defendant's appraisal fees. If the case proceeded to trial, the City would be required to pay the property owner's expert real estate appraiser witness fees along with the additional fees that would be charged by the City's appraiser. Those fees alone would exceed \$7,500. Additionally, if the case is not settled, a jury could render a verdict requiring payment of additional compensation. If that occurred, the City would also be required to pay interest on the increase in compensation.

To minimize the costs and fees and interest the City would otherwise incur if this case proceeded to trial, and based on the unpredictability of a jury, it is our recommendation that the this matter be settled prior to trial. A proposed consent judgment is attached for your review and consideration.

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,

v.

Case No. 09-100948-CC
Hon. Shalina Kumar

JMT PROPERTIES, LLC, a Michigan Limited
Liability Company; ALIF CORPORATION, a
Michigan Corporation; and BANK OF AUBURN
HILLS,

Defendants.

City of Troy – City Attorney's Office
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Allan T. Motzny (P37580)
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Troy, MI 48084
(248) 524-3320

H. Adam Cohen (P47202)
Steinhardt, Pesick & Cohen
Attorney for Defendant
JMT Properties, LLC
380 North Old Woodward Ave. Ste 120
Birmingham, MI 48009
(248) 646-0888

CONSENT JUDGMENT

At a session of said Court held
In the Courthouse in the
City of Pontiac, Oakland County, MI
on: _____

PRESENT: HONORABLE SHALINA KUMAR
OAKLAND COUNTY CIRCUIT COURT JUDGE

In this cause, Plaintiff and Defendant JMT Properties, LLC, through their
counsel, have stipulated to entry of this Consent Judgment; all other named

Defendants have failed to answer the complaint or otherwise appear; the Court being fully advised in the premises; now therefore,

IT IS ORDERED:

1. The City of Troy has previously acquired a permanent public utility easement as fully described in the Complaint for Acquisition and the Declaration of Taking filed with this Court on May 20, 2009 by virtue of said filing and the entry by this Court on June 17, 2009 of the Order for Payment of Estimated Just Compensation and Surrender of Possession.
2. As required in the Order for Payment of Estimated Just Compensation and Surrender of Possession, the Plaintiff previously paid the Defendants estimated just compensation in the amount of \$1,100.
3. Plaintiff shall pay to Defendants the additional sum of \$4,266.67 in compromise and settlement of any and all claims Defendants have against Plaintiff for the acquisition of the permanent public utility easement described in the Complaint for Acquisition of Property and Declaration of Taking. The payee in all instruments drawn pursuant to this paragraph shall be JMT Properties, LLC, Alif Corporation, and Bank of Auburn Hills.
4. Pursuant to the provisions of MCL 213.291, any amounts due as delinquent taxes or assessments, if any, shall be deducted by Plaintiff prior to payment of the sums set forth in paragraph 3.
5. Pursuant to MCL 213.66(3), Plaintiff shall reimburse Defendant JMT Properties, LLC for attorney fees in the amount of \$2,133.33 in the form of a check payable to Steinhardt, Pesick & Cohen, P.C.

6. All payments set forth in this Judgment shall be delivered by Plaintiff to Steinhardt, Pesick & Cohen, P.C., within 21 days of the date of this Judgment.
7. Plaintiff shall not be obligated to pay any costs, appraisal fees, or any other sums except as set forth above.
8. This Judgment resolves the last pending claim and closes the case.

Hon. Shalina Kumar , Circuit Judge

I stipulate to entry of this Judgment:

Allan T. Motzny (P37580)
Attorney for Plaintiff

H. Adam Cohen (P47202)
Attorney for Defendant JMT Properties, LLC