



STAFF REPORT

DATE: September 19, 2017

CONSENT

ITEM #:

AGENDA ITEM: Approve Settlement Agreement with Danielsons

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

Council will hold a closed session prior to this meeting under the Attorney Client Privilege exception.

ISSUE BEFORE COUNCIL:

Should the Council approve the Settlement Agreement with Tim Danielson?

PROPOSAL DETAILS/ANALYSIS:

Included in your packet is the proposed settlement agreement with Tim Danielson on 30th St. The Danielsons have signed the agreement and the commissioner hearings have been canceled to allow the parties to proceed with this agreement.

FISCAL IMPACT:

\$10,800

OPTIONS:

- 1) Approve Stipulation of Settlement Agreement
- 2) Do Not Approve the Settlement Agreement.

RECOMMENDATION:

If removed from the consent agenda:

Motion to approve the Stipulation of Settlement with Timothy John Danielson

ATTACHMENTS:

- Stipulation of Settlement Agreement

STATE OF MINNESOTA
COUNTY OF WASHINGTON

IN DISTRICT COURT
TENTH JUDICIAL DISTRICT

Case Type: Condemnation

City of Lake Elmo,

Court File No. 82-CV-16-3201

Petitioner,

vs.

Timothy John Danielson; et al.,

**STIPULATION OF
SETTLEMENT**

Respondents.

THIS STIPULATION is made by and between Petitioner City of Lake Elmo (“City”) and Respondents Timothy John Danielson and Diana Marie Danielson (“Owners”).

RECITALS

The following recitals are part of this stipulation.

1. Owners are the fee owners of real property identified as Parcel 1 on Exhibit A to the court order approving the City’s Petition in this action (“the Property”). A copy of the applicable part of Exhibit A is attached and incorporated.

2. Washington County has an interest in the Property for the payment of Real Estate taxes, but as indicated in Exhibit B to this stipulation, has represented that there are no delinquent taxes for the Property and has waived any right to participate further in this action.

3. The City commenced this condemnation action to acquire part of the Property in fee, together with a temporary easement over part of the Property (“Subject Interests”), as described in the attached Exhibit A, for the purpose of improving the street, drainage, and utilities and installing a sidewalk along 30th Street (the “Project”).

4. On October 28, 2016, the City deposited with the District Court Administrator the amount of its approved appraised value for the damages caused by the taking, \$5,200.00, pursuant to Minn. Stat. §117.042 (the “Quick Take Payment”); and on April 24, 2017, the City recorded the documents required by court order to take title to and possession of the Subject Interests.

5. The City and the Owners have reached a full and final settlement and compromise of the matters in dispute.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, the parties stipulate and agree as follows:

1. Settlement Amount. The City and Owners agree to a full and final settlement of all claims with respect to the City’s acquisition of the Subject Interests for the total amount of \$10,800.00 (“Settlement Amount”).
2. Payment. Within 30 business days following the Effective Date, the City shall pay the Owners the Settlement Amount.
3. Deposit. The Owners assign to the City all right, title and interest in the Deposit. The City may apply to the Court at any time for disbursement to the City of the Deposit, together with any interest that has accrued thereon, without further notice to the Owners. The City and the Owners agree to the entry of a Court order directing disbursement to the City alone of the Quick-Take Payment, together with any interest that has accrued thereon.
4. Other Considerations. The parties agree to the following additional terms:
 - a. The Owners will not have to relocate as a result of the Project.
 - b. The Owners did not obtain an appraisal.

5. Full and Final Compromise. This Agreement constitutes a full and final settlement of all claims arising out the City's taking of the Subject Interests or the performance the Project. In consideration of the Settlement Amount, the Owners waive and release any and all claims, including without limitation claims for just compensation, common law remedies (e.g., tort claims), statutory remedies, interest, appraisal and other expert fees, attorney fees, costs and disbursements, construction-related interference damages and all other severance damages arising from the City's taking of the Subject Interests or the performance of the Project, against the City, its agents, employees, contractors, or consultants, and the County of Washington, its agent, employees, contractors, or consultants. The Owners further waive any and all rights to further notices, viewings, or hearings regarding this action.
6. Filing of Settlement. The City shall file this Stipulation of Settlement with the district court. Upon payment pursuant to Paragraph 2 above, the City will file a Final Certificate with respect to the Property, and record a discharge of notice of lis pendens with respect to the Property in the Office of the Washington County Recorder.
7. Entire Agreement. The undersigned state and represent that each has fully read this Stipulation of Settlement, has been advised by counsel in this matter, and knows and understands its consequences and legal effect. This Stipulation of Settlement contains the entire agreement of the parties.
8. Execution. The parties agree that this Stipulation of Settlement may be executed in separate counterparts which, taken together, shall be and comprise one agreement. A facsimile or electronic copy of any execution of a counterpart shall have the same force and effect as if it were an original.

9. Authority. The persons signing this Stipulation of Settlement in their representative capacities represent and warrant by signing this Agreement that it is their intent to bind their respective clients to the terms and conditions set forth herein, that the persons signing in their representative capacity have been authorized to bind their respective clients to such terms, and that it is the clients' intent to be so bound.

10. Effective Date. The Effective Date of this Agreement shall be the date of its execution by the last party to sign.

Dated: _____

OWNERS

Timothy John Danielson

Diana Marie Danielson

Dated: _____

KELLY & LEMMONS, P.A.

By: _____
Chad D. Lemmons (# _____)
223 Little Canada Road East, Suite 200
St. Paul, MN 55117
(651) 224-3781

Attorneys for Owners

Dated: _____

CITY OF LAKE ELMO

By: _____

Its: Mayor

By: _____

Its: City Clerk

Dated: _____

KENNEDY & GRAVEN, CHARTERED

Douglas D. Shaftel (#391985)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

Attorneys for Petitioner City of Lake Elmo

EXHIBIT A

Parcel No. 1: Property I.D. 24-029-21-21-0008, Abstract

Property Address: 11357 – 30th Street N, Lake Elmo, MN 55042

Description of Subject Property:

All that part of Government Lot 1, Section 24 in Township 29 North of Range 21 West of the Fourth Meridian, described as follows, to-wit: Beginning at a point on the North line of said Section, said point being 753.5 feet West of the Northwest Corner of the Northeast ¼ of said Section; running thence South on a line parallel with the North and South ¼ Section line of said Section 262.05 feet; running thence East parallel with the North line of said Section 125 feet; running thence North parallel with the said North and South ¼ Section line 262.05 feet; thence West along the North line of said Section 125 feet to the point of beginning, according to the United States Government Survey thereof, Washington County, Minnesota.

Description of portion of Property to be taken in fee:

The North 25.00 feet of the tract described as follows:

All that part of Government Lot 1, Section 24 in Township 29 North of Range 21 West of the Fourth Meridian, described as follows, to-wit: Beginning at a point on the North line of said Section, said point being 753.5 feet West of the Northwest Corner of the Northeast ¼ of said Section; running thence South on a line parallel with the North and South ¼ Section line of said Section 262.05 feet; running thence East parallel with the North line of said Section 125 feet; running thence North parallel with the said North and South ¼ Section line 262.05 feet; thence West along the North line of said Section 125 feet to the point of beginning, according to the United States Government Survey thereof, Washington County, Minnesota.

Description of easements to be taken:

A temporary easement for construction purposes over the tract described as follows:

All that part of Government Lot 1, Section 24 in Township 29 North of Range 21 West of the Fourth Meridian, described as follows, to-wit: Beginning at a point on the North line of said Section, said point being 753.5 feet West of the Northwest Corner of the Northeast ¼ of said Section; running thence South on a line parallel with the North and South ¼ Section line of said Section 262.05 feet; running thence East parallel with the North line of said Section 125 feet; running thence North parallel with the said North and South ¼ Section line 262.05 feet; thence West along the North line of said Section 125 feet to the

point of beginning, according to the United States Government Survey thereof, Washington County, Minnesota.

Said temporary easement is described as follows:

Beginning at the southeast corner of the North 25.00 feet of said Tract; thence westerly along the south line of said North 25.00 feet to the west line of said Tract; thence southerly along said west line a distance of 19.00 feet to the southwest corner of the North 44.00 feet of said Tract; thence easterly along the south line of said North 44.00 feet a distance of 16.00 feet; thence southeasterly, deflecting to the right 75 degrees, a distance of 41.00 feet; thence easterly, deflecting to the left 75 degrees, a distance of 21.00 feet; thence northeasterly, deflecting to the left 79 degrees, a distance of 56.67 feet to a point on said south line of the North 28.00 feet; thence easterly along said south line a distance of 66.61 feet to the east line of said Tract; thence northerly along said east line a distance of 3.00 feet to the point of beginning.

Term of Temporary Easement: The temporary easement described above will run from May 1, 2016 to July 31, 2017.

Subject to easements of record, except as taken herein.

Interests being acquired as to fee takings and encumbered as to easement takings within the taking areas described above:

NAME	NATURE OF INTEREST
Timothy John Danielson and Diana Marie Danielson	Fee Owners
Washington County	Real Estate Taxes
All other parties unknown, together with unknown successors, assigns, heirs, devisees and spouses, if any	Any right, title or interest within the acquired portion of the Subject Property