

City Council  
Date: 7/10/17  
REGULAR  
Item:  
Motion

ITEM: Consider referring the Ziertman's (5261 Keats Avenue) concerns and claims ~~to the~~ to the League of Minnesota Cities Insurance Trust for independent investigation and resolution and evaluation

SUBMITTED BY: Susan Hoyt, City Administrator

SUMMARY AND ACTION REQUESTED: The city council is being asked to refer the Ziertman's concerns and claims against the city, expressed by the Ziertman's at the June 5, 2007 city council meeting, to the League of Minnesota Cities Insurance Trust (LMCIT) for independent investigation, evaluation and ~~if deemed appropriate,~~ settlement of the claim. ~~(A settlement can include actions as well as money).~~ At the June 5, 2007 city council meeting the administrator was directed to return to the city council with a mechanism for evaluating the concerns and claims that the Ziertman's described and for resolving them. The administrator contacted the LMCIT and found the LMCIT is willing to provide this service ~~in this situation~~. The LMCIT investigators, who investigate a wide variety of claims against cities, are experienced working with city issues. The LMCIT independently investigates, determines any misconduct or negligence by the city in carrying its responsibilities, and determines the damages, if any, to settle the matter identifying if a city has responsibility for a situation, and, if so, The LMCIT does not make any assumptions about whether or not the city has neglected its responsibilities when it does its evaluation, identifying damages associated with this. The LMCIT approaches its work by independently investigating the complaints to determine if the city has been negligent and, if so, what damage award is appropriate. Both the LMCIT investigation and any damage award that might emerge from the investigation are covered by the LMCIT so there is no cost to the city for this work except for the deductible and for potential impact on LMCIT insurance premiums.

If ~~the city council approves this action approved, the~~ the Ziertman's information from the June 5 special city council meeting will be forwarded to the LMCIT as the starting point of the LMCIT's investigation. To be sure that the investigation of the concerns is done independently, the LMCIT will have access to any information or individuals that the LMCIT determines it needs to ~~do~~ review or interview to evaluate the Ziertman's claims against the city. To be clear, if the city council refers the Ziertman's concerns and claims to the LMCIT for this investigation, the city council should do so with the understanding that the outcome of the LMCIT investigation will and outcome will conclude the city's responsibility in this topic matter, and it will be concluded by the city. Of course, the Ziertman's, like any party, may take legal action if the Ziertman's are not satisfied with the LMCIT resolution of this matter, outcome.

#### ADDITIONAL INFORMATION

The Ziertman's concerns and claims, including the video tape presented at the June 5, 2007 meeting, are the foundation for a claim against the city and will be turned over to the LMCIT upon city council authorization to get the investigation moving along. The city attorney's memo, dated June 1, 2007 will also be forwarded for background summary.

The issues outlined at the special city council meeting are: (Attachment 1):

1. Lack of compliance with the mediation agreement;
2. Lack of pursuit of the grading and drainage complaint
3. Lack of pursuit of the business complaint
4. Refunding escrow money with interest when the reason for holding it still exists. The eroding hill and lack of landscaping around the addition resulting in additional erosion problems for us
5. The ongoing non-compliance of the 2004 Sessing addition with no effort to legalize it

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6. The misconduct of Chuck Dillerud before, during and after the court case  
a. Issues with Marty Rafferty (former city administrator)  
b. Issues with Jerry Filla (city attorney)

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The city council asked the administrator to recommend an avenue that will provide for an investigation into the concerns and claims described by the Ziertman's. Following the Ziertman presentation, the city council made it clear that the city has not determined whether or not some or all of the claims described in said it needed more information to determine if the Ziertman claims were true or not and needed information on this to make the determination. The presentation and material presented at the June 5, 2007 meeting are true or not true. The city council does not have the information required to make this decision. Given this, the council directed the administrator to bring back options for this.

At the direction of the city council, the administrator explored options. The administrator did not consider using the city staff or its consultants to evaluate the concerns and claims because these individuals do not have the skills, the resources, the independence nor the trust to independently assess the concerns and claims and to resolve them. Given this, independence and expertise became critical.

Does not have the independence nor the capacity to investigate nor to determine the validity of the Ziertman's concerns and claims.

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~~Settling the Ziertman's concerns and claims against the city requires an outside investigation to be sure that the city is not incurring costs at the public's expense without supporting findings nor that the city is avoiding costs at the property owner's expense because it chooses to ignore the concerns raised before it. Since the Ziertman's have documented their concerns and requested action or damages to address them, it is appropriate that the city's insurer address these since insurance is in place to investigate and to cover negligence on the part of the city – should there be any.~~

~~LMCIT investigations are thorough and are designed to determine if the city has been negligent in its duties and, if the city is negligent, what actions/compensation are appropriate to settle the issue/complaint. For example, on a less complex level, the LMCIT frequently investigates and determines if a city owes a property owner costs associated with sewer back ups into basements or for damage caused by snowplows running into vehicles or mailboxes. If the LMCIT determines that there are damages owed to the Ziertmans, these so costs will be covered by are to be covered by the city, the LMCIT because it is the city's insurer with the exception of the deductible in the policy covers it through the city's insurance. The LMCIT also represents the city in lawsuits.~~

~~Settling claims against the city requires an outside investigation to be sure that the city is not assuming or avoiding settlement costs for these claims at the city's (public's) expense. Since the Ziertman's have documented their concerns and requested action or damages to address them, it is appropriate that the city's insurer address these since insurance is in place to cover negligence of the city—should there be any.~~

~~It may appear more efficient to have the city and the Ziertmans negotiate a resolution to this matter without an independent investigation, evaluation and resolution by the LMCIT. However, this is not the type of matter that city's typically negotiate. It is very different than negotiating for a drainage easement from a private property owner. The drainage easement is for a public purpose and is not the result of a claim of negligence in the city performing its duties. To acquire an easement, Addressing the Ziertman's claims and concerns is a very different situation than addressing a disagreement between the city and a property owner over something like the city's acquisition of an easement because the latter does not imply negligence on the part of the city and does not require an investigation to support the resulting settlement of public funds being spent on a property right that gives the city a benefit. For example, if the city was asking the Ziertman's for a drainage easement over the Ziertman's property, the city might need the city typically requires an to get independent appraisals to demonstrate that the value being offered for the easement is justifiable as a public expense and that the value is fair to the property owners. This price is often the subject of the negotiation. for the value of the easement to negotiate in good faith and to support any public funds covering this cost. Under these easement acquisition example, the city is negotiating to accomplish a public purpose, not to satisfy a damage claim(s), and the city would negotiate directly with the Ziertman's or, perhaps, through a third party, with the Ziertman's to acquire the property right for the project. — And the city and the Ziertmans If the property owner and the city can not agree on the compensation for the easement acquisition, the city might have to pursue some legal action if the easement is required for the future public health and safety of the community, might disagree about the amount that the city should pay for the easement, which could result in some type of legal action if the easement was determined critical to the future public health and safety of the city.~~

#### OPTIONS

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The three other options described below that are n are not recommended.

1. ~~1.~~ The city council can hire an attorney to independently investigate the Ziertman's claims and c

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concerns and to determine what damage settlement, if any, is appropriate. To do this the city council will need to select an attorney with no association with the city or parties and pay for the investigation. No estimate of the cost is possible without pursuing this with an independent attorney.

If the attorney finds that there are damages that the city is responsible for covering and the city agrees to pay these damages, the city can ,

- pay the damages outright, or
- refer these damages to the LMCIT to see if the city's insurer will cover the cost of these damages. (Just as the LMCIT covers property damage due to city sewer back ups or snow plow damage). The LMCIT would need to review the investigation done by the attorney as part of its decision on whether or not to cover the damage claim

~~2-2.~~ The city council can Not take any action on the Ziertman's claims. No action on the part of the city, which allows the Ziertman's to decide whether to drop the claims or to proceed with their claims by filing a lawsuit against the city for damages.

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~~3-3.~~ The city council can Accept some or all of the Ziertman's claims without an independent investigation. The city council can and approve a settlement for damages that the city council bases is based upon specific findings identifying the public purpose of the expenditure that the city council makes to support the settlement action. -

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~~1-1~~ The city council can determine if it wants to refer the settlement costs, if there are any, to the LMCIT to cover them, as the city's insurer. The LMCIT would need to investigate the claims prior to agreeing to covering them.

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## RECOMMENDATION

Direct the administrator to refer the Ziertman's concerns and claims to the LMCIT for investigation, evaluation and to determine what, if any, settlement is appropriate to resolve this matter through the LMCIT with the understanding that the outcome of the LMCIT investigation and actions will conclude the city's responsibility on this matter topic. The LMCIT will be provided with the June 5, 2007 Ziertman information, including the video if the Ziertmans are willing to share it, and with the June 1, 2007 memo from the attorney as background. The LMCIT will have access to information and interviews that the LMCIT finds necessary to proceed with the investigation.

## SUGGESTED MOTION FOR CONSIDERATION

*Move to refer the concerns and claims presented by the Ziertman's at the June 5, 2007 city council meeting to the League of Minnesota Cities Insurance Trust (LMCIT) for independent investigation and evaluation of these claims and for a resolution settlement of these claims based upon the findings of the independent investigation. This is with -with- the understanding that the LMCIT will act independently and have access to any information, including individuals that the LMCIT identifies as necessary during the LMCIT investigation. It is the understanding of the city council And that the outcome of resolution of the LMCIT's investigation will fulfill the city's responsibility in resolving the Ziertman's concerns and claims in this matter.*

ORDER OF BUSINESS

- Introduction Susan Hoyt, City Administrator
- Report Susan Hoyt, City Administrator
- Questions from the council  
~~Councilmembers~~Council members Mayor and
- Questions/comments from the requesting party  
Ziertmans, if any Mayor facilitates
- Questions from the public to the council, if any  
(up to three minutes) Mayor ~~facilitates~~facilitates
- Consider a motion  
(required to discuss the item further, )  
This does not imply approval of the motion) Mayor facilitates with council
- Discussion  
~~Councilmembers~~Council members Mayor and
- Action on motion City Council

ATTACHMENTS:

- 1 Outline of the 4 Information presented by Ziertmans at the June 5, 2007 special  
city council meeting
- 42 Memo from City Attorney, Jerry Filla, dated June 1, 2007

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