



STAFF REPORT

DATE: October 3, 2023

CONSENT

AGENDA ITEM: Settlement Agreement with Gormans Regarding Sewer Assessment

TO: Mayor and City Council

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

In 2021, the city council approved the final assessment roll for Old Village Phases 5 and 6. This included a sewer assessment for Gorman's Restaurant of \$162,500. Gorman appealed his assessment and it has been in district court for the last couple of years.

ISSUE BEFORE COUNCIL:

Should the Council approve the settlement agreement with Gormans regarding their sewer assessments for Old Village 5 and 6?

PROPOSAL:

The agreement included in your packet reduces the assessment from \$162,500 to \$125,000. If approved, staff will adjust the assessment amount reported to the county this fall. Previous payments are credited against the new assessment amount and interest.

OPTIONS:

- 1) Approve settlement agreement
- 2) Amend and then approve the settlement agreement
- 3) Do not approve the settlement agreement

RECOMMENDATION:

If removed from the consent agenda:

Motion to approve the settlement agreement with Gormans for the Old Village 5 and 6 sewer assessment.

ATTACHMENTS:

- Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between the Defendant City of Lake Elmo ("City") and Plaintiffs Edward Thomas Gorman and Kathleen Marie Gorman, trustees of the Edward Thomas Gorman Family Revocable Living Trust dated September 20, 2012 ("Plaintiffs") (referred to individually as a "Party" and collectively as the "Parties") relating to the claims and defenses in the action captioned *Edward Thomas Gorman and Kathleen Marie Gorman, trustees of the Edward Thomas Gorman Family Revocable Living Trust dated September 20, 2012 v. City of Lake Elmo*, Court File No. 82-CV-21-4638, venued in Washington County District Court, Washington County, Minnesota (hereinafter, the "Lawsuit"). The Lawsuit involves, principally, matters and disputes over the City's special assessments against Plaintiffs' property for certain improvements related to the City's Old Village Phase 5 & 6 Improvements Project in the amount of \$162,500.00 (the "Original Assessment").

Now, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following terms and conditions of settlement of the Lawsuit.

1. **Agreement Subject to Final Council Approval.** This Agreement is contingent on final approval of the City Council of the City of Lake Elmo. The City Administrator and the City's Attorney in this matter will recommend that the City Council approve the terms and conditions of this Agreement with the understanding that the City Council will take action at its Council meeting of October 3, 2023, to confirm either acceptance or rejection of this Agreement. If the meeting does not occur on October 3, 2023, or for any reason the consideration of this Agreement is delayed, the Parties agree that the City Council will take action as soon as scheduling so allows. If accepted, this Agreement shall be fully executed and thereafter shall be fully enforceable. If rejected, this Agreement, including without limitation, the releases herein, shall be null and void and the Parties shall proceed with their claims, defenses, and remedies as outlined in Paragraph 4 of this Agreement.

2. **Agreement on the Assessment Amount.** In the Lawsuit, Plaintiffs challenge the validity and amount of the City's Original Assessment. The Original Assessment on the Plaintiffs-owned property located at 11011 Stillwater Boulevard, Lake Elmo, MN and identified as Washington County Property I.D. No. 13.029.21.23.0071 (the "Property") originally amounted to \$162,500.00 in total. The City agrees to adjust, and Plaintiffs agree to pay, an assessment amount of one hundred twenty-five thousand dollars and No/100 (\$125,000.00) (the "Agreed Assessment"). The Parties also agree to cooperate in completing any documentation reasonably necessary to adjust the Original Assessment to the Agreed Assessment amount. That the balance of one hundred twenty-five thousand dollars (\$125,000.00) will be adjusted after the fact to reflect installments of Assessments already paid.

3. **Plaintiffs' Payment of the Agreed Assessment.** Plaintiffs agree to pay the above Agreed Assessment to the City, and may do so as provided by the provisions in Minnesota Statutes Chapter 429 through payments on the property tax statements of the Plaintiff's Property. Interest shall accrue at the rate of the Original Assessment. Payments made prior to the date of this Agreement shall be credited against the Agreed Assessment and any interest respectively.

4. **Rights in the Event of Council Rejection of Agreement.** In the event that the City Council rejects the recommendation to approve this Agreement on October 3, 2023, as provided in Paragraph 1, then Plaintiffs and the City shall proceed with their claims and defenses in the Lawsuit with respect to the Assessment challenge.

5. **Mutual Releases.** Upon execution of this Agreement, and the City Council's approval of the same, Plaintiffs and the City, on behalf of themselves, and on behalf of each and all of their respective past and present representatives, council members, managers, engineers, attorneys, officers, members, agents, employees, insurers, heirs, and assigns, shall and do hereby fully and finally release each other, and each and all of their respective past and present representatives, council members, managers, engineers, attorneys, officers, members, agents, employees, insurers, heirs, and assigns, from any and all claims, demands, or causes of action, whether sounding in contract, tort, or warranty, whether statutory or based on claims of alleged wrongful taking or claim to process violations, that the Parties may have, or may claim to have, known or unknown, against each other arising out of or related to the Assessment or the claims stated in the Lawsuit. This mutual release is intended to be full and final between the Parties with respect to any matter or thing relating to the Assessment and the Lawsuit as to all claims, whether now known, or as may arise in the future.

Notwithstanding the above release, if Plaintiffs do not comply with the two-year deadline for connection to the sanitary sewer system as set forth in City Code Section 5.08.080(a), Plaintiffs reserve the right to challenge the fees imposed by the City under City Code Section 5.08.080(a)(1).

6. **Third-Party Claims.** Plaintiffs shall indemnify, defend, and hold harmless, the City, its employees, agents, and Council from and against any and all claims, actions, damages, costs, judgments, and expenses, including reasonable attorney's fees, which result from any claim by any tenant of, or other third party with an interest in the properties subject to the Assessment, related to the Assessment.

7. **Dismissal of Lawsuit.** If the City Council approves this Agreement, the Parties shall execute and file a stipulation and order of dismissal with prejudice. Neither Party shall appeal the dismissal. If the City Council rejects this Agreement, the Parties shall proceed as outlined under Paragraph 4 of this Agreement.

8. **Non-Admission of Liability.** Nothing in this Agreement shall constitute an admission of fault or responsibility by either Plaintiffs or the City. This settlement is made in compromise of disputed matters.

9. **Signatory Authority/Voluntary Execution.** Each of the signatories to this Agreement acknowledge that they are signing the same of their own free act, without being under any coercion, promise, or commitment, except as those expressly contained herein. The persons signing this Agreement in their representative capacities represent and warrant by signing this Agreement that it is their intent to bind their respective principals to the terms and conditions set forth herein, that the persons signing in their representative capacity have been authorized to bind their respective principals to such terms, and that it is the respective principals' intent to be so bound.

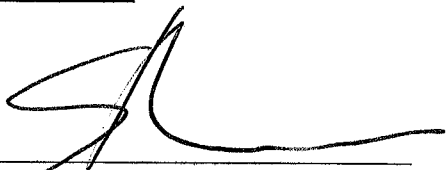
10. **Complete Agreement.** It is understood and agreed that this Agreement is the complete agreement between the Parties, which supersedes any oral agreements and negotiations between the Parties.

11. **Execution in Counterpart.** This Agreement may be executed in counterparts.

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Signature Page for Plaintiffs

DATED: 9/25, 2023.




Edward Thomas Gorman, Trustee of the Edward
Thomas Gorman Family Revocable Living Trust
dated September 20, 2012

DATED: 9/25, 2023.



Kathleen Marie Gorman, Trustee of the Edward
Thomas Gorman Family Revocable Living Trust
dated September 20, 2012

DATED: 9/25, 2023.



Chad D. Lemmons, Attorney for Plaintiffs

Signature Page for Defendant City of Lake Elmo

DATED: _____, 2023.

Charles Cadenhead, Mayor

DATED: _____, 2023.

Julie Johnson, City Clerk

DATED: _____, 2023.

Kristina Handt, City Administrator

DATED: _____, 2023.

Joshua P. Weir, Attorney for Defendant