



**Request for City Council Committee Action
From the City Attorney's Office**

Date: October 16, 2007
To: Ways & Means/Budget Committee
Referral to:

Subject: *Michael Sweat v. City of Minneapolis (claim)*

Recommendation: The City Attorney's Office recommends that the City Council approve the settlement of this case by payment of \$ 124,125.00 to Michael Sweat from Fund/Org. 6900 150 1500 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives:

Prepared by: Stephen H. Norton *SN* Phone: (612) 673-2689

Approved by: *Jay M. Heffern*
JMB Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
 Action requires an appropriation increase to the ___ Capital Budget or ___ Operating Budget.
 Action provides increased revenue for appropriation increase.
 Action requires use of contingency or reserves.
 Business Plan: ___ Action is within the plan. ___ Action requires a change to plan.
 Other financial impact (Explain): Fund/Org. 6900 150 1500
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

Neighborhood Notification

City Goal(s):

Build Community

Background/Supporting Information

Michael Sweat (claimant) filed a claim with the City for damage that occurred to his property at 3620 Central Ave. on May 8, 2007. On that date, heavy rains washed into the sewer system. The system was not able to handle the extra volume of water, and it back flowed into several properties, including claimant's. The raw sewage entered claimant's property through toilets and sinks in the basement, resulting in approximately 2-3" of standing sewage/water. Consequently, the basement of claimant's property was severely damaged. Specifically, all of the walls, floor coverings, and custom sized and built cabinets were damaged to the point that none were salvageable.

Minnesota courts have consistently held cities liable for damages sustained by a claimant when the city's intentional or negligent actions divert the natural flow of water, causing damage to property which would not normally be in the water's path. In this case, the City was in the area of claimant's property relining sewer pipes, and City employees had taken out catch basins to facilitate this work. These actions caused additional water to flow into other systems in the area, thereby overloading those systems. The result was the backup that damaged claimant's property. It appears that the City's work on the sewer system was a proximate cause of the damage to claimant's property.

Accordingly, the City employed Crawford & Company (independent insurance adjusters) to value claimant's property, as well as assess the damage to the property. After visiting the property, reviewing the costs to repair the damage, and adjusting for the age of the materials, etc., Crawford determined that it will cost \$124,125.00 to return the property to its original condition.

Because the City would almost certainly be held liable for the sewage backup at claimant's property on May 8, 2007, the City Attorney's Office recommends full and final settlement of the case in the amount of \$124,125.00. Additionally, by settling this case now, the City may avoid further costs incurred by the claimant, such as lost rents or profits.

RECOMMENDATION

The City Attorney's Office recommends settlement of the above-referenced case through payment of \$124,125.00 to Michael Sweat (payable from Fund/Org. 6900 150 1500).