



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

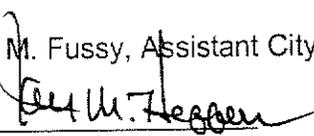
Date: May 28, 2004
To: Ways & Means/Budget Committee
Referral to:

Subject: Loni Ansel, Chicago-Lake Liquor Store, Inc., Chicago-Lake Properties, LLC, and John Wolf Enterprises, Inc. v. City of Minneapolis
Hennepin County District Court File No.: MC 03-012828

Recommendation: That the City Council approve full and final settlement of the above-referenced lawsuit by payment of the amount of \$100,000.00, payable to Rosen & Rosen LLC from Fund/Org. 690 150 1500 6850 and further authorize the City Attorney's Office to execute all documents necessary to finalize the settlement.

Previous Directives:

Prepared by: Joel M. Fussy, Assistant City Attorney Phone: 673-2067

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): \$100,000.00 payable from Fund/Org. 690 150 1500 6850
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

Background/Supporting Information

This case arises out of the closing by the City of Elliot Avenue adjacent to Plaintiffs' liquor store. The closing, effectuated by placing temporary pylon-type orange barriers across Elliot Avenue just to the south of the Elliot access to the liquor store, took place on November 24, 1998 and remains in effect to this day. The closure was made in consultation with the surrounding residential neighborhood in an effort to stem

unwanted traffic and livability issues emanating from the liquor store. To that end, the closure has been successful.

Plaintiffs (the two ownership groups of the liquor store during the period in which the barriers have been in place) filed this lawsuit in 2003 alleging an unconstitutional taking of private property rights by the City. Their claim focused on the fact that the barriers on Elliot create a de facto cul-de-sac that forces and funnels motorists onto their private parking lot in order to turn around or exit from Elliot. This case is akin to the *Kick's Liquor* lawsuit that recently led to a substantial monetary judgment against the City (approximately \$250,000). However, this case differs in that the taking at issue with Chicago-Lake Liquors is not a taking of reasonable access, but rather a direct taking of private property rights through the installation of the de facto cul-de-sac. In the *Kick's Liquor* litigation, the Minnesota Court of Appeals specifically held that "we take this opportunity to emphasize that the city's act of creating a cul-de-sac that forces motorists onto respondents' private property to turn around is a *direct* taking." Kick's Liquor v. Minneapolis, 2002 WL 1364018 (emphasis in original).

Based on this specific holding of the appellate court in the nearly identical situation, the City Attorney's Litigation Committee determined that liability would likely apply to the City in this case as well. Additionally, based on applicable Minnesota law, a prevailing private party in an inverse condemnation suit is entitled to attorneys fees as well as substantial interest (investment interest as opposed to statutory interest) on the judgment from the date of the taking. Although the potential damages to the City in this case are certainly much less than the damages awarded in the *Kick's Liquor* case (since they would be based upon a temporary non-exclusive easement over the plaintiffs' parking lot and not based upon a tangible loss of reasonable access), the liability exposure to the City is heightened by the above-detailed availability of attorneys fees and interest as well as significant litigation expenses including costly property appraisals. An examination of similar reported cases reveals that the courts apply various damage formulas in these sorts of takings cases which utilize a combination of objective market value and subjective determinations of the value of an intangible interference with a recognized bundle of private property rights. These reported cases lead to a determination that although the liability exposure to the City in this case could potentially end up being somewhat less than \$100,000, it is more likely that the City's overall liability would end up being appreciably greater than \$100,000, all factors considered.

A mediation session was held in front of Rick Solum, former Hennepin County District Court Judge, in his offices at Dorsey & Whitney on May 10, 2004. Council Member Lilligren and Jon Wertjes of Public Works were present at the mediation. After considerable negotiation, a tentative settlement was reached on May 19th in which the lawsuit would be dismissed with prejudice in exchange for the City paying damages of \$100,000.00 and agreeing to remove the barriers on Elliot on or before September 1, 2004. All parties recommend approval of the proposed settlement.

The City Attorney recommends that the finance officer be authorized to issue a settlement check to Rosen & Rosen LLC in the amount of \$100,000.00 payable from Fund/Org. 690 150 1500 6850 and further recommends that the City Attorney's Office be authorized to execute any documents necessary to finalize the settlement.