



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

Date: April 12, 2007
To: Ways & Means/Budget Committee
Referral to:

Subject: 227 Colfax, LLC v. City of Minneapolis

Recommendation: The City Attorney's Office recommends that the City Council approve the settlement of this case by payment of \$5,000 to 227 Colfax, LLC and \$85,000 to Auto-Owners Insurance Company from Fund/Org. 6900 150 1500 6900 and authorize the City Attorney's Office to execute any documents necessary to effectuate settlement.

Previous Directives:

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

Approved by: Jay M. Heffern
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 6900
 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

227 Colfax, LLC (claimant) filed a claim with the City for damage that occurred to its property on June 6, 2006, when a water main ruptured near 227 Colfax Ave. Consequently, the basement of claimant's property flooded, resulting in extensive damage. While claimant was attempting to remove the large volume of water in the basement of its property, a second rupture occurred, again flooding claimant's property.

Public Works determined that the ruptures near 227 Colfax Ave. were caused by the breakdown of the water mains due to electrolysis. While investigating the case, it was discovered that there was a history of electrolysis breaks in the area of 227 Colfax Ave. over a period of years. Therefore, the City was effectively put on notice that the water mains in this area were prone to ruptures.

Minnesota courts have held that cities can be held liable for damages sustained by a claimant's property *even in the absence of negligence or any intention to cause the main break*. The rationale for such rulings is based on the premise that because the entire community benefits from the maintenance of a water delivery system, the community as a whole should bear the liability for losses instead of the individual.

Prior to the water main ruptures, the basement of claimant's commercial property underwent extensive renovation. Therefore, the repair valuation is difficult to dispute, and very little depreciation can be applied to the figures.

Because the City would almost certainly be held liable for the two water main ruptures on June 6, 2006, the City Attorney's Office recommends settlement of the case. We have been able to negotiate a full and final settlement in the amount of \$90,000. This dollar value is below the \$97,871.37 valuation by the City's independent insurance adjuster, Broad Spire/Crawford & Company, as well as the actual costs to 227 Colfax, LLC and its insurance company, Auto-Owners Insurance Company. Furthermore, by settling this case now, the City will avoid further costs incurred by 227 Colfax, LLC, such as lost rents.

RECOMMENDATION

The City Attorney's Office recommends settlement of the above-referenced case through payment of \$5,000 to 227 Colfax, LLC and \$85,000 to Auto-Owners Insurance Company (payable from Fund/Org. 6900 150 1500 6900).