

CITY OF MADISON, WISCONSIN

REPORT OF: CITY ATTORNEY	PRESENTED <u>February 7, 2006</u>	REFERRED _____
TITLE: Approving Settlement of Use Value Penalty Cases	REREFERRED _____	_____
AUTHOR: Michael P. May City Attorney	REPORTED BACK _____	_____
DATED: January 24, 2006	ADOPTED _____ POF _____	RULES SUSPENDED _____
	ID NUMBER _____	_____

TO THE MAYOR AND COMMON COUNCIL:

RE: Approving Settlement of Use Value Penalty Cases

BACKGROUND

In 2002, the City commenced a series of court cases against developers for property tax penalties under the agricultural use value law, Wis. Stats. Sec. 74.485. Under this statute, property used for agricultural purposes is assessed at a much lower value than otherwise would be the case. If the property is then developed (used in a way inconsistent with agricultural use), a property tax penalty is imposed for the prior two year period.

The cases are very complex, fact intensive, and involve legal issues that have not been addressed by any appellate court decisions in Wisconsin. The defendants challenged the constitutionality of the statute as violating Wisconsin's tax uniformity clause. Circuit Court Judge Nowakowski ruled against the defendants, upholding the constitutionality of the statutes. Nonetheless, if the cases were tried, that issue alone would suggest uncertain results on appeal. If the law were found unconstitutional, the City could collect no penalties.

Trial of the cases would take one to two weeks, with further uncertainties due to a number of factual issues. As noted above, if the cases were appealed, an unfavorable ruling on some of the legal issues could result in no penalty being assessable.

In addition, the penalties recovered must be shared with other jurisdictions, making the use of resources for trial of these cases less than advantageous to the City.

PROPOSED SETTLEMENT

With that background in mind, we recently were able to reach tentative settlements on six of the seven cases. We still hope to reach a settlement on the seventh case. If necessary, we will try the seventh case. It is set for trial in June, 2006.

The following chart identifies the defendants, the penalty that the City claimed, and the proposed settlement:

DEFENDANT	ORIGINAL CLAIM	SETTLEMENT
JAKS Investment	\$233,857	\$124,250
Hovde & Hovde / Shea (2 cases)	\$35,924	\$22,452
QRS / Gallina	\$45,788	\$26,327
Great Dane Dev.	\$82,768	\$51,730
Midtown Madison Corp.	\$33,949	\$30,554
Nesbitt Farms	\$39,474	Unresolved
TOTAL	\$471,760	\$255,313

Note that the City will not get to keep all of those funds. An apportionment of funds to go back to other taxing jurisdictions must be done. Under the settlement, the City is allowed broad discretion in assigning the settlement to various parcels and various time periods. Thus, the exact amount that the City will retain is not known at this time.

The City Attorney recommends that the Council approve the resolution authorizing these settlements.

Michael P. May
City Attorney

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