

39936
Version 1

..Fiscal Note

This resolution approves a settlement of outstanding property tax litigation with Attic Angels Prairie Point (AAPP). The City will refund \$2,703,435 to AAPP for taxes paid in 2011 through 2014. The refund for tax year 2010 had already been paid into escrow by the City as part of a previous agreement to stop the accrual of interest costs. In response to the Appeals Court ruling against the City in early 2015, the 2011 through 2013 tax refund amounts were reflected in the City's 2014 financial statements. The City's share of the refund of 2014 taxes (paid in 2015) is \$268,185, and will reduce estimated revenues in the 2015 budget by that amount.

The settlement waives payment of interest costs by the City of over \$500,000 (which are solely the City's responsibility and would have been appropriated from the Contingent Reserve in the 2015 adopted budget). In addition, AAPP agrees to make a \$175,000 payment for prior year payment-in-lieu of taxes (PILOT), and has agreed to make a voluntary PILOT of approximately \$106,000 annually in future years, based on a per unit cost of certain City services to the development.

As the jurisdiction responsible for collecting all property taxes, the City will pay the entire refund and be reimbursed by the other taxing jurisdictions in the following proportions:

Madison School District:	\$1,198,718
Dane County:	\$305,773
MATC:	\$172,463
State of Wisconsin:	\$18,634

Payment of the refund prior to September 30, 2015, will allow the City to reflect the total amount of its refund over the previous four years in its levy limit calculation for 2016.

..Title

Approving a settlement of outstanding property tax litigation with Attic Angel Prairie Point, authorizing a refund of \$2,703,435 to pay the tax refunds due, authorizing the City Attorney to sign the settlement agreement, and authorizing the Mayor and City Clerk to sign an Agreement with Attic Angel Prairie Point for the future payment for municipal services to the City.

..Body

This resolution approves the settlement of five years of property tax litigation with Attic Angel Prairie Point (AAPP).

AAPP operates a retirement home on the far west side of Madison. In 2002, AAPP applied for a tax exemption under then existing sec. 70.11(4), Wis. Stats. The City denied the exemption and litigation ensued. Ultimately, the City won the lawsuit on the basis that AAPP did not meet the standards for a "benevolent association" under the statute and precedents. The primary reason AAPP did not meet the test is that its residents are relatively wealthy compared to the population. Decision of the Circuit Court in Case No. 03CV1617, dated November 9, 2005.

In the 2009 Budget Bill, the Wisconsin Legislature modified the laws governing tax exemption for low income housing and retirement housing. 2009 Wis. Act 28, effective June 30, 2009. The Madison Common Council supported the legislative changes. One result was the creation of a new sec. 70.11(4d), Wis. Stats., for "benevolent retirement homes for the aged." This new

section established a test for tax exemption dependent upon the value of the housing for the residents, but still stated that the organization had to be a “benevolent association.”

AAPP filed again for exemption under the new law. The City denied the exemption on the basis of the prior litigation and that AAPP was still required to be a “benevolent association”. AAPP again sued the City, and both the Circuit Court for Dane County and the Wisconsin Court of Appeals ruled in AAPP’s favor, finding that the law on what constituted a “benevolent association” under the prior section of the statutes did not carry over to the new section. The City has petitioned the Wisconsin Supreme Court to review the case. That petition is pending.

Proposed Settlement.

The City Attorney believes that the lower court rulings are incorrect. Having failed to convince two courts of that position, however, the City Attorney believes that prudence suggests seeking a compromise.

The proposed settlement with AAPP has four significant features:

1. The City will refund taxes collected for years 2011 to 2014 to AAPP in the total amount of \$2,703,435. These refunds will be charged back to other jurisdictions in the following amounts:

Madison School District: \$1,198,718
Dane County: \$305,773
MATC: \$172,463
State of Wisconsin: \$18,634

This means the total liability of the City will be \$1,007,847. The City has already paid the liability for 2010.

2. AAPP agrees to waive any interest on the tax refunds. This saves the City about \$500,000.

3. Absent a change in operation or a change in the law, the City agrees to treat AAPP as qualifying as a tax exempt retirement home for the aged. AAPP agrees to make a negotiated payment of \$175,000 for Payments for Municipal Services (PMS) or Payment in Lieu of Taxes (PILOT) for all past years. AAPP agrees to enter into an agreement with the City to make PMS or PILOT payments on an agreed upon formula for future years. This should bring the City about \$106,000 annually.

4. All pending cases, including the Petition pending in the Supreme Court, will be dismissed without any costs or further proceedings.

Resolution.

WHEREAS, the City and Attic Angel Prairie Point (AAPP) are engaged in litigation over property taxes paid by AAPP to the City for years 2011-2014; and

WHEREAS, the City and AAPP have reached a settlement that would end the tax litigation, refund taxes to AAPP, waive any interest payments to AAPP, and result in payments for prior

and future years by AAPP to the City for municipal services rendered to AAPP, all as more fully described above and adopted herein; and

WHEREAS, the Common Council finds that a settlement as set forth in this resolution and the attached settlement documents is in the best interests of the City and its taxpayers.

NOW, THEREFORE, BE IT RESOLVED, that the City agrees to settle outstanding tax disputes with AAPP as set forth in this resolution and the attached documents; and

BE IT FURTHER RESOLVED, that the City Attorney is authorized to sign the settlement agreement and related documents on behalf of the City; and

BE IT FINALLY RESOLVED, that the Mayor and City Clerk are authorized to sign the Agreement for the Payment of Municipal Services in the form attached hereto to effectuate the settlement.