



Legislation Text

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Fiscal Note

This resolution will reduce city general fund revenues by \$256,831.40 in 2012 and appropriate \$128,570.84 from the Contingent Reserve to pay costs and interest associated with on-going legal proceedings regarding payment of property taxes.

The City of Madison has been in legal proceedings with Attic Angels Prairie Point (AAPP) regarding property tax status. The Dane County Circuit Court recently ruled against the city and for AAPP to make the properties tax-exempt. The city plans to appeal that ruling. However, under state law, unpaid judgments accrue interest costs at 0.8% per month (approximately \$5,451 per month). In order to avoid these interest costs, this resolution would allow the city to pay the judgment without prejudice while the case continues.

Property tax refunds affect all taxing jurisdictions where the property is located. As such, the Madison Metropolitan School District (MMSD), Madison College, Dane County, and the State of Wisconsin (Forestry tax) may also be affected. At the earliest, the refunded property taxes would be certified to the state in October 2013 and have to be paid by the taxing jurisdictions in February 2014. In the interim, the city will pay the judgment and show the payments from the other affected taxing jurisdictions as a receivable.

Based on the \$681,427.02 of real property taxes paid by AAPP in 2010, the impact by jurisdiction is listed below:

| | |
|--------------------|-----------------|
| MMSD | \$293,149.67 |
| Madison College | 46,356.51 |
| Dane County | 79,755.98 |
| City of Madison | 256,831.40 |
| State of Wisconsin | <u>5,333.46</u> |
| | \$681,427.02 |

Costs of \$2,407.14 and interest accrued of \$126,163.70 through an estimated December 31, 2012, payment date will be paid by the City of Madison, as required under state law. The total fiscal effect (refunded taxes, costs and interest) is estimated at \$809,997.86. If the city were to prevail on appeal, these payments would be returned.

The summary of the financial impact to the city is shown below:

| | |
|--------------------------------------|-------------------|
| Refund of Taxes (city share) | \$256,831.40 |
| Costs | \$2,407.14 |
| Interest on Costs through 12/31/2012 | 77.65 |
| Interest on Taxes through 12/31/2012 | <u>126,086.05</u> |
| Contingent Reserve Total | \$128,570.84 |
| Total | \$385,402.24 |

Title

Approving the payment of judgment in *Attic Angel Prairie Point, Inc. V. City of Madison*, in Dane County Circuit Court case 11CV2746 for property tax year 2010, approving payment of \$256,831.40, the City's share, by amending the 2012 operating budget to reduce estimated General Fund Revenue and to appropriate \$128,570.84 from the Contingent Reserve to fund the related interest and costs.

Body

Authorizing the payment of judgment in *Attic Angel Prairie Point, Inc. v. City of Madison*, Dane County Circuit Court Case 11CV2746 pertaining to a refund of property taxes for tax year 2010 which provides for a refund of taxes, costs and calculated interest through December 31, 2012, in the amount of \$809,997.86 to either the Plaintiff or in the alternative to the Dane County Circuit Court. The statutory interest rate on the judgment is 0.8% until the date the judgment is paid and therefore the interest has been calculated through December 31, 2012 because the date of payment of the judgment is unknown. The City's share of the payment will be made from City resources amending the 2012 operating budget to reduce estimated General Fund revenues by \$256,831.40 to recognize the City's share of the tax refund, and to appropriate \$128,570.84 from the Contingent Reserve to fund related interest and costs.

Background

The City of Madison ('City') and Attic Angel Prairie Point ('AAPP') have a history of litigation for a property tax exemption for these properties. In 2003, the City denied AAPP an exemption as a benevolent retirement home for the aged under the former section of Wis. Stat. § 70.11(4) and AAPP sued the City in case number 2003CV1617. The City's main argument was that the retirement home could not establish that it was a benevolent association. Dane County Circuit Judge Sumi ruled that AAPP did not satisfy the benevolence test because their actual use of the property was to people housing for moderate and upper-income level individuals.

In 2010, the Wisconsin Legislature amended and created various new subsections of Wis. Stat. § 70.11. Specifically, Wis. Stat. § 70.11(4d) was adopted, entitled Benevolent Retirement Homes for the Aged. AAPP applied for a property tax exemption in 2010 pursuant to this new subsection, which the City subsequently denied the exemption because the subsection still requires an entity to be a benevolent association and satisfy the benevolence test. AAPP sued the City in case number 2011CV2746 in Dane County Circuit Court and Judge Anderson ruled in favor of AAPP, finding that benevolence under this section is defined by the statutory requirement which limits the value of the units in a retirement home for the aged to 130 percent of the average equalized value of improved parcels of residential property located in the same county as they retirement home. AAPP for 2010 satisfied this value limitation of the units. The City has appealed this ruling in 2012 AP 2095, which is currently pending.

The Judgment

The total outstanding judgment is \$809,997.86, which includes the 2010 property taxes for the 33 parcels owned by AAPP, interest and costs through December 31, 2012. The City is required to pay statutory interest on the judgment in the amount of 0.8% per month until paid and this amount reflects the interest calculated through December 31, 2012 because the date the judgment will be paid is unknown.

The judgment is broken out into \$681,427.02 for the real 2010 property taxes, \$126,086.05, in interest through December 31, 2012, costs in the amount of \$2,407.14 plus interest on costs in the amount of \$77.65. The City's approximate share of the judgment is \$385,402.24 the County's share is \$79,755.98, the State share is \$5,333.46, MATC's share is \$46,356.51 and the Madison School District's share is \$293,149.67.

City staff is requesting the Common Council approve payment of the judgment pending the appeal to either the Plaintiff or the Dane County Circuit Court to stop the additional interest from accumulating at the high rate of 0.8% per month. The City Attorney requests the alternative of paying to the Circuit Court because the attorneys for AAPP have refused to stipulate that payment to AAPP will not affect the pending appeal. Wisconsin case law is clear that this is the rule, and the AAPP attorneys agree that is the law, but they refuse to agree to apply it to this case. This unreasonable behavior means the City may have to use an alternate procedure of paying the funds into the Circuit Court to halt interest from running.

The City Attorney, the City Assessor, the City Finance Director and the City Treasurer all recommend approval of the resolution.

Necessary Authorizations

This resolution:

1. Approves the payment of a total of 809,997.86, including interest through December 31, 2012 for full satisfaction of the judgment for tax year 2010 to either the Plaintiff or the Dane County Circuit Court.
2. Amends the 2012 Operating Budget to reduce estimated general fund revenues by \$256,831.40 to recognize the City's share of the tax refund and to appropriate \$128,570.84 from the Contingent Reserve to fund related interest and costs.
3. Authorizes the City Assessor and other City staff to pursue the tax adjustments from other taxing jurisdictions pursuant to State law and Department of Revenue procedures.

Resolution

WHEREAS, the City of Madison and AAPP have been involved in two property tax exemption disputes for both tax years 2003 and 2010; and

WHEREAS, there is a judgment against the City by AAPP for tax year 2010; and

WHEREAS, the City Attorney, City Assessor, City Finance Director and City Treasurer all recommend approval of the payment of judgment as described in this resolution;

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Madison approves the payment of the judgment to either AAPP or the Dane County Circuit Court for tax year 2010 as described above in this resolution; and

BE IT FURTHER RESOLVED, that the Common Council authorizes the payment of \$809,997.86 from City resources to be paid to either AAPP or the Dane County Circuit Court in full satisfaction of the judgment for case number 2011CV2746 (tax year 2010); and

BE IT FURTHER RESOLVED, that the Assessor and other City staff are authorized to file for reimbursement from other taxing jurisdictions pursuant to Wisconsin Department of Revenue procedures; and

BE IT FINALLY RESOLVED, that the City's Operating Budget for 2012 is amended to reflect reduced revenues of \$256,831.40 to reflect the City's share of the tax refund and to appropriate \$128,570.84 from the Contingent Reserve to fund related interest and costs.