



## Legislation Details (With Text)

**File #:** 52468      **Version:** 1      **Name:** Authorizing the settlement and payment of a tax refund for tax year 2016 and 2017 for Shopko Stores Operating Co., LLC v. City of Madison, Dane County Circuit Court Case number 17CV1248, 2018CV1653 and 2018CV1652. Authorizing entry into settlement agreem

**Type:** Resolution      **Status:** Passed

**File created:** 7/16/2018      **In control:** FINANCE COMMITTEE

**On agenda:** 8/7/2018      **Final action:** 8/7/2018

**Enactment date:** 8/10/2018      **Enactment #:** RES-18-00617

**Title:** Authorizing the settlement and payment of a tax refund for tax year 2016 and 2017 for Shopko Stores Operating Co., LLC v. City of Madison, Dane County Circuit Court Case number 17CV1248, 2018CV1653 and 2018CV1652. Authorizing entry into settlement agreement for two Shopko properties for tax years 2016 and 2017 for a total refund of \$254,275.79 and approving payment of approximately, \$101,540.25 from City resources to represent the City's share of the settlement.

**Sponsors:** Paul R. Soglin

### Indexes:

### Code sections:

### Attachments:

Date	Ver.	Action By	Action	Result
8/7/2018	1	COMMON COUNCIL	Adopt	Pass
7/30/2018	1	FINANCE COMMITTEE	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
7/24/2018	1	COMMON COUNCIL	Refer	Pass
7/16/2018	1	Attorney's Office	Referred for Introduction	

### Fiscal Note

The proposed resolution authorizes a \$101,540.25 tax refund pursuant to a settlement agreement. The subject properties consist of two Shopko retail stores located at 2201 Zeier and 7401 Mineral Point Road in the City of Madison. The refund will be paid through a reduction in property tax revenue budgeted in the 2018 Adopted Operating Budget.

### Title

Authorizing the settlement and payment of a tax refund for tax year 2016 and 2017 for *Shopko Stores Operating Co., LLC v. City of Madison*, Dane County Circuit Court Case number 17CV1248, 2018CV1653 and 2018CV1652. Authorizing entry into settlement agreement for two Shopko properties for tax years 2016 and 2017 for a total refund of \$254,275.79 and approving payment of approximately, \$101,540.25 from City resources to represent the City's share of the settlement.

### Body

### Background

The subject properties consist of two Shopko retail stores located at 2201 Zeier and 7401 Mineral Point Road in the City of Madison. The two parcels sold in 2015 for \$10,000,000 (Zeier) and \$11,304,000 (Mineral Point). The two parcels were sold by a REIT and the buyers were two non-related parties. Shopko has long-term triple-net leases in place until approximately 2029 for both locations. The City set the 2016 assessments at the subject sale prices.

Shopko filed an objection with the Board of Review and presented what is commonly known as “Dark Store Appraisals” with opinions of value which consisted of \$3,870,000 (Zeier) and \$4,200,000 (Mineral Point). The “Dark Store theory” is a methodology that only utilizes sales comparisons of similar big box retail stores that are vacant. The Wisconsin Property Assessment Manual and Wisconsin case law caution assessors against using dark and/or distressed properties as sales comparables. The Board of Review sustained the assessments and Shopko subsequently sued the City suit for excessive assessment and violation of the Uniform Taxation Clause of the Wisconsin Constitution.

In 2017 the City reduced the assessments to \$9,240,000 (Zeier) and \$9,420,000 (Mineral Point) based on current market data. The Plaintiff filed a subsequent objection to their 2017 assessments. The Board of Review sustained the City’s assessments. Late June 2018, Shopko brought suit on the 2017 assessment in the Dane County Circuit Court.

## **Settlement**

The City and Shopko reached a tentative settlement through mediation. The proposed settlement consists of a reduction of:

1. Zeier Road property for tax years 2016 and 2017 to \$7,158,000. The assessment represents a value of \$71.39 per square foot for the main floor area, which consists of 94,120 square feet. The mezzanine consists of 24,606 square feet and is valued at \$17.85 per square foot or 25% of the main floor per square foot value.
2. 7401 Mineral Point Road property for tax years 2016 and 2017 to \$7,532,000. The assessment represents a value of \$71.39 per square foot for the main floor area, which consists of 99,101 square feet. The mezzanine consists of 25,604 square feet and is valued at \$17.85 per square foot or 25% of the main floor per square foot value.

The proposed assessments are equitable to other assessed values of big box retail located near the subject properties on both the east and west sides of Madison. The proposed settlement results in an approximate refund for both properties for tax years 2016 and 2017 for a total of \$254,275.79. The City’s portion of the refund is approximately \$101,540.25. Under the proposed settlement Shopko agrees to waive all interest and costs.

The City Attorney and the City Assessor recommend the approval of the proposed Settlement Agreement.

## **Necessary Authorizations**

This resolution

1. Approves the Settlement as outlined above.
2. Authorizes the City Attorney to sign the Settlement Agreement on behalf of the City.
3. Approves the payment in total of \$254,275.79 to settle tax years 2016 and 2017 for both the Zeier and Mineral Point Properties.

## **Resolution**

WHEREAS, Shopko Operating Stores Co. LLC, pursued an action against the City of Madison for excessive assessment for two 2201 Zeier Road and 7401 Mineral Point Road in the City of Madison for tax years 2016 and 2017; and

WHEREAS, Shopko Operating Stores Co. LLC and City of Madison have reached a proposed settlement regarding the 2016 and 2017 assessments, which settlement the Common Council finds is the best interest of

the City; and

WHEREAS, The City Attorney, City Assessor and the Finance Director all recommend the approval of the settlement as described in this resolution; the City Attorney will subsequently enter into a Settlement Agreement for the following total tax refund of \$254,275.79 with no additional interest or costs.

NOW, THEREFORE BE IT RESOLVED, that the Common Council authorizes the payment of approximately \$101,540.25 from City resources to Shopko Operating Stores Co., LLC in full settlement for tax years 2016 and 2017;

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 Attorney is authorized to sign the settlement agreement on behalf of the City of Madison.