

City of South St. Paul

COUNCIL AGENDA

SPECIAL MEETING

TRAINING ROOM

Monday, November 25, 2019

Immediately Following Conclusion of Worksession Meeting

1. CALL TO ORDER:

2. ROLL CALL:

3. GENERAL BUSINESS:

A. Approve Settlement Agreement for 357 1st Avenue

4. ADJOURNMENT:



SPECIAL COUNCIL CITY COUNCIL REPORT

DATE: NOVEMBER 25, 2019

DEPARTMENT: CITY ATTORNEY'S OFFICE

ADMINISTRATOR: JRH

3-A

AGENDA ITEM: 357 – 1st Ave. South

ACTION TO BE CONSIDERED:

Adopt Resolution 2019-175 Approving Mediated Settlement Agreement for 357 – 1st Ave. South

OVERVIEW:

As you know, the City has been litigating a trespass action with the owner of 357 1st Ave. South for almost 2 years. The City owns 2 vacant lots adjacent to 357 1st Ave. South. The property owner at 357 – 1st Ave. South, Michael Amundson, cleared trees, constructed a gravel driveway and dumped fill material on the City lots for at least 2½ years.

On November 21, 2017, then City Engineer Chris Hartzell and Public Works Director Pat Dunn met Amundson at his property and notified him that he needed to stop his land alteration activities on the City lots. He admitted that he had been conducting these activities for approximately 4 years.

The following violations were noted:

- Conducting land excavation activities without a permit
- Failing to have a stormwater management plan
- Failing to have an erosion control plan
- Illegal disposal and dumping
- Trespassing on City property
- Illegally conducting bluff altering activities
- Constructing an illegal gravel driveway
- Causing damage/debris to other roadways (Camber Ave.) due to erosion from illegal dumping
- Illegal removal of trees from City lots

The City sued Michael Amundson in Dakota County District Court. Eventually, following a failed mediation in February 2019, two other parties were brought into the action, including Blacktop Pro's, the contractor who provided at least 10 loads of fill, as well as Joe Amundson, the son of Michael Amundson, who allegedly performed some spreading activities of the fill on the City's lots.

After additional discovery, depositions and motions, another mediation was held on November 21, 2019 with the same mediator and this time it was successful. The terms of the settlement are as follows:

1. Defendants must pay the City a total sum of \$100,000:

Michael Amundson and State Farm will pay \$62,500

Blacktop Pro's will pay \$35,000

Joe Amundson will pay \$2,500

All payments are due within 20 days of the date of the agreement (By 12/11/19)

2. City will grant an encroachment agreement for the existing deck and shed on Amundson's property.
3. Michael Amundson will grant the City any Temporary Easements necessary for construction equipment during our remediation project on the City's lots.

ACTION REQUESTED:

Adopt Resolution Approving Mediated Settlement Agreement

SOURCE OF FUNDS:

N/A

City of South St. Paul
Dakota County, Minnesota

RESOLUTION NO 2019-175.

**RESOLUTION APPROVING SETTLEMENT BY AND BETWEEN
CITY OF SOUTH ST. PAUL, MICHAEL D. AMUNDSON,
JOSEPH W. RELF AND BLACKTOP PRO'S LLC AND
JOE AMUNDSON**

WHEREAS, the City of South St. Paul (“City”) commenced a court action against Michael D. Amundson (“Amundson”), Joseph W. Relf and Blacktop Pro’s LLC for the following actions that occurred on lots owned by the City: (a) encroachment of sheds and deck, (b) cutting down trees, (c) dumping of debris, which caused erosion of dirt and debris onto the City-owned lots and a sidewalk near Camber Avenue, (d) and construction of an unapproved driveway; and

WHEREAS, Joseph W. Relf and Blacktop Pro’s LLC commenced a third-party court action against Joe Amundson, claiming Joe Amundson was responsible for the dumping of the debris; and

WHEREAS, the lots owned by the City are near 4th Street South and 1st Avenue South, just north of Amundson’s property located at 357 – 1st Avenue, South St. Paul, MN 55075; and

WHEREAS, the parties participated in mediation on November 21, 2019; and

WHEREAS, the parties reached a settlement; and

WHEREAS, the Mediated Settlement Agreement is attached hereto as Exhibit A and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED by the South St. Paul City Council that the City approves the settlement by and between the City of South St. Paul, Michael D. Amundson, Joseph W. Relf and Blacktop Pro’s LLC and Joe Amundson and authorizes the appropriate city officials to prepare and execute the documents necessary to effectuate the actions contemplated in the Mediated Settlement Agreement attached as Exhibit A.

Adopted this 25th day of November, 2019.

Christy Wilcox, City Clerk

EXHIBIT A

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Case Type: Civil Other/Miscellaneous
Judicial Officer: Karen Asphaug

City of South St. Paul,
a Minnesota municipal corporation,

Court File No.: 19HA-CV-18-2628

Plaintiff,

vs.

MEDIATED SETTLEMENT

Michael D. Amundson, a single person,
Joseph W. Relf, a married person
and Blacktop Pro's LLC,
a Minnesota limited liability company,

AGREEMENT

Defendants,

and

Joseph W. Relf, a married person
and Blacktop Pro's LLC,
a Minnesota limited liability company,

Third-Party Plaintiffs,

vs.

Joe Amundson, John Doe, Mary Roe, ABC
Corp., and XYZ LLC,

Third-Party Defendants.

The parties in the above-entitled action have engaged the mediation services of Gilbert Mediation Center, Ltd. on this 21st day of November 2019. The parties have voluntarily appeared at mediation and are represented by the undersigned attorneys. The parties have entered into an agreement to voluntarily mediate the dispute between them and have engaged in settlement discussions between the mediator and their counsel. The parties have been advised to consult an attorney for legal advice before signing this Mediated Settlement Agreement and the parties have been separately advised of their rights and interest in this matter and have decided to voluntarily enter into this Mediated Settlement Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:

1. BINDING AGREEMENT: Pursuant to Minn. Stat. § 572.35, this Mediated Settlement Agreement will serve to memorialize all of the material terms and conditions of settlement and is fully binding on the parties. The parties are hereby advised that (a) the mediator has no duty to protect their interests or provide them with information about their legal rights; (b) signing this mediated settlement agreement may adversely affect their legal rights; and (c) they should consult with an attorney before signing a mediated settlement agreement if they are uncertain of their rights.
2. There will or may be some additional documentation required to be prepared and signed, and the parties agree to cooperate in good faith to obtain and sign those documents.
3. The parties agree to mutually release each other, their agents, officers, and employees in full satisfaction of any and all claims, counter-claims, and cross claims, known or unknown, that they may have against each other.
4. The Defendants will pay to the Plaintiff the sum of \$100,000.00 within 20 days of today's date as follows: Michael Amundson and State Farm Insurance in the sum of \$62,500.00; Joseph Relf and Blacktop Pro's, LLC in the sum of \$35,000.00; and Joe Amundson in the sum of \$2,500.00.

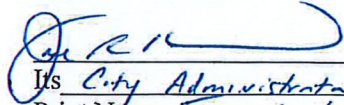
If the Defendants fails to pay said sum when due, upon 10 days' written notice to Plaintiff and their counsel, this stipulation may be filed with the Court and a judgment may be entered according to the terms and conditions of this Mediated Settlement Agreement entered into pursuant to Minnesota Statute Sec. 572.35.

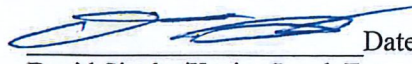
5. Upon payment and fulfillment of the obligations contained herein, a Stipulation of Dismissal with Prejudice will be filed with the District Court dismissing this case without further cost or expenses to any of the parties; or
6. This agreement is governed by the laws of Minnesota.
7. The parties agree to abide by the terms of their Mediated Settlement Agreement and to pay their mediation fees according to the separate Mediation Agreement that was signed by the parties.
8. The form of this agreement has been prepared for the convenience of the parties by the mediator, and is approved by the undersigned parties and their counsel. The mediator has no duty to protect the interests of either party or to provide them with any information about their legal rights and has not so advised either of the parties or their counsel. The mediator has not given any legal advice to any of the parties or their counsel.


ADDITIONAL TERMS AND CONDITIONS


9. The City shall grant an Encroachment Agreement for the benefit of Michael Amundson's property (Lot 3 Block 18, Riverside Park Addition) to allow the existing deck and shed to encroach onto the City's property (Lot 2, Lot 18, Riverside Park Addition) to the extent of the current encroachment. The deck and shed may be removed or replaced but shall not be allowed to expand or encroach any further onto the City's property.
10. Michael Amundson will agree to execute a Temporary Construction Easement for the City to perform remediation and slope stabilization.
11. This Agreement is subject to the approval of the South St. Paul City Council.

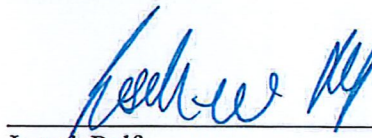
City of South St. Paul

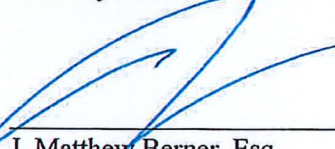
 Date 11/21/19
Is City Administrator
Print Name Joe L. Hanson
Plaintiff

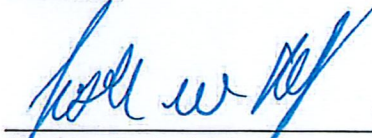
 Date 11-21-19
David Sienko/Korine Land, Esq.
Attorney for Plaintiff

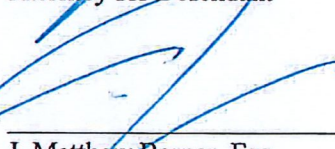
 Date 11/21/19
Michael Amundson
Defendant

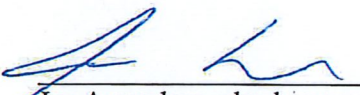
 Date 11/21/19
Kevin Gray, Esq./Steven Bader, Esq.
Attorney for Defendant


 Date 11-21-19
Joseph Relf
Defendant

 Date 11/21/19
J. Matthew Berner, Esq.
Attorney for Defendant

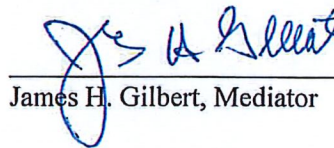
 Date 11-21-19
Blacktop Pro's, LLC
By Joseph Relf, its Owner
Defendant

 Date 11/21/19
J. Matthew Berner, Esq.
Attorney for Defendant

 Date 11-21-19
Joe Amundson, also known as Joseph
Amundson
Third-Party Defendant

 Date 11/21/19
Ryan McLaughlin, Esq.
Attorney for Third-Party Defendant

Witness Execution of Mediated Settlement Agreement

 Date 11/21/19
James H. Gilbert, Mediator