



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: City Administrator Dan Wietecha
Date: May 15, 2023
Item: Dismissing City's Counterclaim

Council Action Requested:

Approve the negotiated terms, including dismissing the City's counterclaim against Greg J Homes of Hastings, Inc.

Background Information:

In 2022, Greg J Homes of Hastings, Inc. filed suit against the City of Hastings alleging, among other claims, that the City had breached a 2020 Settlement Agreement regarding the development South Oaks 4th Addition. The City filed a counterclaim for \$12,877.75 in unpaid expenses by the developer. The court dismissed several of the claims in late 2022. The remaining claim regarding the alleged breach went to trial May 1-2, 2023.

The Court found in the City's favor (that the City did not breach the Settlement Agreement) and dismissed the claim. We then discussed the City dropping the counterclaim and GJH waiving any appeal, contingent on City Council approval. City staff, legal counsel, and I all strongly recommend the City Council waive the City's counterclaim and satisfy the contingency in the Stipulation.

Mr. Jablonske still owns the South Oaks 4th property and we'd like to see him develop it in compliance with City ordinances.

Financial Impact:

Forgo \$12,877.75

Committee Discussion:

Not applicable

Attachments:

- Stipulation
- Court Order

VIII-13

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST DISTRICT COURT

Greg J. Homes of Hastings, Inc.,	Court File No. 19HA-CV-22-1589
	Case Type: Civil Other/Misc.

Plaintiff,

Stipulation

v.

City of Hastings,

Defendant.

The above parties, through their undersigned counsel, hereby stipulate and agree to the following terms:

1. Defendant City of Hastings (“City”) waives its counterclaim against Plaintiff Greg J. Homes (“Greg J. Homes”) in the above-entitled matter;
2. Greg J. Homes agrees to waive all right to appeal the Court’s decisions in this matter, including the Order Ruling on Summary Judgment Motion dated December 22, 2022 and the oral decision rendered on the record granting the City’s Motion for Involuntary Dismissal pursuant to Minn. R. Civ. P. 41.02 issued May 2, 2023;
3. The City’s stipulation is contingent upon approval by the Hasting’s City Council at its next regular meeting following this stipulation. City staff, the City Attorney, and litigation counsel will strongly recommend approval;
4. Each party shall bear its own attorney’s fees and costs.

A proposed order is submitted herewith for the convenience of the Court.

VIII-13

Dated: May 2, 2023

s/Justin L. Templin
Justin L. Templin (#0305807)
HOFF BARRY, P.A.
100 Prairie Center Drive, Suite 200
Eden Prairie, MN 55344
Tel: (952) 746-2700
jtemplin@hoffbarry.com

Attorneys for Defendant

Dated: May 3, 2023

/s/Christopher Johnston
Christopher J. Johnston (#0387685)
7300 Metro Boulevard, Suite 300
Edina, MN 55439-2302
Tel: (952) 897-1707
cjohnston@wilkersonhegna.com

Attorneys for Plaintiff

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST DISTRICT COURT

Court File No. 19HA-CV-22-1589
Case Type: Civil Other/Misc.

Greg J. Homes of Hastings, Inc.,
Plaintiff,

Order

v.

City of Hastings,
Defendant.

The parties have agreed to a stipulation regarding items remaining at issue in the referenced matter. That agreement is contingent on final approval by the Hasting's City Council at its next regular meeting following this stipulation. City staff, the City Attorney, and litigation counsel will strongly recommend approval.

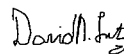
Based upon the stipulation filed herewith, and pending the contingency referenced herein,

IT IS HEREBY ORDERED:

1. The counterclaim by Defendant City of Hastings ("City") against Plaintiff Greg J. Homes ("Greg J. Homes") is dismissed;
2. Greg J. Homes waives all right to appeal the Court's decisions in this matter, including the Order Ruling on Summary Judgment Motion dated December 22, 2022 and the oral decision rendered on the record granting the City's Motion for Involuntary Dismissal pursuant to Minn. R. Civ. P. 41.02 issued May 2, 2023;
3. Each party shall bear its own attorney's fees and costs.

Dated: _____

BY THE COURT:



Digitally signed by Lutz,
David
Date: 2023.05.04 11:01:01
-05'00'

David N. Lutz
Judge of District Court

I certify the above order constitutes the Judgment of the Court.
Court Administrator

By:



May 4 2023 3:52 PM

May 4 2023 3:51 PM