

Government of Nashville and Davidson County requiring it.

Analysis

In 2017, the Metropolitan Council amended Section 17.20.120 of the Metropolitan Code of Laws to require property owners to build sidewalks or pay a fee in lieu of sidewalk construction as a condition on certain building permits. The Council amended the section in 2019 to its current form.

James Knight and Jason Mayes (“Plaintiffs”) both own property in Nashville subject to the sidewalk ordinance. Mr. Knight hired a contractor to build a single-family home on his property on Acklen Park Drive, but halted when he could not get a permit without paying a sidewalk in-lieu fee. Mr. Mayes paid an in-lieu fee in 2020. Both Plaintiffs applied for a variance from the Board of Zoning Appeals. Both applicants were denied and this lawsuit followed, which challenged the sidewalk ordinance as an unconstitutional exaction in violation of the Fifth Amendment’s Takings Clause. This case became *Knight et al. v. Metropolitan Government*.

This District Court sided with Metro and held the sidewalk ordinance as constitutional. Plaintiffs appealed and on May 10, 2023, the United States Court of Appeals for the Sixth Circuit reversed the District Court’s decision. The Plaintiffs sought injunctive relief to declare the sidewalk ordinance unconstitutional. Mr. Mayes also requested reimbursement of his \$8,883.21 in-lieu fee.

Under 42 U.S.C. § 1988, Plaintiffs’ attorneys are entitled to their reasonably incurred costs and fees. The itemized fees for the Plaintiffs’ attorneys come to \$244,343.91.

The Department of Law recommends settlement of this case for \$224,343.91, with \$215,460.70 representing fees and costs to be paid from the Judgments and Losses fund and \$8,883.21 representing Mr. Mayes’s in-lieu fee to be paid from the NDOT Sidewalk Fund.

Fiscal Note: The total settlement amount is \$224,343.91. The NDOT Sidewalk Fund would pay the amount of \$8,883.21 and the remaining amount of \$215,460.70 would be paid from Judgements and Losses Fund. This \$215,460.70 settlement, along with the settlement per Resolution No. RS2023-2385 would be the 1st and 2nd payment from the Judgment and Losses Fund in FY24 for a cumulative total of \$292,156. The fund balance would be \$14,566,681 after this payment.