



Metropolitan Nashville and Davidson County, TN

Legislation Details (With Text)

File #: RS2023-2386

Type: Resolution **Status:** Passed

File created: 8/2/2023 **In control:** Metropolitan Council

On agenda: 8/15/2023 **Final action:** 8/15/2023

Title: A resolution authorizing the Metropolitan Department of Law to compromise and settle the claims of James Knight and Jason Mayes against the Metropolitan Government of Nashville and Davidson County in the amount of \$224,343.91, with \$215,460.70 to be paid out of the Judgments and Losses Fund and \$8,883.21 to be paid out of the NDOT Sidewalk Fund.

Sponsors: Kevin Rhoten

Indexes:

Code sections:

Attachments: 1. Letter to Metro Clerk

Date	Ver.	Action By	Action	Result
8/28/2023	1	Mayor	approved	
8/15/2023	1	Metropolitan Council	adopted	
8/14/2023	1	Budget and Finance Committee	approved	
8/8/2023	1	Metropolitan Council	filed	

A resolution authorizing the Metropolitan Department of Law to compromise and settle the claims of James Knight and Jason Mayes against the Metropolitan Government of Nashville and Davidson County in the amount of \$224,343.91, with \$215,460.70 to be paid out of the Judgments and Losses Fund and \$8,883.21 to be paid out of the NDOT Sidewalk Fund.

WHEREAS, James Knight and Jason Mayes filed a lawsuit against the Metropolitan Government alleging an unconstitutional taking under the Fifth Amendment arising out of the application of Metro. Code § 17.20.120 (the "Sidewalk Ordinance") to their properties; and,

WHEREAS, after litigation in the United States District Court and the United States Court of Appeals for the Sixth Circuit, the dispositive question of law in this lawsuit has been decided against the Metropolitan Government; and,

WHEREAS, the Metropolitan Department of Law believes that the settlement terms listed in Section 1 are fair and reasonable and in the best interest of the Metropolitan Government and recommends that any and all claims or causes of action brought or that could have been brought by James Knight and Jason Mayes related to the Sidewalk Ordinance's application to their properties be settled for \$224,343.91, with \$215,460.70 to be paid out of the Judgments and Losses Fund and \$8,883.21 to be paid out of the NDOT Sidewalk Fund;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: The Metropolitan Department of Law is authorized to compromise and settle the claims of James Knight and Jason Mayes for the sum of \$224,343.91, with \$215,460.70 to be paid out of the Judgments and Losses Fund and \$8,883.21 to be paid out of the NDOT Sidewalk Fund.

Section 2: This resolution shall take effect from and after its adoption, the welfare of the Metropolitan

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.