



Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street
Chicago, IL 60611

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Title: Authority to settle Show Cause Action, Metropolitan Water Reclamation District of Greater Chicago v. Condominiums of Birch Manor Association, Violation Complaint No VC-01-36, and to approve the final order of the Hearing Officer setting forth the recommendation of settlement and dismissal of the Show Cause Action

Sponsors:

Indexes:

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Attachments: 1. 10.15.15 Birch Manor Settlement Agreement.pdf

Date	Ver.	Action By	Action	Result
10/15/2015	1	Board of Commissioners	Approved	Pass
10/15/2015	1	Committee of the Whole	Recommended	Pass

TRANSMITTAL LETTER FOR BOARD MEETING OF OCTOBER 15, 2015

COMMITTEE ON JUDICIARY

Mr. David St. Pierre, Executive Director

Authority to settle Show Cause Action, Metropolitan Water Reclamation District of Greater Chicago v. Condominiums of Birch Manor Association, Violation Complaint No VC-01-36, and to approve the final order of the Hearing Officer setting forth the recommendation of settlement and dismissal of the Show Cause Action

Dear Sir:

A sewer system, force main and connecting manhole was constructed and placed into service at Dempster Road and Busse Highway in Mount Prospect, Illinois under a sewer construction permit issued in 1962, Sewer Permit No. 1962-0025, for the purpose of serving a residential complex, which became known as Condominiums of Birch Manor. The Condominiums of Birch Manor Association (“Association”) currently owns the common elements of the twenty acre complex. There are eight residential buildings housing thirty-six units each. The sewerage system connected to the District’s interceptor serves the units within the complex, which are the sole dischargers to that sewerage system. Under the terms of the permit, the Developer, as Permittee, was required to maintain the sewerage system, but there came a point in time when the sewer manhole fell into disrepair.

In 2001, after determining that the Developer transferred all its interest in the residential complex to the Association, the District notified the Association of the need to repair the manhole. However, when repairs were not made, the District undertook to make emergency repairs due to concerns that the pavement in the area of the manhole would collapse. In accordance with the terms of the Permit, the original Permittee was obligated to assign Sewer Permit No. 1962-0025 to the Association as the new owner of the residential complex, but failed to do so. As a result, the Association was utilizing the sewerage system without a valid

sewer permit.

The repairs that were required to be made to the system were done at the District's expense in the amount of \$104,882.80. Attempts by the District to recoup the costs of the repair from the Association were unsuccessful thereby resulting in the filing of a Show Cause Action in 2002 for violation of the Sewer Permit Ordinance. The Condominiums of Birch Manor strenuously disputed any ownership interest in the Sewerage System or obligation to reimburse the District for the repairs. After lengthy briefing on the issue of ownership, the Hearing Officer determined that the Association had a legal obligation to maintain the sewerage system that solely serviced the residents of the complex. Although the Association accepted the Hearing Officer's finding, it contended that it did not have the financial means to reimburse the District in full for the repairs and provided financial statements in support of its position.

Extensive negotiations took place with different attorneys representing the District and different Hearing Officers presiding over the matter over the course of several years, but ultimately resulted in settlement of the Show Cause Action on terms and conditions whereby (1) Association will pay the sum of \$43,000.00 over a period of five (5) years, making monthly payments in the amount of \$716.67; (2) Association will complete a reassignment of Permit 1962-0025 and abide by the terms of the Permit; and (3) Association will obtain an Operation and Maintenance Bond in the amount of \$50,000.00 so that the costs of any future repairs will be secured by a bond should the Association's failure to make such repairs result in the District undertaking repairs to ensure public safety. The Engineering Department and Law Department worked closely to effectuate settlement on terms and conditions acceptable to all parties and the Engineering Department is in agreement with the final settlement and dismissal of the Show Cause Action.

A proposed final order was issued by the Hearing Officer, the terms of which are subject to approval by the Board of Commissioners. In his Final Order the Hearing Officer approves the terms and conditions of the settlement, dismisses the Show Cause Action, sets forth the required action to be taken by the Association and reserves jurisdiction to enforce the terms of the settlement. A copy of the Final Order and Settlement Agreement are attached.

Therefore, the General Counsel respectfully requests that the Board of Commissioners approve the settlement of Metropolitan Water Reclamation District of Greater Chicago v. Condominiums of Birch Manor Association, Violation Complaint No VC-01-36, upon the terms as stated herein and grant authority to the requisite District personnel to execute such documents as may be necessary to effectuate settlement.

Requested by, Ronald M. Hill, General Counsel, RMH:HSW:MTC:kk:bh

Recommended by Catherine A. O'Conner, Director of Engineering

Respectfully submitted, Mariyana Spyropoulos, Chairman Committee on Judiciary

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for October 15, 2015

Attachments