

**MINUTES OF THE MEETING OF THE
LITIGATION SETTLEMENT COMMITTEE
Wednesday, February 11, 2009**

Committee Members Present: Mr. Robert Smuts, Acting Chairman; Alderman Jorge Perez; Alderman Allan Brison; and Mr. Mark Pietrosimone, Controller

Corporation Counsel Staff Present: Victor Bolden, Acting Corporation Counsel; Vikki Cooper, Deputy Corporation Counsel; Carl Amento, Deputy Corporation Counsel; Roderick Williams, Assistant Corporation Counsel; and Nancy Pepe, Legal Assistant II.

Tax Assessor's Office: Mr. William O'Brien
Mr. David Ambrose

Meeting Started: 5:31 p.m.

Meeting Ended: 6:15 p.m.

Mr. Smuts called the meeting to order at 5:31 p.m.

Mr. Pietrosimone moved approval of the minutes of the January 28, 2009 meeting. Alderman Perez seconded the motion. Alderman Brison abstained because he was not present at the January 28, 2009 meeting. The motion passed.

Mr. Pietrosimone moved approval of Office No. L06-0117. Alderman Perez seconded the motion.

Alderman Perez asked about the question of the December 17, 2008 meeting regarding authority of having property tax appeal cases brought before this Committee. Attorney Bolden explained to the Committee that property tax appeals brought before the City of New Haven's Board of Assessment Appeals do not involve litigation and therefore, should not be subject to the approval process of the Litigation Settlement Committee. An appeal of the Board of Assessment Appeals to Superior Court of a property tax appeal otherwise filed in Superior Court, does involve litigation and should be subject to the approval process of the Litigation Settlement Committee, if the taxpayer is to receive a benefit from the City of more than \$5,000.00.

Alderman Perez asked that when the Committee Members are given copies of Public Acts, Statutes, etc., that someone summarize them to make them easier for the Committee Members to understand. Attorney Bolden stated that the Office of Corporation Counsel will provide a summation of any Acts, Statutes, etc. that the Committee Members receive.

Office No. L06-0117 - Evergreen Power LLC v. City of New Haven – Mr. O'Brien summarized the issues regarding this matter to the Committee Members. Alderman Perez asked why the City is agreeing to the difference in the valuation. Mr. O'Brien stated that this is not an issue of valuation. Usually, most of these cases involve issues of taxes. The only way to get to taxes is to take appeals. The reason these cases (at this point in time in the negotiation process) come to this Committee is so a decision can be made regarding whether the City wants to go forward with a court appeal and the cost and risks involved in a trial.

Attorney Bolden explained that part of what Mr. O'Brien is saying is that there is a calculation that this Committee is making. It's not only the question of winning in court but, whether the City wants to spend money in court as opposed to resolving a matter for a sum certain now. Alderman Perez stated he would have the City go to trial if it felt it could win.

Alderman Perez asked why the City feels it can't defend its assessment. Perhaps it's because the City thought it was fully rented and it wasn't, or perhaps it was because the use changed. Mr. O'Brien stated there were several issues such as, approvals, zoning and other influences involved with it. All of the physical circumstances, the change in the market condition with respect to power and energy, and the fact that this plant could not get restarted for one reason or another were all issues. Alderman Brison asked if it's fair to say that the reasons why the City is settling for this amount is the fact that the Power Plant was not able to be operated. Mr. O'Brien stated that was certainly a contributory factor.

Aldermen Perez asked about the significant errors in judgment and methodology found by the City Valuation Consultant. Was it an error done by the Appraiser of the owner of the property? Mr. O'Brien said that is correct. Alderman Perez again stated that he does not know how the appraised value went from 5.7 million to 2.5 million, or why the City would agree that its value is that far off. Mr. O'Brien stated that in any event it certainly wasn't worth the Plaintiff's appraisal. Unfortunately, that is what the Assessor is always faced with. The City has to go with what it thinks the value is. This property is not necessary valued at of 2.5 million. This value represents merely the end result of all the factors that were considered.

Mr. Smuts stated that this is a negotiated value based on what the City thinks it chances are taking the matter to court. It doesn't necessary have to do with value, it has to do with the midline that would make the City and the other parties agree and avoid a trial.

Mr. Smuts asked what the considerations are that would make the City feel it needs to come off its original appraised value. What are the concerns if this went to trial?

It was decided that further discussion of the matter would continue in an Executive Session.

Alderman Perez moved the Committee enter an Executive Session to continue the discussion of Office No. L06-0117 with Attorney Bolden, Attorney Cooper, Attorney Amento and Mr. O'Brien.

Alderman Brison seconded the motion. The motion passed unanimously.

The Committee entered an Executive Session at 5:45 p.m.

A Motion was made to exit Executive Session. The motion was seconded and passed unanimously.

The Committee exited Executive Session at 5:57 p.m.

The motion to approve the recommendation passed unanimously.

Alderman Perez moved approval of Office No. L07-0285. Alderman Brison seconded the motion.

Office No. L07-0285 - Connecticut Fund v. City of New Haven – Mr. O'Brien summarized the issues regarding this matter to the Committee Members. Alderman Perez asked about the square foot value. Mr. O'Brien stated he is not agreeing with the square foot value. Attorney Bolden stated that the settlement is being recommended based on the fact the City is not necessarily agreeing to the square foot value range. It is compromised in a way that makes sure the full sense of the value is not lost, but it's also a value that the City feels is fair. Mr. Smuts asked if the compromise is \$65.00 a square foot. Mr. O'Brien stated that it was. Alderman Perez asked if they charge rent. Mr. O'Brien stated they do. Alderman Perez asked if the Public Act 07-254 excludes them and asked if a charitable entity that rents to someone who is not a charitable entity is it taxable and, if a charitable entity that rents to someone with a different charity, is it not taxable. Attorney Amento stated that charity to charity there is no tax. Charity to non-charity there is tax.

The motion to approve the recommendation passed with Alderman Perez, Alderman Brison and Mr. Pietrosimone voting in favor. Mr. Smuts abstained.

Alderman Perez moved approval of Office No. L07-0273. Mr. Pietrosimone seconded the motion.

Office No. L07-0273 - Phelps Association v. of City of New Haven – Mr. O'Brien summarized the issues regarding this matter to the Committee Members. Alderman Perez asked if this was commercial property. Mr. O'Brien stated this is a High Society Club House that has no residents. Mr. Smuts asked if he got it inspected. Mr. O'Brien stated that he did not. Alderman Perez stated that he does not think the square foot value is a fair price.

The motion to approve the recommendation passed with Alderman Brison, Mr. Smuts and Mr. Pietrosimone voting in favor. Alderman Perez opposed.

Mr. Pietrosimone moved approval of Office No. L07-0179. Alderman Perez seconded the motion.

Office No. L07-0179 – Power Test Realty (Getty) v. City of New Haven – Mr. O'Brien summarized the issues regarding this matter to the Committee Members. Alderman Perez asked what lead to this negotiation. Mr. O'Brien stated the appraisals and experts were compared. Mr. Smuts asked why the City's Proposed Settlement Market Value is below the Plaintiff's Appraised Value on the 2008 Grand List. Mr. O'Brien stated that is an error. The Plaintiff's Appraised Value should be 581,000. Mr. Smuts asked if the 821,000 on 2006 grand list is correct. Mr. O'Brien stated that too is an error, it should be 581,000.

Mr. Smuts asked about the tax impact total revenue loss of \$1,702.00 for the 2005 Grand List. Attorney Amento stated that was added in due to the fact that the property was operating below capacity and it had been closed. Alderman Perez stated it's an issue of cash flow.

The motion to approve the recommendation passed unanimously.

Mr. Pietrosimone moved approval of Office No. L08-0169. Alderman Brison seconded the motion.

Office No. L08-0169 – CT Healthcare Holdings v. City of New Haven - Mr. O'Brien summarized the issues regarding this matter to the Committee Members. The Committee had no questions.

The motion to approve the recommendation passed unanimously.

Mr. Brison moved approval of Office No. L07-0184. Alderman Perez seconded the motion.

Office No. L07- 0184 – Lex Atlantic v. City of New Haven – Mr. O'Brien summarized the issues of this matter to the Committee Members. The Committee had no questions.

The motion to approve the recommendation passed unanimously.

Alderman Perez moved approval of Office No. L05-0119. Mr. Pietrosimone seconded the motion.

Office No. L05-0119 – Dharmesh Patel v. Hector Martinez, et al – Attorney Williams summarized the issues of this matter to the Committee Members. Alderman Perez asked about the disciplinary action taken. Attorney Williams stated the employee was not disciplined. Alderman Perez asked if we knew why no disciplinary action was taken. Attorney Williams stated that, at this point, he did not know. Attorney Bolden stated that the Office of the Corporation Counsel will try to determine why this employee was not disciplined.

The motion to approve the recommendation passed unanimously.

A motion was made to adjourn the meeting. The motion was seconded and passed unanimously.

The meeting was adjourned at 6:15 p.m.