



REQUEST FOR COUNCIL ACTION City of Greenville, South Carolina

Agenda Item No.

15b

TO: Honorable Mayor and Members of City Council
FROM: John F. McDonough, City Manager

Ordinance/First Reading Ordinance/Second & Final Reading Resolution/First & Final Reading Information Only

AGENDA DATE REQUESTED: June 14, 2021

ORDINANCE/RESOLUTION CAPTION:

ORDINANCE APPROVING A LEGAL SETTLEMENT WITH SJC PROPERTIES, LLC AND APPROPRIATING THE SUM OF \$275,000 FOR THAT PURPOSE

SUMMARY BACKGROUND:

SJC Properties, LLC ("SJC") is the owner of property located at the corner of East North Street and East Stone Avenue. A building located on a portion of the property was destroyed during an extraordinary flood event which occurred in August 2014. SJC sought approval from the City to rebuild said building, but the City denied that approval due to its stormwater regulations which, among other things, prohibits reconstruction of a building when it is located in the regulatory floodway. SJC subsequently brought a lawsuit against the City alleging the City's stormwater ordinances and regulations constituted a taking of property for which SJC was entitled to just compensation. The City denied and continues to deny SJC's allegations. The parties have nevertheless determined that it is in their mutual interests to resolve the lawsuit in a settlement and release of claims.

The settlement is for a total of \$1M. The City has previously allocated \$725,000 for floodplain buyout, which is eligible for use for this purpose. Additional funds are needed and are requested for appropriation.

IMPACT IF DENIED:

The City Manager will not be authorized to execute the settlement agreement and the case will move forward to trial.

FINANCIAL IMPACT:

A reduction in Stormwater Fund Fund Balance of approximately \$275,000. Adequate fund balance is available above the fund's required reserves for this purpose.

REQUIRED SIGNATURES

Department Director _____

OMB Director _____

DocuSigned by:

Matt Elyard

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City Attorney _____

City Manager _____

DocuSigned by:

Michael Pitts

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DocuSigned by:

John McDonough

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A N O R D I N A N C E

APPROVING A LEGAL SETTLEMENT WITH SJC PROPERTIES, LLC AND APPROPRIATING THE SUM OF \$275,000 FOR THAT PURPOSE

WHEREAS, SJC Properties, LLC (the “SJC”) is the owner of real property located within the corporate limits of the city of Greenville (the “City”) situated at the corner of East North Street and East Stone Avenue (the “Property”); and

WHEREAS, a building located on a portion of the Property out of which SJC operated a family restaurant was destroyed during an extraordinary flood event which occurred in August 2014; and

WHEREAS, SJC sought approval from the City to rebuild said building, but the City denied that approval due to its stormwater regulations set forth in Chapter 19 of the City’s Code of Ordinances which, among other things, prohibits reconstruction of a building when it is located in the regulatory floodway; and

WHEREAS, SJC subsequently brought a lawsuit in the Greenville County Court of Common Pleas styled *Spero Conits, SJC Properties, LLC, Spero’s Pete’s Original Too, LLC v. City of Greenville* (the “Lawsuit”) alleging the City’s stormwater ordinances and regulations constituted a taking of property for which SJC was entitled to just compensation; and

WHEREAS, the City denied and continues to deny SJC’s allegations; and

WHEREAS, the parties have determined that it is in their mutual best interests to resolve the Lawsuit on the terms and conditions set forth in a Settlement Agreement and Release of All Claims, a copy of which is attached hereto and made a part hereof as Attachment 1 (the “Agreement”); and

WHEREAS, City Council desires to approve the Agreement and appropriate the funds for the settlement;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA:

1. The Agreement is approved, and the City Manager is authorized to execute same.
2. The amount of \$275,000 is appropriated in the Stormwater Fund for the purpose of funding the settlement as reflected in Attachment 2. Council has previously appropriated \$725,000 for Floodplain Buyout to be utilized for this purpose.
3. This Ordinance shall become effective upon passage on the second and final reading.

DONE, RATIFIED AND PASSED THIS THE _____ DAY OF _____, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

ATTACHMENT 1

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (the “Agreement”) is entered into effective this _____ day of May, 2021 by and between the City of Greenville, a municipal corporation organized and existing under the laws of South Carolina (the “City”) and Spero Conits, SJC Properties, LLC, and Spero’s Pete’s Original Too, collectively (“SJC”). Where no distinction is made herein, “Party” or “Parties” refer respectively to any or all of the aforementioned parties to the Agreement.

WHEREAS, SJC owns or otherwise claims an interest in real property located within the corporate limits of the City situated at the corner of East North Street and East Stone Avenue, which said property is more fully described on a survey entitled “Exhibit for SJC Properties LLC” drawn by Site Design, Inc. and dated September 24, 2019, a copy of which is attached hereto and incorporated herein as **Exhibit A** (the “Survey” and the property described therein the “Property”);

WHEREAS, a building located on a portion of the Property out of which SJC operated a family restaurant was destroyed during an extraordinary flood event which occurred in August, 2014;

WHEREAS, at or around of the time of the loss of the aforementioned building, the Property was located in the regulatory floodway;

WHEREAS, SJC sought approval from the City to rebuild said building, but the City denied that approval due to its stormwater regulations set forth in Chapter 19 of the City Code of Ordinances which, among other things, prohibits reconstruction of a building when it is located in the regulatory floodway;

WHEREAS, SJC appealed that denial to the City Board of Zoning Appeals which upheld the denial;

WHEREAS, the Board of Zoning Appeals decision was subsequently affirmed by the Circuit Court;

WHEREAS, SJC then brought a lawsuit styled Spero Conits and SJC Properties, LLC, Spero’s Pete’s Original Too, LLC, Plaintiffs v. City of Greenville, Defendant (the “Lawsuit”) alleging various causes of action, the gravamen of which was that the City’s stormwater ordinances and regulations constituted a taking of property for which SJC was entitled to just compensation;

WHEREAS, the City denied and continues to deny SJC’s allegations;

WHEREAS, the Parties have determined that it is in their mutual best interests to resolve the Lawsuit on the terms and conditions set forth herein;

WHEREFORE, in exchange for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Purchase of 819 East Stone Avenue**. In exchange for the City’s payment of One Million and no/100’s (\$1,000,000) Dollars, SJC shall convey to the City that portion of the Property designated on

the Survey as “819 E STONE” consisting of approximately 0.365 acres by way of a general warranty deed.

2. **Donation of a portion of 817A and 825 East Stone Avenue.** SJC shall, for no additional consideration, donate to the City a portion of the Property designated on the Survey as “817A and 825 E STONE” consisting of approximately 0.534 acres. The donated portion of property is located at the corner of East North Street and East Stone Avenue and shall be established by taking the Northwestern boundary line of the land described above in Paragraph 1 and extending it along the same course to a terminus at the property line on East Stone Avenue. The Parties acknowledge that a subdivision of land will be required to accomplish the donation and the City shall be responsible for all costs and approvals associated with said subdivision.

3. **Remainder of 817A and 825 East Stone Avenue.** SJC shall retain title to a portion of the Property designated on the Survey as “817A and 825 E STONE”, less that part donated to the City as set forth above in Paragraph 2. SJC agrees that all use and development of said land shall be in strict conformity with all applicable local, state, and federal laws, ordinances, and regulations except that City agrees that, subject to the foregoing, the property may be used as parking and to allow any improvements necessary to accommodate that use including, although not exclusively, surface, curbing, landscaping, security, and lighting. SJC recognizes that such use and development is subject to permitting and other approvals by the City in the ordinary course of business, which such permits and approvals shall not be unreasonably withheld.

4. **817 East Stone Avenue.** SJC shall retain title to that portion of the property designated on the Survey as “817 E STONE” consisting of approximately 0.561 acres. The City agrees to waive in perpetuity the restrictions set forth in Section 19-7.7.1 (C)(1)(i) of the City Code of Ordinances with respect to the existing structure located thereon. SJC recognizes and agrees that any rehabilitation or reconstruction of the existing building will be limited to its existing footprint plus a garage door style bay and concrete pad to accommodate same. For all regulatory purposes, subject to any applicable state or federal laws, ordinances, or regulations, the parties agree that henceforth, in perpetuity, 817 East Stone shall be treated as if in a regulatory floodplain. Except as expressly provided in this Paragraph 4, all use and development of said land shall be in strict conformity with all applicable local, state, and federal laws, ordinances, and regulations. SJC recognizes that such use and development is subject to permitting and other approvals by the City in the ordinary course of business, which such permits and approvals shall not be unreasonably withheld.

5. **Greenspace Designation and Memorial.** The land conveyed to the City pursuant to Paragraphs 1 and 2 above shall be dedicated for use as greenspace and no detention pond or wetlands will be constructed on that land. The foregoing notwithstanding, the Parties acknowledge that the greenspace must be designed and configured in such a fashion as to accommodate the flow and discharge of stormwater. The City further agrees to place, at its sole expense, a reasonably sized and appropriate marker or plaque honoring the immigrant background of, and the contributions to the City by, John and Athena Conits.

6. **Land Transaction Costs and Fees.** The City agrees to bear all costs and fees necessary to accomplish the acquisition and donation of land contemplated above in Paragraphs 1 and 2.

7. **Complete and General Release of All Claims.** Spero Conits and SJC Properties, LLC, Spero’s Pete’s Original Too, LLC (“SJC”), on behalf of themselves and their shareholders, members, officers, agents, servants, employees, insurers, heirs, successors and assigns, do hereby forever release and fully discharge the City, as well as its officials, employees, agents, insurers, attorneys, successors, and assigns, from and against any and all current or prospective claims, actions, judgments, obligations, damages, demands, debts, liabilities and causes of action, including any claim for attorney’s fees or interest, known or unknown of any nature whatsoever including, but in no way limited to, the claims

asserted in the Lawsuit or otherwise arising out of, or related in any manner to, the application of the City's stormwater ordinances and regulations to the Property as well as the acts, errors and omissions of the City and its employees in applying and enforcing same, the existence of which is expressly denied by the City. This Release extinguishes the right of Spero Conits, SJC, and all others to sue the City for claims arising from the regulations which were in place at the time of the filing of the lawsuit which established 817 East Stone Avenue as being in the floodplain or floodway. This Release does not extend to future condemnation actions which the City could bring in the future concerning the property, and this Release cannot be raised by the City as a bar to the owner's claim for compensation in such a condemnation action.

8. **Attorney's Fees and Costs.** Other than as set forth above, each Party shall bear their own costs and attorney's fees in connection with the Lawsuit or any matter related thereto, including the Agreement.

9. **No Admissions.** The Parties understand and acknowledge the Agreement constitutes a compromise in settlement of disputed and potential claims. No action taken by the Parties hereto, or any of them, either previously or in connection with this Agreement, shall be deemed or construed to be:

(a) An admission of the truth or falsity of any claims heretofore made or any other wrongdoing whatsoever; or

(b) An acknowledgement or admission by any Party of any fault or liability, whatsoever, to the other Party or to any third party.

10. **No Prior Assignment.** The Parties represent and warrant that they have not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any claim or any other matter herein released.

11. **Inurement.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective heirs, legal representatives, successors and assigns.

12. **Miscellaneous.** The Agreement expresses the complete agreement and understanding of the Parties, and any and all prior or contemporaneous oral agreements or prior written agreements regarding the subject matter hereof shall be merged herein and then extinguished. The waiver of a breach of the Agreement by either Party shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of the Agreement shall be construed to be a waiver of the breach. If any term, covenant or condition of the Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby and each such term, covenant or condition of the Agreement shall be valid and enforceable to the full extent permitted by law. No modification, amendment or waiver of any provision of the Agreement shall be binding upon the Parties unless the same is first reduced to writing in a document having the same formality as the Agreement and executed by the duly authorized officer for each Party. The terms of the Agreement shall be construed in accordance with and governed by the laws of the State of South Carolina. Any dispute between the Parties arising or related in any manner to the Agreement shall be brought exclusively in the state or federal courts sitting in Greenville County, South Carolina. The captions and headings used in the Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement. As used in the Agreement, the masculine, feminine or neuter gender and the singular or plural number shall each include the others whenever the context so indicates. The Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute the same instrument. A signed copy of the Agreement delivered by email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial

appearance of a document, shall be deemed to have the same legal effect as physical delivery of a signed original of this Agreement and may be used in lieu of the signed original for all purposes.

I/WE HAVE READ THIS SETTLEMENT AGREEMENT CAREFULLY AND UNDERSTAND THAT IT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS ACCRUING ON OR BEFORE THE DATE OF THIS AGREEMENT.

City of Greenville

By: _____

Its: City Manager

SJC Properties, LLC

By: _____

Its: _____

Spero's Pete's Original Too, LLC

By: _____

Its: _____

Spero Conits

Attachment 2

BUDGET AMENDMENT					
BUDGET	Stormwater Fund		REQUESTED BY	City Attorney's Office	
FISCAL YEAR	2020-21		DATE		
<u>INCREASE</u>			<u>DECREASE</u>		
<u>Description</u>			<u>Description</u>		
<u>Stormwater Fund</u>					
Fund Balance Appropriated (Rev)		275,000			
ROW & Site Acquisition		275,000			
Explanation:	To appropriate \$275,000 in additional funding in the Stormwater Fund for the settlement of the Spero Contis claim.				
DATE			APPROVED BY		
			City Council/City Manager Camilla Pitman/City Clerk		
FOR OMB POSTING PURPOSES ONLY					
<u>Budget Adjustments</u>		Increase (Decrease)	<u>Journal Entry</u>		
<u>Project Code</u>	<u>Account</u>	<u>Amount</u>	<u>Project Code</u>	<u>Account</u>	<u>Amount</u>
SW3421	120-0000-390.10-01	275,000		120-0000-390.10-01	DR 275,000
SW3421	120-9010-433.68-02	275,000	SW3421	120-0000-390.10-01	CR 275,000
		Total		Total	550,000
		550,000			
		Prepared By			
		Posted By			
		Date			
				Number	