



**Request for City Council Committee Action
From the City Attorney's Office**

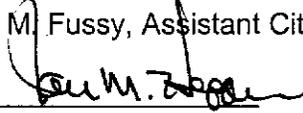
Date: March 25, 2004
To: Ways & Means/Budget Committee
Referral to:

Subject: Kick's Liquor Store, Inc. d/b/a Broadway Liquor Outlet v. City of Minneapolis
Hennepin County District Court File No.: C4-2063

Recommendation: That the City Council approve payment of the commissioners' award of damages as final settlement in the above-referenced matter in the amount of \$177,574.50, payable to Kick's Liquor Store, Inc. from Fund/Org. 690 150 1500 6850 and further authorize the City Attorney's Office to execute all documents necessary to finalize the settlement.

Previous Directives:

Prepared by: Joel M. Fussy, Assistant City Attorney Phone: 673-2067

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

<p>Financial Impact (Check those that apply)</p> <p><input type="checkbox"/> No financial impact - or - Action is within current department budget. (If checked, go directly to Background/Supporting Information)</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Capital Budget</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Operating Budget</p> <p><input type="checkbox"/> Action provides increased revenue for appropriation increase</p> <p><input type="checkbox"/> Action requires use of contingency or reserves</p> <p><input checked="" type="checkbox"/> Other financial impact (Explain): \$177,574.50 payable from Fund/Org. 690 150 1500 6850</p> <p><input type="checkbox"/> Request provided to the Budget Office when provided to the Committee Coordinator</p>

<p>Community Impact:</p>

Background/Supporting Information

This case arises out of the temporary closing by the City of McNair Avenue adjacent to Plaintiff's liquor store. The closing, effectuated by placing temporary barriers across McNair Avenue just to the south of the access to the liquor store, lasted from December 17, 1997 through December 27, 2002. This closure led to a lawsuit being filed by Plaintiff which, after trial and multiple trips to the Minnesota Court of Appeals and one trip to the Minnesota Supreme Court, resulted in a judgment that a temporary taking of Plaintiff's

property had occurred and an order for the City to initiate eminent domain proceedings to determine the amount of damages owed to Plaintiff for the temporary loss of reasonably convenient and suitable access to the liquor store. See Kick's Liquor v. Minneapolis, WL 1364018 (Minn.App. 2002).

Therefore, the only issue in question for the current proceeding was the determination of damages attributable to the temporary taking. A panel of three court-appointed commissioners heard two days of testimony from February 24 – 25, 2004 in the matter pursuant to Minn. Stat. Ch. 117. Assistant city attorneys James Moore and Joel Fussy represented the City at the hearings. Property appraisal experts testified for each side. On March 8, 2004, the commissioners issued their award totaling \$130,000 in damages and \$500 in statutory appraisal fees. However, judgment interest applies to this award from the date of the taking – December 17, 1997. In this type of case, Minnesota law also provides for a higher amount of judgment interest, compounded and equal to “what a reasonable and prudent investor would have earned during that period while investing so as to maximize the rate of return, yet guarantee the safety of the principle.”

Courts recognize the following as types of investments qualifying for this interest analysis: (1) certificates of deposit from federally insured banks, (2) United States Treasury Bills with maturities within the relevant time period, (3) other government bonds, and (4) long term corporate bonds from AAA rated companies with maturities within the relevant time period. The applicable interest rates for these listed investments during the relevant time period varied between 5.8% and 6.8%. Based on an analysis of these types of investments, it has been negotiated between the parties that a judgment interest rate of 6.28% would apply. Using this figure, and adjusting for the \$13,500 quick take payment that the City previously tendered on April 3, 2003, the final and complete damage amount, taking into account interest, equals \$177,574.50.

According to Minnesota condemnation law, each side has 40 days to appeal the award of the commissioners to district court and to request a full jury trial on damages. Based on the expertise of the commissioners and the amount of their award (which was significantly lower than what Plaintiff had requested), it is the City Attorney's recommendation not to appeal the award. Additionally, Plaintiff has stated that it will forego its statutory appeal rights as well upon full payment of the commissioners' award, wholly resolving this matter.

The City Attorney recommends that the finance officer be authorized to issue a settlement check to Kick's Liquor, Inc. in the amount of \$177,574.50 payable from Fund/Org. 690 150 1500 6850 and further recommends that the City Attorney's Office be authorized to execute any documents necessary to finalize the settlement.