

MEMORANDUM

TO: Charlotte City Council

FROM: Thomas M. Hitch, City Attorney

RE: **CITY ATTORNEY REPORT**

DATE: December 22, 2016

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The following is my report to the City Council on several issues in which our office has been engaged since the last Council meeting:

1. CNI Plastics. Opposing counsel and I have come to an agreement that hopefully will very much simplify the litigation. As part of the background, CNI was not the owner of this personal property when the personal property tax bills went unpaid. CNI had a strong argument that it had no liability “as the taxpayer” for payment of the back personal property taxes. However, under the law, the City has a lien against the property that it can enforce by seizing and selling the property. As part of our litigation, I have retained an expert appraiser out of Chicago, IL that I was to utilize in entering onto the property and marking those pieces of property that the City would be seizing and selling in order to satisfy the personal property tax debt.

I had sent the demand for entry onto the property to opposing counsel who contacted me and suggested that there might be a better way. He indicated that if there were an order of seizure, they would never allow the property to be seized, but would rather pay the taxes.

After a discussion with opposing counsel (and utilizing the suggestion of the City Manager), I proposed that they pay the taxes under protest so as to permit them to pay the tax and continue to contest the lien. They were never going to pay the tax without us going through the process of seizing the property in any event and, by paying the taxes under protest, we have simplified the litigation, as without the

seizure, there are no questions of the validity of the sale and those issues. We have also eliminated the expense of the expert going forward. He will be paid for the work that he has done, but most of it was yet to occur. That was the concern of CNI Plastics that prompted this inquiry, because CNI is responsible for the payment of the collection costs, including our expert.

I will be preparing a stipulation for the court and then, as indicated before, will be preparing a motion for summary disposition seeking a declaration from the court that the City's lien is paramount, and cannot be defeated by any defenses that CNI might raise.

I will continue to keep the Council advised.

TMH:ddy