

MEMORANDUM

TO: Charlotte City Council

FROM: Thomas M. Hitch, City Attorney

RE: **CITY ATTORNEY REPORT**

DATE: February 10, 2017

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. There have been several major changes that have occurred in this litigation since the last time I made a report to Council. The first is that the parties defendant have changed in this litigation. CNI Plastics will no longer be the defendant in this matter. CNI Plastics was not the entity that failed to pay the personal property taxes in the first instance. That was WJG Enterprises, LLC. The assets of WJG Enterprises was acquired by CNI Plastics. The principal shareholder that controlled CNI Plastics at the time of the WJG Enterprises acquisition is not the principal shareholder today. That shareholder, Jorge Morales was bought out by a company from Australia. As a condition of permitting the payment of the taxes under protest, which I will discuss below, CNI Plastics demanded that Jorge Morales be substituted in as a defendant. I have agreed to this substitution of defendants as it facilitates the payment of the taxes and, as we will have a judgment against Morales if we prevail, he is collectible as CNI Plastics owes Mr. Morales money on the sale of the business. I see no downside in that substitution and it is significant in that it permits the payment of the taxes.

I have agreed that Mr. Morales may continue to litigate the validity of the lien and that the payment of taxes would be made under protest. It is a significant benefit to Mr. Morales in that it stops the running of interest, which, given the penalties as assessed by the state, amounts to one percent per month. On the City's side, it

significantly reduces the cost to the City as there does not have to be the sale of the personal property on which the City has its lien. As this Council may remember, I retained an expert from Chicago to value the property and assist in its sale. All of the issues that can be contested by the defendants regarding the sale have now been eliminated. The only issue to be litigated is a question of law (absent any arithmetic discrepancy, which I believe there is none) so that the trial is greatly simplified for both the court and the litigants. Again, this reduces the costs of litigation.

The parties have presently scheduled a hearing on the motions for summary disposition which are to be held on March 17, 2017. The parties have agreed that the motions need to be filed on or before February 25, 2017, to provide the court with adequate time to review this matter before the hearing.

2. Easement Review. I have been provided with an amendment to an existing easement provided to Consumers Power over land now owned by the City, which land was acquired from the Charlotte Country Club. Amy Gilson and I have been reviewing the legal description and I have reviewed the documents in the transaction between the City and the Country Club to assure that there are no conflicts within the new easement proposed by Consumers Energy.

TMH:ddy