

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is between the Plaintiffs defined below and the City of Ann Arbor.

RECITALS

1. Musicraft, Inc. d/b/a/ Herb David Guitar Studio; Kiki Properties, LLC., Jerusalem Garden, and The Great Lakes Environmental Law Center are the Plaintiffs in case no. 09-945CZ, filed in the Washtenaw County Circuit Court. (They are referred to collectively as “Plaintiffs”.) This case alleged that the building of a parking garage on City owned property presented actionable claims for 1) nuisance, 2) trespass, 3) violation of the Michigan Freedom of Information Act, 4) violation of the Michigan Open Meetings Act, and 5) violation of the Michigan Environmental Protection Act.

2. Defendant the City of Ann Arbor (the “City”) is a municipal corporation operating and existing under the laws of the State of Michigan.

3. The Plaintiffs filed this lawsuit on August 11, 2009. The Plaintiffs have not served the Defendant in this lawsuit and no answer and affirmative defenses have been filed. The Defendant disputes all of the allegations and legal claims filed in this case and reserves all applicable defenses, including, but not limited to, failure to state a claim, governmental immunity, lack of standing, and preclusion of claims based on applicable statute of limitations.

4. Furthermore, the parties recognize that the City Council adopted Council rules over six months ago, on September 8, 2009, limiting e-mail usage during Council meeting. (This rule was initiated by the Council Rules Committee prior to the filing of the complaint in this lawsuit.)

5. The parties recognize that the City has provided all documents (subject to permissible statutory exemptions) requested by the FOIA requests of the plaintiff Great Lakes Environmental Law Center.

6. The parties now wish to settle this lawsuit in accordance with the terms and conditions set forth below in order to avoid actual litigation of this matter.

7. The settlement of this action shall not be taken or construed as an admission on the part of the City that they have acted improperly in any manner or have any liability as alleged in the pleadings or otherwise. Nor shall the settlement of this action be taken as an admission on the part of the Plaintiffs that they acted improperly in filing this lawsuit.

AGREEMENT

THEREFORE, the parties agree as follows to resolve this matter:

Release and Dismissal of Case

1. Plaintiffs release and forever discharge the City (and its respective affiliates, including the Downtown Development Authority, and the City's officials, employees, independent contractors, attorneys, and other agents) from any and all claims, demands, actions, causes of action, suits, debts, judgments, executions, damages, statutory or other attorney fees, and rights of whatever nature in law, equity or otherwise which now exist or which may subsequently accrue by reason of any acts, events or facts existing on the date of this Agreement, whether known or unknown on that date, including, but without limitation, any matter arising out of or relating to this lawsuit, and/or any claims or causes of action arising under the Federal and State Constitutions or any federal, state, or local statutes, rules or regulations. This release shall not bar claims brought to enforce, interpret or otherwise obtain legal or equitable relief under or pursuant to this Agreement.

2. Plaintiffs will file immediately with the Court an order in the form attached dismissing this case with prejudice and without costs or fees.

Environmental Study

3. The City and the Ann Arbor Downtown Development Authority (DDA), agree that the City's environmental staff, working with DDA staff, will conduct an environmental study (the "New Study") as described in the below steps:

4. **Step 1.** The New Study will list all decisions regarding public parking that have been made by the DDA or the City after the 2007 Ann Arbor Downtown Parking Study (the "2007 Study") data were gathered¹ but on or before January 31, 2010,² and determine the difference in the overall number of public parking spaces available in Ann Arbor in 2011 (assuming the new garage is completed in 2011, and without regard to the effect of any decisions that may be made after January 31, 2010) compared to the 2007 Study level. If the difference is a net increase of 100 or fewer public parking spaces, then the New Study will be deemed to be complete. If the difference is a net increase exceeding 100 spaces, then the New Study shall continue to Step 2.

5. **Step 2.** The New Study shall estimate the expected number of cars seeking public parking in 2011. If parking demand is expected to decrease from the 2007 Study level, the New Study will be deemed to be complete.

¹ The Ann Arbor Downtown Parking Study, produced by Nelson\Nygaard Consulting Associates, Phase I Final Report (January 2007) and Phase II Final Report (June 2007) are available at http://www.a2dda.org/resources/data_reports/. For a summary of the 2007 DDA Parking Inventory, see the Ann Arbor Downtown Parking Study, Phase I Final Report, at page 3-5.

² The City and DDA face a number of upcoming decisions that may affect the overall number of parking spaces available, and the parties agree that the New Study is only intended to determine the overall effect of decisions made between the time the 2007 Study data were gathered through January 31, 2010, and may not accurately reflect the overall number of spaces available in 2011 due to the effect of other decisions made after January 31, 2010.

6. **Step 3.** The New Study shall estimate how many of the additional cars could be accommodated by the net increase in the number of spaces determined in Step 1, except that the maximum number of spaces evaluated shall be the number of spaces in the new parking structure. That figure will then be multiplied by an estimate of the additional vehicle miles traveled (likely from the 2007 Study regarding vehicle miles traveled by users of the parking system). An emissions factor will then be applied to the number of vehicle miles to estimate the greenhouse gas emission impact from net additional vehicles that could be accommodated by the parking structure. It is understood that the 2007 Study's survey had insufficient sampling and insufficient statistical power to generate the additional vehicle miles traveled, and therefore, the New Study will be an educated guess with significant uncertainty, and not a scientific determination of such emissions. At the sole discretion of the City, the New Study may use an emissions factor that is the same or different from the one used in the 2007 Study, and may consider any new information to supplement the survey data from the 2007 Study³ regarding vehicle miles traveled by users of the parking system.

7. **Step 4.** The New Study will identify new measures, policies, and actions that may mitigate any estimated greenhouse gas impact (if any) of the additional cars seeking public parking that can be accommodated by the new parking structure. This may include new measures, policies, and actions to offset and reduce greenhouse gas emissions in furtherance of the City's resolution to reduce greenhouse gas emissions 20% from 2000 levels by 2015.⁴ However, nothing in this Agreement requires the City or the DDA to implement any measure,

³ Ann Arbor Downtown Parking Study, Phase I Final Report (January 2007) and Phase II Final Report (June 2007) are available at http://www.a2dda.org/resources/data_reports/. The Ann Arbor Downtown Parking Study indicated that downtown parkers drive an average of 13.7 miles to get downtown. Ann Arbor Downtown Parking Study, Phase I Final Report, at page 3-52.

⁴ R-172-5-06, "Resolution to Set Renewable Energy Goals for Ann Arbor" (May 1, 2006).

