# **CITY OF FLAGSTAFF** STAFF SUMMARY REPORT

To:

The Honorable Mayor and City Council

From:

Patricia Boomsma City Attorney's Office

Date:

July 13, 2010

Meeting Date: July 27, 2010



TITLE: Consideration of increasing expenditure authority up to \$100,000 with the legal firm of Gammage & Burnham representing the City's interests in defense of the lawsuit Regner v. City of Flagstaff.

### RECOMMENDED ACTION:

Approve expenditure authority up to \$100,000 with the firm of Gammage & Burnham for litigation representation in Regner v. City of Flagstaff.

#### **ACTION SUMMARY:**

Authorization of this expenditure will allow outside legal counsel to continue to represent Flagstaff interests in defense of the pending lawsuit Regner v. City of Flagstaff. Their continued effort will include conducting discovery, attending hearings, writing motions and briefs both in the trial court and on appeal, and further advice as required through a trial, if necessary.

#### **DISCUSSION:**

#### Background/History:

On June 19, 2007, the City adopted Ordinance No. 2007-34, which designated a certain area of the City as a Historic Design Review District ("Historic District") and placed some restrictions on building changes in the area so that new construction would fit in with the character of historic buildings. On June 20, 2007, the owners of three parcels within the Historic District asserted a claim under the recently enacted state law known as Prop. 207 in the amount of \$368,000, asserting that the ordinance resulted in a diminution of the value of their property. Plaintiffs filed suit in Coconino County Superior Court on October 3, 2007, and the suit was dismissed on April 24, 2008 due to Plaintiffs' failure to comply with the notice of claim statute, A.R.S. § 12-821.01. Plaintiffs appealed, and on February 3, 2009, the Court of Appeals vacated the dismissal and remanded the case back to the trial court. While the case was on appeal, the owners of one of the parcels voluntarily dismissed their claims. On August 21, 2009, the City filed a Motion to Dismiss against the claim of one of the remaining owners (Turner's claim) on the ground that Turner's claim was filed by someone other than the owner of the property. Turner's claim was dismissed by the trial court on November 19, 2009, and Turner appealed. This appeal is currently pending before Division One of the Arizona Court of Appeals. Mr. Regner's claim is being litigated in Coconino County Superior Court.

# **Key Considerations:**

- This is defense of a lawsuit brought against the City, not one the City filed.
- The City does not have in-house litigation staffing.
- Fees and costs have been kept at a minimum in this litigation which has lasted almost three years already.

# **Community Benefits and Considerations:**

- Defense of this lawsuit has the potential to save the City hundreds of thousands of dollars.
- The Townsite Historic District, which is the challenged legislation, preserves the historic character of a residential neighborhood in central Flagstaff.

# **Community Involvement:**

The Townsite Historic District was initiated by citizens of Flagstaff, and Council adopted the zoning regulations at issue in this case following extensive public participation.

### **Financial Implications:**

The expenditures to date in *Regner v. Flagstaff* are \$66,913.43 with June and July invoices forthcoming. Council on November 7, 2006, authorized a blanket purchase order for payment of fees to Gammage & Burnham in the amount of \$200,000. Of this amount, \$206,215.05 has been expended to date. While expenditures may be made up to \$50,000 on a single matter without Council authorization pursuant to the City Charter, under either the Charter authorization or the blanket purchase order additional Council authorization is needed.

## **Options and Alternatives:**

- Attempt additional settlement negotiations.
- Hire a different firm.

DATE OF COUNCIL APPROVAL:

• Default in the litigation.

The first option is one we continue to leave available at any time, but until the matter is finally settled attorneys' fees and costs will continue to accrue. We do not recommend the second option because counsel has been doing an excellent job defending the City's interests in litigation brought AGAINST the City, and bringing new counsel to the necessary level would be very expensive. The City does not have in-house litigation staffing, and so taking the litigation inhouse is not an option. Default is theoretically an option, but that could result in significant damages being assessed against the City as the claimed damages are in excess of \$300,000, a result the City surely wants to defend against.