

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

A RESOLUTION authorizing the County Counselor to settle the claim against McClain Enterprises, in the case of Jackson County, Missouri vs. McClain Enterprises, et al., No. 0516-CV14771, now pending in the Circuit Court of Jackson County, Missouri.

RESOLUTION # 15933, June 12, 2006

INTRODUCED BY Henry C. Rizzo and Dennis Waits, County Legislators

WHEREAS, in the case of Jackson County, Missouri vs. McClain Enterprises, et al., No. 0516-CV14771, now pending in the Circuit Court of Jackson County, Missouri, the County, represented by special counsel, is seeking damages and other remedies against, among others, McClain Enterprises, for their encroachment upon the County's Little Blue Trace Park in the development of the adjacent Saddle Ridge subdivision in Independence; and,

WHEREAS, the County and McClain Enterprises have engaged in discussions with the goal of resolving the County's claim against McClain in this lawsuit; and,

WHEREAS, these parties have discussed a tentative settlement of this claim, which involves the exchange of a parcel of land owned by McClain for the parcel of park land containing the encroachment; and,

WHEREAS, because the County obtained the affected park land with the assistance of federal funds, the exchange and settlement are subject to the approval of the U.S. Department of the Interior and the Missouri Department of Natural Resources; and,

WHEREAS, under this settlement, the County will retain its right to pursue damages and other remedies against the remaining co-defendant in the lawsuit; and,

WHEREAS, other provisions of the proposed settlement are generally outlined in the letter attached hereto as Exhibit A; and,

WHEREAS, the County Counselor and special counsel recommend this settlement; and,

WHEREAS, the proposed settlement is in the best interests of the health, welfare, and safety of the citizens of Jackson County; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the settlement of the County's claim against McClain Enterprises in the case of Jackson County v. McClain Enterprises, et al., No. 0516-CV14771, Circuit Court of Jackson County, Missouri is hereby approved, in a manner consistent with this Resolution; and,

BE IT FURTHER RESOLVED that the County Counselor and all other County officials be and hereby are authorized to execute any and all documents necessary to give effect to this settlement.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:



Chief Deputy County Counselor



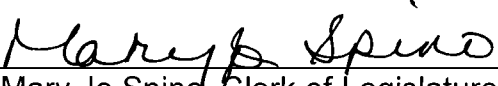
County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution #15933 of June 12, 2006, was duly passed on June 12, 2006 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 8 Nays 0
Abstaining 0 Absent 1

6.13.06
Date



Mary Jo Spino, Clerk of Legislature

RESOLUTION #15933

Dear

This letter is written to you at the direction of the Jackson County Legislature in response to your letter to County Counselor Edward Rucker on April 19, 2006.

My client has authorized this response to your proposal to settle the matter. This letter and its contents are confidential settlement negotiations and may not be used as evidence in court for any purpose. Your review of this proposal constitutes your acceptance of the confidential terms under which this proposal was submitted to you. This letter is intended to be an outline of the basic terms of a settlement; upon your agreement we will proceed to a more complete document including detailed terms and the normal and usual terms of litigation settlement agreements.

For purposes of this letter, the term "the Parcel" refers to the north five acres of the tract identified in your letter of April 19, 2006, as the land McClain Enterprises proposes to transfer to Jackson County. The term "the Borrow Pit" refers to the tract of land in Jackson County's Little Blue Trace Park upon which McClain Enterprises encroached and which your letter contemplates will be transferred by Jackson County to McClain Enterprises.

In settlement of the dispute between Jackson County and McClain Enterprises, Jackson County requires that McClain Enterprises take the following actions:

1. McClain Enterprises will, at its own cost and risk that the settlement discussed herein is not consummated, obtain an owner's title report acceptable to the County demonstrating fee simple title in and insuring fee simple title to the Parcel when it is transferred to Jackson County.
2. McClain Enterprises will, at its own cost and risk that the settlement discussed herein is not consummated, obtain an environmental assessment of the Parcel demonstrating that it is suitable for park use as part of the Little Blue Trace Park.
3. McClain Enterprises will, at its own cost and risk that the settlement discussed herein is not consummated, pay all necessary fees, including appraisal fees for both parcels, consultant expenses, and costs required to prepare the conversion documents necessary to obtain approvals from the State of Missouri and the United States of America and all their subordinate units of government at any level, to allow Jackson County to accept the Parcel as part of Little Blue Trace Park.
4. McClain Enterprises will, at its own cost and risk that the settlement discussed herein is not consummated, grant to Jackson County a permanent fifteen-foot easement in an appropriate location so as to allow Jackson County to access the Parcel with machinery and mowers or, in the alternative, McClain Enterprises will plant native grasses on the Parcel to the satisfaction of Jackson County, according to the following specifications.

- a. Native Grass Seed Specification: All seed shall be certified regionally grown native warm season grass mix (per County approval). This grass seed mix shall be planted at the rate of 9.5 pounds (Pure Live Seed) per acre. Certification of the seed shall be verified on the label attached to each bag. Seed mixture shall be as follows:
- i. Big Bluestem 2.3 lbs.
 - ii. Indiangrass 2.5 lbs.
 - iii. Little Bluestem lbs.
 - iv. Sideoats Grama lbs.
 - v. Switchgrass 0.7 lbs.
- and 1 bulk lb. per acre of the following mixture bagged separately:
- vi. Partridge Peas 20%
 - vii. Illinois Bundleflower 25%
 - viii. Blackeyed Susan 10%
 - ix. Purple Coneflower 10%
 - x. Coreopsis 20%
 - xi. Purple Prairie Clover 15%
- Total seed: 9.5 PLS lbs per acre

No Till Planting Method: For the best conservation practice, no-till the seed into the stubble of a previous crop or the existing stand of another species that has been successfully eradicated (per County approval). Use a seed drill specifically designed for native grasses. No fertilizer is necessary.

5. McClain Enterprises will, at its own cost and risk that the settlement discussed herein is not consummated, screen, fence, or otherwise obstruct public access to the Borrow Pit or, in the alternative, provide such improvements to the Borrow Pit that it becomes a lake suitable for fishing and other public recreational pursuits.

Upon satisfactory completion of the terms and conditions set out above, McClain Enterprises will transfer title to the Parcel to Jackson County and Jackson County will transfer title to the Borrow Pit to McClain Enterprises.

Contemporaneous with the transfers set out above, the parties will execute full and complete releases of any and all claims each has against the other as set out in the case styled Jackson County v. McClain Enterprises, and all other claims arising out of the set of facts giving rise to this lawsuit, whether asserted or unasserted and whether based on facts know or unknown at the time of the execution of these mutual releases.

As part of the settlement, McClain Enterprises will cooperate in providing evidence as requested by Jackson County in the claim of Jackson County against Bill House Excavating which is included in the pending lawsuit and which will survive the settlement of claims as set out in paragraph 7 above.

Thank you for your time and attention.