

LRB-RESEARCH AND ANALYSIS SECTION

JUDICIARY & LEGISLATION COMMITTEE

ITEM 13, FILE # 070734

SEPTEMBER 17, 2007

RICHARD L. WITHERS

Resolution authorizing settlement of the claim of Sgt. Kevin Moore, in the amount of \$89,630.80 less taxes and the return of property located at 313 E. Burleigh St..

Background

1. Kevin Moore was the owner of properties located at 2822 North 9th Street and 313 East Burleigh Street. Unpaid taxes on the property at 2822 North 9th Street and on the property at 313 East Burleigh Street resulted in *in rem* foreclosure actions in 2004 and 2005, respectively.
2. The City sold the 9th Street property after vacating a tenant. The Burleigh Street property has been unoccupied and boarded since it was received in the City's inventory.
3. At the time the properties were taken, and until the present time, Kevin Moore has been in active military service.
4. Sgt Kevin Moore has filed a claim with the City seeking \$186,517.00 based upon alleged violation of the Federal Servicemembers Civil Relief Act (SCRA) in the taking of the 2 properties..

Discussion

1. Section 501 of the SCRA provides in part as follows:

(N)o property owned by a servicemember or jointly by a servicemember and the servicemember's dependants can be sold to enforce the collection of a tax which became due before or during the time a servicemember is on active duty, on a servicemember's personal property or real property occupied as a dwelling, or for professional, business, or agricultural purposes by a member or a servicemember's dependents or employees while a servicemember is on active duty, without a court order and upon a determination by the court that the military service does not materially affect the servicemember's ability to pay the tax.

A court may stay a proceeding to enforce collection of a tax or sale of the property while the servicemember is on active duty and up to 180 days after the release from active duty.

When a servicemember's property is sold pursuant to a court order, a servicemember has the right to redeem or commence an action to redeem the property during the period of active duty or within 180 days after release from active duty....
2. The City Attorney recommends settlement of this claim by returning the Burleigh Street property to Sgt. Moore and compensating him for the 9th Street property and lost rental income. The cover letter from the City Attorney which is in File # 070734 provides details about the valuation of the 9th Street property, lost rental income and calculations of back taxes and the interest allowed under SCRA.

3. The resolution authorizes payment from the Damages and Claims Fund Special Purpose Account (SPA) in the amount of \$89,630.80. Of this amount, \$57,097.28 will be paid to the claimant, Sgt. Moore, and the remaining \$32,533.52 will be paid to the Tax Deed Account.
4. To avoid recurrence, the City Attorney's Office and the Office of the Treasurer have instituted procedures to check the military status of owners or interested parties prior to obtaining *in rem* foreclosure judgments.

Summary of Fiscal Impact

1. The 2007 Damages and Claims Fund SPA will be reduced by \$89,630.80.
2. The Tax Deed Account will receive \$32,533.52 in revenue.

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