ECLEG DEC04'12 AM10:07

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

December 4, 2012

Erie County Legislature
92 Franklin Street – Fourth Floor
Buffalo, NY 14202

RE: Settlement – Eminent Domain Claim for Additional Compensation
Parcel 193.00-1-2.111
Erie County Sewer District (ECSD) No. 2

Dear Honorable Members:

Enclosed please find a resolution and an accompanying memorandum from the Department of Environment and Planning pertaining to a proposed settlement for an eminent domain claim for additional compensation.

Should your Honorable Body require further information, I encourage you to contact Joseph L. Fiegl, P.E, in the Department of Environment and Planning/Division of Sewerage Management. Thank you for your consideration on this matter.

Sincerely,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/JF/ms
Enclosure

C: J. Fiegl – Environment and Planning

MEMORANDUM

To:	Honorable Members of the Erie County Legislature
From:	Department of Environment and Planning
Re:	Settlement – Eminent Domain Claim for Additional Compensation Parcel 193.00-1-2.111 Erie County Sewer District (ECSD) No. 2
Date:	November 19, 2012

SUMMARY

Approval of the accompanying resolution authorizing a payment in an amount of $125,000 to settle a claim for additional compensation pertaining to ECSD No. 2's easement and associated sanitary sewers on parcel 193.00-1-2.111 is requested.

FISCAL IMPLICATIONS

There are no fiscal implications to the County's General Fund. The settlement payment would be paid from available cash balances in ECSD No. 2 capital projects and capital reserves.

REASONS FOR RECOMMENDATION

In March of 2007, the owner of parcel 193.00-1-2.111 filed a claim against Erie County due to condemnation performed through the power of eminent domain. The condemnation process was completed to effectuate an easement necessary to allow for the elimination of an ECSD No. 2 pumping station. The petition claimed that compensation paid by ECSD No. 2 ($52,700 per Legislative Comm. 4E-19, 2004) was not sufficient for the damages incurred as a result of the easement taking and subsequent construction activities.

The Erie County Attorney's office and the law firm of Hiscock & Barclay, LLP participated in court-ordered alternative dispute resolution in an attempt to settle this claim prior to trial. Due to the potential risks, it was recommended by the County Attorney's office and the County's outside counsel that ECSD No. 2 settle this claim with an agreed upon additional payment of $125,000 to the plaintiff.

BACKGROUND INFORMATION

In 2004, ECSD No. 2 issued a condemnation to acquire a 30-foot wide permanent easement and 25-foot wide temporary easement on parcel 193.00-1-2.111. The easement was necessary for ECSD No. 2 to eliminate the Hamilton Drive pumping station via a new gravity sewer to be installed within the easement. At the time, ECSD No. 2 completed an appraisal to assess the damages associated with this action and subsequently issued a $52,700 payment to compensate the property owner for the amount determined via appraisal.

After completion of the pumping station elimination project, the property owner completed their own appraisal and claimed that the damages were much higher than the original payment. As a result, in March of 2007, the property owner filed a claim against Erie County for additional compensation. Due to the specialized area of law associated with the underling petition, the County Attorney's office retained Hiscock & Barclay, LLP to defend Erie County/ECSD No. 2. After several years of back-

and-forth between the parties, the judge ordered both parties to complete new appraisals and assigned this case to alternative dispute resolution.

Based upon the County's updated appraisal, Hiscock & Barclay, LLP estimated that ECSD No. 2's additional liability – should this issue go to trial and the County were to prevail – was at a minimum approximately $40,000. This amount takes into account the difference between the County's 2004 and 2012 appraisals, interest as required pursuant to New York State Law, and the County's potential legal fees. Hiscock & Barclay, LLP estimated that should the plaintiff prevail in court, ECSD No. 2's additional liabilities could be over $350,000 when the difference in the appraisals, interest, plaintiff legal / appraisal fees, and the County's potential legal fees are considered. As a result, it was the County Attorney's and Hiscock & Barclay, LLP's recommendation to settle this item prior to trial. Negotiations between the two parties during the alternative dispute resolution process led to a settlement of $125,000 for the additional payment to the owner of parcel 193.00-1-2.111.

CONSEQUENCES OF NEGATIVE ACTION

ECSD No. 2 could be liable for over $350,000 in additional costs should this claim go to trial.

STEPS TO FOLLOW APPROVAL

The Erie County Comptroller and the Erie County Director of Budget and Management will be directed to allocate the necessary funds and the Erie County Comptroller will be directed to issue payment to the owner of parcel 193.00-1-2.111 in an amount of $125,000 as full compensation for this settlement.

COMPTROLLER'S OFFICE REVIEW

The proposed legislation has been reviewed by the Comptroller's Office and is related to an authorized capital project for which there are sufficient capital appropriations for the action proposed.

Signed Lorne Steinhart Date: November 21, 2012
Title Lorne Steinhart
Deputy Comptroller

A RESOLUTION SUBMITTED BY:
DEPARTMENT OF ENVIRONMENT AND PLANNING

RE: Settlement – Eminent Domain Claim for Additional Compensation
Parcel 193.00-1-2.111
Erie County Sewer District (ECSD) No. 2

WHEREAS, County of Erie obtained an easement on parcel 193.00-1-2.111 via condemnation performed through the power of eminent domain; and

WHEREAS, said easement was necessary for ECSD No. 2 to construct the sanitary sewers necessary to eliminate the Hamilton Drive Pumping Station; and

WHEREAS, pursuant to Legislative Communication 4E-19 (2004), Erie County/ECSD No. 2 issued an advance payment to the owner of parcel 193.00-1-2.111 as part of the condemnation process; and

WHEREAS, the owner of parcel 193.00-1-2.111 filed a claim for additional compensation contending that monies paid by Erie County/ECSD No. 2 during the condemnation process were not sufficient for the damages incurred as a result of the easement taking and subsequent construction activities; and

WHEREAS, due to the specialized area of law associated with the underlying petition, the County Attorney's office retained Hiscock & Barclay, LLP to defend Erie County/ECSD No. 2; and

WHEREAS, prior to trial both parties participated in a court-ordered alternative dispute resolution process; and

WHEREAS, during the alternative dispute resolution process a final offer of an additional $125,000.00 to be paid by ECSD No. 2 has been agreed upon by both parties to settle this claim; and

WHEREAS, considering the potential financial liabilities to ECSD No. 2, it is the recommendation of the County Attorney's office and Hiscock & Barclay, LLP to proceed with the $125,000.00 settlement.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Comptroller be directed to issue a payment to Stasia T. Vogel (Office of Stasia Vogel, 6540 Old Lake Shore Road, Derby, New York 14047) in an amount of $125,000.00 as a final payment to settle the claim for additional compensation associated with Erie County/ECSD No. 2's easement and associated activities on parcel 193.00-1-2.111; and be it further

RESOLVED, that Erie County Comptroller and the Erie County Director of Budget and Management allocate $125,000.00 for the payment as follows:

ECSD No. 2 Project C.00002	$ 60,164.15
ECSD No. 2 Project C.00011	$ 4,415.41
ECSD No. 2 Project C.00028	$ 25,552.88
ECSD No. 2 Project C.00036	$ 18,443.17
ECSD No. 2 Capital Reserve C.00008	$ 16,424.39
Total	$125,000.00 ;

and be it further

RESOLVED, that Erie County Comptroller and the Erie County Director of Budget and Management be authorized to transfer $16,424.39 from ECSD No. 2 Capital Reserve C.00008 to ECSD No. 2 Project C.00011 and to establish all budgetary accounts necessary to facilitate the transfer; and be it further

RESOLVED, that the Clerk of the Legislature send one (1) certified copy each to the County Executive, the Erie County Comptroller, the Erie County Director of Budget and Management, Kristen Walder, Assistant County Attorney, and send two (2) certified copies of this resolution to Joseph Fiegl, P.E., Division of Sewerage Management.