



**Centre City
Development
Corporation**

REPORT NO. CCDC-08-08

DATE ISSUED: March 19, 2008

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Docket of March 25, 2008

ORIGINATING DEPT.: Centre City Development Corporation

SUBJECT: Harvey Furgatch v. San Diego Unified Port District San Diego
Superior Court Case No. GIC 775242 – East Village
Redevelopment District of the Expansion Sub Area of the Centre
City Redevelopment Project

COUNCIL DISTRICT: 2

REFERENCE: None

STAFF CONTACT: David N. Allsbrook, Assistant Vice President – Contracting and
Public Works (533-7112)

REQUESTED ACTION:

That the Redevelopment Agency (“Agency”) approve the payment of attorney’s fees and costs not to exceed \$308,500 in the matter of the Harvey Furgatch v. San Diego Unified Port District San Diego Court Case No.: GIC 775242, for the City of San Diego’s (“City”) share of these costs.

STAFF RECOMMENDATION:

That the Agency approve the payment of attorney’s fees and costs not to exceed \$308,500 in the matter of the Harvey Furgatch v. San Diego Unified Port District San Diego Court Case No.: GIC 775242, for the City’s share of these costs.

SUMMARY: On February 6, 2002, the City entered into a purchase and sale agreement with the Port. The purchase and sale agreement was part of the funding mechanism related to the Ballpark Project. In May 2005 the City Council authorized the termination of the purchase and sale agreement at the request of the Corporation. The Agency would retain the ownership of Tailgate Park. At the time the City terminated the purchase and sale agreement, the lawsuit known as Furgatch v. San Diego Unified Port District had concluded and was waiting the ruling by the Court. The lawsuit sought to invalidate the sale of Tailgate Park from the City to the Port District. Because funding for the Ballpark Project was tied to the sale of Tailgate Park, the City had joined the lawsuit as an interested defendant.

After the termination of the purchase and sale agreement, Furgatch claimed that the invalidation of the sale resulted, in part, because of the lawsuit. Subsequently, Judge Nevitt ruled on January 16, 2008, that the Furgatch lawsuit was a substantial factor in the City's decision to terminate the contract and he also ruled that the Port District was an integral part of the termination process and liable, like the City, for the payment of attorney's fees and costs to Furgatch's attorney.

Plaintiff has made a settlement demand not to exceed \$308,500 and the City is seeking payment from the Agency for the City's share of the settlement amount.

FISCAL CONSIDERATIONS:

Funds are available in the Fiscal Year 2008 Centre City Redevelopment Project Area Budget within the East Village line item, in the amount of \$308,500 for settlement of the attorney's fees and costs.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION:

At the March Corporation Board meeting, the Corporation will consider this matter and a verbal report will be presented to the Agency at the March 25, 2008 Agency meeting.

BACKGROUND

The matter of the Furgatch lawsuit is more fully summarized in the attached memorandum from John Riley, Deputy City Attorney. On March 4, 2008, the City Council voted to request the Corporation to recommend the Agency pay the City's share of the settlement amount of the attorney's fees and costs.

Environmental Impact

This activity is not a project, and therefore not subject to CEQA per CEQA Guidelines Section 15060(c)(3).

CONCLUSION

The settlement of the attorney's fees and costs will cap the exposure of the total attorney's fees and costs to be paid. If the matter proceeds to a hearing before Judge Nevitt set for April 11, 2008, the exposure to the City will be greater to pay these attorney's fees and costs.

Respectfully submitted,

Concurred by:



David N. Allsbrook
Assistant Vice President – Contracting
and Public Works



Nancy C. Graham
President