



OFFICE OF THE
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THE CITY OF DAYTONA BEACH

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MEMORANDUM

To: City Commission
From: Robert Jagger, City Attorney *RJ*
Re: Settlement of claim: John Hawkins
Date: 10/23/18

The claimant, John Hawkins, owns a home located at 115 Botefuhr Ave. which flooded with sewage on October 9, 2017, due to a back-up of the City's sewer system.

Prior to this event, during Hurricane Irma, September 10-13, 2017, the lift station servicing the area located on Botefuhr Ave., failed without further incident. At that time the City determined that the lift station failure was due to an interruption of power from FPL. The lift station was equipped with an AT&T telephone line, which also failed, that was to automatically notify the Utilities Department of any power failure so the City could block the system from backing up. Upon learning that the telephone line failed, and prior to the subject incident, the Utilities Department notified AT&T about the line and requested repairs.

Following the subject incident, it was determined by the City that the lift station failed again due to a power outage, and that AT&T had not repaired the telephone line as requested in September, 2017. As a result, the City was not notified of the power outage, and sewerage backed up into Mr. Hawkins' home.

Mr. Hawkins' basement had to be completely renovated as a result of the incident. In addition, Mr. Hawkins had to dispose of the majority of the contents in the basement area which included a master bedroom, a master bath room, a family room, and laundry room. Mr. Hawkins claims he incurred approximately \$53,000.00 in expenses to renovate the structural part of the area. He also claims to have lost approximately \$26,000.00 in personal belongings, for a loss totaling about \$79,000.00.

In 2010, there was a similar problem with this lift station that also caused major sewage damage to this property, which was remediated at City expense. Mr. Hawkins purchased the property in 2011, and was not aware of the prior problem.

Although some liability rests with AT&T and FPL for not properly maintaining their equipment, a court would likely determine that the City has some responsibility for this loss. Mr. Hawkins is represented by Attorney David Russell, and Mr. Hawkins has agreed to accept \$45,000.00 in full settlement of his claim against the City. Mr. Hawkins, through his attorney, has represented that

he will pursue claims against the other entities involved. Since this incident, the Utilities Department has installed a new system that will prevent future incidents of this nature.

The Incident Review Committee recommends City Commission approval for settlement of Mr. Hawkins' claim in the amount of \$45,000. If this case is not settled, a jury verdict could result in an award in excess of the settlement amount; accordingly, I concur with the recommendation of the Incident Review Committee.

This memorandum is prepared for purposes of client consultation and does not constitute an admission against interest.

cc: James V. Chisolm, City Manager
Letitia LaMagna, City Clerk