

Introduced by: Councilmember Seamens

**CITY OF TAKOMA PARK, MARYLAND
RESOLUTION 2011-8**

**SETTLEMENT OF DISTRICT COURT CASE
*DeChaine v. City of Takoma Park***

WHEREAS, on January 24, 2011, the City Council voted in closed session to settle this case pursuant to advice of the City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, that the City Manager is authorized to sign the Settlement Agreement, which requires the Plaintiff to dismiss this action in consideration of a payment to DeChaine, half of which will be reimbursed to Takoma Park by contractor, NZI Construction Corporation.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute documents and take any action necessary to carry out the intent of this Resolution.

Adopted this 14th day of February, 2011.

ATTEST:

Jessie Carpenter, CMC
City Clerk

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is made and entered into by and between James A. DeChaine (hereinafter "DeChaine") and the City of Takoma Park, Maryland (hereinafter "Takoma Park") this _____ day of _____, 2011.

WHEREAS, DeChaine alleges that Takoma Park, on behalf of itself and through a contractor, diverted water from DeChaine's multi-family building at 704 Chaney Drive, Takoma Park, Maryland 20912, during the Spring of 2010 for use in a sidewalk construction project;

WHEREAS, Takoma Park denies any liability for itself or its contractor; and

WHEREAS, the parties desire to settle fully and finally all issues between them concerning this issue.

NOW, THEREFORE, in consideration of the premises and mutual promises contained in this Agreement, it is agreed as follows:

1. Upon the execution of this Agreement, DeChaine shall file a voluntary line of dismissal with prejudice as to all claims in Case No. 060200295952010 in the District Court for Montgomery County, Maryland.

2. Takoma Park shall pay to DeChaine the amount of Seven Hundred Fifty Dollars (\$750.00). Said payment constitutes compensation for any claims filed or could have been filed with respect to any water that was allegedly diverted from DeChaine's property for use in a sidewalk construction and repair project.

3. DeChaine agrees that if he has any future alleged claims arising out of water diversion from his property, he will notify the Takoma Park Public Works Director in writing within twenty-four (24) hours of its occurrence so that Takoma Park can take prompt corrective action, if appropriate. Any notice delayed beyond this point will lead to correction, if

appropriate, but will not lead to any damages arising from any diversion before the 24-hour period.

4. DeChaine, his heirs, successors and assignees, hereby release and forever discharge Takoma Park, its Councilmembers and officials, successors and assignees, and contractors, from any and all liability, claims and causes of action, debts, demands, expenses and costs (including attorneys' fees and costs) of any kind or nature whatsoever, known or unknown, under any federal, state or municipal statute or regulation, which DeChaine now has or could have had, related to this claim.

5. This Agreement shall constitute the entire agreement between the parties, resolving all matters arising out of this dispute between the parties.

6. DeChaine hereby acknowledges that he has read this Agreement and the Release contained herein, that he understands his option to review it with an attorney of his choosing and that he has executed this Agreement voluntarily and with full knowledge of its meaning and consequences.

IT IS UNDERSTOOD AND AGREED THAT THIS IS A FULL AND FINAL RELEASE AND THAT PAYMENT OF THE CONSIDERATION DESCRIBED IN THIS AGREEMENT IS NOT AN ADMISSION OF LIABILITY.

PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

WE HAVE READ THIS AGREEMENT, UNDERSTAND ITS TERMS AND ENTER INTO IT VOLUNTARILY.

Dated: _____

James A. DeChaine

CITY OF TAKOMA PARK

Dated: _____

By: _____
Barbara Matthews, Takoma Park City Manager