

**CITY OF WAUKESHA****Administration**

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Source: City Attorney	Date: 12/2/2016
Common Council Item Number: 16-1785	Date: 12/6/2016
Submitted By: Brian Running, City Attorney	City Administrator Approval: Kevin Lahner, City Administrator KL
Finance Department Review: Rich Abbott, Finance Director RA	City Attorney's Office Review: Brian Running, City Attorney BER
Subject: Settlement of excessive-assessment lawsuit filed by Carisch Brothers LP regarding Arby's property.	

Details:

Carisch Brothers LP filed an excessive-assessment lawsuit against the City, claiming that the 2015 assessment of \$867,000 for the Arby's on Moreland Boulevard was too high, and demanding a refund of taxes paid for 2015. The City is represented in this lawsuit by Jack Bruce of Schober, Schober & Mitchell, who was hired, and is being paid, by the City's liability insurance company. Mr. Bruce has arrived at an agreement with the plaintiff to settle the lawsuit by setting the assessment for both 2015 and 2016 at \$840,000, which would result in a refund to the plaintiff for 2015 of \$556.01. The settlement affects only tax years 2015 and 2016, and assessments for 2017 and beyond will be done as usual. Mr. Bruce recommends this settlement, and Paul Klauck, the City Assessor, feels that this is a fair resolution.

Options & Alternatives:

The alternative to settlement is to go to trial. While the City does not incur any additional litigation expenses by doing so, because our insurer is covering the cost of defense, there are two big advantages to settlement, particularly when the settlement results in a refund of only \$556.01. One, Mr. Klauck and his staff will not have to take time away from work to participate in trial preparation and to testify at trial. Two, a settlement allows control over the terms of the resolution, whereas the outcome of a trial can't be predicted with certainty and may give an adverse result.

Financial Remarks:

The refund required by the settlement agreement will be \$556.01, and will be paid from account 9456.5593.

Staff Recommendation:

The City Attorney's Office recommends approving this settlement and authorizing the Mayor to execute it on the City's behalf.