

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF OLMSTED

THIRD JUDICIAL DISTRICT

Case Type: Civil Other/Misc.

Judge: Joseph F. Chase
Court File #55-CV-15-6531

Wilmar Investments, LLC,

Plaintiff,

SETTLEMENT AGREEMENT

vs.

Cascade Township,

Defendant.

The undersigned have arrived at the following settlement agreement (“Agreement”):

1. The parties to this Agreement (the “Parties”) are: Plaintiff Wilmar Investments, LLC (“Wilmar”); Cascade Township (“Township”); Milestone Materials; Rochester Sand & Gravel; and Mathy Construction Company. Milestone Materials, Rochester Sand & Gravel, and Mathy Construction Company (collectively “Mathy”) are not parties to the present lawsuit, but are interested in the proceeding, participated in the mediation and post-mediation negotiations, and agree to be bound by this Agreement. Wilmar represents that, apart from its lease with Mathy, it owns all legal interests in the property located in Section 11, Township 107 North, Range 14 West (hereafter the “Section 11 property”) that is referenced in the Complaint. Mathy represents that its companies, subsidiaries, and affiliates lease the Section 11 property from Wilmar and that they are aware of no other entities with a legal interest in the Section 11 property apart from themselves and Wilmar.
2. The Parties participated in mediation with mediator William Hull on January 31, 2017. Following the mediation, the Parties continued their discussions and arrived at these terms.
3. The Parties have arrived at a tentative settlement related to the Section 11 property that has two contingencies: 1) this Agreement is not binding until it has been approved by a majority of the full Township Board of Supervisors; 2) this Agreement is not binding unless the Township grants the zoning change and the conditional use permit (“CUP”) with conditions referenced in Exhibit A hereto or such other conditions imposed on the CUP as may be acceptable to Wilmar and Mathy in their sole discretion. It is understood that the Township has made no formal commitment to grant the zoning change or issue a CUP with conditions,

but the Township representatives who attended the mediation and participated in post-mediation negotiations intend to recommend and support this Agreement.

4. If the CUP is granted by the Board and is not the subject of litigation challenging its validity or terms (either singly or in connection with the zoning reclassification described below) by a party other than Wilmar or Mathy or their successors or affiliates, Wilmar and Mathy agree to waive and relinquish any claim that the Section 11 property referenced in the Complaint in this matter is entitled to any nonconforming use rights, and Wilmar and Mathy forever relinquish any claims that they or their successors are entitled to conduct activities on the Section 11 property referenced in the Complaint because they or their predecessors in interest owned or leased the property prior to enactment of county and Township zoning ordinances and land use controls. The waiver and relinquishment of rights referenced in this paragraph shall occur when the Township grants the CUP referenced herein. However, the waiver and relinquishment of rights shall not occur unless the Township issues the zoning reclassification and the CUP referenced herein and in Exhibit A, and such CUP and/or zoning reclassification is not the subject of a challenge to its validity or terms by some person or entity other than Wilmar or Mathy or their successors or affiliates. In the event that the validity or terms of the CUP are challenged by some person or entity other than Wilmar or Mathy or their successors or affiliates, Wilmar and Mathy retain the ability to assert a claim to nonconforming rights until such time as the litigation is concluded and the terms of the CUP upheld. An action by the Township to enforce the conditions of the CUP or to revoke the CUP for noncompliance shall not be considered a challenge to the validity or terms of the CUP.
5. It is understood and agreed by all parties hereto that Wilmar and Mathy are not waiving or relinquishing any claim or position that the property located in Section 14, Township 107 North, Range 14 West (hereafter the "Section 14 property") referenced in the Complaint in this matter is entitled to legal, nonconforming preexisting use rights, all such claims being specifically reserved. It is further understood and agreed that the reservation of all claims and defenses possessed by any party to this Agreement and which are related to the Section 14 property in any manner shall survive the dismissal of the lawsuit pending in Olmsted County District Court, Court File No. 55-CV-15-6531.
6. The Township will consider a change to the zoning classification of the Section 11 property referenced in the Complaint to Ag/Resource Commercial, excepting the parcel at the end of the cul-de-sac on Oak Meadow Lane, which shall retain its current zoning classification. The zoning change shall be applied for, processed, and considered in the usual fashion specified by the Township's ordinance. When possible, and when not inconsistent with the terms of this Agreement or the terms of the proposed CUP, the Township will encourage its planning officials to make use of materials already on file related to the prior zoning change request.

7. If the zoning change request for the Section 11 property is granted, the Township will then consider an application for a CUP for extraction of sand and gravel and quarrying on the Section 11 property. The parties agree that the CUP to be considered will include the conditions stated in the attached Exhibit A.
8. It is anticipated that the completion of the zoning change and CUP process for the Section 11 property could take several months. Accordingly, the Parties agree to approach the Court, advise that the matter has been tentatively settled, and request a continuance of the trial date and all pending Court appearances. In the event that the settlement is not finally consummated through issuance of a CUP with only the conditions described in Exhibit A or such other conditions acceptable to Wilmar and Mathy in their sole discretion, the Parties will jointly request that the Court reset the matter for trial. In the event that the CUP is granted, the parties agree that this matter will be dismissed with prejudice as to all claims related to the Section 11 property and without prejudice as to all claims related to the Section 14 property and without costs, disbursements, or attorney fees to any party.
9. All Parties acknowledge that the Township is not bound to either grant or deny any zoning change or CUP. The Township representatives who attended the mediation intend to support the zoning change request and the CUP's issuance with conditions, but neither they nor the Township are bound to do so.
10. As the compromise of disputed claims, this Agreement is not an admission against the interests of the Parties or their officers, agents, employees, insurers, representatives, or affiliates.
11. Wilmar and Mathy agree to release and forever discharge any claims they may have against the Township arising from or in any way related to the Section 11 property. Such release and discharge is limited to claims arising before or at the time this Agreement is entered into.
12. It is understood and agreed that the settling parties retain any and all claims, causes of action or defenses which relate in any way to the Section 14 property.
13. The Parties may execute this Agreement separately, and each separate signed document shall be deemed an original regardless of the date of its execution and delivery, and these counterparts together shall be one and the same Agreement.
14. The terms and conditions contained in this Agreement have been negotiated by the Parties and their attorneys. No ambiguity in this Agreement shall be construed or interpreted against any one party as the preparer of this Agreement, as each party and its attorney contributed to drafting this Agreement.

Wilmar Investment, LLC v. Cascade Township, et al.
Settlement Agreement

WILMAR INVESTMENTS, LLC

Dated: _____

By _____
Its _____
Plaintiff

Dunlap & Seeger, P.A.

Dated: _____

By _____
Robert G. Benner (#227420)
206 Broadway South, Suite 505
P.O. Box 549
Rochester, MN 55903-0549
507-288-9111
Email: rgb@dunlaplaw.com
Attorneys for Wilmar Investments, LLC

[Signature Page Continues]

Wilmar Investment, LLC v. Cascade Township, et al.
Settlement Agreement

CASCADE TOWNSHIP

Dated: _____

By _____
Its _____

Dated: _____

By _____
Its _____
Plaintiff

Quinlivan & Hughes, P.A.

Dated: _____

By _____
Kenneth H. Bayliss (#157569)
Sixth Floor, Wells Fargo Center
400 South First Street
P.O. Box 1008
St. Cloud, MN 56302
320-258-7840
Email: kbayliss@quinlivan.com
Attorneys for Cascade Township

[Signature Page Continues]

Wilmar Investment, LLC v. Cascade Township, et al.
Settlement Agreement

MILESTONE MATERIALS

Dated: _____

By _____
Its _____

ROCHESTER SAND & GRAVEL

Dated: _____

By _____
Its _____

MATHY CONSTRUCTION COMPANY

Dated: _____

By _____
Its _____

Faegre Baker Daniels LLP

Dated: _____

By _____

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*Attorneys for Mathy Construction
Company; Milestone Materials; and
Rochester Sand & Gravel*