

NYE COUNTY AGENDA INFORMATION FORM

Action
 Presentation
 Presentation & Action

Department: County Manager		Agenda Date:	
Category: Regular Agenda Item		August 6, 2019	
Contact: Tim Sutton		Phone:	Continued from meeting of:
Return to:	Location:		Phone:
Action requested: (Include what, with whom, when, where, why, how much (\$) and terms) Discussion and deliberation regarding approval of a Settlement Agreement between Nye County and Raymond G. Jensen and Grace Elaine Jensen concerning Case No. CV37936, asserting claims quiet title and damages relating to property near Sawtooth Road.			
Complete description of requested action: (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures)			
Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.			
Expenditure Impact by FY(s): (Provide detail on Financial Form)			
			<input type="checkbox"/> No financial impact

Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal	Date
4.	Date	9. Finance	Date
5.	Date	10. County Manager	Date

BR 07-09-19
 [Signature]
 Place on Agenda
 ITEM # 35

SETTLEMENT AGREEMENT, MUTUAL RELEASE AND WAIVER OF ALL CLAIMS

This Settlement Agreement, Mutual Release and Waiver of all Claims (“Agreement”) is entered into this _____ day of _____, 2019, (“Effective Date”) by and between Raymond G. Jensen and Grace Elaine Jensen (“Plaintiffs”) and Nye County, a political subdivision of the State of Nevada (“Defendant”) (each a “Party” and collectively, “the Parties”). In consideration of the mutual covenants and agreements of the Parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby warranted and agreed as follows:

1. BACKGROUND.

1.1 On or about October 4, 2016, Plaintiffs filed a Complaint against the Defendant in the Fifth Judicial District Court, Nye County, Nevada styled as Case No: CV37936 (the “Litigation”) asserting claims quiet title and damages based upon allegations relating to Sawtooth Road in Nye County, Nevada near Plaintiffs’ real properties commonly identified as 008-261-41 and 008-261-53.

1.2 On or about January 23, 2017, the Defendant filed its Answer to the Complaint in the Litigation. Thereafter, the parties conducted discovery and prepared for trial.

1.3 Prior to trial, the Parties were able resolve their respective claims and defenses in the Litigation and were able to reach a compromise and agreement as set forth herein.

1.4 Without either Party admitting liability or fault, and in a compromise of each of their positions and rights, the Parties desire to enter into this Agreement to resolve all disputes related to their respective rights in the Litigation and arising out of the claims and allegations set forth in the Litigation upon the terms and conditions stated herein. Neither the execution nor the performance of this Agreement shall be considered an admission of fault, liability or wrongdoing whatsoever by any of the Parties.

2. TERMS OF AGREEMENT.

The Parties agree to the following terms and conditions:

2.1 The Defendant shall pay Plaintiffs the amount of Three Thousand Dollars (\$3,000) (the “Settlement Amount”) which shall be disbursed to Stovall & Associates within ten (10) days following execution of this Agreement.

2.2 The Defendant shall abandon any and all rights or claims to those portions of Sawtooth Road in Nye County, Nevada near Plaintiffs’ real properties commonly identified as 008-261-41 and 008-261-53 and shall work with the Plaintiffs to facilitate the approval of a revised parcel map and order of abandonment.

2.3 The Plaintiffs shall, within one hundred and twenty (120) days file their application for approval of a revised parcel map reflecting Defendant’s abandonment of the same.

2.4 The Defendant shall waive the following Planning Fees: (i) \$500 Road Abandonment Fee; and (ii) \$850 plus \$10 per lot Parcel Map fee associated with the filing of the Plaintiffs’ applications for approval of a revised parcel map. Upon receipt of a completed application, Defendant shall work with all diligence to obtain all necessary approvals of the revised parcel map submitted by the Plaintiffs.

2.5 Upon the receipt of the Settlement Amount, the Parties stipulate and agree to dismiss the Litigation between the Parties with prejudice each party to bear its own fees and costs, as evidenced by the execution and filing of a Stipulation and Order for Dismissal with Prejudice.

2.6 The Parties have agreed that they will not at any time, directly or indirectly, disparage any of the other Parties and that they will not discuss the facts and circumstances of the Litigation with any other third parties save and except with respect to any and all statutory obligations including, but not limited to, those obligations set forth in NRS 239B.020.

2.7 Plaintiffs shall be responsible for any and all taxes or other obligations that may become due as a result of his receipt of the Settlement Amount and agree to indemnify and hold harmless the Defendant and/or their insurer from any and all claims for reimbursement related to those damages claimed as a part of the Litigation which shall include, but not be limited to, any obligations or claims asserted by Medicare or Medicaid.

2.8 Upon fulfillment of the Terms of this Agreement, the Parties hereby forever release and discharge each other and their past and present employees, agents, attorneys, representatives, insurance carriers and other related parties from any and all claims, demands, debts, liabilities, damages, causes of action of whatever kind or nature, whether presently known or unknown arising out of or relating to the Litigation, including, without limitation, any claims that have been or could have been asserted in the Litigation.

3. INDEMNIFICATION.

In the event that any Party shall fail to comply with any term, condition, obligation, covenant, warranty, or the like contained in this Agreement such Party shall indemnify, defend, save and hold the other Party harmless from any and all damage and/or liability arising from such failure to comply with the terms and conditions of this Agreement.

4. ATTORNEYS FEES.

Each Party shall bear its own fees and costs related to the resolution of this matter, the drafting and negotiation of this Agreement, and any other matters related to the settlement contemplated herein. If any legal action or other proceeding is brought by either Party to enforce this Agreement or to recover damages or equitable relief for a breach thereof, the prevailing Party shall be entitled to recover its costs, and reasonable attorneys' fees incurred in such action or proceeding, which amount shall be determined by the Court and not a jury. Nothing herein is intended or should be construed as a waiver of the right to request a jury in any legal proceeding brought by any Party to enforce this Agreement or to recover damages or equitable relief for breach thereof.

5. ENTIRE AGREEMENT.

All prior or contemporaneous understandings or agreements between the Parties are merged into this Agreement. This Agreement, along with the exhibits referenced herein, expresses the entire agreement between the Parties on all matters, whether presently known or unknown arising out of or relating to the Litigation, including, without limitation, any claims that have been or could have been asserted in the Litigation. This Agreement may be modified only in writing, signed by all the Parties, and no term or provision may be waived except by such writing. There are no other agreements or representations, express or implied, either oral or in writing, between the Parties concerning the subject matter of this Agreement, except as specifically set forth in this Agreement. The Parties acknowledge and agree that they have been represented by counsel in connection with the preparation, negotiation, and execution of this Agreement.

6. MUTUAL RELEASES.

6.1 Plaintiffs specifically release, waive, and forever discharge the Defendant and its successors in interest, past, present and future assigns, officers, directors, subsidiaries, affiliates, attorneys, and insurers, from any and all past claims, demands, actions, liabilities and causes of actions, of

every kind and character, whether asserted or unasserted in the Litigation, whether known or unknown, suspected or unsuspected, in law or in equity, for or by reason of any matter, cause or thing whatsoever related to the Litigation.

6.2 The Defendant specifically releases, waives, and forever discharges Plaintiffs and their successors in interest, past, present and future assigns, officers, directors, subsidiaries, affiliates, attorneys, and insurers, from any and all past claims, demands, actions, liabilities and causes of actions, of every kind and character, whether asserted or unasserted in the Litigation, whether known or unknown, suspected or unsuspected, in law or in equity, for or by reason of any matter, cause or thing whatsoever related to the Incident and/or Litigation.

6.3 The Parties acknowledge that they or others might have sustained losses or may in the future sustain losses that are currently unknown and unsuspected, and such losses as were or may be sustained may give rise to additional losses and expenses in the future, which are not now anticipated. The Parties acknowledge that this release has been negotiated and agreed upon in light of these factors and, notwithstanding any other language herein, the Parties expressly waive any and all rights, actions, claims, or demands it or he may have against such other Party as more specifically set forth herein. Further, the Parties represent that their respective counsel of record have explained the effect of a release of any and all rights, actions, claims, or demands, known or unknown and, based upon that explanation and their independent judgment by the reading of this Agreement, hereby agree to such a release.

7. CONTRIBUTION AND DISCHARGE.

This Agreement is given pursuant to the terms of NRS 17.225 and 17.245 and shall be construed to be in compliance with such terms such that parties hereto shall be entitled to the protection that such statutory provisions afford them as settling parties. Plaintiffs understand and agree that the Defendant is hereby discharged from all liability for contribution and for equitable indemnity to a third-party, if any, related to the facts and circumstance described and alleged in the Litigation.

8. APPLICABLE LAW.

This Agreement was drafted through the joint efforts of the Parties through their respective counsel. Accordingly, no rule of construction against the drafting Party shall be implemented; instead, this Agreement shall be interpreted in accordance with the fair meaning of its terms. This Agreement is intended to be enforced according to its written terms exclusively under the laws of the State of Nevada. Venue for any legal action concerning this Agreement shall lie exclusively in Clark County, Nevada and the Parties consent to jurisdiction and venue in such Court.

9. BENEFIT.

This Agreement shall be binding upon and inure to the benefit of the Parties, and each of them, their successors, assigns, personal representatives, agents, employees, directors, officers and servants.

10. TIME OF ESSENCE.

Time is of the essence of this Agreement and all of its provisions.

11. SEVERABILITY.

Wherever possible, each term, covenant and condition of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid, such provision shall be ineffective but shall not invalidate the remainder of the terms, covenants or conditions of this Agreement.

12. HEADINGS AND CAPTIONS.

The section headings and captions in this Agreement are inserted for convenience and reference only, and the parties intend that they shall be disregarded in interpreting the terms, covenants, conditions and provisions of this Agreement.

13. FURTHER INSTRUCTIONS.

The Parties shall take such actions and execute, acknowledge, and deliver such other instruments and documents as may be necessary or appropriate to carry out the full intent and purpose of this Agreement.

14. MUTUAL WARRANTIES.

Each Party to this Agreement warrants and represents to the other that they have not assigned or transferred to any person not a party hereto any claim or other released matter, or any part or portion thereof, and that each Party has the authority to execute this Agreement.

15. BACKGROUND PROVISIONS.

The provisions of Section 1 above are incorporated into and made a substantive part of this agreement and are not mere recitals.

16. REPRESENTATIONS AND WARRANTIES.

It is the intention of the Parties that this Agreement is binding on their principals, successors, agents, assigns and representatives. The Parties represent and warrant that they have all necessary rights and authority to enter into this Agreement.

17. COUNTERPARTS.

This Agreement may be executed in any number of counterparts and each counterpart executed by any of the undersigned together with all other counterparts so executed shall constitute a single instrument and agreement of the undersigned. Facsimile copies hereof and facsimile signatures hereon shall have the same force and effect as originals.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date.

NYE COUNTY, a Political Subdivision of the State of Nevada

RAYMOND G. JENSEN
an individual

By: _____

Raymond G. Jensen

Printed Name: _____

GRACE ELAINE JENSEN
an individual

Its: _____

Grace Elaine Jensen