

060736

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

District /

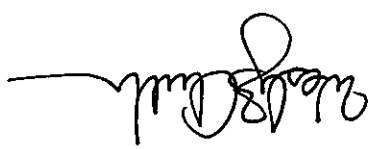
Resolution or Ordinance (Blue)
 Recommendations of Boards, Commissions & Committees (Green)
 Other Business (Pink)

TO : PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE : November 30, 2006 **BOF T :** January 4, 2007

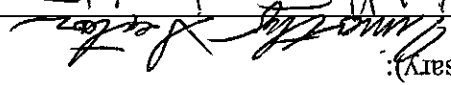
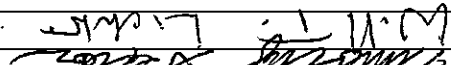
SUBJECT: Settlement Agreement with Bill's Auto

SUBMITTED BY : Wesley B. Anderson, Director of Public Works


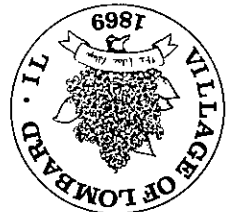
BACKGROUND/POLICY IMPLICATIONS:

The Village Attorney has completed negotiating the settlement agreement with Bill's Auto regarding reimbursement for remediation of contaminated soils in the Willow Street right-of-way, which was required to complete the Lincoln/Ash/Willow Street road reconstruction project. The settlement is within the range authorized by the Trustees.

Fiscal Impact/Funding Source:

Review (as necessary):
Finance Director 
Village Manager 
Date 12/24/06
Date 12/20/06

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda distribution.



To: William T. Lichter, Village Manager

From: Wesley B. Anderson, Director of Public Works

Date: December 18, 2006

Subject: Settlement of Lombard vs. Kovar, Illinois Pollution Control Board Recovery Case

As part of the Lincoln/Ash/Willow reconstruction project, the Village had to remediate contaminated soils in the Willow Street right-of-way. The source of contamination was from the Bill's Auto property, 330 S. Main Street, owned by Mr. Kovar. Public Works and the Village Attorney have been working for several years to obtain reimbursement. The Village had filed with the Illinois Pollution Control Board to obtain reimbursement.

Earlier this summer Mr. Kovar's attorney indicated they were willing to settle. The Director of Public Works, after consulting with the Village Attorney, conducted a telephone poll on July 24, 2006 to obtain approval of a settlement range with a minimum of \$60,000. The Village Attorney has negotiated a settlement of \$61,000, which is within the approved range of reimbursement for the remediation of the contaminated soil. Per the agreement, the first payment of \$10,000 accompanied the signed agreement from Mr. Kovar. The second payment of \$25,500 is due on Jan 28, 2007 and the final payment of \$25,500 is due on May 28, 2007. The Illinois Pollution Control Board retains jurisdiction of the case until all settlement obligations are met.

Please forward the agreement to the Board of Trustees for the January 4, 2007 meeting for ratification.

RESOLUTION
R

A RESOLUTION AUTHORIZING
A SETTLEMENT AGREEMENT



WHEREAS, the Board of Trustees of the Village of Lombard on January 4, 2007 adopted a resolution ratifying a settlement agreement between the Village of Lombard and Bill's Auto, Bill's Standard Service and William Kovar; and

WHEREAS, an agreement is required to legally bind the parties;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the settlement agreement between the Village and Bill's Auto, Bill's Standard Service and William Kovar substantially in the form and manner of Exhibit "A" attached hereto and made a part hereof is ratified.

Adopted this 4th day of January, 2007.

Ayes: _____

Nays: _____

Absent: _____

Approved this 4th day of January, 2007.

ATTEST:
William J. Mueller
Village President

Brigette O'Brien
Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney

SETTLEMENT AGREEMENT

This Settlement Agreement is made on Nov. 29, 2006, by and between the VILLAGE OF LOMBARD ("Village"), and BILL'S AUTO, BILL'S STANDARD SERVICE, and WILLIAM KOVAR (collectively, "Bill's Auto"):

WHEREAS, Bill's Auto owns the property at 330 S. Main Street, Lombard, Illinois, ("the Bill's Auto property"); and

WHEREAS, there were formerly underground storage tanks (USTs) located on the Bill's Auto property; and

WHEREAS, the USTs formerly on the Bill's Auto property contained gasoline and waste oil; and

WHEREAS, the Village owns and controls the property immediately adjacent, to the south ("the Village property"), of the Bill's Auto property; and

WHEREAS, the Village discovered what appeared to be gasoline contamination on the Village property, during the course of installing a water main on the Village property; and

WHEREAS, the Village expended additional sums of money as a result of the apparent gasoline contamination on the Village property; and

WHEREAS, disputes have arisen between the parties, in conjunction with the pending action filed by the Village, captioned at the Illinois Pollution Control Board as *Village of Lombard v. Bill's Auto Center, et al.*, PCB 04-213 ("the action"); and

WHEREAS, the parties enter into this Settlement Agreement to resolve any and all of the issues and disputes pertaining to the action, and to reach a full and final compromise, settlement, and release of all matters and disputes between the Village and Bill's Auto, pertaining to the action; and

WHEREAS, all statements set forth herein are solely for the purposes of settlement, no statements set forth herein shall be deemed an admission of any liability of any of the parties, the parties specifically denying any liability;

NOW, THEREFORE, for good and valuable consideration, which each party hereby acknowledges, the parties to this Settlement Agreement agree as follows:

COST RECOVERY PAYMENTS

1. Payment of Village costs. Bill's Auto agrees to pay the Village the total sum of \$61,000. The payment of that sum is in full release and compensation for the costs the Village contends it expended as a result of the apparent gasoline contamination on the Village property.

2. Payment schedule. The parties agree that payments due under paragraph 1 will be paid on the following schedule: (1) a payment of \$10,000 will be made upon the signing of this Agreement; (2) a payment of \$25,500 will be made within 60 days of the signing of this Agreement; and (3) the final payment of \$25,500 will be made within 180 days of the signing of this Agreement. Notwithstanding the foregoing, the sole option of Bill's Auto, any or all of the payments may be made early, and the remaining balance of the \$61,000 may be paid at any time, without any penalty to Bill's Auto.

3. Guarantee of payments. All payments, due from any party under this Settlement Agreement, shall be made by cashier's check, payable to the Village of Lombard. To guarantee the payments due under paragraph 1, Bill's Auto agrees that the Illinois Pollution Control Board may retain provisional jurisdiction over this case until the Village has been fully compensated according to the terms described herein.

When Bill's Auto has paid the full \$61,000, as provided in paragraph 1, the Village agrees to execute a Voluntary Dismissal with the Illinois Pollution Control Board, substantially in the form set forth in Exhibit B. The Village agrees to file this voluntary dismissal within ten (10) business days after the final payment is made under the terms of paragraph 1.

4. The parties specifically recognize and agree that Bill's Auto will seek reimbursement of the \$61,000 payment pursuant to the indemnification provisions of Section 57.8(c) of the Environmental Protection Act (415 ILCS 5/57.8(c)).

POTENTIAL EXPANSION OF BILL'S AUTO

5. The parties recognize that Bill's Auto may seek, in the future, any necessary permissions and approvals, including but not limited to permits, from the Village to allow expansion, remodeling, renovation, or reconstruction of the building currently located on the Bill's Auto property. The Village states that it currently has no zoning or redevelopment ordinances or requirements that would prohibit such expansion, remodeling, renovation, or reconstruction of the building on the Bill's Auto property apart from the zoning codes and other ordinances applicable

to all other similar properties. The Village further states that it currently knows of no planned ordinances or requirements that would more greatly restrict such expansion, remodeling, renovation, or reconstruction of the building on the Bill's Auto property.

6. The parties recognize that, in seeking approvals and permissions as set forth in paragraph 5, Bill's Auto must satisfy Village requirements for obtaining those permissions and approvals.

7. The Village further states that it knows of no ordinance or requirement, or planned ordinance or requirement, that would prohibit Bill's Auto from continuing its existing business at the Bill's Auto property.

RELEASES AND DISMISSAL

8. Dismissal of Lawsuit. Within ten (10) business days after the full payment of the settlement amount, the Village shall file with the Pollution Control Board a motion to voluntarily dismiss the action, with prejudice, subject to the complete repayment by Bill's Auto as described above in Paragraphs 1 and 2. Plaintiff shall provide counsel for Bill's Auto with a file-stamped copy of that motion within 2 business days of the filing of the motion.

9. Releases. As of the date on which Bill's Auto fully completes its obligations under this Agreement, the Village, its successors and assigns, forever release and all discharge Bill's Auto, and their heirs, successors, and assigns, from any and all claims, lawsuits, demands, or other causes of action: 1) arising out of or related to property damage, nuisance and/or trespass claims; 2) brought pursuant to federal, state, and local environmental laws, including but not limited to the Resource Conservation and Recovery Act, and the Illinois Environmental Protection Act; or 3) in any way arising out of or related to apparent gasoline contamination formerly or currently on the Village property; to the extent those claims, lawsuits, demands, or other causes of action relate to the claims set forth in the lawsuit; provided, however, that nothing in this Paragraph 9 shall be deemed to release Bill's Auto from their obligations under this Settlement Agreement.

MISCELLANEOUS PROVISIONS

10. Choice of Law. This Settlement Agreement shall be governed by, construed, and enforced in accordance with the substantive and procedural laws of the State of Illinois, applicable to contracts made and performed entirely in the State of Illinois, without regard to any principles of conflicts of laws.

11. Successors and Assigns. This Settlement Agreement shall be binding upon, and inure to the benefit of the parties hereto, and their respective successors and assigns. Except as expressly provided herein, neither this Settlement Agreement nor any rights hereunder may be assigned or transferred, and no duties may be delegated, by any party hereto without the prior written consent of all other parties hereto. Notwithstanding the foregoing, the parties expressly agree that this Settlement Agreement and the rights hereunder may be assigned or transferred without the prior written consent of any party to such individuals or entities who may, from time to time, have any ownership interest or rights in the Bill's Auto property and/or the Village's property, and who, prior to the effective date of any such assignment or transfer, specifically agree in writing to be bound by the terms of this Settlement Agreement applicable to that person's or entity's assignor.

12. Change to Settlement Agreement. This Settlement Agreement may not be altered, amended or modified except by a writing executed by the party to be bound by such alteration, amendment or modification.

13. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

14. Notices. All notices or other communications required or permitted under this Settlement Agreement shall be made in writing and shall be deemed given: a) upon delivery, if sent by (A) personal delivery or (B) courier (e.g., overnight delivery); b) four (4) business days after being sent by certified mail, return receipt requested, postage and registration fees prepaid and correctly addressed to a party as set forth below; or c) upon sending, if sent by facsimile to a party at the number listed below for such party (with a facsimile machine generated confirmation sheet retained by the sender):

ff to the Village:

Village Manager
 Village of Lombard
 255 East Wilson Avenue
 Lombard, Illinois 60148

cc:

Thomas P. Bayer
 Jacob Karaca
 Klein, Thorpe and Jenkins, Ltd.
 20 N. Wacker Drive, Suite 1660
 Chicago, IL 60601
 Facsimile: 312/984-6444

19. Reliance of Parties. Each of the parties to this Settlement Agreement acknowledges that they have consulted with counsel in connection with their claims and that they have had this Settlement Agreement reviewed by such of their attorneys and advisors as they deem necessary. The parties hereto further acknowledge that they have: a) made an independent investigation of such facts as they deem necessary or appropriate in order to make the decision to enter into this Settlement Agreement; b) made an independent determination to enter into this Settlement Agreement; c) not relied upon any statement of or

18. Effective Date. This Settlement Agreement shall become effective upon the date of the last signature of this Agreement. Moreover, this Agreement may be executed in counterparts.

17. Entire agreement. Except as stated, this Settlement Agreement represents the entire agreement between the parties hereto; supersedes any prior written or oral statements or agreements with respect to the matters covered hereby; and the terms hereof are contractual and not merely recitals.

16. Severability. Whenever possible, each provision of this Settlement Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If, however, any provision of this Settlement Agreement shall be prohibited by or found to be invalid under applicable law, such provision shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or the remaining provisions of this Settlement Agreement, and such invalidity shall not invalidate or make this Settlement Agreement ineffective as to any provision not involved in such invalidity or ineffectiveness.

15. Additional Actions. Each of the parties to this Settlement Agreement shall, when reasonably requested, promptly take such further steps as may be reasonably necessary in order to carry out the terms of this Settlement Agreement.

Any address or facsimile number listed above may be changed by a party by notifying all other parties of such change in the manner provided above.

If to Bill's Auto:

William Kovar
330 S. Main
Lombard, IL

cc:

Elizabeth S. Harvey
Swanson, Martin & Bell, LLP
330 N. Wabash Avenue, Suite 3300
Chicago, IL 60611
Facsimile: 312/321-0990

information received from any other party or from counsel for any other party that are not expressly reflected herein in making such independent investigation and determination; and d) there have been no written or oral representations made by any party or counsel for any party to induce them to execute this Settlement Agreement that are not expressly reflected herein.

20. Construction. The headings in this Settlement Agreement are solely for convenience of reference and shall be given no effect in the construction or interpretation of this Settlement Agreement. The gender and number used in this Settlement Agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural. The use of any conjunctive word or phrase in this Settlement Agreement such as "and" shall include the disjunctive word or phrase in this Settlement Agreement such as "or" and the use of any disjunctive word or phrase in this Settlement Agreement such as "and" shall include the conjunctive word or phrase such as "and."

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK.]

VILLAGE OF LOMBARD an Illinois
Municipal Corporation.

By: _____

Name: William J. Mueller
Its: Village President

ATTEST:

By: _____

Its: _____

BILL'S AUTO, an Illinois corporation

By: William Kovar

Its: President

BILL'S STANDARD SERVICE, an

Illinois corporation

By: William Kovar

Its: President

WILLIAM KOVAR

William Kovar

WILLIAM KOVAR

Its:

By:

BILL'S STANDARD SERVICE, an Illinois corporation

Its:

By:

BILL'S AUTO, an Illinois corporation

Name: William T. Lichter
Its: Village Manager

By: William T. Lichter
VILLAGE OF LOMBARD an Illinois Municipal Corporation.

Its:

By:

ATTEST: