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**JOLIET, ILLINOIS 60432-4158**

March 14, 2016

To the Mayor, Members of the City Council, City Manager, and residents of the City of Joliet:

At the request of the Mayor and City Manager, the Inspector General has completed a review of the City's litigation involving, and eventual purchase of Evergreen Terrace. This request was made out of concerns regarding potential cost overruns, as well as a desire for a public accounting of the process.

This review is focused on the City's management of the process; from initial attempts to negotiate for a purchase, through litigation, and the eventual court decision and acquisition of Evergreen Terrace.

The attached report summarizes relevant details of this process.

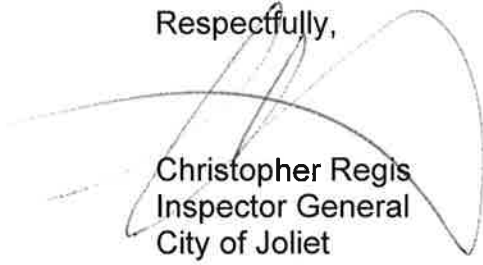
It should be noted that the process to acquire Evergreen Terrace took place over more than 15 years; it has seen 3 City Managers, 3 Corporation Counsels, 3 Mayors, and a notable turnover in the City Council and City administration. The vast majority of City officials who are tasked with handling this acquisition today inherited the situation from previous administrations. This report has been made with the gift of hindsight.

This review has revealed that the process to acquire Evergreen Terrace was fundamentally flawed from the beginning. The City entered into this process with no plan in place to guide its actions and decision making. The City created and fueled an adversarial relationship with the federal government which resulted in a complex and costly litigation. City employees failed to monitor and accurately report the costs of this process to the City Council.

It should be noted that the current City administration is actively engaged in resolving this campaign in a manner which best serves the residents of, not only Evergreen Terrace, but the City of Joliet as a whole. City staff has been incredibly helpful in providing the documents and historical perspective necessary to make this report possible.

It is my hope that this report serves as a cautionary tale which can aid City administrators in their future planning, decision making, and government of the City of Joliet.

Respectfully,



Christopher Regis  
Inspector General  
City of Joliet

## I. Executive Summary

Towards the end of the 1990's, the City Council, along with the City Manager, became vocal about redeveloping the 300 blocks of Bluff and Broadway Streets, Evergreen Terrace. By this time, the decades old high density housing complex had become run down, mismanaged, and a magnet for crime. In the years that followed, city officials lobbied local legislators, as well as the Department of Housing and Urban Development to stop subsidizing the complex. This course of action led to a series of lawsuits, some of which are still pending in 2016.

At the request of the Mayor and the City Manager, the Inspector General reviewed the City's campaign to redevelop Evergreen Terrace.

In order to respond to this request in a timely fashion, this review was limited in scope to the evidence which was available in this timeframe. A more comprehensive audit would require months of document collection and data analysis, as well as potential assistance from outside contractors. The goals of this review were as follows:

1. To examine the actions of the city government and the steps which were taken to acquire Evergreen Terrace
2. To review the costs of this process
3. To provide a public accounting of the actions of the City government
4. To identify shortcomings and make recommendations for more effective operations in the future

This review has revealed that the actions of the city government, although well intentioned, were woefully lacking in focus and vision from the start. Even as litigation began in order to condemn and eventually take control of Evergreen Terrace, a comprehensive plan to take over and redevelop the facility was never in place.

This lack of planning led to confusion and conflicting messages to the public, as well as ineffective communication between the City Council and the city administration. As litigation continued and costs escalated, the City Council was not adequately informed of developments in the situation.

This report includes background information regarding the events that led to the eventual litigation regarding Evergreen Terrace, a roadmap through the litigation, a breakdown of the costs associated with the litigation, and suggestions for future operations of city government.

## II. Background

In 1961, the City of Joliet proceeded with an urban renewal plan which called for an affordable housing development on land which was formerly occupied by St. Joseph's Hospital. The project was completed in 1968 and consisted of two parcels: River West, which was the four high rise structures located in the 300 block of North Broadway Street; and Bluff Plaza, which was the three buildings located in the 300 block of Bluff Street, both were separately owned. The owners of both sites defaulted on their FHA loans, forcing HUD to take ownership.<sup>1</sup>

In 1979, Burnham Development Company redeveloped and renamed the site Evergreen Terrace. The former River West complex is referred to as Evergreen Terrace I (ET 1), and Bluff Plaza, Evergreen Terrace II (ET 2). Burnham Management subsequently took control of both properties.<sup>2</sup> The combined facility consists of 356 residential units.

The decades that followed saw continued deterioration at the complex, which was accompanied with an increase of crime. During the 1990's, several inspections were conducted which resulted in a litany of building code violations.<sup>3</sup> By 1999, then District 2 City Councilman Tim Brophy, suggested that the riverfront area be redeveloped, but cautioned that this was not possible while Evergreen Terrace still existed.<sup>4</sup> "I believe Evergreen Terrace represents a cancer on the civic body of Joliet."<sup>5</sup> Thus began an initiative to demolish the complex.<sup>6</sup>

By 2002, Burnham Management was an estimated \$13 million in debt on the project, and sought to restructure its mortgage with HUD.<sup>7</sup> As of that date, HUD had invested over \$53 million in Evergreen Terrace. The City of Joliet, citing the obsolete design of the buildings, the disproportionate drain on city resources, unsavory sanitary conditions, neighborhood decline, and community concerns,

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<sup>1</sup> City of Joliet, *Alternative Strategies for the Revitalization of Evergreen Terrace*, EJP Consulting Group, LLC, August 2011, page 2.

<sup>2</sup> *Ibid.*

<sup>3</sup> City of Joliet, *Summary of First Administrative Hearing*, 1994.

<sup>4</sup> City of Joliet, *Memorandum from Tim Brophy*, August 6, 1999.

<sup>5</sup> City of Joliet, *Memorandum from Tim Brophy*, October 11, 1999.

<sup>6</sup> Charles Pelkie, "Councilman bolsters effort to raze Joliet apartments," *The Herald News*, November 3, 1999.

<sup>7</sup> Charles Pelkie, "Joliet assails Evergreen Terrace plan," *The Herald News*, April 25, 2003.

requested that HUD decline to refinance Evergreen Terrace, potentially pushing the project into foreclosure. In a 2002 letter, the City of Joliet indicated that Evergreen Terrace was a bad financial investment for its owners and for HUD.<sup>8</sup>

During this time, city officials were vocal about their desire to demolish the project, frequently engaging HUD, as well as local legislators Jerry Weller, Peter Fitzgerald, and Dick Durbin in their efforts to block refinancing.<sup>9 10 11 12 13 14</sup> A Herald News article stated that, "The only way to improve property values is to do away with Evergreen Terrace and the black eye it gives the city."<sup>15</sup>

Part of the City's negotiations with HUD was a relocation plan which sought to move residents into affordable housing throughout the city and elsewhere. This plan was deemed insufficient by HUD.<sup>16</sup> During this time, the City hired the first of many consulting firms to work on the project; Gilmore Kean, LLC.<sup>17 18</sup>

It is worth noting that, at this time, the city had some measure of success in its negotiations with the government. There were early assurances from HUD Secretary Mel Martinez that Evergreen Terrace would not receive refinancing from HUD.

Throughout 2005, both sides attempted to negotiate a sale of the Evergreen Terrace to the City of Joliet; however, the parties never came close to a resolution. One sticking point was a \$273,944.96 debt owed to the city for special assignment police security at the project.<sup>19</sup> Another was the outstanding mortgage balance which was owed by Burnham Management.

On August 26, 2005, Burnham Management made an offer to sell Evergreen Terrace to the city. A summary of the terms follows:

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<sup>8</sup> City of Joliet, letter from Arthur Schultz to Ed Hinsberger, HUD, January 15, 2002.

<sup>9</sup> Charles Pelkie, "Evergreen contradiction is baffling," *The Herald News*, May 3, 2003.

<sup>10</sup> Charles Pelkie, "Weller to HUD: Hold off," *The Herald News*, June 29, 2003.

<sup>11</sup> Charles Pelkie, "Senator continues housing fight," *The Herald News*, July 2, 2004.

<sup>12</sup> Jill Jedlowski, "Apartments' future clouded," *The Herald News*, July 15, 2003.

<sup>13</sup> Charles Pelkie, "In Joliet, Sen. Durbin tours Evergreen Terrace," *The Herald News*, December 18, 2003.

<sup>14</sup> Chicago Tribune, "Joliet's housing dilemma," [http://www.chicagotribune.com/news/opinion/chi-0311050135nov05\\_1,4590793.story](http://www.chicagotribune.com/news/opinion/chi-0311050135nov05_1,4590793.story), November 5, 2003.

<sup>15</sup> Jill Jedlowski, "Residents near complex uneasy," *The Herald News*, August 19, 2003.

<sup>16</sup> City of Joliet, letter to Arthur Schultz from Charles H. Williams, HUD, October 30, 2003.

<sup>17</sup> City of Joliet, memorandum from John Mezera to City Council, October 2, 2003.

<sup>18</sup> In 2003, the City of Joliet paid Gilmore Kean, LLC \$10,587.29.

<sup>19</sup> City of Joliet, letter from Robert Fraser to Burnham Management, February 8, 2005.

1. The purchase price shall be \$12 million above the mortgage balance (which at this point was \$12,030,000)<sup>20</sup>
2. The property will remain affordable housing for at least 30 years after the purchase, or if it is not, the city must relocate the tenants to replacement affordable housing;
3. The deadline to accept the offer is December 1, 2005.<sup>21</sup>

This offer was not accepted.

On September 21, 2005, the city made a purchase offer to Burnham Management of \$10.7 million dollars, mortgage balance to be paid out of the purchase price.<sup>22</sup> This offer was not accepted.

Throughout the months preceding these offers, there was growing concern within the city government that HUD would agree to refinance the outstanding debt, thereby drastically weakening the City's bargaining position. Also, there was a growing awareness that relocating the tenants through HUD was not going to be a simple task. This concern was bolstered by the departure of HUD Secretary Martinez, as well as assurances that he had made regarding refinancing.

During a June 6, 2005 closed session of the city council, then City Manager John Mezera warned the city council, "If you can get into an ownership position with Evergreen Terrace, you're going to have control; you're not going to have complete control because the feds are still going to be involved in the project for quite some time. But you can begin to negotiate with the feds to phase it out, maybe it takes 10 years to phase it out, I don't know, maybe you can do it in 5 years . . . if they reject it [the offer], we don't have any other rabbits to pull out of the hat, we're basically done . . . we have no chance of getting rid of Evergreen Terrace if we let this thing [refinancing] go through."<sup>23</sup>

During an August 5, 2005 closed session, John Mezera voiced further concern, "If you do have to keep it like it is for the next 30 years, don't become the owner,

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<sup>20</sup> City of Joliet, memorandum from James Shapard to John Mezera, August 29, 2005.

<sup>21</sup> City of Joliet, Letter of terms for purchase from Burnham Management, August 26, 2005.

<sup>22</sup> City of Joliet, Letter of offer to purchase to Burnham Management, September 21, 2005.

<sup>23</sup> City of Joliet, closed session recordings, June 6, 2005.

because it would be very very difficult to run.”<sup>24</sup> Later, at the same meeting, a purchase price was discussed, Mezera indicated that he guessed it would be between 7 and 15 million, Councilman Uremovic responded, “I think it’s more in the range of \$35 million.”<sup>25</sup>

At that same meeting, an alternate strategy was discussed by John Mezera, “condemnation is your way to take control, if you take no action, I think the Herald News is going to get all over your case for not doing anything . . . the cost of doing nothing is greater than the cost of doing something.”<sup>26</sup>

Concerns deepened when, on September 12, 2005, the city received correspondence from attorneys representing Evergreen Terrace which indicated that HUD had approved refinancing.<sup>27</sup>

On August 17, 2005, the city council passed a resolution authorizing the initiation of eminent domain and nuisance abatement proceedings.<sup>28</sup> This resolution sent the City of Joliet down a long and costly road of litigation, from which there was seemingly no way out.

The following December, it was published that John Mezera estimated that the cost of litigation and the purchase of Evergreen Terrace could be \$15 million.<sup>29</sup> That estimate was optimistic.

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<sup>24</sup> City of Joliet, closed session recordings, August 15, 2005.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> City of Joliet, letter from Ungaretti and Harris, September 12, 2005.

<sup>28</sup> City of Joliet, Council memo 1145-05, September 30, 2005; Ordinance No. 15298, Council Resolution 5655

<sup>29</sup> Editorial, *The Herald News*, December 4, 2005.



### III. Litigation

Litigation regarding Evergreen Terrace began on March 24, 2005, when New West (Burnham Management) filed a lawsuit in federal court seeking to stop the City of Joliet from any further attempts to delay HUD refinancing. It was filed under case number 05C1743 and it alleged violations of the Fair Housing Act, the Civil Rights Act, and tortious interference with contractual agreements between Burnham Management and HUD.<sup>30</sup>

The City first took action on April 13, 2005 by filing suit in the Circuit Court of Will County, seeking recovery of \$299,595.79 which was owed for special assignment police officers to patrol Evergreen Terrace.<sup>31</sup>

On September 28, 2005, the city filed complaints in the Will County Circuit Court under case numbers 05OV4533, 05OV5695, and 05CH1800. These actions sought enforcement of the numerous code violations which existed at the apartments, and are still pending.<sup>32</sup>

Based on the Resolution of August 17, 2005, the city sought to proceed with an eminent domain suit, seeking to condemn and take ownership of the buildings at Evergreen Terrace.

At the City Council closed session on September 6, 2005, the eminent domain suit was discussed, along with the hiring of the law firm Figliulo & Silverman to represent the city. At this meeting, Corporation Counsel Jeff Plyman told the city council that their rate was \$250 per hour, and \$55 per hour for paralegal work.<sup>33</sup> This was confirmed by a letter from the law firm indicating the following, "The fees for our services will be based upon the time expended at the following hourly rates: partners - \$215.00 to \$250.00; associates - \$155.00 to \$185.00; and paralegals - \$55.00."<sup>34</sup> Based upon these representations, the City Council agreed to retain this firm.

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<sup>30</sup> Complaint 05C1743, United States District Court, Northern District of Illinois, March 24, 2005.

<sup>31</sup> Complaint 05L246, Circuit Court of Will County, April 13, 2005.

<sup>32</sup> Complaints 05OV4533, 5695, and 05CH1800, Will County Circuit Court, September 28, 2005.

<sup>33</sup> City of Joliet, closed session recordings, September 6, 2005.

<sup>34</sup> City of Joliet, letter regarding engagement from Figliulo and Silverman, September 2, 2005.

The eminent domain lawsuit was filed in Will County Circuit Court on October 7, 2005, under case number 05ED39.<sup>35</sup> Shortly thereafter, the city became aware of HUD's agreement to refinance the debt of Burnham Management.

In November 2005, the federal government sought to remove the eminent domain case to the federal court. This request was ultimately granted, and this case proceeded under federal case number 05C6746.

The documents to refinance the outstanding mortgage on Evergreen Terrace were finalized on November 3, 2006 under some of the following terms:

1. The loan matured on December 1, 2036<sup>36</sup>;
2. Under the following use requirement, "Throughout the Term, the project shall be used solely as rental housing with no reduction in the number of residential units unless approved in writing by HUD"<sup>37</sup>
3. Under the following Covenant, "The owner hereby declares its express intent that the covenants, reservations, and restrictions set forth herein shall be deemed covenants running with the land . . . and shall pass to and be binding upon the successors in title to the Property throughout the Term."<sup>38</sup>

This development was discussed in the November 20, 2006 City Council closed session. The question was posed, "What's the likelihood of us prevailing?" Jeff Plyman replied, "Close to zero."<sup>39</sup> Further discussion revealed an awareness that, since HUD now held the mortgage (and placed a restriction on the land use), and the City's interests conflicted with those of HUD, it was best to seek a settlement. Councilman Giarrante remarked, "We're not going to get this property."<sup>40</sup>

As settlement negotiations continued, so did the litigation. It is worth noting at this point, because the City of Joliet was now suing HUD, the U.S. Attorney was now involved in the litigation, as an opponent to the city.

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<sup>35</sup> Complaint 05ED39, Circuit Court of Will County, October 7, 2005.

<sup>36</sup> The loan for ET 1 was for \$8,546,100.09 and matured on 12/1/30; the loan for ET 2 was for \$3,019,649.08 and matured on 12/1/36

<sup>37</sup> The use requirement applied to both ET 1 and 2

<sup>38</sup> The restrictive covenant applies to both ET 1 and 2

<sup>39</sup> City of Joliet, closed session recordings, November 20, 2006.

<sup>40</sup> *Ibid.*

Over the next few years, early victories on ancillary issues appear to have given the City a boost of confidence. The City survived a motion to dismiss the case, as well as an appeal of that motion. As legal bills mounted, the City's relationship with HUD and the federal government grew more adversarial.

In December 2007, six residents of Evergreen Terrace filed suit against the City of Joliet in federal court under case number 07C7214. This suit sought to stop the demolition of Evergreen Terrace, as the City's actions were discriminatory under the Fair Housing Act.<sup>41</sup>

By 2010, the relationship with HUD had deteriorated to the point that federal housing subsidies were in jeopardy of being withheld due to what the government saw as discriminatory housing practices by the City, in particular, the condemnation suit.<sup>42 43 44 45</sup> At this point, it became apparent that HUD was communicating its concerns to local legislators. It was also apparent that any long term plan for Evergreen Terrace was unclear, if it existed at all.

At a City Council closed session, Jeff Plyman advised, "I think we need to do some planning homework . . . as we communicate with them, being Halverson and Durbin, we need to tell them what our position is long term, so we need to figure that out . . . I don't know if we've ever really defined what we want to see (with Evergreen Terrace)." He further stated, "If the court told us tomorrow it's yours, just write a check and it's yours, I don't know if we have a plan ready to go."<sup>46</sup> One council member then remarked, "HUD's not afraid of us one bit."<sup>47</sup> Councilwoman Quillman asked, "Is there somebody out there who can tell us point blank, 'Don't pursue this, you're wasting your money', or, 'Yes you've got a good chance.'" Plyman responded, "I think there might be."<sup>48</sup> Quillman responded, "When do we cut our losses?" The response from the city attorney was unclear, as

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<sup>41</sup> Complaint 07C7214, filed in the United States District Court, Northern District of Illinois, December 21, 2007.

<sup>42</sup> City of Joliet, letter from HUD to Mayor Arthur Schultz, December 23, 2009.

<sup>43</sup> City of Joliet, letter from HUD to Mayor Arthur Schultz, January 15, 2010.

<sup>44</sup> City of Joliet, closed session recordings, January 27, 2010.

<sup>45</sup> City of Joliet, letter from HUD to Mayor Arthur Schultz, January 29, 2010.

<sup>46</sup> City of Joliet, closed session recordings, February 1, 2010.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

he warned that the city would be liable for opposing attorney's fees if we withdraw the lawsuit.<sup>49</sup>

By the next city council meeting, it was apparent that HUD was in control of the situation. Plyman advised, "The way to next approach HUD [is] to develop a plan, they're basically calling our bluff and saying, 'ok Joliet, if you're going to proceed with the condemnation, you have to give us the following assurances' . . . what they are insisting we do at this point is take over the property and operate it as is for the balance of Gidwicz's contract, which runs until 2026<sup>50</sup>, and if we don't want to do that, then do a one for one replacement through construction or purchase somewhere in the Joliet community . . . We can't build 356 units, and we're not going to operate Evergreen Terrace the way it is."<sup>51</sup> Plyman went on to warn that the city council still needed to engage HUD because federal housing funds for the rest of the city were at risk. He continued, "The first thing we need to do is develop a plan with the appropriate input from qualified professionals and engage HUD in a negotiation."<sup>52</sup>

"I think we always knew that we were not going to be able to just knock the buildings down there and issue vouchers, there was going to need to be a Liberty Meadows type of project to assist the tenants."<sup>53</sup> <sup>54</sup> Plyman continued, "I don't think that HUD trusts us."

The council continued with discussion of withdrawing the suit, Plyman counseled, "At this point it's not worth it, you've swam more than halfway across the lake, why would you turn around now? We're going to find out within a year if we can own it, that doesn't mean we have to buy it for the condemnation amount, if it turns out that its 30 million dollars, and we can't get a funding source, then you don't proceed."<sup>55</sup> The talk of withdrawal continued.

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<sup>49</sup> Ibid.

<sup>50</sup> It was actually 2036.

<sup>51</sup> City of Joliet, closed session recordings, February 16, 2010.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Liberty Meadows refers to a mixed income development at Briggs and Rosalind in Joliet that replaced the McKay Street HAJ property

<sup>55</sup> Ibid.

One councilman asked, “And we’ve spent how much on legal fees so far?” Plyman responded, “About 500.”<sup>56 57</sup> The city council authorized up to \$50,000 to hire a consultant and an attorney to deal with HUD.<sup>58 59</sup> Councilwoman Quillman asked, “If we cut our losses now . . . where does that leave us and how does that make us look?” Plyman responded that the City would have to pay the attorney’s fees for Gidwicz and the tenant’s group, and “that would be a couple mil easy.”<sup>60</sup> Plyman furthered by expressing optimism about the prospects of litigation.

In January 2010, a group of tenants from Evergreen Terrace filed suit in federal court under the False Claims Act. This suit alleged that, since 2003, the City had been making false claims with regard to its applications for federal housing funds. The suit sought to recoup \$9,000,000 in past federal grants to the City.<sup>61</sup>

The city retained Klein Hornig, LLP to represent their interests in dealing with HUD.<sup>62</sup> They also retained EJP Consulting Group, LLC to develop a plan for the property.<sup>63 64</sup> Also, in furtherance of negotiations with HUD, the city agreed to stay all legal proceedings while they negotiated the receipt of federal housing funds.<sup>65</sup>

Discussions regarding a plan continued at the next city council closed session. Plyman remarked, “At some point, we should explain to our own constituents what we’re going to do with Evergreen Terrace.”<sup>66</sup> This had apparently not been done as of yet.

Discussions continued regarding the potential loss of federal money. Councilman Shetina asked, “What if we just drop this goddamn thing, will they come back and give us our money?” Plyman responded, “If we drop Evergreen Terrace, eventually we will get straight with HUD . . . we would owe the attorney’s fees for

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<sup>56</sup> Ibid.

<sup>57</sup> The cost of litigation at this point was \$537,363.72.

<sup>58</sup> Ibid.

<sup>59</sup> The actual cost of the consulting firm and legal fees was approximately \$373,152.90.

<sup>60</sup> Ibid.

<sup>61</sup> Complaint 10CV373, filed in the United States District Court, Northern District of Illinois, January 15, 2010.

<sup>62</sup> City of Joliet, Engagement letter from Klein Hornig, LLP to Jeff Plyman, February 16, 2010.

<sup>63</sup> City of Joliet, Proposal letter from EJP Consulting Group, LLC, February 15, 2010.

<sup>64</sup> City of Joliet, Contract between EJP Consulting Group, LLC and the City of Joliet, July 8, 2010.

<sup>65</sup> City of Joliet, letter to Mercedes Marquez from Mayor Arthur Schultz, June 16, 2010.

<sup>66</sup> City of Joliet, closed session recordings, March 2, 2010.

HUD, for Evergreen Terrace, and for the small tenants group.” He did not know the amount. Councilwoman Quillman again asked, “When do we say, ‘Enough is enough,’ and pull the plug?”<sup>67</sup> Nobody had an answer.

Negotiations with HUD continued for the following year. In August 2011, the federal government filed a civil action against the City of Joliet alleging violations of the Fair Housing Act. The complaint stated in part that, “the City continues to try to condemn Evergreen Terrace while neglecting to propose any realistic plan to provide sufficient adequate and affordable housing . . .”<sup>68</sup> The suit sought to stop the condemnation.

It is also worth noting that paragraph 24 of the complaint reads as follows, “Since at least 1978, City officials have expressed opposition and hostility to Evergreen Terrace. For example, according to a November 11, 1999 newspaper article, Joliet Councilman Tim Brophy characterized Evergreen Terrace as a ‘cancer on the civic body of Joliet’ and proposed that Joliet ‘follow Chicago’s lead and tear down’ Evergreen Terrace.”<sup>69</sup>

Paragraph 28 of the complaint continues, “. . . in conversations with HUD officials, Joliet Councilman Brophy referred to Evergreen Terrace residents as ‘rats’ and ‘rats from Robert Taylor Homes.’”<sup>70</sup>

At a closed session of the city council that same month, the City’s lack of any clear plan became more evident. Jeff Plyman stated, “One of the things HUD has been accusing us of though is, if we were to acquire the property, we’re being accused that we would just demolish the property and voucher out the residents, HUD would give them a voucher and just move them somewhere, and HUD is saying, ‘If that’s Joliet’s intention, we will take away federal funding.’”<sup>71</sup> Withdrawal was again discussed, and again Plyman warned of being liable for an unknown amount of attorney’s fees. He further reassured, “HUD will pay for the changes at Evergreen Terrace.”<sup>72</sup>

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<sup>67</sup> Ibid.

<sup>68</sup> Complaint 11CV5305, United States District Court, Northern District of Illinois, August 4, 2011.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> City of Joliet, closed session recordings, August 2, 2011.

<sup>72</sup> Ibid.

In meetings that followed, discussions regarding settlement continued. Councilman O'Dekirk stated, "I think we need to consider, for the taxpayer's sake, a way out of this . . . I think we need to be realistic about what we're up against." Once again, Plyman asked the city council to, "Hang in there."<sup>73</sup>

In April 2012, the United States Department of Justice began an investigation into the city, potentially seeking to recoup over \$9 million in federal funds that had been given to the city from 2003 to 2009, as well as damages for making false certifications regarding compliance with the requirements of the Civil Rights Act and the Fair Housing Act. This investigation was in response to the lawsuit filed by a tenants' group seeking recovery of those funds.<sup>74</sup>

Over the next year, litigation continued as depositions were conducted in preparation for a potential trial.<sup>75</sup> Absent from any discussions between corporation counsel and the city council was the topic of escalating legal fees. In early 2013, another discussion was held regarding potential withdrawal from the lawsuit. "I sense that we have so much invested in Evergreen Terrace, we have no choice, we cannot walk away from it; some of you have talked to me about the possibility of a walk away, we can't do that because get ready to write a seven or eight million dollar check, if that, it's probably higher now" said then City Manager Tom Thanas.<sup>76</sup>

Discussions continued regarding the ultimate fate of the complex. At this time, the plan seemed to be that, after acquisition, the city would sell Evergreen Terrace to a developer who would rehab the complex, not knock it down.<sup>77</sup>

In May of 2013, for the first time, there was talk of a settlement in the case. Once again, success in pretrial motions seems to have given the city a greater optimism regarding the potential outcome. Tom Thanas acknowledged that a settlement may be a better option than continued litigation. Despite this optimism, he still acknowledged the fact that the city had gone too far to back out of costly litigation, "Is it worth the fight? It's too late to even talk about that because for us just to

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<sup>73</sup> City of Joliet, closed session recordings, October 3, 2011.

<sup>74</sup> City of Joliet, correspondence and complaint 10CV373, April 17, 2012.

<sup>75</sup> A bench trial on the condemnation suit began on September 28, 2012.

<sup>76</sup> City of Joliet, closed session recordings, February 4, 2013.

<sup>77</sup> Ibid.

throw in the towel and walk away we will pay millions of dollars of attorney's fees for closing out a case that we started . . . we have to be in it to win it.”<sup>78</sup>

At this point, Evergreen Terrace ownership offered to sell the property to the City for \$15 million, and agree to a gradual phase out with density reduction. This offer was complicated by HUD's involvement, as well as a growing realization that there were no good options regarding an outcome in the case. Several council members voiced concerns that the final expense would be so high as to force cuts in other city spending.<sup>79</sup>

The offer that the City Council seemed to be waiting for came on June 3, 2013. Attorneys representing Evergreen Terrace offered to dismiss their pending litigation if the city would do the same. In exchange for the dismissals, both sides would pay their own attorney's fees and walk away.<sup>80 81</sup> This offer was not communicated to the city council until the following September. At a meeting that month, Thanas and Plyman, in response to the frustrations of the city council over not being informed of the offer, offered the rationale that they did not deem this a realistic offer due to ongoing complications with HUD.<sup>82</sup> Also at this meeting, several City Council members expressed concern regarding the source of funds to pay for this project, whether the City dropped out or took possession of Evergreen Terrace. Thanas replied, “I think we're paying either way.”<sup>83</sup>

Frustrations boiled over at a public City Council meeting the following February. Several members of the city council confronted Jeff Plyman over the apparent lack of transparency in the Evergreen Terrace case; in particular, not being informed of the aforementioned offer, and a lack of information over how much money had been spent to date. One councilman indicated that Plyman had told him that the City had spent around \$2 million; the actual number was \$4,754,207.98.<sup>84</sup>

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<sup>78</sup> City of Joliet, closed session recordings, May 7, 2013.

<sup>79</sup> Ibid.

<sup>80</sup> City of Joliet, Letter regarding settlement offer from Ungaretti and Harris, June 3, 2013.

<sup>81</sup> At this point, litigation costs were 2,885,971.47.

<sup>82</sup> City of Joliet, closed session recordings, September 17, 2013.

<sup>83</sup> Ibid.

<sup>84</sup> City of Joliet, city council meeting, February 18, 2014.



The following October, the City reached a settlement agreement with HUD. The settlement included, in part, the following conditions:

1. Money used to purchase Evergreen Terrace would first be applied to the HUD mortgage (which was \$12,089,164.71)
2. Following satisfaction of the mortgage, HUD shall release any encumbrances (restrictive covenant)
3. The City agrees to maintain at least 115 units (of 356) and assist in the relocation of displaced tenants
4. If the City chooses to relocate the 115 units, those individuals must be given replacement housing within the city, subject to HUD approval
5. The City shall construct and operate a community center on the property
6. The site shall be used for affordable housing and/or other public purposes
7. The City shall retain a management company to operate the complex
8. The new use agreement with HUD shall be in effect for 20 years

Also as part of the settlement, HUD agreed to dismiss the civil rights action (11C6746), and they would be dismissed as a party to the condemnation case (05C6746). The City's federal housing funds would be reinstated<sup>85</sup>, and HUD would not seek repayment of the \$9 million in past grant money.

The agreement also provided a roadmap by which the City would take possession of the facility, if the condemnation suit was successful. According to the agreement, once the City pays compensation for Evergreen Terrace, as decided by the court, they will have acquired the property.<sup>86</sup>

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<sup>85</sup> At that point, HUD had withheld \$6 million from the City

<sup>86</sup> City of Joliet, Settlement Agreement Between the United States of America, the United States Department of Housing and Urban Development and the City of Joliet

In January of 2014, the City settled the two lawsuits with the tenant groups. They withdrew their pending actions in exchange for an agreement for right of first refusal as to any redeveloped units.<sup>87</sup>

The condemnation case concluded in October of 2014. The judge decided that the condemnation could proceed. The next phase of the litigation was a valuation of the property, which was to be decided by a jury.

At a November City Council closed session, Councilwoman Gavin pointed out the fact that there was still no strategic plan in place for the acquisition and future of Evergreen Terrace. Councilman O'Dekirk agreed, "Before we spend dollar one, we should know what the endgame is and what it's going to take to get there." By this time, the city had retained Holsten Real Estate to formulate a transition plan, and EJP had prepared several options.<sup>88</sup> Discussions followed, but no consensus was reached.<sup>89</sup>

In early 2015, Councilman Hug succinctly stated, "We don't have a plan."<sup>90</sup>

The valuation trial began in January 2015. The jury decided that a fair price for Evergreen Terrace was \$15,077,000. Final judgment was entered on March 17, 2015.<sup>91</sup> The following May, an order was entered giving the City 120 days to pay for Evergreen Terrace.<sup>92</sup>

On August 18, 2015, the City Council passed a resolution authorizing payment for Evergreen Terrace.<sup>93</sup>

Burnham Management appealed the decision in the condemnation trial, as well as the jury's valuation. Arguments regarding the appeal were heard in the 7<sup>th</sup> Circuit Court of Appeals in January 2016. A decision is expected in the spring of 2016.

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<sup>87</sup> Settlement agreement, January 8, 2014.

<sup>88</sup> City of Joliet, Professional Services Agreement with Holsten Real Estate Development Corporation, November 26, 2012, City Council Resolution 6647.

<sup>89</sup> City of Joliet, closed session recordings, November 3, 2014.

<sup>90</sup> City of Joliet, closed session recordings, January 5, 2015.

<sup>91</sup> Order of Judgment 05C6746, March 17, 2015.

<sup>92</sup> Order signed May 4, 2015.

<sup>93</sup> City of Joliet, City Council Resolution No. 6927, August 18, 2015.

The original 2005 civil rights lawsuit (05C1743), which was filed by Burnham Management is still pending. Attorneys representing the City have said that the costs of this litigation will be borne by the City's insurance carrier.<sup>94</sup>

Also still pending are the code enforcement suits which were filed in 2005.

The attorneys who represented Evergreen Terrace have withdrawn from the case due to non-payment of legal fees.<sup>95</sup>

#### IV. Costs

To date, the City of Joliet has paid the Law Offices of Figliulo and Silverman approximately \$5,466,214.22 in legal fees.<sup>96</sup>

In 2005, the city paid Gilmore Kean, LLC \$10,587.29 in consulting fees.<sup>97</sup>

In 2005, Ruettiger, Tonelli, and Associates was paid \$12,593 for a survey of the property.<sup>98</sup>

In 2005, Complete Investigative Services, Inc. was paid \$172 for process service.<sup>99</sup>

EJP Consulting Group, LLC was paid \$106,926.33 from 2010 to 2012 for consulting work regarding a redevelopment strategy for the property.<sup>100</sup>

Klein Hornig LLP is currently representing the City in negotiations with HUD regarding potential tenant relocation and redevelopment of the property. Since 2010, the city has paid them \$266, 226.57.<sup>101</sup>

Holsten Real Estate Development Corp. is currently engaged by the city as a real estate management company for Evergreen Terrace, as required by the

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<sup>94</sup> Interview with Carl Gigante and Stephanie Jones, February 25, 2016.

<sup>95</sup> Motion to Withdraw filed in 05C6746.

<sup>96</sup> City of Joliet, payment vouchers for Figliulo and Silverman for Evergreen Terrace, September 2005 to present.

<sup>97</sup> City of Joliet, treasurer's report, 2005.

<sup>98</sup> City of Joliet, voucher request and invoice regarding survey, December 2005 and April 2006.

<sup>99</sup> City of Joliet, voucher request and invoices, January 2006.

<sup>100</sup> City of Joliet, treasurer's report, 2010-2012.

<sup>101</sup> City of Joliet, treasurer's report 2010-present.

aforementioned settlement agreement with HUD. To date, the City has paid them \$62,509.60.<sup>102</sup>

In 2012, the City paid Marous & Company \$12,500 for an appraisal of the property. In 2015, the City paid them \$25,535.<sup>103</sup>

In 2015, the City paid Landon Bone Baker Architects \$26,971 for consulting work regarding new options for redevelopment.<sup>104</sup>

During the litigation, the City paid \$7431.04 in travel expenses for witnesses and attorneys.<sup>105</sup>

Allen Kracower and Associates was hired as an expert witness during the trial, as part of the legal fees, the City paid them \$13,394.31; separately, the City paid them \$22,806.91, for a total of \$36,201.22.<sup>106</sup>

Squire Sanders LLP is a law firm in Lisle, in 2012, the City paid them \$25,000 as part of the litigation.<sup>107</sup>

In 2012, the City paid Valerie Kretchmer \$3800 for consulting.<sup>108</sup>

In 2012, the City paid Doak Smith \$7800.<sup>109</sup>

In 2012, Cohn Reznick was paid \$16,023 for consulting.<sup>110</sup>

In August, 2015, the City deposited \$15,093,412.85 with the clerk of the U.S. District Court, Northern District of Illinois, for the eventual purchase of Evergreen Terrace.<sup>111 112</sup>

The City's insurance carrier has reimbursed the City for \$61,727.89 in legal fees paid regarding the civil rights claim.<sup>113</sup>

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<sup>102</sup> City of Joliet, invoices and vouchers, 2015, treasurer's report, 2012.

<sup>103</sup> City of Joliet, finance department invoice list and account activity listing, 2015.

<sup>104</sup> City of Joliet, Landon Bone Baker Invoices, vouchers, and memo 2015.

<sup>105</sup> City of Joliet, finance department, project expense list, 2016.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> City of Joliet, finance department, invoice list, 2015, Resolution #6927.

<sup>112</sup> This represents the sale price, plus interest accrued from March 2015 to August 2015.

Attorneys representing the City have filed a Bill of Costs in the condemnation case seeking payment to the City of \$167,752 in litigation costs.<sup>114</sup>

To date, the total costs are approximately \$21,168,652.44.

An analysis of these expenditures raises the following issues.

The original contract between EJP Consulting and the City of Joliet indicates that the price is not to exceed \$60,000; to date the city has paid them almost twice that amount. Also included in the original contract are design services for Landon Bone Baker Architects, a company that the city would later pay separately for design services.<sup>115</sup>

Marous and Company was paid for an appraisal in 2015. As part of litigation, they also performed an appraisal in 2012, they also did work in 2009; these costs were included in legal fees at the amount of \$18,030.<sup>116</sup> To date they have been paid a total of \$56,065 for work relating to Evergreen Terrace.

Associated Property Counselors also performed appraisal work that was included in legal fees; in 2005 for \$4000, and 2012 for \$21,500.<sup>117</sup>

From 2012 to 2015, the city paid \$77,565 for appraisals of Evergreen Terrace. These fees may have included trial testimony, as litigation was being conducted in 2012 and 2015.

The original rate for legal services from Figliulo and Silverman was a maximum of \$250 per hour.<sup>118</sup> A review of the billing statements revealed that, in 2008, these rates increased to \$265 per hour; in 2012, Peter Silverman began billing at \$375 per hour, James Figliulo began billing at a rate of \$400 per hour; in 2015, the rates for most attorneys increased to \$278.25 per hour, with Silverman at \$383.25 per hour, and Figliulo at \$420 per hour.<sup>119</sup> The difference between the legal fees that

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<sup>113</sup> Correspondence between the City of Joliet and Arrowood Indemnity Company, received February 29, 2015.

<sup>114</sup> Bill of Costs filed in 05C6746, April 24, 2015.

<sup>115</sup> Id. at 63.

<sup>116</sup> City of Joliet, Figliulo and Silverman billing statements, 2012.

<sup>117</sup> City of Joliet, Figliulo and Silverman billing statements, 2005 and 2012.

<sup>118</sup> Id. at 33,34.

<sup>119</sup> City of Joliet, Figliulo and Silverman billing statements 2005-present.

were paid under the increased rates and the fees which would have been paid at the originally agreed upon rates is approximately \$656,669.69.

There is no record of city council being informed of an increased rate. Attorney Carl Gigante stated that these increases were approved by the city attorneys; however, there is no memorialization of these approvals.

It should be noted that Local Ordinance 2-437(a) states that, “All purchases<sup>120</sup> whose estimated cost exceeds twenty thousand dollars (\$20,000) shall be submitted to the mayor and city council for approval or ratification.” In this case, monthly legal bills were routinely in excess of this amount.

Furthermore, when reviewing the voucher request forms which were submitted by the City’s Legal Department to the Finance Director in order facilitate payment of legal fees, an inconsistent practice is revealed. At the top of the form there are two boxes; request treasurer’s disbursement, and please issue payment after council approval. From September 2005 to October 2006, the vouchers were not submitted for council approval. From October 2006 to September 2009, the vouchers were submitted for approval. From October 2009 to December 2014, they were again not submitted for approval. In 2015, an electronic format was adopted which eliminated the use of the boxes. The submitting signature on all voucher requests was City Attorney Jeff Plyman. (See attached)

A review of the hours which were billed by Figliuolo and Silverman reveals that, at certain times, certain attorneys were billing for up to 13 hour days.

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<sup>120</sup> Local Ordinance 2-430(a) defines purchase as, “The acquisition of supplies, materials, equipment, and services for consideration.”

V. Current Status

The eminent domain suit is currently being appealed by Burnham Management; the decision of the appellate court is expected in April. Depending on the outcome, an appeal to the U.S. Supreme Court may be pursued.

The original civil rights lawsuit which was filed in 2005 by Burnham Management is still pending.

Figliulo and Silverman represents the city in both of these matters.

Once the eminent domain suit is settled, assuming the courts continue to rule in favor of the city, the settlement agreement with HUD will be finalized and the city will take possession of Evergreen Terrace.

The city council continues to work with the attorneys at Klein Hornig, as well as Holsten Development to develop a plan for Evergreen Terrace.

## **VI. Conclusions and Suggestions for Future Management**

### **A. The City was underprepared to enter into complex litigation**

After years of speaking out publicly against the existence of Evergreen Terrace, lobbying local legislators, negotiating with HUD, and negotiating with Burnham Management, the City painted itself into a corner in which the only alternative seemed to be the filing a condemnation suit. The feeling that it was too late to turn back was pervasive throughout the ten year litigation, and led the city down a path from which there was no return.

As litigation began, the City underestimated the impact that HUD's involvement would have on the case. Once HUD agreed to refinance the mortgage at Evergreen Terrace, the City of Joliet was effectively suing the United States of America. This aspect of litigation greatly increased the stakes, as HUD withheld federal housing money for the City, and placed the City in jeopardy of being obligated to repay \$9,000,000 in past federal grants. Issues with HUD were not resolved until 2014, after the City hired an additional attorney to negotiate a settlement.

The lack of any coherent plan was evident from the beginning, as the City repeatedly attempted to negotiate with HUD and Burnham Management. As far back as 2005, the City hired a consulting firm; the results of which are unknown today.<sup>121</sup> It was not until five years into the litigation that the City Council began discussing the need for a plan; additional consultants and attorneys were hired to this end, at additional cost.<sup>122</sup> The City Council has still not agreed on a plan.<sup>123</sup>

The lack of planning created an unfocused approach to, and progression through, the litigation. Public comments by city officials indicated a desire to move the residents out and to demolish the buildings.<sup>124</sup> This sentiment was pervasive in media reports and internal memoranda.<sup>125</sup> Following a lawsuit and accusations by

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<sup>121</sup> Id at 17.

<sup>122</sup> Id. at 46.

<sup>123</sup> Id at 90.

<sup>124</sup> Id. at 5.

<sup>125</sup> Id at 4, 6.



HUD of discriminatory housing practices, city officials were in denial of the originally stated intentions.<sup>126</sup>

Lack of any coherent vision led to potential missed opportunities during the litigation. At several points, offers to sell were made by Burnham Management; these offers were rejected each time, in part because nobody had an idea of what the end game would be. In retrospect, the offers were not far off from the eventual outcome. Additionally, on several occasions, members of the City Council posed questions regarding the City's spending limits, or at what point the City would pull out of litigation. Due to lack of planning, there were no answers to these questions.

#### **Suggestions for Future Management**

Should the City wish to engage in a similar undertaking, meticulous prior planning is essential in order to foster a focused approach and increase the likelihood of a successful outcome. All potential contingencies should be discussed and mapped out in order to ensure a unified roadmap to success. While it is true that unexpected occurrences may arise, HUD's involvement in the case was easily foreseeable, as they were in talks to refinance Evergreen Terrace at the beginning of the condemnation suit. Any discussion of HUD's involvement would have certainly included the hazards of suing the federal government. While it is true that the City eventually settled with HUD, this was nine years later, and with the assistance of an additional attorney and a consultant, at great cost.

Prior to undertaking any litigation, the City should also have established parameters of cost limitations; none existed in this case, which put the City at a disadvantage during negotiations.

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<sup>126</sup> *Id.* at 71.

## **B. Poor Communication Existed Between City Staff and the City Council**

A review of the available record indicates that, initially, the City Council was heavily involved in the campaign to take over Evergreen Terrace. As litigation pressed on and years passed however, their involvement lessened. As their involvement lessened, so too did their awareness of new and potentially important developments.

As new lawsuits against the City were filed, the City Council was ill informed of what was at stake. On at least one occasion, an offer to settle was not communicated to the City Council until months had passed and litigation costs escalated.<sup>127 128</sup> When council members inquired about escalating costs and the price of withdrawal, they were often given vague answers. When council members talked of an exit strategy, they were repeatedly warned of the looming specter of liability for opposing attorney's fees, which never came to fruition.<sup>129</sup> The record indicates that city staff adopted a win at all costs mentality due to the corner that they allowed themselves to be painted into.

This poor communication also led to unaccounted cost overruns. The City Council repeatedly approved spending limits for attorneys and consultants, only to have the costs for those items exceed that which had been approved.<sup>130</sup> There is no record of council approval for increased attorney's rates or increased budgets for the consulting firm and the attorney hired to negotiate with HUD.

As a result of poor communication, the City Council was often unaware of the stakes of litigation, passed on potentially lucrative settlement opportunities, and allowed the City to spend far more than was originally authorized for this project.

### **Suggestions for Future Management**

The City Council should consistently be informed regarding the status of major litigation. This information should include potential liabilities, as well as an accounting of costs, and offers to settle.

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<sup>127</sup> Id. at 84.

<sup>128</sup> At the peak of litigation, the City was routinely paying in excess of \$250,000 per month in legal fees.

<sup>129</sup> Id. at 46, 66, 71, 76.

<sup>130</sup> Id. at 17, 34, 51, 62, 63.

The City Council should be informed when previously approved spending limitations are surpassed, or the billing rates are increased.

### **C. Public Comments Made By City Officials Exposed the City to Potential Liability**

During the years which preceded litigation, city officials engaged in a public campaign to cut off federal monies for Evergreen Terrace. During that campaign, comments were made about the living conditions that existed at the apartment complex. At times, these comments strayed from the facts and ventured into pejorative characterizations of the complex, and, at times, its residents.<sup>131</sup> These comments were later used as evidence to demonstrate that the City of Joliet was engaging in discriminatory housing practices, exposing the City to serious liability.<sup>132</sup>

#### **Suggestions for Future Management**

When making public comments, public officials should be keenly aware of the potential ramifications of these comments. The stakes are escalated in a situation such as Evergreen Terrace due to the tremendous cost of the project, as well as the potential that the actions of the City could be, and were, mischaracterized as being racially motivated.

Such comments were unnecessary, inflammatory, and damaging to the City of Joliet.

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<sup>131</sup> Id. at 5, 6

<sup>132</sup> Id. at 68.

COPY

# VOUCHER REQUEST

## City Of Joliet



REQUEST TREASURER'S  
DISBURSEMENT (NEXT  
PAYMENT PROCESSING)

PLEASE ISSUE PAYMENT  
AFTER COUNCIL APPROVAL

**TO THE FINANCE DIRECTOR:**

**PLEASE FURNISH THE FOLLOWING VOUCHER:**

VENDOR NUMBER: \_\_\_\_\_

PAYABLE TO: Figliulo & Silverman

STREET ADDRESS: 10 South LaSalle Street, Suite 3600

CITY, STATE: Chicago, Illinois ZIP CODE: 60603

AMOUNT: \$ 230,936.69

P.O. # \_\_\_\_\_

BUDGET CODE: 001-50-84-415-30-08

PROJECT # ET0012

**REASON:**

File No. 1439.1 Evergreen Terrace  
Invoice No. 36778

REFER QUESTIONS TO: Jeff Plyman

EXTENSION: 3805

DEPT/DIV APPROVAL SIGNATURE: \_\_\_\_\_

APPROVED FOR VOUCHERING: \_\_\_\_\_

TITLE: Corporation Counsel

FINANCE DIRECTOR

DATE: September 19, 2012

Please return check to:

# VOUCHER REQUEST



- REQUEST TREASURER'S  
DISBURSEMENT  
(NEXT PAYMENT PROCESSING)
- PLEASE ISSUE PAYMENT AFTER  
COUNCIL APPROVAL

**TO THE FINANCE DIRECTOR:**  
PLEASE FURNISH THE FOLLOWING VOUCHER:

**VENDOR NAME:**

**PAYABLE TO:** Figliulo & Silverman

**STREET ADDRESS:** Ten South LaSalle Street, Suite 3600

**CITY, STATE:** Chicago, IL

**ZIP CODE:** 60603

**AMOUNT:** \$500.00

**BUDGET CODE:** 001-50-84-415-80-03

**REASON:** Payment for Professional Services 9/1/06 – 9/30/06  
Re: Evergreen Terrace Litigation

**REQUESTED BY:**

**APPROVED FOR VOUCHERING:**

\_\_\_\_\_  
**FINANCE DIRECTOR**

**DATE:** October 17, 2006