

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

City of Shakopee,

Case Type: Other Civil

File No.: 70-CV-20-2287

Plaintiff,

SETTLEMENT AGREEMENT

vs.

Gerald Jerome Schmitz,

Defendant.

RECITALS

WHEREAS, Plaintiff City of Shakopee (the "City") commenced this action on or about April 25, 2017, seeking declaratory and injunctive relief against Defendant Gerald Jerome Schmitz ("Defendant") with regard to alleged violations of the City's zoning ordinance on Defendant's real property located at 3475 Marschall Road in Shakopee, Minnesota ("Subject Property") and legally described as follows:

All that part of the South Half of the Southwest Quarter of Section 29, City 115, Range 22, Scott County, Minnesota, described as follows:

Beginning at the intersection of the North line of said South Half of the Southwest Quarter with the East line of the West 288.75 feet thereof; thence East along the North line of said South Half of the Southwest Quarter a distance of 1400.00 feet; thence South at right angles a distance of 990.00 feet; thence West parallel with said North line to the intersection with the centerline of County Road No. 17; thence Northwesterly along said centerline to its intersection with afore described east line; thence North along said East line to the point of beginning.

WHEREAS, the violations on the Subject Property consist of illegal exterior storage of multiple items that are supposed be either appropriately stored or disposed of pursuant to the City Code.

WHEREAS, Defendant has failed to eradicate the violations on the Subject Property

notwithstanding multiple notification, warnings and citations from the City.

WHEREAS, Defendant was criminally charged for the same ordinance violations in Scott County District Court (Court File No. 70-CR19-1806).

WHEREAS, in a verdict rendered on August 31, 2022, Defendant was found guilty of violating the City Code based on the illegal exterior storage on the Subject Property.

WHEREAS, in light of the criminal verdict against the Defendant, the parties agreed to the following settlement on the record subject to approval by the City at a pretrial conducted on December 20, 2022 before the Honorable Christian S. Wilton.

WHEREAS, the Court has scheduled another hearing in this matter for July 20, 2023, to review the status of the settlement and the parties' compliance therewith.

NOW, THEREFORE, the parties hereto agree and declare as follows:

SETTLEMENT AGREEMENT

1. On or before June 30, 2023, Defendant and any successors or assigns in interest in the Subject Property shall eradicate or remove all exterior storage on the Subject Property in order to be in compliance with the City Code. Specifically, Defendant shall (1) eliminate all exterior storage on the Subject Property unless specifically permitted under the City Code; (2) remove any and all junk vehicles, furniture, household furnishing, appliances, or parts or components thereof that are being illegally stored the Subject Property and/or the adjacent public property; and (3) remove and discontinue the illegal storage of any inoperable vehicles, trailers, and boats on the Subject Property and/or adjacent public property.

2. Defendant agrees not to permit or create any same or similar violations on the Subject Property and shall be held in contempt of court in the event such violations exist on the Subject Property again in the future.

3. In the event Defendant breaches any obligation under this Settlement Agreement, the Court shall immediately enter judgment in favor of the City for the following relief upon notification of a breach of the Settlement Agreement by the City via the filing of an Affidavit of Non-Compliance with the Court:

- a. A declaration that Defendant's exterior storage on the Subject Property constitutes a violation of the City Code.
- b. An Order permanently enjoining Defendant from taking any action that would result in any same or similar violation of the City Code.
- c. An Order permitting the City, its agents, and/or contractors to enter the Subject Property with the assistance of law enforcement if necessary, after notice to the Defendant, to evaluate the scope of the violations and determine the appropriate means and/or methods to remove them from the Subject Property.
- d. An Order permitting the City, its agents, and/or contractors to enter the Subject Property with the assistance of law enforcement if necessary, to eradicate the foregoing violations on the Subject Property pursuant to the following procedure:
 - 1) At least seven (7) days prior to entering the Subject Property, the City shall provide Defendant with written notice of the City's intention to remove the violations on the Subject Property. Such notice shall be mailed to Gerald Schmitz at the address of the Subject Property. Such notice shall provide the following information to Defendant: (a) the date on which representatives or agents of the City will access the property with assistance of law enforcement, if necessary, for purposes of removing the motor vehicles, automobile parts, trailers, boats and other wrongfully stored debris on the Subject Property; (b) an estimate of the anticipated cost of removing and storing the foregoing items from the Subject Property; (c) the name, address and contact information of the contractor that will be removing and storing or otherwise disposing of the vehicles from the Subject Property; and (d) the name and telephone number of a City representative who can be contacted by the Defendant with any questions.
 - 2) On the date identified in the written notice provided by the City, Defendant shall permit representatives of the City to enter the Subject Property at such times as may be reasonably necessary for the purposes of removing the motor vehicles, automobile parts, trailers, boats and other illegal exterior storage and debris on the Subject Property. Defendant's representatives shall affirmatively allow access to the Subject Property and not impede or otherwise interfere with the City's efforts to comply with this Order. Any individuals interfering or

preventing this Order being duly enforced shall be arrested and brought before the Court for contempt of Court.

- 3) The City, its agents or contractors shall remove and dispose of all motor vehicles, trailers, boats, recreational vehicles or any other vehicles on the Subject Property pursuant to the appropriate procedures outlined in Chapter 168B of Minnesota Statutes. All other illegal exterior storage shall be removed from the Subject Property in order to ensure compliance with City Code and shall be stored in a secure storage facility for a period of sixty (60) days. The Owner may recover possession of the personal property upon payment of all outstanding expenses incurred by the abatement of the violations but Defendants is strictly prohibited from returning any items of personal property to the Subject Property to be stored illegally. Defendant and any successors and assigns are permanently enjoined from taking any actions that would result in any similar, ongoing violations of the City Code or this Settlement Agreement. Any personal property or vehicles that are not returned to the Owner after 60 days shall be sold or discarded by the City after notice to the Owner. Any proceeds obtained from the sale of any property may be used to cover costs incurred by the City in connection with this abatement procedure pursuant to Minn. Stat. § 463.22.
- e. An Order authorizing the City to assess against the Subject Property the total cost that the City incurs related to the foregoing corrective action and allow such charge to be a lien upon the Subject Property.
- f. An Order awarding the City all its costs, disbursements, expenses and reasonable attorney's fees incurred in connection with the enforcement of this Settlement Agreement hereinafter and allowing such charges to be assessed against the Subject Property by the City.

CITY OF SHAKOPEE, MINNESOTA

January ___, 2023

By _____
Matt Lehman, Mayor

By _____
William H. Reynolds, City Administrator

KENNEDY & GRAVEN, CHARTERED

January __, 2023

/s/ Robert A. Alsop
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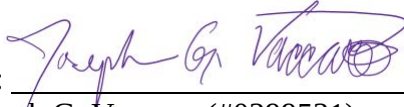
ATTORNEY FOR CITY OF SHAKOPEE

May 30, 2023

/s/ Gerald Schmitz
GERALD SCHMITZ

**THE LAW OFFICE OF JOSEPH G.
VACCARO, PLLC**

May 30, 2023.

By: 
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**ATTORNEY FOR DEFENDANT
GERALD SCHMITZ**