

# **BEMIDJI CITY COUNCIL**

## ***Work Session Agenda***

**Monday, January 25, 2010**

**City Hall  
Conference Room  
5:30 P.M.**



1. CALL TO ORDER / ROLL CALL
  
2. DISCUSS ANNEXATION
  
3. ADJOURNMENT



# Memorandum

**TO:** Mayor and City Council  
**FROM:** Alan Felix, City Attorney  
**DATE:** Northern Township Request to Delay First Phase of Annexation Until After Birchmont Drive Project Reassessment  
**RE:** January 19, 2010

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Mayor and Council:

Attached is a letter submitted on behalf of the Northern Town Board by its legal counsel, requesting that the City delay its pending decision/action to exercise the first phase of annexation under the parties' Joint Orderly Annexation Agreement until Northern Township has been able to complete the Township's reassessment of Birchmont Drive Project related costs. You may recall that Jason Kuboushek represented the Township in the appeal(s) of the original assessment brought by approximately 55 property owners/residents.

Also, attached are a map prepared by the City's GIS Department showing the Northern Township Phase I Orderly Annexation Area (OAA) and highlighting the seven (7) properties in that area that are also subject of the reassessment process, and a list of those seven property owners and a breakdown of the related unit assessments.

Before addressing the request, I'd like to again reiterate that the January 1, 2010 eligibility date set forth in the Orderly Annexation Agreement, is just that, an eligibility date. Nothing else in the Agreement compels annexation on or before any date certain other than if the City intends to levy against the annexed parcels we need to annex before August 1 of the year of annexation. Furthermore, it is presumed that if we wait to annex until after the Agreement's natural termination in 2020, obviously we would be foreclosed from annexing property in the OAA after that date.

Turning next to the request, one of the challenges we've had to wrestle with to accomplish the Birchmont Drive Project, is that neither governmental entity can assess properties outside their respective jurisdictional limits. Hence, we entered into a joint powers agreement to permit the Township to assess the Project costs. It was assumed, perhaps naively, that the Project would be completed in total, including the assessment phase, prior to the Phase One annexation.

Consequently, as a result of the assessment appeal and the need to undertake a reassessment, if the seven parcels in the Phase One area are annexed before the Township's reassessment is completed, the Township will lose its ability to reassess the properties and the City would become the assessing authority and, thereby, assume both the responsibility for and the direct cost(s) of the reassessment process for these properties.

The reassessment process and costs for these seven properties would include appraiser/appraisal services both for the reassessment and subsequent appeal(s), if any, of the reassessment(s). The City would also be directly and primarily responsible for legal costs associated with the reassessment process and the handling of any appeal(s).

Reiterating the concerns conveyed in Mr. Koboushek's letter, the Township is hoping to be able to recover all project costs, including administrative costs that the Township has incurred to date as part of the Project. Eligible costs are anticipated to now include legal and appraisal fees incurred by the Township in the reassessment process. It follows that if the City steps into the assessing authority's shoes for the seven properties in question, we'll first of all be incurring our own admin costs, not to mention having to harmonize our assessment decision(s) with those being made in the "parallel" proceeding being conducted by the Township. Ideally, similarly situated properties in a Project should not be subject to a variable assessment amount based on which assessing authority may be levying the assessment. Obviously, this situation, if it should occur, is unique such that you seldom or never see a project with multiple assessing authorities!

Some additional information I'm attempting to have for Monday night's meeting includes: 1) What options exist on the continuum of annexing as planned versus delaying action as requested; 2) If the City conducts a reassessment process, and property owner(s) appeal, does League insurance coverage provide defense and at what deductible (cost to City); 3) Has an appraiser been retained as yet by the Township, and on what fee basis (provides fee comparable/comparison for consideration). It is pure speculation on my part at this point, but individual residential appraisals generally may run in the neighborhood of \$2,000-\$4,000 a piece, depending on the complexity. Additionally, in terms of cost or fees, there's the need to plan on or for expert appraisal testimony in a court proceeding if an assessment (re) is appealed.

Regardless of the answers to some or all of these questions, I am of the opinion that the City should not by an annexation decision readily infuse itself into a process that has already resulted in litigation and may likely again. Consequently, I'd recommend that the City delay annexation until the Township's reassessment process has been completed. I anticipate a lively discussion at Monday's meeting!

AI

cc: John Chattin  
Department Heads

January 13, 2010

City of Bemidji Mayor & City Council  
317 4<sup>th</sup> St. NW  
Bemidji, MN 56601-3116

Re: Birchmont Drive Preservation Society, et al. vs. Northern Township  
Our File No: 300.712

Dear Mayor and City Council:

I have been retained by Northern Township to assist the Township in the reassessment of the Birchmont Drive project. Currently the Township working on the reassessment process and has requested a proposal from an appraiser regarding the cost to perform a benefit/market analysis of the properties. This process is expected to last until the middle to end of 2010.

While this process is moving forward, Northern Township has directed me to request the City hold off on the first phase of annexation with Northern Township until after the reassessment process is complete. The Township's fear is if certain properties are annexed into the City before the reassessment process is complete, the Township will no longer have assessment authority over those properties and will not be able to recoup costs related to the Birchmont Drive project. If this happens, the Township believes the City will have to assess the properties or use another similar mechanism to recoup those properties' share of the project cost.

Thank you for your attention to this matter.

Yours truly,

IVERSON REUVERS



Jason J. Kuboushek  
JJK:be

cc: Al Felix, City Attorney  
Northern Township

JON K. IVERSON  
PAUL D. REUVERS  
JEFF M. ZALASKY  
JASON J. KUBOUSHEK  
PAMELA J.F. WHITMORE  
JASON M. HIVELEY  
SUSAN M. TINDAL  
STEPHANIE A. ANGOLKAR  
ANDREA B. WING

**CITY OF BEMIDJI**  
**FINAL ASSESSMENT ROLL - First phase Annexation**  
**2008 BIRCHMONT DRIVE NE - WATER & SEWER EXTENSION**  
**SEWER CONNECTION ONLY**

DATE: OCTOBER 15, 2008

PROPERTY ADDRESS	TAX PARCEL NO.	NAME & ADDRESS OF PROPERTY OWNER	RATE	ASSESSABLE UNIT	
				(SEWER SERVICE)	TOTAL AMOUNT
3030 BIRCHMONT DR.	31.00810.00	[REDACTED]	SERVICES	1	
			RATE	\$13,990.00	
			TOTAL	\$13,990.00	\$13,990.00
3042 BIRCHMONT DR.	31.01501.00	[REDACTED]	SERVICES	1	
			RATE	\$13,990.00	
			TOTAL	\$13,990.00	\$13,990.00
3100 BIRCHMONT DR.	31.01502.00	[REDACTED]	SERVICES	1	
			RATE	\$13,990.00	
			TOTAL	\$13,990.00	\$13,990.00
3111 BIRCHMONT DR.	31.00824.00	[REDACTED]	SERVICES	1	
			RATE	\$13,990.00	
			TOTAL	\$13,990.00	\$13,990.00
3329 BIRCHMONT DR.	31.00825.00	[REDACTED]	SERVICES	1	
			RATE	\$13,990.00	
			TOTAL	\$13,990.00	\$7,490.00
3323 BIRCHMONT DR.	31.00820.01	[REDACTED]	SERVICES	1	
			RATE	\$13,990.00	
			TOTAL	\$13,990.00	\$13,990.00
3407 BIRCHMONT DR.	31.00791.00	[REDACTED]	SERVICES	1	
			RATE	\$13,990.00	
			TOTAL	\$13,990.00	\$13,990.00
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
			TOTALS	\$111,920.00	\$105,420.00

TOTAL SEWER SERVICES  
TOTAL WATER SERVICES (\$1,500.00)

# Birchmont Drive Annexation Area



## Legend

- EXISTING SEWER
- NEW SEWER
- Litigants - New Water and Sewer
- Litigants - New Sewer Only
- EXISTING WATER
- NEW WATER
- Property Lines
- 2010 Annexation