

# **CITY COUNCIL PROCEEDINGS**

## **BEMIDJI, MINNESOTA**

### **Special Joint Meeting – September 11, 2012**

Pursuant to due call and notice, a special joint meeting of the City Council of the City of Bemidji, Beltrami County, Minnesota, and the Northern Township Board was held on Tuesday, September 11, 2012, at 6:30 p.m. at Northern Town Hall, Chair Kelly presiding.

Upon roll call, the following Councilmembers were declared present: Larson, Waldhausen, Hellquist, Johnson, Albrecht, Negard, Thompson

Upon roll call, the following Northern Town Supervisors were declared present: Kelly, Chambers, Gangeness, Bahr

City Staff: City Manager John Chattin, City Attorney Alan Felix, Public Works Director/City Engineer Craig Gray, City Clerk Kay Murphy  
Township: Town Clerk Mary Israelson, Attorney Jason Kuboushek, Appraiser John Vigen

Northern Township Chair Kelly stated that the purpose of the special meeting was to hold a public hearing regarding the Birchmont Drive Water and Sewer Extension reassessment and assessment.

Jason Kuboshek, Attorney for Northern Township, reviewed the project and the process to date stating that in November 2008 the assessment was challenged by a number of Northern Township property owners. Judge Sweetland ordered a re-assessment of the Plaintiff's properties. Northern Township hired Ramsland & Vigen to determine benefits of the properties. He stated that as Northern's legal counsel, he advised Northern Township to vacate the re-assessment that was prepared in July 2011.

John Vigen, Ramsland & Vigen, reviewed the process used to calculate the benefits. He stated that the econometric model, although not common to mortgage appraisers is accepted by the International Office of Appraisers and is commonplace and accepted by Courts. He stated that they used five years of sales data focusing on the Bemidji community. The sales summary included 35 transactions in the subject area and 1,249 in the general community. The raw data showed a difference on the price paid for property with public utilities.

Chair Kelly opened the public hearing at 6:45 p.m.

Zenus Baer, Attorney for the Property Owners and Birchmont Drive Preservation Society, provided copies to the City Clerk and Town Clerk stating their objections to the proposed re-assessment. He then read the list of plaintiffs that he was representing. The following are the objections that he raised on behalf of his clients (see letter dated to City Clerk dated September 10, 2012):

- The land does not receive a special benefit from the improvement being constructed.
- The assessment is not uniform upon the same class of property. Baer stated that the entire assessment roll has been vacated by the Court as it did not take into consideration the before and after value.
- The proposed assessment exceeds the special benefits.
- The benefitted area extends beyond the scope of the project. Baer stated that the project was designed to accommodate expansion/extension beyond the project area. He stated that according to the City's Policy for Public Improvements the costs for increase pipes cannot be assessed.
- The cost to hook up is, or may be, equal to or greater than the assessment. Baer stated that the cost to hookup to the city water and sewer was not taken into consideration by Mr. Vigen in his calculating the increase in value of the properties.
- The project is a rebuild of existing improvements which by policy can only be assessed to a maximum of 25 percent of the cost.
- The Court Order of August 28, 2009, in Beltrami County Court File vacated the Assessment Roll 2008-05 in its entirety. The reassessment of Plaintiff's property without consideration of the entire improvement area creates a non-uniform assessment methodology upon the same class of properties.
- The total amount of the proposed assessments is identified to be \$1,439,148 (\$48,688 attributable to re-assessment properties in the City) which is more than the

- assessment against the properties owned by Plaintiff's in the Appeal Beltrami County Court File No. 04-CV-08-6535 and 04-CV-11-2597. Inasmuch as there was no new construction, the Township is attempting to shift costs of litigation improperly upon the Plaintiff's.
- The City of Bemidji pursuant to the Joint Powers Agreement for financing, construction and maintenance between the City and Northern Township regarding the Birchmont Drive improvements adopted Resolution 5620 on or about March 15, 2010 which establishes as charges for connection to the Birchmont Drive Municipal utility System Facilities. Baer then provided the amounts of those hookup charges. He stated that the hookup charge violates the Equal Protection and Due Process Clauses of the State and Federal Constitutions.
  - The initial Public Hearing on the above Project 05-05 was held on December 12, 2005, with an estimated project cost of \$3,277,000. This amount sets the upper limit of the amounts that can be specially assessed against the benefitted properties.
  - The petition used to commence the project was not signed by the requisite amount of property owners nor was the petition otherwise valid. The petition was circulated under false pretenses obtaining property owner's signatures.
  - The feasibility report of the engineer was based on an estimated total cost of improvement to be \$3.277 million.
  - The Orderly Annexation Agreement between Northern Township and the City of Bemidji authorized the City of Bemidji to extend services beyond the City boundary only upon a petition therefore being filed.
  - The City of Bemidji, upon information and belief, failed to determine if the required amount of property owners signed the petition, or if a petition was filed for the \$5.4 million project.
  - The petition for extension of sewer and water facilities in Northern Township and preliminary engineering report was based on a \$3.27 million project, not a \$5.4 million project.
  - No petition for, nor hearing on, preliminary plans and construction was held for the \$5.4 million project contrary to the Orderly Annexation Agreement and the limited authorized granted to the City of Bemidji therein.
  - Upon information and belief, the current special assessments are based on a "comparable sales regression analysis" also referred to as econometric model. This methodology has not been adopted by Courts in the State of Minnesota to determine fair market value of real property.
  - A regression analysis is a quest for an equation which indicates, for appraisal purposes, a predicted selling price for a property. He stated that this model has been rejected citing *Dezurik Corporation v. County of Stearns*, 1999 W.L. 286300 (Minn. Tax).
  - Regression analysis in general and specifically the multiple regression analysis used by Mr. Ramsland has been routinely rejected by the State Tax Court.

Rod Pickett, 5712 Birchmont Drive, stated that the petition he signed was different than the one presented. He felt there was a "bait and switch".

Cassandra Robinson, 4509 Birchmont Drive, questioned how the value of her property was arrived at as her home is valued at \$140,000.

Bill Freye, 308 Elm Street, stated that the value for his property has changed three times. He also questioned the value attached to a vacant parcel he had purchased.

Vigen responded that Mr. Freye's home was under construction and he made an adjustment to the square footage after it was pointed out by the homeowners.

Mike Kelly stated that the reassessment on all the plaintiff's vacant lots changed dramatically.

Shari Schluchter, 308 Elm Street, expressed concerns about the request to Mr. Vigen to turn over data. She further commented that the Board should not make any decision until they fully understand the econometric method utilized by Mr. Vigen.

Jason Kuboshek stated that the Court directed that a reassessment of the Plaintiff's properties take place.

Vigen stated that he never refused to provide information to Mr. Baer. He stated that he was in process of preparing that information when the error was discovered. Vigen stated that professionally he recognized the error and that it needed to be corrected.

Carl Drahos, 6126 Birchmont Drive NE, questioned the appraisals performed by Vigen. He stated that he believed that the petition he signed was not the petition presented to the City.

Tracy Poque, 6016 Shady Lane NE, stated that the Board and Council should just admit that a mistake was made and that the cost be shared township wide.

Bonnie Hill, 5619 Birchmont Drive, stated that because of the assessment she is going into foreclosure.

Brian Eggersdorf 129 Meadow Creek Lane, stated that the citizens have the right to appeal to Orderly Annexation and the City is “pretending” to have rights.

Hearing no further comments, Chair Kelly closed the Public Hearing at 7:58 p.m.

#### Resolutions

Chair Kelly stated that Northern Township Board and the City Council each have separate resolutions to consider. He suggested that Northern consider delaying that to allow time for legal counsel to review the objections.

Motion by Bahr, seconded by Gangeness, to consider the re-assessment roll resolution for the Birchmont Drive project at the Township's next regular meeting on September 24, 2012. All voted aye. Motion carried.

City Attorney Felix advised the City Council to consider holding off on the resolution to allow staff time to look at the objections raised by Mr. Baer.

**Motion by Negard, seconded by Hellquist, to consider the resolution adopting the assessment roll for the Birchmont Drive Utility Extension project at the Council's meeting on October 15, 2012. Motion carried with the following vote: Ayes: Larson, Albrecht, Hellquist, Negard, Johnson, Waldhausen. Nays: Thompson.**

Mr. Kuboshek advised that the Board should continue the hearing and asked for the Board to clarify that in a motion.

Motion by Bahr, seconded by Chambers, to continue the Birchmont Drive Utility Project re-assessment hearing at Board's regular meeting on September 24, 2012. Motion carried unanimously.

**Motion by Negard, seconded by Hellquist, to continue the Birchmont Drive Utility assessment hearing at the Council's regular meeting on October 15, 2012. Motion carried with the following vote: Ayes: Larson, Albrecht, Hellquist, Negard, Johnson, Waldhausen. Nays: Thompson.**

#### ADJOURN

There being no further business the meeting adjourned at 8:04 p.m.

Respectfully submitted,

  
Kay M. Murphy  
City Clerk