

Summary of Hoeschler Objections

October 14, 2016 Factual Hearing

Re 2016 Street ROW Assessments

On behalf of all of the clients I represent, I make the following objections and ask that these be made a part of the record that is delivered in summary form to the City Council:

- 1) There do not appear to be any written standards that the staff can point to that determine the following:**
 - a) The differences between Class 2 Commercial and Class 3 or 4 Commercial streets.** (I object that many of my clients have property located on back-water streets that are improperly and inconsistently designated as commercial when compared with comparable streets.)
 - b) The differences between Residential and Commercial Streets.** (There is a map that shows which are which but there are no written standards that determine how a given street should be classified. (The city appears to rely on a determination by the county which has been done based on other or no standards.)
 - c) The basis for the cost differences between residential and commercial properties.** (The Council establishes a commercial and a residential rate for each service district but the staff cannot point to any standards by which they recommend those differential rates to the Council.)
 - d) The basis for charging commercial properties more than the city's actual costs when it charges residential properties less than actual cost for the same work.** (The staff explanation of the system is that all costs incurred or attributed to a given service district are recouped from the properties abutting those streets by the use of two rates, a higher commercial rate and a lower residential rate. The actual cost could be recovered by a single rate against all served properties that lies somewhere between these two rates. Therefore, by definition, the

commercial rate is higher than cost. I object to that as being contrary to the law re special assessments that limits the assessment to actual costs. See Ms. Veith's memos.)

- e) **The basis for using a lineal foot measure of benefit instead of a square foot or a value measure of benefit.** (The Council has used LF as the measure of benefit for many years without ever analyzing whether that meets the legal requirement that assessments must be collected in a manner that is fairly proportional for all of the affected properties. The LF measure assumes a two dimensional world and ignores the three dimensional reality of a modern city. I object to this and other city practices, such as charging commercial corners but not residential corners for their side lot dimensions. That create a disproportional burden on similar properties.)
- f) **The basis for treating downtown nonprofits and churches as commercial when all other nonprofits and churches are treated as residential.** (The stated distinction based on level of service is not relevant since the level of services in each service district varies. Each district above unpaved alleys receives greater service than the districts below it. Ms. Veith has admitted that the city does this because it needs the money. That is not a valid reason for nonuniform treatment.)
- g) **The basis for treating golf courses as commercial rather than residential.** (If the state capitol, major hospitals, major universities, and the Cathedral are all treated by the city as residential, why should a golf course with only grass, that is used only half of the year and only by a very limited number of members be charged the much higher commercial rates? This does not seem to be proportional.)
- h) **The basis for treating railroad R/W sometimes commercial and sometimes residential and sometimes exempt.** (The railroads do not use the streets at all and would likely see their value and business improve if the city actually failed to plow the streets and people would be more likely to use railroads in the event. The staff does not seem to have any written standards or basis for treating railroads in any particular way. The result appears to be a random treatment. Railroads

already pay a gross earnings tax collected by the state that is returned to the local governments in lieu of property taxes. They receive no special benefit, no proportional treatment, and if charged commercial, they pay more than even theoretical city costs—the city does not plow their R/W.)

- i) **The basis for charging nonprofits and churches at all since they are exempt for taxation and the Supreme Court has said that merely providing many of the types of services the city provides cannot be the basis for a valid special assessment since those are of a general benefit to everyone.** (The city cannot point to any valid basis for charging nonprofits and churches beyond the mere determination of the Council to do so.)
- j) **The basis for the city to attempt to use and cite its administrative code when it is proceeding under the state statute and legally needs to consistently follow the state and not the local rules.**
- k) **The reason for using the state statute this year when in prior years the city used the charter rules to govern ROW assessment collections?**
(Staff seems unable to provide a rationale for this change even though it was based on a recommendation by staff and not a specific council decision.)
- l) **The procedural rationale for and rules under which these factual hearings are being conducted.** (I understand that these additional hearings are merely an extension of the Council's 3 minute oral objection opportunity and that they are based on the instructions in the 2016 ROW assessment resolution. I understand from the Hearing Officer that they are not being conducted pursuant to the state administrative hearing rules and procedures not according to any published city administrative hearing rules and procedures. I have expressed my concern that the city attorney might later—as has happened before—argue that this is the administrative hearing at which I should present all of my evidence. Ms. Veith, refused to concede that this is merely an extension of the objection opportunity and not a full blown administrative hearing. I therefore have objected that I have not

been allowed an discovery opportunity except to ask staff present some questions, I have not been able to obtain and present an expert's opinion on the lack of special benefit, the hearing officer is not an independent person but rather a city employee, there are not published rules and regulations governing this process, and there is insufficient time to present my case do to the fact that the city has called additional objecting citizens for the same time that I was called. I request that these objections be explicated entered into any written summary of the hearings.)

- m) **The basis for the assessments other than estimated or historical city costs and budget estimates and the lack of any effort by the staff or the Council to determine the key requirement for a valid special assessment—special benefit.** (The staff has been unable to point to any effort, historically or this year specifically, to make an independent determination of special benefit. Likewise, the Council has not made any such determination since they would have no basis upon which to make such a determination. I object to the entire process as being fatally flawed regarding this bedrock issue.)

This list of issues and concerns is provided to provide a more convenient way for the Hearing Officer to understand the basis for my questions and objections. Because of time limitations, I have not listed every objection that I and my clients have to the ROW assessment process. I reserve the opportunity to make those other claims before the district court on my appeal.

I urge the Hearing Officer to give special and prominent credence to the frustration expressed by the various individuals that have appeared before you, especially Mr. Skally. His testimony was moving and his frustration at unfulfilled promises is symbolic of the frustration that we all feel. We hope that the Hearing Officer than these staff members attending these hearings are not just flack catchers for the council but will make meaningful recommendations for change.

As I told the Council when I spoke, the system is broken, illegal and impractical. The city finds itself in a hole and should stop digging before it goes deeper in a

hole that will be harder to climb out of each subsequent year. Please recommend a pause so that the Council can take a fresh look at the problem and return to regular property taxes like all other Minnesota cities use.

Respectfully submitted,

Jack Hoeschler

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