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MEMORANDUM

To: Mayor Coleman, City Clerk Shari Moore, Council Members
From: John G. Hoeschler
Date: September 29, 2016
Re: 2016 Street ROW Assessments

Summary:

Before 2016 street ROW assessments are approved, City decision leaders should know whether:

- City is losing more tax revenues than those it raises from nonprofits.
- City is overtaxing commercial corner properties more than \$1,000 each per year to subsidize exemption for high rise properties.
- City has any proof that its street ROW assessments create a special benefit to any properties in excess of their general benefit to all properties and citizens.
- City is assessing more than its actual costs to commercial properties.

Background:

Each year since CY 2011 I have filed written challenges to the City's street ROW assessments on behalf of various clients. The City has vigorously resisted these challenges but has been unable to provide any evidence that such assessments meet the legal requirements that:

- they provide and do not exceed a special benefit (i.e., increase in market value) to any assessed properties;
- they be uniform across the city as to each type of property;
- they do not exceed the city's costs;
- they be proportional as to all benefitted and burdened properties.

In the response, the City claimed that it was assessing under its police powers as a regulatory fee and that it need not show a special benefit.

The Minnesota Supreme Court has now ruled that this regulatory fee theory is without basis and that the City must show:

1. Uniform treatment across the City as to given types of property (e.g., downtown nonprofits should be treated like neighborhood nonprofits and receive the lower, residential assessment rates).
2. Special benefit to each property (and not just a general benefit) in excess of the assessment.
3. Proportional treatment of all properties benefitted (without exemption for high rise properties and users over and beneath the ground floor).
4. Assessments do not exceed the city's costs as to an assessed property type.

These issues will be fought out in the context of the CY 2011 challenges and subsequent years' challenges are expected to follow the lead of the CY 2011 case.

Challenge:

I note that this year's Mayor's budget shows only \$826,000 of street ROW assessments coming from City nonprofits.

I note that in prior years, the city staff reports have indicated that regular property tax collections from high rise properties for the public works operating budget would far exceed (by more than 3 times) the amount raised from the nonprofits.

I note that prior city staff reports have shown that if the street ROW assessment program were scrapped and the City merely returned to regular *ad valorem* taxation like all other cities, typical commercial corner properties on arterial streets would see a tax reduction greater than \$1,000/year.

If these assertions are anywhere near true, I suggest that the City Council should investigate these assertions of unfairness, inefficiency, and indeed, fraud, before it proceeds to get itself another year deeper into this street ROW assessment hole.

I urge you to ask city staff whether:

- It can prove special benefit (i.e., increase in market value) as a result of street ROW assessment services?
- It can justify charging downtown nonprofits at the high commercial assessment rates when it charges neighborhood nonprofits at the much lower (5 times lower) residential rates?
- It can justify the use of lineal foot charges rather than square foot charges and thus exempt all multi-floor properties from SROW Assessments beyond their ground floor? (E.g., why should a 25 story office building like UBS Tower only pay less than \$6,000 in street assessments when nonprofits like First Baptist Church must pay more than \$18,000).

New Appeals:

I, and others, will again file written appeals from the CY 2016 street ROW assessments on the above grounds. The actual parties will be disclosed in subsequent notices. The grounds for all appeals will be similar to the issues outlined by the Supreme Court in its recent ruling in *First Baptist Church of St. Paul, et al vs. City of St. Paul*.

The Facts and Proper Policy:

Before the Council votes on October 5, 2016 to approve the 2016 street ROW assessment rates, I respectfully request and suggest that it find out and know the city staff's best estimates of the answers to the following questions:

1. Can the City identify any professional appraiser who will opine that the mere provision of annual public works operating services will cause a special benefit (increase in value) at least as great as the special assessment to each property?
2. If City public works services vary in each city service district, how can commercial rates on downtown nonprofits be justified in comparison to residential rates on nonprofits in any other service district?
3. If all benefitted properties are to be assessed in a roughly proportional manner, how can the value, area and uses of multi-story buildings be ignored and only the first floor of properties be assessed? Should not at least a square foot measure of benefit be used?
4. How can the City justify assessing commercial properties more than its actual costs in order to assess residential properties less than its actual costs?

Once you fairly determine the facts behind these questions, I urge the City to scrap its street ROW assessment policy and return to a straight *ad valorem* tax to fund public works budgets as is done in all other Minnesota cities. I urge the City to observe and be guided by the law.

Please accept this memo as the written objection of the property owners I will later identify by reference to this memo.

Thank you for your consideration.


John G. Hoeschler