

**MINUTES OF A SPECIAL CITY COUNCIL MEETING HELD WEDNESDAY, OCTOBER 24, 2007 7:00 P.M. – ROCKVILLE CITY HALL.**

The meeting was called to order by Mayor Brian Herberg. Roll Call was taken and the following members were found to be present: Mayor Herberg, Council members Vern Ahles, Jeff Hagen, Jim Pflipsen, Don Simon & Randy Volkmuth. Absent: Susan Palmer.

Staff members present were: Administrator/Clerk Rena Weber, City Engineer Scott Hedlund, Financial Consultant David Drown, & Attorney Jim Mogen.

Others present were: Tудie Hermanutz, Vince & Audrey Schaefer, Inge Seelen, Bonnie Ring, Aaron Cheeley, Bill & Linda Phillips, Kari & Jeff Patton, Bruce Conrad, Brian & Joanne Hatten, Corynne Philipsek, Donald & Pat Danzl, Marvin Friedrich, Andrew & Genevieve Anderson, Alcuin & Doris Schneider, Mel & Lucille Marthaler, Harold & Marilyn Sietsema, Frances Platzer, Marie Skaja, Amanda Marquart, Gerald Orbeck, Ed Schutz, Ann Filla, Peter & Janet Schaefer, Helen Suess, Joyce & Jerry Schlangen, LeRoy Weber, Gary Grams, Steve & Sandy Pfannenstein, Jan Neyssen, Laura Laudenbach, Harold & Lorraine Jungels, Andy & Eunice Molitor, Mary & Randy Stensrud, Jackie & Earl Pierskalla, Kim, Jim & Emily Jones, Ed Molitor, Jayson Molitor, Nick & Shannon Puttikka, Joan & James Chance, Peter Walz, Glenn & Kris Johannes, Dale Nieman, Alice Schneider, Dorothy Porwall, Judy & Larry Kunz, Jerry Schmitt, Dan & Mary Jo Udermann, Dennis Schneider, Joe & Sharon Sponheim, Marshia, George, Kate, & Randy Bechtold, Dave Molitor, Barb Iverslie, Joe Feldhege, Herbie & Joanne Schlangen, Duane Willenbring, Greg & Mary Schaefer, Brian & Carol Heinen, Charles Walz, Dorothy Fritz, Eric Kunz, Gordon Massmann, Tim & Sue Jeffrey, Michael Maserter, Ron Westrup, Ken Kunkel, Dale Otsby, Roxann Fuchs, Doug Hodel, Doris & Keith Sieben, Carl Musielewicz, Ray Simon, Sara Feldhaus, John Stielow, Judy Ikeogu, Dave Volkmuth, Jerry Tippelt & Charles Schechter.

Mayor Herberg announced that the special meeting had been called for the purpose of considering adoption of special assessments for two projects:

**COUNTY ROAD 82 TURNBACK IMPROVEMENT PROJECT  
C.S.A.H. 8 (TH 23 TO MARTY) RECLAIM PROJECT**

**ASSESSMENT HEARING GUIDELINES** - Mayor Herberg read the guidelines for the public hearing process. (A copy is hereby attached and marked Exhibit A).

**HISTORY:** Mayor Herberg reviewed the following:

How we got to here – A Special Assessment Policy committee worked over 8 months on the assessment policy. A lot of people are upset, but maybe don't understand the process. Everybody pays property taxes to the city, school, and county.

The question came up: How are we going to fix our roads? Whether or not the merger happened the roads were still there.

The thought process was that 25 to 30% of citizens live along a County road where they would only be stuck paying for county and school taxes, but not city streets. The rest of the people would pay taxes to the same three, but also be stuck with an assessment for city streets. It is legal to assess for these County projects.

- County Road 82 - The city has a vested interest and is assessing for what we are being assessed.
- County Road 8 – Is not the same, but the money will be going into a dedicated Road & Bridge type of fund.
- If the city goes strictly on a property tax increase, which they can do, it creates a whole bunch of havoc.
- It limits the city's borrowing capacity and the time in paying the debt back (This will be addressed by David Drown, Scott Hedlund & Jim Mogen).
- It was thought that it is fair to assess all roads.

Mayor Herberg also reviewed some of the rumors that have been heard and the facts to dispel those rumors.

**RUMOR – The reason County Road 82 is being lowered is because City Hall was built too low. Which in fact is false because County Road 82 was put back in the same place where started.**

**FACT –**

- a) A survey of the lot was done as the first step showing the topographic elevations of the site.
- b) The Architect was to give this information to the Engineer (hired by the Architect) and the building was to be designed to fit the elevations accordingly.
- c) The problem first showed up when the job Superintendent (SBI) noticed that the northwest corner (where the front entrance is) would not meet ADA compliance because we would have had to put steps in to meet the parking lot. After looking at the situation extensively it was determined that we could not put in a ramp as the ramp would have been in excess of 30' to get someone to walk up that ramp. It was felt that is easier to put the building down at the elevation it should be which created the drainage issue on the east end of the building. After discussion on how to fix the problem knowing that County Road 82 was going to be re-done and storm pipe would be extended past city hall on County Road 82 that they would drop in the pipe (which is on the east side of the building) that feeds into the storm sewer. That is exactly what happened and it was not at these astronomically large numbers that he heard. From the schedule of costs from the County it is approximately \$2,000 to do that.

**RUMOR: Broadway Street (CR 82 Turnback) is a city project.**

**FACT:** It is a county road project with city cost participation. The County has been working with the City as there have been some projects the City added to the project: curb & gutter, sidewalk, and storm water.

**RUMOR: The City is overspending and is in dire straits.**

**FACT:** The city's tax rate is decreasing for 2008: 3.38% to 40.675%

The estimated tax rate for 2006 including the city hall/fire was supposed to be 50.366% (per the consolidation plan 2002).

The city has an A- bond rating which affects the interest rate the city is charged and did not come easy. It has a lot to do with the ability to pay debt back and people have to be very responsible in how they handle that.

**RUMOR: The Mayor does not want people (residents) to come into City Hall anymore.**

**FACT:** The Mayor does want people to come into city hall. People have questions/concerns and staff is here to provide assistance. Mayor Herberg highly encouraged people to come here to get information before they pick up information that is misconstrued.

#### **ASSESSMENT HEARING FOR COUNTY ROAD 82 TURNBACK PROJECT**

Mayor Herberg called the public meeting to order at 7:12 p.m.

#### **PRESENTATION OF AFFIDAVIT OF PUBLICATION & AFFIDAVIT OF MAILED NOTICE –**

Rena Weber read the notice of public hearing and for the record reported that 56 Notices were mailed out with 16 objections received (2 were renter/owners in John Clark Senior Housing).

**PRESENTATION OF PROPOSED ASSESSMENTS –** Scott Hedlund reported on what the project consists of. The project is not complete and the contractor will complete as much as they can this year. More than likely a final coat of tarvia and turf restoration will occur next year. Can we actually assess even though the project is not completed? Yes we can and this is a fairly typical practice. The City could have chosen to go through the final assessment process before the project even started.

What are the actual costs of the project? Information was provided on the city web-site and Scott Hedlund's costs being presented is information based on recent changes:

Total construction costs	\$1,903,256
Add in City soft costs (engineering, legal & administrative	2,036,918
Source for paying (MNDOT Turnback, county & city funds	1,808,152
Covered by the city	228,766
Total specially assessed	255,253.23

The total specially assessed excludes city owned property which amounts to about 13% of project costs. There was a request by the public to include the city owned parcels in the final assessment roll. That cost was \$25,000 which brings the total to \$280,203.09 or approximately 14% of total project cost.

The City is not assessing based on the cost of the project, but rather the benefit of the project. The total assessed cost is not going to equal the same as what the city pays. There is a fairness issue with different construction issues so it is the goal to assess everybody the same for similar types of road construction (road widths, structural thickness) and also taken into the roll is zoning, and types of users, etc.

- An assessment worksheet was received by the public.
- The left side shows ownership details and zoning.
- Adjusted front footage number is not necessarily the exact front footage people have. If they have an odd shaped lot, this is taken into consideration.
- Property area calculation.
- What construction items apply to the property? Each item has an assessable rate.
- The assessment adjustment factor is based on the adjusted front footage and/or property area calculation which was 15% or 100% on this project.
- Rates are taken from the schedule of costs in the assessment policy.
- 15% is due to a change in the policy and is only being applied to non-city roads.
- Policy in SP-1 District is to charge 200' for every 40 acres, 400' for 80 acres, etc. This applies to A-40 acres as well with the caveat that the remaining portion is deferred for a number of years.
- Rate x Adjustment Factor x Assessable Footage = Assessment
- Term of assessment – 10 years at 5% interest, but people will be able to pay it off without interest for 30 days.

Mayor Herberg explained that rather than assessing on a cost of project the council chose a schedule of costs which was determined to be a fairness issue. The difference of what is not being assessed will be put into everybody's taxes.

Financial Consultant David Drown presented a breakdown of annual impact of taxes on a sample \$700,000 road project based on:

- #1 Budget & Pay Cash
  - #2 Bond over 10 years
  - #3 Assess 20%, Bond over 10 years
- (Attached is a copy marked as Exhibit B).

John Stielow – attorney representing a number of people, presented a summary of what he senses is the public opinion of this particular assessment and the policy itself. 16 objections received by the City and an additional 25 were handed to him today. A majority of the County 82 project are opposing the project or 80%. Why is this happening? Mr. Stielow appreciates the fact of what the council is doing, it's a tough job. He does not want to minimize the tough job the council does. Mr. Stielow also recognizes that the procedure the council followed was with the sense of trying to do the fair thing. What is being viewed by the individuals as to what is fair is different and maybe the right thing to do is the policy should be re looked at.

In terms of objections, the basis for objections are numerous:

1. Sense that portions of the policy are unlawful.
2. Policy that is being applied to County Road 82 is not being applied consistently with the law.
3. The engineer states that the cost is not being assessed, rather the benefit is being assessed and that the final cost is irrelevant. However, there has to be a specific

benefit looked at here. For example in the policy itself the menu is listed as a statement of costs. However, those costs were put together and I would suggest to you today that those numbers were not derived from benefits. They are not being derived from benefit and are being derived from either perceived costs and would not be permissible under the statute.

4. The position is the benefit that will be realized by the property owners will be exceeded by the amount of the assessment. The project is not completed and he will agree that the project does not have to be completed, however; it will make it difficult to determine what the benefits to a property are. As we sit here today it will be months before the project is finalized. It would be difficult for anyone, especially him not being an appraiser or an engineer, to determine the benefit of an individual property owner.
5. Not all benefiting property is being assessed. He is sure that the council is aware that during this assessment procedure that all benefiting property of like classes must be treated in a like manner. There are properties of a like class that are not being treated in a like manner like the non-abutting properties. I think you see those typically where you have a project that reaches beyond this area and not just paving a typical street for people to have an access to a main street from their home. There are projects that are far reaching, either from sewer which would benefit a whole host of individuals in a potential area or a region of a city. There are also major thoroughfares as we are dealing with here today.

People are interested in hearing an alternative. The policy is a guideline and was written to be just that. History will indicated that the city council has taken action to change specific elements of that policy already.

One thing he has heard on-going is that people can't afford the assessment. There is a lot of confusion on why are the assessments more than what the city is paying? There are a substantial amount of elderly people or small business owners who are questioning this. Maybe if they understood why it is necessary they might stomach that. They have grave concerns over the future of the city today.

Regarding the annual tax impact and looking at a one year project there is the assumption it is a one year cost and you are out of there. There is annual maintenance and the concern is over budgeting. Having an annual \$700,000 project there would be continued bonding throughout the process and it would be that amount for each project. One way or another you have to pay for it and he is not here to help us figure how to do that. There may be another way to defray those costs. The over riding theme is that people just don't like how this is being applied. Mr. Stielow presented additional petitions to the City Administrator. (A copy of the updated list of petitioners is hereby attached and marked Exhibit C).

Vince Schaefer – 541 Caroline Lane, stated that he looked at some of the figures. The project is billed as County Road 82, but he believes this is 3 projects: County Road 82, Elm Street and the storm water project at the softball park.

Mr. Mayor you indicated the cost would be \$2,000 for the Elm Street project. Mayor Herberg corrected Vince Schaefer in that the \$2,000 was the cost for the storm sewer hook up.

Vince Schaefer continued with saying that Elm Street is not part of the County Road 82 Turnback project. MNDOT is not paying for any of this. He has an itemized list of the costs of Elm Street. This should be a part of the city hall project and had nothing to do with the County Road 82 project. It should not have altered more than any other street all the way down.

By the way the centerline is 4 tenths of a foot lower than before and it looks lower because of the crown of the road.

- Elm Street cost is \$31,000.
- Project at softball diamond cost \$4,200 and has nothing to do with County Road 82 project. MNDOT is paying nothing for this.
- He does not see anybody being assessed for either of these projects.
- \$1,902,256.52 total cost of the project.
- Deduct Elm Street and ball park and the cost would be \$1,868,056.00 total.

- Figures of how much is being assessed \$255,203.
- Actual city cost is \$200,109.42 for all three projects.
- Deduct Elm Street and the Ball diamond project and \$164,909.00 would be the actual cost.
- Your assessment comes to \$90,203 more than the actual city costs.
- Soft costs – what is on the web site is just an estimate.
- Right of way \$6,000 which is being funded entirely by MNDOT.
- Engineering costs to the city \$12,500.
- Legal \$3,500.
- Right of way.
- Financing \$16,000.
- Contingency fund is \$93,595 which is not a part of the cost just something that could be used if something comes up. We had to move a city water line which Stearns County is picking up.
- Funding sources are State \$1,788,305 and City \$215,700 funding includes all 3 projects. People on County Road 82 are being assessed for a project not even on the street. It is a separate project and he urged the council to break out those costs in all fairness to everyone.

You are pushing this about benefiting parties. You are not getting every one because the storm water comes from a watershed area behind this area from up on the hill. You are only assessing everybody adjacent to the road. Not sure why this was never addressed.

He heard from everyone of the election campaigns say that if I am elected I will do what my constituents want me to do.

Bonnie Ring – 316 East Broadway, stated that as a former council member she is saddened that council members are doing what Vince said and not listening to what the people are asking. People living on County Road 82 are only asking you to be fair. When this project first started it was said that it was unique and the old council said go ahead do it because the council would never have been able to do the project. We are beautifying the downtown area and making it something we all can be proud of. Most of the people she talked with (even if they don't live on County Road 82) don't have a problem paying for any of the project, because even though they don't live here they benefit. If you take that \$164,909 and split it equally among every property owner in the City of Rockville you won't have a problem. All I ask you to do is listen to what the people are asking you and be fair.

Duane Willenbring – 25123 County Road 139, stated he is representing John Clark Coop Housing and Pajetina Enterprises (for the shares that he still holds). Comments:

- Researched through another venue not our legal counsel.
- In order for a special assessment to be valid, it must be based on an approximate market value analysis which shows that because of the improvements the property has increased in value by at least the amount of the assessment.
- If a municipality cannot show this then no special benefit has been conferred to the property that can justify the special assessment. That has been tested in MN courts since 1977.
- Important to note that municipalities have the obligation to determine the reach of the benefits of an improvement and has broad discretion in making this determination.
- Improvements may be made on a property that has benefited from an improvement regardless of whether the property abuts that improvement.
- Mr. Schafer has stated prior to broaden the base for the people of this assessment.
- Special Assessment may be used to defray the costs (Attorney General's opinion) of an improvement and cannot be used for general tax revenue raising purposes. Funds can be used for street improvement project and not returned to the general fund.
- Assessment policy FAQ's – Some of what he has read was the policy was drafted with several goals in mind:
  - #1 Be fair and equal to all residents and businesses – This was ratified without public hearing or public input.

- #2 Balance the special benefits of municipal projects for specific property owners with the general benefit for all city residents. We have to broaden the base.
- #3 A lot of novice people here but rather than talk about the funding he wanted to talk about Pajetina Enterprises and how they had to get the sewer, water and storm water taken care of. They had to get storm sewer easements on private property and this eventually emptied into the Hansen ditch, not using any of the city's infrastructure.
- Needs to verify that their assessment which came down to \$17,300 instead of \$24,000 is correct, assuming we get a retention pond if we ever get across the railroad property.
  - Sidewalk and curb & gutter assessment is based on 100%. Mayor Herberg indicated earlier there was a movement changing the assessment from 30% to 15%.
  - Another situation occurred awhile ago where 3 council members and the Mayor voted on an assessment for Hubert Lane – a movement of the city picking up 50% of the cost from \$15,000 to \$30,000 was approved.
  - Assessments are general guidelines, they are not rigid. Therefore if we were to look at our city, they did not petition for the sidewalk or curb & gutter and never had it before.
  - Why could they not also get a 50% reduction? 100% to 50% on the sidewalk on the curb & gutter.
  - John Clark Housing is also asking for deferment for those 65 years or older. State Statutes allows for deferment of folks living here on fixed incomes. The city used to charge one water/sewer billing for the whole building and now they are being billed for every unit. That is not what they started off with.
  - The Council and Mayor are not mandated to the assessment policy as an assisted guideline. We sense it is to divide and concur.
  - Who is going to be next year? We need to broaden the base of this assessment and levy the taxes of the improvement.
  - If they saw a big chunk of money going to road improvements they would be okay with it.
  - Challenges must be in writing – they need to lay out the specific challenge.
- Jim Mogen stated that challenges must be in writing before the close of the public hearing listing to specifically what they are challenging. That is a statutory requirement.
- So is the written notice they presented good enough? Jim Mogen stated that if this is a challenge it is specific enough.

Earl Pierskalla –29833 Lilac Road, owner of Rockville Self Storage and the land adjacent to it stated the project was supposed to be assessed at 15% and they are being charged at 100% for sidewalk, curb and gutter. He is not sure where the benefit comes in. Hopefully they can get this down to 15% as they did in other areas. It is more expensive to tear out an old sidewalk and put one back in so it seems extreme to be charging 100%.

What happens when a new city council gets voted in and does away with this policy? Will we still be assessed for County Road 82 and have to pay for other projects? You know we were told previously there would be no assessments for County Road 82 and when Highway 23 was moved it lowered or decreased the value of his land. That is like a triple edged sword. As far as being a business person it is not very encouraging to do business here. He urged the council to look at other options because assessments can't be deducted from property taxes. How would the City of Rockville feel if Stearns County assessed them for these projects?

Steve Pfannenstien - 802 Ptarmigan Drive, stated the council heard from people who are on or adjacent to the road and he feels he had to step forward. Basically he is in support of the citizens of this community because he was born here, lived here all of his life and wants to see the city grow and flourish. It pains him to hear and see some of the assessments to particular people and businesses in our community. There are residents on fixed incomes on this project and fearing that if we continue to go in this manner we are going to squelch the growth of the city. We are grateful to have a wonderful restaurant, church, people, and if these impacts become too great, we are going to lose them. We all use that main road, as a taxpayer if that road needs to be improved spread it among the whole city – we all use it.

Tudie Hermanutz - 211 1<sup>st</sup> St West, stated that she is not on either project, but is mainly here to speak for a majority of people in this community who she has surveyed in the last week and it is not a legal survey. They went out by neighborhoods and she has 100+ objecting to the street assessment policy. Their comments have been totally 100% that they are willing to put it on their taxes. They want street projects done and she is sure they have not seen Mr. Drown's chart. They have lived here long enough to know how to pay taxes or how you pay for things. I would probably say that you not do \$700,000 every year. Pay for things as you do them. 100 out of 1300 adults is a pretty good sampling and not one person said this is the way to go with the assessment policy. They would like to see all of the street projects paid by all when we can afford them. The public outcry happened; they got together, and paid an attorney to meet with them 3 or 4 times. 80% of the people on the project have the right now to go to court. She does not want to pay the city attorneys wages to fight her in court.

Jim Mogen asked if any of the property owners were on County Road 82 as they need to be kept separate. Tudie indicated that no they were not and this is a separate petition.

Gary Grams – 21373 Agate Beach Road, stated he does not live on either road, but he opposes the precedent the council is setting. He sees this as another level of taxation however you want to color it. He already saw this on Grand Lake with the Lake Improvement District. These are instruments that the county implemented. You already have the sales tax, the Levander penny, and liquor tax. It was supposed to be a temporary tax, but it will not go away as will this precedent you are setting. He urged the council to recognize the voice, your constituency. Mr. Grams has seen a sewer project pushed in at Pleasant Lake and Grand Lake and he does not see any of those council members on the board tonight. That is something you have to listen to and recognize. Listen to your constituency they are trying to tell you something tonight.

Bruce Conrad – 11381 Hubert Lane, stated that he is a tenant by George Bechtold and owns an industrial lot by Gilbert Donabauer. He has concern on:

- Some assessments are 15% and other areas are 70% of the cost. Most of the city is paying most of the cost anyway.
- Some will be paying 100% if they have the road tarred like the Hansen's or the road where the road runs through a farm yard was an area proposed to be assessed on both sides a few years ago.
- There is no way you can charge them because it exceeds the value. You are going to have that all over the city and will defeat the policy you have already.
- Does not understand that you can charge 100% for sidewalks. If they own it they should gate it off and be able to use it as a private patio. This is ludicrous.
- People come from the apartments and use the sidewalks, everybody uses them.
- \$700,000/yr you already estimate for roads. Is that in addition to the \$250,000 per year already collecting on taxes for road maintenance?
- If that is not true it is misleading. It is \$950,000 year and more is added because the price goes up each year. An interest rate is added on each year for 10 years. It can't be cheaper because people want to make money.
- As President of the Rockville Business Association it is hard enough now to pay his rent. You have construction people parking their broken down trucks in Schaefer's parking lot. His business should be in Cold Spring. He paid \$5500 cash for his industrial lot along Highway 23.
- I have no choice but to look elsewhere.

Mayor Herberg addressed the \$700,000 is new money and is the estimate to do 2 miles of road each year. Some of it is total reconstruction, some of it is new construction. The city has 52 miles of roads. The city should do at least 2 miles each year and it will take 25 years to do the whole city. The expected life of a road is 25 years.

Audrey Schaefer - 541 Caroline Lane, she is not being assessed. The biggest problem in the last five years is that nothing has been done to pull the 3 former entities together and operate together. That is until you started on the proposed assessment policy. Your action on this has brought the whole city together and working in one unit. That includes the core city, people living on county roads, the farmers, and everybody in the whole city.

Attorney John Stielow stated he wanted to make a point of order. He stated that one person gave him an objection which he provided and now he would like to change it to provide more specifics. He would like to provide it to the City Administrator. He hopes it is not the position of the Mayor here that the objections not abiding by the necessity of the specificity. He just wants to make sure we are not going to accept those. What the notices are is a notice (under statute) that there is an objection. There is no specificity requirement within the statute itself under subdivision 2. It simply requires that a written objection be brought forth but no specific objection. There are 100 appeals so he would like to #1 make that point, and #2 that a proper record of objections will be hung onto.

Harold Jungels – 164 Broadway Street East, stated that he heard the comment that it is not the cost of the project, but it is the benefit. He owns property at 168 & 164 Broadway Street. He had a good sidewalk, curb & road and does not see where he is going to benefit on any of them. He would like to know what benefits he is going to receive.

Ann Filla – 234 4<sup>th</sup> Street stated she was raised to live within her means. If she did not have money she did not buy something. You were all elected to represent us. You are spending our money, using our taxes. She would ask that the council live within our means.

**CLOSE PUBLIC HEARING – Motion by Member Volkmuth, second by Member Ahles, to close the public hearing at 8:32 p.m.**

**AYES: Ahles, Hagen, Herberg, Pflapsen, Simon, & Volkmuth**  
**Motion passed on a 6 to 0 vote.**

**ASSESSMENT HEARING FOR C.S.A.H. 8 RECLAIM PROJECT**

Mayor Herberg called the public hearing to order at: 8:33 p.m.

**PRESENTATION OF AFFIDAVIT OF PUBLICATION & AFFIDAVIT OF MAILED NOTICE –**

Rena Weber read the notice of public hearing and for the record reported that 58 notices were mailed out with 26 objections received (2 concerned parties submitted the objections) and one written concern regarding commercial/residential structure.

**PRESENTATION OF PROPOSED ASSESSMENTS –** Scott Hedlund reported on the project costs.

\$687,450.00 total with soft costs

There was a question raised after the assessment was mailed out and a change was made to that parcel so his number is slightly different.

\$57,906.85 with this change

\$16,606.73 deferred assessed total

Scott Hedlund reviewed the assessment roll and explained the information provided.

Inge Seelen – 156 Broadway Street, stated that we never mentioned the boulevard. Are you still putting it in? Yes.

She was told she has to drive over the boulevard to get into her yard. There is no sense to have a boulevard, further down okay, but not right there. How much does it cost? There you save money.

John Stielow asked that statements made at the previous hearing be applied to this. The rights to talk to this assessment while it has some similarities, but it has some differences too:

- Looking at the funding and understanding these are an estimate of final project costs he does not understand the need for legal, engineering, and administration costs.
- He heard from the county that there will be none of these costs. This is different.
- In the listing from the FAQ and in the policy itself, there is a reference to Attorney General Mondale comments on assessments and whether or not a city could assess in excess of actual costs.
- He alluded to Attorney Miles Lord where in 1959 his opinion allows for excess assessments.
- County project where there are no city costs – Under the statute only the cost of the improvement may be assessed. If the city has no input and no expense there should be no assessment. These are county improvements
- Municipality may only act under specific actions of the statute. If this is a county project there is no improvement. Under the statues you cannot assess.
- County road reconstruction – is not an allowed use of powers in Miles Lord's opinion.
- Position is there are specific objections to how this is being applied.
- Point of clarification – there is a provision that mandates a written objection to give the courts jurisdiction to hear these types of appeals should they become necessary, but no where does it require specific items be listed or that the objection will be waived if there are no specific items listed. He cautioned the city that all these written objections should all be treated in a like manner.
- You are hearing a tremendous amount of objections. He is adding an additional 26 objections with 56 notices mailed out the total amount of objections is nearly equal to 100%.
- This is something that people don't want.
- Provided the additional written objections to the Administrator.

Joe Sponheim – 21556 County Road 8, stated he opposes the assessment and wants to know how this will benefit him. The road is steep and he can't even put his garbage can out without a wood block. There is a traffic problem, the speed problem is just as bad if not worse, and if this is not a benefit, it should be decreasing his property. If it is he wants to know how much are his taxes going down? There are 52 miles in the city and so many are state or county while 26 are city streets. Why do you have to do 2 miles each year? Can't you just budget?

Mayor Herberg replied that there are 52 miles of city roads.

Bill Phillips – 22446 County Road 8 urged the council to rescind the policy on assessments that brought us here tonight. This assessment to the land owners is a no win situation. If this assessment isn't pulled it will be challenged in court. It will force us to pay for lawyers on the city side and their side. If the council's decision is upheld in the courts there will most likely be a replacement of the council over the next few elections. The future council will see the error of your ways at which point we will be assessed this time around and what I see as fairly into the future. The policy needs to be rescinded. Improvements, if needed, should be budgeted and split equitably among the citizens in the City of Rockville. This is how it used to work in the former Township of Rockville and that is how it was in the past. Do not table the decision and have the backbone to look the constituents in the eye and tell them what you are going to do.

Don Danzl – 23335 County Road 8, Cold Spring, stated that he is proud to say Cold Spring. If you people were retired how would you pay this assessment if you are living on social security? Are you going to let the rest of the people living on a county road decide how they would like to see the road look or are you going to screw us too.

Ken Kunkel – 21409 County Road 8, stated he has been here before speaking of the so called benefits of the reclaim of County Road 8. He moved here in 1991 and maybe 3 or 4 cars drove by his house in an hour. On 10/7/07 he went for a ½ hour walk (5:45 p.m. to 6:15 p.m.) and he counted 37 vehicles. On Wednesday 10/10/06 (4:40 p.m. to 5:10 p.m.) he counted 82 vehicles. Six of those vehicles were Anderson trucks. He does not see this as a benefit. He looks at this

city hall and fire hall and sees the City of Rockville with a Cadillac or Mercedes idea with a Geo Metro pocket book.

Charles Schechter - 20357 County Road 8, stated that he never thought he would get this involved in city government, but he has lived here for 30 years and chose that location because of the location. He got some information from Jeff Hagen and as far as the assessment policy being fair he has done some research. A lot of cities do charge assessments, but to be fair, the (\$700,000 if really needed) and Jeff had indicated that we don't want to raise taxes; he suggested we charge everybody the same. You raise the levy and everybody is impacted at the same time. Roads have been gravel for years, they don't need to be tar, just grade them. If the money is needed consider a tax levy because it would be the fairest way and impact everybody. If you are talking about a 15 year program there are people living at the end of the road that may never see an assessment.

Tudie Hermanutz – 211 1<sup>st</sup> St West, stated that we are talking about county roads and farmers. Some farmers have 5 miles of property on county roads. We only have a few farmers left. You are talking about deferring their assessment for 7 to 10 years. There is a young couple living on the end of County Road 8 who has been assessed \$4,000 and then in 7 years they will have to pay the additional \$20,000 at 7% interest. How can a young couple trying to run a farm and pay \$24,000 for a piece of tar that was already there? The farmers would never have merged if they knew they were going to get hit with an assessment. We are not being fair. Most cities assess, but most cities don't have farms. Look at that policy and be fair to farmers.

Inge Seelen – 156 Broadway Street East, stated when she received the first assessment for the Main Street and she has property on the alley. She used to pay \$10 year and now she pays \$190 year. It has 45' in the front and 46' in the back. Rena Weber is to call her. I'm 80 years old; do you think I am dumb?

Steve Pfannenstien – 802 Ptarmigan Drive, stated he is in support of residents on this project. It is closer to him and he is thinking of the 2009 project that will affect his mother. He has a mother who wants the good lord to take her out the front door instead of keeping her in her home. What are the expected costs going to be in 2009 and on her fixed income? The big fear is the whole policy procedure. Once in place, how is this going to be applied in the future? He does not understand all of the issues, but if you have a county project and there are no costs to the city, then how are you going to assess the residents for that particular project? What is going to happen when the State wants to improve Highway 23 which goes through the City of Rockville? Is the city going to impose an assessment on those people? That is going to be a horrendous bill. People are fearful of what is going to happen in the future.

Judy Ikeogu - 23305 County Road 8, stated that when they joined the city the idea was to benefit all of us. She questioned that seems too good to be true and she voted no on the consolidation because of this reason. Some of the things going on here have not been done for the benefit of this community.

Vince Schaefer - 541 Caroline Lane, wished to add on to what Tudie Hermanutz has said. This part of the assessment is definitely in the assessment policy. Another council may come in and change it.

Chapter 10 H – Assessments for Properties Zoned A-40 reads – For example, a 160 acre parcel zoned A-40 with 2,000 feet of adjusted front footage shall have an assessment levied for 800 Adjusted Front Feet (200 feet for each 40 acres) and shall have a deferred assessment for the remaining 1,200 adjusted front feet. The purpose of this provision is to recognize the future development potential for property zoned A-40 and account for the benefits. The deferred assessments shall become payable upon the earlier occurrence of one of the following: (1) 10 years (for totally reconstructed streets) or 7 years (for reclaimed streets) has passed from the date of the adoption of the assessment roll; (2) the rezone of the property; (3).

He looked at the Ed Massmann property who is being assessed \$4,000. If somebody enforces this policy in 7 years he would have to fork up another \$22,000 with 7% interest.

Another thing is that County Road 8 is an 8 ½ mile project with 3 ½ miles being in Rockville. Maine Prairie has 5 miles. The City of Rockville has in their proposed assessments \$5000 for Engineering fees and Maine Prairie has 0. I would suggest the council members from here on in demand itemized statements from any of the engineers, attorneys, or whomever. Don't just go and pay it.

Duane Willenbring – 25123 County Road 139, has a few quick comments because he sensed it was getting towards the end, but could the city's legal counsel give us a heads up on what is next for those of us who are novice and so that we don't miss something that is time certain. You have heard that the taxpayers are positioned to take this as a legal fight. It would be foolish to pit personal money against taxpayer's money. This could be modified very simply. Stop the assessment and go back to the reality. So, after the public hearing is over and legal counsel gives their answers will we be allowed to ask questions at that time specifically regarding state statutes or the 30 days time certain after the adoption of the assessment. I don't imagine this is going to happen tonight. Could this be done collectively since legal counsel is being paid with taxpayer's money right now? If the city council/Mayor wants to continue to swing votes (this is not a threat) it would be a great time to get the assessment policy taken away.

Dave Volkmuth – 25574 Lake Road, stated this was an interesting meeting, but at the same token I would urge you to look at the future for a couple of people who say I voted no for the consolidation. I was a council member for over 30 years. I think you are heading this way, but you have to have money to build roads, but you don't take it by this action as you have seen a crowd here opposed to how you are going to pay for it. I believe that as a council member you have to have at least 75% of the money before (I know we didn't have all the roads you have). As a council member I had a moral obligation to represent the citizens and I think you need to take a good hard look into allowing some form of money going into a road fund. The policy as it is here tonight may have to be looked at again. So much does have to go into the road fund.

Jerry Tippelt – 12318 235<sup>th</sup> Street, stated he would wonder if we do follow the assessment policy, you have to have something in place to cover years down the road because all these people are going to get assessments now and in five or six years and the policy changes where it gets on their tax base. It would not be fair to the people paying all this money now. In regards to the Main Street he thinks it is too narrow, sidewalks are wider than the street. Personally he is going to avoid coming through town as much as possible as he foresees a problem.

**CLOSE PUBLIC HEARING – Motion by Member Ahles, second by Member Volkmuth, to close the public hearing at 9:09 p.m.**

**AYES: Ahles, Hagen, Herberg, Pflapsen, Simon, & Volkmuth**  
**Motion passed on a 6 to 0 vote.**

**CITY ATTORNEY JIM MOGEN ADDRESSES QUESTIONS** – Jim Mogen stated the he kept track of issues that were raised during the public hearings:

- A summary of where we go from here:
- Duane Willenbring's challenge and appeal process will be discussed at the end.
- Claims regarding policy for Ag – 40 and how that applies. There is no property in the County Road 8 project that has \$17,000 or \$20,000 deferred assessment. It is more like \$7,000 or \$6,000.
- In addition there was discussion on a specific property owner who is in the SP – 1 zoning classification is not given a deferral like the A-40. In your zoning scheme you have determined that there is property out there that is so unlikely to be developed that the assessment is not even assessed for the balance.
- A-40 does have a deferral since it is likely to be developed. They do have a system so that they are not stuck with a huge assessment and the remainder if deferred over a period of 7 to 10 years.

- Questions regarding deferrals for low income or seniors – The policy does allow for this and people can apply through the county and that will allow them to defer.
- Green Acres deferral – People who have green acres also can defer special assessments.
- For difficult situations the policy is proactive and does address those concerns.
- Questions demonstrating benefit property – We can't discuss here as every property benefits at a different level, however, there are general rules regarding property:  
In order for property to have value, the property has to have access.  
Need road access to develop the property.  
There is expected maintenance and aesthetics that relates to benefit to the roads.
- Not required to demonstrate the benefit today. You need a good faith estimate that the amount assessed against the property does not exceed the amount of benefit to that property. Given that none of the your assessments exceed 15% more than the actual cost of the improvement it is fairly safe to gauge that you are not going to see the benefit. There are specific properties that have identified this and you have the ability to look at those properties to see that in that specific situation you can say "in this case it doesn't apply." Your assessment policy doesn't apply and we have to do some other number. In that situation we have to take a number of different steps on a parcel by parcel basis. You can be rest assured overall that those properties will fit within the benefit factors.

Member Hagen asked what about the property that has been assessed 100% of their sidewalk or curb & gutter. Do we have the prerogative to look at just that aspect of the project? Jim Mogen stated that the council does have that prerogative.

Member Hagen stated that people claim they are being assessed 100% in the same zone. Jim Mogen indicated the courts will look at the entire project and entire benefit and that is one way you will fit into the benefit. Sidewalks do benefit the property. You can make an analysis and make an adjustment to that based on your belief.

Jim Mogen stated that Mr. Stielow questioned the legality of the assessment policy as well as the question of benefit. The legality of your assessment policy is decided. I brought your attention to two Attorney General's opinions in which the AG has held that a project is not required to take into account the actual out of pocket expenses that a city incurs in determining assessments. I want to step back in that Scott Hedlund misspoke in explaining the project. This project is based on costs. What you have done here is you identified the overall cost of \$2,000,000 and directed Mr. Hedlund to come up with an average per foot cost. In that way we analyze each parcel fairly and treat every parcel the same using a schedule of cost Vs per lineal foot method. It is still based on the average costs. The statute specifically allows you to exempt certain funds that you may obtain from others sources and are not required to lower the assessment. The assessment is still based on the cost of the project and the policy is applied to all projects within the City of Rockville. The policy is to apply the same assessment rate to any project.

Why is this different for county roads 15% rather than 30% for other roads? The difference is based on the collector traffic on county and state roads. Therefore you determined there is a greater public benefit on county and state roads and 15% would be paid for by sources other than the state or county funding.

Highway 23 – Specifically Highway 23 would not be assessed because there is no direct access to 23 and your policy requires that there be direct access.

Member Volkmuth asked if we can do a Road and Bridge fund. Jim Mogen indicated that the city can levy an additional tax but it will not show up on the levy in its own special fund like the township does. It would more than likely come into the general fund and you can then put it in its own fund.

Member Volkmuth asked if we can charge everybody \$300. Jim Mogen stated the answer is no because it is based on the market value of the property.

Member Hagen asked if there is more latitude for the council to use such funds elsewhere Vs the money we would receive from special assessments. Jim Mogen indicated that yes the tax levy can be re-budgeted at any time and used elsewhere, but an assessment has to be spent on similar road projects.

Member Pflapsen stated that his question is in regards to the high percentage of people living on County Road 8 in that it was explained to them by someone working the street that if someone did not object that they would be left in the cold and they would still have to pay an assessment even if the objectors won. Could that be a reason that we have 70% to 80% that have signed up?

Jim Mogen indicated that statute requires that any property owner who wants to appeal an assessment has to challenge the assessment in writing. The statute does require that the objector has to identify the reason for the objection. It has limited the appeals of the assessment to the issue regarding the assessments. The idea is that you have to be given notice that there is an issue out there before they can go to a court of appeals. However, how that applies is that after the fact, the property owner can still appeal and they get access to the original appeal and go to the court using the other appeal. This needs to be filed within 30 days of adoption of the final assessment. If not a member of the appeal they can't appeal later. If they were to win only those that win get a change. Challenges to assessments are very rare, it is rare that challenges succeed and the city can re-assess for the changed portion.

Member Hagen to Scott Hedlund – On the Elm Street project which Vince Schaefer said cost was \$31,000 is that dollar amount being assessed to properties adjacent to County Road 82 or is that dollar amount being assessed to the properties adjacent to Elm Street?

Scott Hedlund reported that dollar amount is listed in the project cost and in regards to who is being assessed, both properties abutting Elm Street are already being assessed for the County Road 82 side and your policy is not to assess both sides of the roads.

Jim Mogen stated that in addition, under the policy, the increase due to Elm Street or the Community ball park does not increase the cost to property owners along the street. Their cost is based on the front foot per the schedule of fees.

Mayor Herberg stated again that all assessment costs are based on the schedule of fees.

Member Pflapsen to Rena Weber - Did Rena have any contact with any residents that are in support of the assessment level of 30% and recognize in writing that 15% for a county road seems fair? Rena Weber indicated that she did not have anything in writing and that no one has contacted her, but some have given their support to members.

Question from the residents – Who are they?

Mayor Herberg stated that he concurred that there are people in favor of it, but they would not be asked to appear tonight as there would be a lynch mob.

Mayor Herberg stated he would like to address the County Road 82 Turnback. The Council voted to change the 30% to 15% on the street reconstruction. We did not look at the sidewalk and curb & gutter at 100%. He suggested the council look at that across the board and drop the 100% rate to 50% - same as the 30% to 15%. This is in fairness of what we have acted upon.

Member Pflapsen indicated that seems logical.

Member Volkmuth stated he is interested in coming up with another option; however, we are on a tight budget and that we do foot the bill. \$166,000 is the amount that we will incur in this project. Assessments aside and just going through the city budget, we are not like Cold Spring or Waite Park and can do all the roads we would like to. He is open to other solutions, but we need to pay for it. He could look at a cut for the new sidewalk by 50%. He would like to look at all issues. It would be best to look at and come up with a solution.

Member Pflapsen voiced concern that if we don't adhere to any kind of assessment policy, he did not hear any solution for road projects going forward tonight, and we are working with one of the best financial consultants in central Minnesota who tells us we are looking at an ad valorem tax levy increase of \$700 per year per home. We would probably do a \$700,000

project only once every two to three years. Those are real numbers. On the flip side of that is to assess a low rate of 15% on arterial roads and 30% for other roads and then we bond for the balance. That is the scenario that about 99% of the cities in the State of MN use. What is the financial option? We don't have one. The ones who object are stepping up to the plate. There needs to be some subjective views on this as we did not create the policy within 30 days. We need to look at options to take care of the infrastructure of the city. There are a number of people who have supported the policy. He has spoken to a number of people who feel it is a fairness issue because if they are going to pay 30% and the city pays 70% and people living on a county road pay 15%, then this is an issue. He clearly recognizes that he was elected to represent the citizens and feels we need to research other funding options.

Mayor Herberg stated the comments made to the elected officials sitting up here and listening to the constituents (all will support him saying this) that people are tired of their taxes being jacked up. Mayor Herberg also informed the council at the committee level that if you guys think people will be contentious about taxes, wait until you go through assessments. This has not been easy. We are looking at 10 to 20 years down the road and starting this process is something the council needs to do. If people don't agree with what we are doing or what we are proposing the next election will reflect what we are doing. A little digestion needs to happen before we make a decision.

***Motion by Member Volkmuth, second by Member Pfllepsen, to table action on the two final assessments.***

***AYES: Ahles, Hagen, Herberg, Pfllepsen, Simon, & Volkmuth***

***Motion passed on a 6 to 0 vote.***

Mayor Herberg thanked everybody for keeping their tempers down and not making this a circus.

Duane Willenbring asked if people can ask a question at the next meeting. Mayor Herberg indicated a little bit of yes and no.

***ADJOURNMENT – Motion by Member Simon, second by Member Ahles, to adjourn the meeting at 9:41 p.m. Motion carried unanimously.***

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**VERENA M. WEBER-CMC  
ADMINISTRATOR/CLERK**

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**BRIAN HERBERG  
MAYOR**