

## Rena Weber

**From:** Amy Goerger  
**Sent:** Friday, September 04, 2009 8:05 AM  
**To:** Tim Sime; Rena Weber  
**Subject:** RE: Voigts Assessment and SAC Fees owed

Tim,

The SAC charges are for new development and not the 5 acres with the land.

Amy Goerger  
Finance Director  
City of Rockville  
Phone: 320-251-5836 ext.103  
agoerger@rockvillecity.org

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**From:** Tim Sime [mailto:tsime@rnoon.com]  
**Sent:** Thursday, September 03, 2009 4:06 PM  
**To:** Rena Weber  
**Cc:** Amy Goerger  
**Subject:** Re: Voigts Assessment and SAC Fees owed

Rena,

The resolution and findings on the apportionment issue is attached. After reviewing the info from Amy, I noticed that a portion of the \$420,000 is not part of a special assessment - about \$65,000 is related to unpaid charges for SAC and other late fees. The apportionment statute only allows the city to divide up the special assessments. The certified charges relate to sewer charges for connection to the house presumably. If that's the case, those charges need to stay with the parcel that has the house. If these charges relate to another parcel (and were certified on some other parcel), then we should discuss that.

I highlighted the numbers for the assessment apportionment at the end. I kept the \$120,000 that is being moved over to the 135 acre tract, but dropped the amount remaining on the 5 acre tract (since the actual amount of the special assessment is lower). But if you add in the certified charges that are staying with the 5 acre parcel, it comes out to the same - just a different way of getting there.

Please review and let me know if you have any questions or comments - or if you think any of the dates are wrong. Thanks.

Tim

Tim Sime  
Attorney

**RINKE NOONAN**  
Suite 300, US Bank Plaza  
P.O. Box 1497  
St. Cloud, MN 56302  
(320) 251-6700 Office  
(320) 656-3536 Direct  
(320) 656-3500 Fax

[website](#) | [email](#) | [bio](#) | [map](#)

9/4/2009

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION ADOPTING FINDINGS OF FACT AND REAPPORTIONING  
SPECIAL ASSESSMENTS PREVIOUSLY LEVIED ON PROPERTY PURSUANT  
TO MINN.STAT. § 429.071**

**WHEREAS**, the Rockville City Council has considered Applicant's request for an administrative subdivision of Applicant's property (described below); and

**WHEREAS**, the Council has also considered a reapportionment of the special assessments previously levied on the property pursuant to Minn.Stat. § 429.071 and hereby makes the following:

**FINDINGS OF FACT**

1. James E. & Jacqueline A. Voigt, Lon & Julianne Voigt, Michael & Candace Voigt are the owners of the property located at 25614 Pleasant Road and identified as parcel number 76.41600.400 (the Voigt Property). The Voigt Property consists of approximately 140 acres and is improved with a single family residence in which James and Jacqueline Voigt currently reside.
2. In 2004, the City levied special assessments on the Voigt Property in the amount of \$353,075.18 for sanitary sewer improvements to the Voigt Property.
3. There are also unpaid sanitary sewer charges and fees in the total amount of \$65,854.02 that have been certified against the Voigt Property. These fees and charges relate to development of the proposed 135 acre tract.
4. The 2004 assessments were originally deferred so that payment would not begin until 2008.
5. In 2008, the Voigts asked the City to defer the assessments for an additional two (2) year period due to financial hardship. They also asked the City to defer collection on the certified unpaid charges. The City Council agreed on the condition that the Voigts sign an assessment agreement providing certain protections for the City. The Voigts represented to the City that they would sign the agreement.
6. The Council, in good faith reliance on the Voigts' promise to sign the assessment agreement, deferred the special assessments and certified unpaid charges for a period of two years (deferring until 2010 payments that were scheduled to begin in 2008). The Voigts, however, have refused to sign the assessment and deferral agreement.
7. Based on the deferral, the initial payments on the special assessments for the Voigt Property will not begin until 2010.

8. The Voigts have made no payments on the special assessments and the entire original amount of \$353,075.18 is still outstanding.
9. The Voigts have also not made any payments in the certified unpaid charges.
10. The City bonded for the sanitary sewer improvement project for which the Voigt Property and other properties were specially assessed. The special assessments have been pledged as payment on the improvement bonds.
11. James and Jacqueline Voigt have now applied for a qualified minor subdivision of the Voigt Property, requesting to split off a five (5) acre tract that includes their single family residence. The purpose of the subdivision request is to separate ownership interests in the Voigt Property so that James and Jacqueline Voigt will own the five acre improved tract and Lon, Julianne, Michael and Candace Voigt the own the remaining 135 acre tract.
12. Minnesota Statutes § 429.071 permits the City to apportion a special assessment previously levied on a parcel when the parcel is subdivided if the Council determines that such apportionment will not materially impair collection of the unpaid balance of the original assessment.
13. The statute also mandates that the City require, as a condition of the apportionment, that the property owner furnish a satisfactory surety bond fully protecting the City against any loss resulting from the failure to pay any part of the reapportionment assessment when due.
14. Stearns County is responsible for assigning Parcel ID numbers to new tracts created through a subdivision of property. When an parcel that has been subdivided includes an existing single family residence, the County has historically required that the new tract with the single family residence retain the property's existing Parcel ID number, and has assigned a new Parcel ID number to the subdivided unimproved tract, designating that tract as the new parcel.
15. The County recently modified its policies to require that all new tracts created through a subdivision be assigned new Parcel ID numbers. The County defers to the City as to which of the new tracts shall be designated as the original parcel for purposes of assigning and apportioning existing special assessments.
16. In keeping with past practices, the City designates the proposed 5 acre tract with the single family residence as the original parcel for purposes of retaining and/or apportioning the existing special assessments.
17. In determining the apportionment of special assessments, the Council has considered the arguments and requests of the Voigts, the failure of the Voigts to provide prior assurances to the City through the unexecuted assessment agreement, the unpaid balance of the assessment on the Voigt Property, the relative estimated property values of the proposed

5 and 135 acre tracts, the relative benefit of the special improvements to the proposed tracts, the obligations of the City to make payment on the improvement bonds through the collection of the special assessments, the ability of the City to collect the unpaid balance of the special assessment on the proposed 5 and 135 acre tracts, and the equitable distribution of the special assessments to the proposed tracts.

18. The Council finds that there is significant risk to the City if the entire or substantially all of the special assessments are moved from the 5 acre tract and placed on the 135 acre tract. The 135 acre tract is undeveloped and is currently used for agricultural purposes. At least one Voigt family member has speculated that one of the reasons for the requested subdivision is that the 135 acre tract may be lost to unpaid property taxes.
19. The Council finds that, under the unique circumstances of this special assessment and proposed property split, there is a need to retain a substantial amount of the assessments on the proposed 5 acre tract so as not to materially impair the collection of the unpaid balance.
20. The Council finds that the proposed 5 acre tract is substantially benefited by the improvements for which the assessments were levied due to the single family residence on the property and the fact that the 5 acre tract may be platted and subdivided in the future for additional residential development.
21. The Council finds that the 135 acre tract is also benefitted by improvements for which the assessments were levied due to the potential for future development of the property.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL THAT:**

1. The above Findings of Fact are adopted.
2. Upon approval of a qualified minor subdivision of the Voigt Property, \$233,075.18 of the remaining unpaid balance of the special assessments shall remain with the proposed 5 acre tract and \$120,000.00 of the remaining unpaid balance shall be apportioned to the 135 acre tract.
3. Before any portion of the assessment is apportioned to the 135 acre tract, the owners of that tract shall provide the City with a satisfactory surety bond fully in the amount of \$120,000.00.
4. The certified unpaid charges shall remain with the new 135 acre tract.
5. The City Administrator is hereby directed to coordinate the apportionment of the special assessments with the Stearns County Recorder and Auditor and is authorized to execute any necessary documents necessary for the County to apportion the assessments in accordance with this Resolution.

Adopted this \_\_\_\_\_ day of September, 2009.

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Jeff Hagen  
Mayor

ATTEST:

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Rena Weber  
Administrator-Clerk