

**MINUTES OF A SPECIAL CITY COUNCIL MEETING HELD WEDNESDAY, SEPTEMBER 26, 2007 – 6:30 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, Susan Palmer, Jim Pflapsen, Don Simon, and Randy Volkmuth. Absent: None

Staff members present: Finance Director Julie Zimmerman, Maintenance Person Rick Hansen, & Engineer Scott Hedlund.

Others present were: Jason Ophoven, Kevin May, Mathew Haubrich, Daniel Bielejeski, Lance Levasseur, Loren Eich, Dennis Goebel & Matthew Weiman.

**TAMARACK COURT DRAINAGE SYSTEM** – Mayor Herberg announced that a public hearing would now be held to consider improvements to the Tamarack Court Drainage system.

Julie Zimmerman read the public hearing notice for all present.

Scott Hedlund reported on the following:

- Map of the current drain system
- Maintenance issues the city has been facing
- Drainage system has not been working well since the sanitary sewer system was put in
- Tree roots have been found in pipe in the past
- This project is to replace or install pipe correctly or restore.
- \$24,000 – high end of construction – includes contingency
- Estimated assessment per parcel \$2,000 (12) if 100% assessed. Less if city assumes portion of assessment. I.e. \$1,000 if city pays half. (This was requested by property owners at the public information meeting on 9/5/07).
- Brief feasibility report of project request. This project would benefit all 12 owners. According to the engineer the project is feasible and the plan would be to install a 6” pipe instead of the 4” pipe.

Matthew Haubrich - 521 Ptarmigan Lane-Would like clarification on what is going under Ptarmigan Drive? Scott Hedlund replied the 6” pipe would go 10’ east of Ptarmigan Drive.

Matthew also questioned whether there is, in fact, a drainage line from County Rd. 8 east to Ptarmigan Drive? Scott Hedlund noted they can’t find anything documented to indicate that a line exists.

Jason Ophoven - 502 Tamarack Court questioned if there would be an agreement for future liability if the new pipe clogs or collapses?

Council members referred to the memo dated September 26, 2007 from the city attorney where he stated that if the city assumes some portion of ownership the city may then still be liable.

Jason Ophoven – 502 Tamarack Court wondered if there had been any discussion on including Kinzer’s home, or the yellow house to the south of Kinzer’s, in the list of benefiting owners? There was no benefit to them per Scott Hedlund.

There was discussion whether it is more fair to divide the assessment by the number of owners benefiting or by the property length (for example Willenbring’s have a larger square footage than other owners). Scott Hedlund believed it is more fair to divide by the twelve benefiting property owners.

There was a question on whether research was done on when the drain tile went? Engineer Scott Hedlund stated not to his knowledge.

Mayor Herberg noted it the tile was put in by the developer after the homes on Tamarack Court were built. Kevin May - 514 Tamarack Court noted that where water the water gets plugged by Ophoven’s there is not

free flowing water tile on opposite side of road. It can get plugged up in spring and Kevin would like to see that there is a natural flow of water to east by Kinzer's. Kevin doesn't want to see it freeze up and back up. Kevin noted that Thompson's old house (518 Tamarack Court) has the majority of water problems and their sump pump often runs 24/7. Kevin can attest to the city making repairs and maintaining over the years and he is concerned about water finding way its way back into his house. He approves of using the 6" tile throughout.

Kevin May – 514 Tamarack Court is concerned that if the drainage is fixed he has a problem with the liability issue in the future. He has no legal title to fix on someone else's property in the future so if the tile needs fixing then what happens?

Member Hagen noted this is a private property issue and just because the city has done some repair in the past it still is the property owner's liability. The city probably shouldn't have maintained this in the past. Kevin wondered if that would be true even if the city issued the permit for the home, etc. Member Hagen believes the answer would be the same.

Kevin May stated the city has set a precedent for 10 years by doing some maintenance. Member Hagen noted the city attorney states in his memo that the city doesn't have liability even if the city did do some maintenance in the past. Member Hagen noted the County would have been involved in the decision to allow the plat as well as the city. Member Hagen spoke to Vince Schaefer regarding past history on this issue and according to Vince city maintenance was limited to snaking out the pipe.

Kevin May is worried about water making its way into his house. Once the tile was connected there was an easy flow of water through the pipe but it needs to be snaked out periodically. Kevin believes if there is no easy flow on east side outlet (by Kinzer's) this could create a problem back to the west behind the homes on the north side of Tamarack Court.

Member Palmer questioned what causes it to backs up on the other side of Ptarmigan Drive? According to Engineer Scott Hedlund there is head on the pipe and 10" of drop from Levasseur's to the pond by Kinzer's and they need a certain amount of cover over the pipe. Scott noted, if replaced, this would be sanitary sewer grade 6" rigid pipe. It would be thicker than what is there now to minimize shearing or breaking. There are limitations to where they can daylight the pipe and the plan would be to treat the end of the pipe with rip rap to keep the end from washing out or plugging the pipe end. Scott Hedlund also noted you can't guarantee anything.

Member Hagen questioned whether the Thompson's problem (518 Tamarack Court) was only when pipe the pipe was cut? Member Simon stated no it wasn't.

Mayor Herberg stated that the Murphy's (previous owners at 515 Tamarack Court) had water problems until the pipe connection was corrected.

Kevin May – 514 Tamarack Court still believes there is a tile from County Road 8 to the back of the homes on the south side of Ptarmigan Lane and he would like to see this taken care of with this project by giving him an upright in the northwest corner of his property so if excess water comes above ground that it has an outlet.

Matt Weiman - 518 Tamarack Court (former Thompson home) noted that his sump pump was running all summer long due to wetness especially in his back yard. He questions what the pipe is made of? Engineer Scott Hedlund stated there are slip joints with 6 cleanouts (every other property line) and there is a percent and a half of fall.

Matt Weiman is concerned with frost heaves and at 3' depth he feels the pipe will bust up. Engineer Scott Hedlund noted this is the maximum grade of pipe that can be used. Matt Weiman asked if there is anything to act as a catch basin. Engineer Hedlund noted that isn't proposed in the project but it would need to be monitored. Matt Weiman questioned how much rock there would be? Engineer Hedlund noted the plan has 6" of course filter.

Scott handed out the plan design. Matt Weiman questioned if this project would be going out for bids if approved? Engineer Scott Hedlund noted that the city would get quotes because the project would be under \$50,000. Bids are not required per competitive bidding unless the project is over \$50,000. If approved tonight the plan would be to get quotes and request approval at the October 3, 2007 council meeting.

Matt wanted to know whether there would be a warranty period. He is in the sewer business. If property owners have to kick in he would like to see a warranty period. Engineer Hedlund noted that the standard warranty period for S E H is 2 years. Matt also stated that depending on the contractor would depend on the warranty to hold the contractor to. Matt further reported that if issues arise in the future he would like something on paper about who would take care of this.

Loren Eich -541 Ptarmigan Lane stated he has lived here for 30 years and he has had no water problems. There was no drain field in this area until the houses were put in. He doesn't know of anyone with problems along Ptarmigan Lane. How would this benefit those owners? Engineer Scott Hedlund responded that within the project a line would be installed to each property and if they ever needed it would be available to them. The property owners could have a sump pump and discharge into the line if needed in the future.

Loren Eich mentioned that the pond by Kinzer's is much smaller than in the past. Loren stated it was discovered there were springs in the area when homes started to go in and that's why the drain tile went in. Loren Eich would not vote for this project.

Lance Levasseur - 515 Tamarack Court question whether the Maintenance person cut the long section of pipe. Maintenance person Rick Hansen noted that the pipe was cut before he came and he just lifted the pipe up with a pick axe to make the water flows easier. Lance stated that his understanding was that when his house went in the builder put in drain tile after the home was built. Mayor Herberg noted his understanding is that the city put in the 6" line behind Thompson's. Lance Levasseur questioned if the city already replaced 200' of pipe how can the attorney say the city doesn't need to maintain the line?

Member Randy Volkmuth asked whether there is an easement. Yes, per Mayor Herberg. Engineer Scott Hedlund responded that there is an easement noted on the plans.

Lance Levasseur stated that during the closing on his home he was told that the city takes care of line behind his house. Every spring the line seems to clog up.

Matt Haubrich - 521 Ptarmigan Lane doesn't want to pay up to \$2,000 for an issue he never has had. He is against paying as a Ptarmigan Lane property owner.

Dennis Goebel - 501 Ptarmigan Lane stated he has never had any water problems and he would be opposed to paying for the project.

Mayor Herberg questioned if the city pays 50% does that make a difference to anyone opposed to the project? Loren Eich and Dennis Goebel stated they see no benefit to them.

Mayor Herberg reported that the city has spent approximately \$9,000 in repairs and maintenance since 1999. He feels that the current 6" line feeding into the 4" line is part of problem which stems from the developer putting this in when the city wasn't aware of this. Then they ran into drain tile when the sewer went in. The city got tied in due to the sewer project. Mayor Herberg stated that Murphy's had water running out to the street and that's why the city got involved in the past.

**With no further input from the residents there was a motion by Member Volkmuth, seconded by Member Hagen to close the Public Hearing Motion at 7:21 pm.**

**AYES: Ahles, Hagen, Herberg, Palmer, Pflapsen, Simon & Volkmuth.**

**Motion passed on a 7 to 0 vote.**

Member Pflapsen questioned whether the builder has any exposure on this? Mayor Herberg didn't know for sure but thought probably not due to the statute of limitations on when the land was developed. (Approximately 1990's). Mayor Herberg noted it has been a battle with previous issues with this developer based on past history. Mayor Herberg believes the city has a little responsibility here. Member Volkmuth believes this is on private property and believes the city could assess fully for the project. The city can't assess for past bills but can for future bills. Member Volkmuth stated he believes the future liability is too great, and he doesn't believe this will fix the problem.

Member Palmer feels it is okay if the city fixes the problem, but she believes this should be assessed to each property owner as they are receiving the benefit. Member Palmer is open to a per foot assessment instead of an equal share assessment. The city has already paid some repairs for the owners.

Member Volkmuth doesn't believe the city should maintain unless this is assessed. Mayor Herberg stated that if people put sump water on our streets it is a benefit to the city to keep water off the street. Member Volkmuth felt it would be okay to keep putting it on the street. Member Ahles said that it is a liability if residents are pumping water on the street in the winter. He believes the city forefathers shouldn't have allowed building in a wetland.

Member Volkmuth noted that people from Pleasant Lake have water problems too and they will be watching this issue to see what happens.

Member Simon questioned how many council members went on site to look at this issue? Member Pflapsen drove by to view it. Member Volkmuth mentioned he spoke to an attorney for background and on how the city should proceed.

Member Simon stated during the Boundary Commission issue the city is picking up a share of the assessments but we're talking about assessing the full amount here. Member Simon would like to see members view these things.

Members Palmer, Hagen and Volkmuth believe it is the responsibility of the homeowners to be aware, as buyers.

Member Palmer believes the piping should get fixed but that it should be assessed at 100% to the property owners. Member Pflapsen believes this needs fixing, it sounds like the city has been maintaining at a cost of about \$9,800 over 8 years and if there is a benefit to owners it is assessable. This is not unlike other city projects that if a benefit exists it can be assessed. Member Pflapsen feels the city will need to be in on the maintenance and he is viewing this more as a storm water type issue and not a wet basement issue. So, he would be in favor of assessing 75% to the property owners with 25% paid by the city. This could be put on the tax rolls for 5-7 years, if needed.

Member Jeff Hagen feels the city attorney said city the city can step away 100% or otherwise if the city stays involved then the city has to maintain it. Member Hagen believes Vince Schaefer knows about this and the history of the issues. Member Hagen noted that in other developments in this city and elsewhere there is no stepping in by the city. Vince Schaefer told member Hagen that installing the sewer project didn't cause this problem with the tile.

Mayor Brian Herberg stated that water bleeds out from the Tamarack swamp when tile was dug the water is collected before it gets to the homes. Sump pumps can take a majority of water out before it gets to the house. Mayor Herberg believes if the city fixes it this time it will work now that the ground has settled, etc.

Matthew Weiman – 518 Tamarack Court is concerned that research was going to be done since the last meeting and the council is not following through on what was said at the last meeting.

Kevin May – 514 Tamarack Court believes it will flow fine with a solid pipe where it gets plugged up and that they won't have a problem in the future. Kevin further stated you can't have the pipe by Kinzer's go into dirt. Kevin wants to get the issue resolved and over with.

**Motion by Member Volkmuth, second by Member Palmer to assess the project at 75% and have the city pick up 25%.**

Member Jeff Hagen wanted to clarify what about ongoing maintenance? Would that be assessed in future? Member Hagen also wondered if the council vote be impacted if there are more land owners against the project? Kevin May – 514 Tamarack Court wondered could there be a term established now to review the system in the future to make sure there were still no issues and give the owners some assurance it could be readdressed at a future time if issues occurred.

Matt Weiman – 518 Tamarack Court reminded the council that owners on Tamarack Court would like to see a warranty.

Mayor Herberg noted that based on his experience having a warranty increases the price of the project. A standard warranty is generally one year.

Member Jim Pflapsen questioned the city engineer whether, if the project moved forward, would the city expect maintenance issues in the future? Engineer Scott Hedlund responded you cannot get away from never having to maintain a system, however, it would be easier to roto-roter & there are clean outs planned for this project.

Since there was a motion on the table Mayor Brian Herberg asked that a roll call vote be conducted. Member Jim Pflapsen questioned does the council want to see a straw vote of owners. It was noted there were eight property owners represented. 5 of the 8 raised their hands to signify they were okay with a 75% assessment, with the city taking over the maintenance. **The motion was amended to include the city taking over the maintenance of the line. AYES: Hagen, Palmer, Pflapsen, and Volkmuth. NAYES: Ahles, Simon and Herberg. Motion carried on a 4-3 vote.** Member Herberg noted he supports the project but feels the city should pay at a higher percentage.

Engineer Scott Hedlund discussed the potential next steps in the process.

**Motion by Mayor Herberg, second by Member Hagen to approve the feasibility report of Tamarack Court Drainage Project as presented.**

**AYES: Ahles, Hagen, Herberg, Palmer, Pflapsen, Simon & Volkmuth**

**Motion passed on a 7 to 0 vote.**

**Member Herberg introduced the following resolution and moved for its adoption:**

**RESOLUTION NO. 2007-31**

**A RESOLUTION ORDERING THE IMPROVEMENT & PREPARATION OF PLANS & SPECS**

**Resolution # 2007-31**

**Resolution Ordering Improvement and Preparation of Plans**

**Tamarack Court Drain Tile Improvements**

**Rockville, Minnesota**

WHEREAS, a resolution of the city council adopted the 5<sup>th</sup> day of September, 2007, fixed a date for a council hearing on the proposed drainage improvement along the back property lines of the westerly and northerly lots on Tamarack Court to approximately 100 feet east of Ptarmigan Drive.

WHEREAS, the City Engineer has provided a report advising the Council in a preliminary way as to whether the proposed improvement is necessary, cost-effective, and feasible; and as to whether it should best be made as proposed or in connection with some other improvement; and includes the estimated cost of the improvement as recommended.

WHEREAS, ten days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon on the 26<sup>th</sup> day of September, 2007, at which all persons desiring to be heard were given an opportunity to be heard thereon,

AND WHEREAS, a reasonable estimate of the total amount to be assessed, and a description of the methodology used to calculate individual assessments for affected parcels, was available at the hearing.

NOW THEREFORE, BE RESOLVED BY THE COUNCIL OF THE CITY OF ROCKVILLE, MINNESOTA:

1. Such improvement is necessary, cost-effective, and feasible as detailed in the feasibility report.
2. Such improvement is hereby ordered as proposed.
3. Short Elliott Hendrickson Inc. (SEH) is hereby designated as the engineer for this improvement. The engineer shall prepare plans and specifications for the making of such improvement.
4. The city council declares its official intent to reimburse itself for the costs of the improvement from the proceeds of the tax exempt bond.

The motion for the foregoing resolution was duly seconded by Member Palmer with the following vote being taken:

**AYES:** Ahles, Hagen, Herberg, Palmer, Pfllepsen, Simon & Volkmuth  
Motion passed on a 7 to 0 vote.

Member Herberg introduced the following resolution and moved for its adoption:

**RESOLUTION NO. 2007-32**

**Resolution Approving Plans and Specifications and Ordering Procurement of Quotes**

**Tamarack Court Drain Tile Improvements**

**Rockville, Minnesota**

**WHEREAS, pursuant to a resolution passed by the council on Wednesday, September 26, 2007 the city engineer (consulting engineer retained for the purpose) has prepared plans and specifications for the Tamarack Court Drain Tile Improvements and has presented such plans and specifications to the council for approval.**

**AND WHEREAS, the estimated cost of the improvement does not exceed \$50,000,**

**NOW THEREFORE, BE RESOLVED BY THE CITY COUNCIL OF ROCKVILLE, MINNESOTA:**

- 1. Such plans and specifications, a copy of which is attached hereto and made a part hereof, are hereby approved.**
- 2. The city engineer shall procure (at least two) quotes for the making of such improvement under such approved plans and specifications. The quotes will be considered for award at a future City Council meeting.**

**Adopted by the Council this 26th day of September, 2007.**

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**Brian Herberg, Mayor**

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**Rena Weber, City Administrator/ Clerk**

**The motion for the foregoing resolution was duly seconded by Member Ahles with the following vote being taken:**

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

**Motion passed on a 7 to 0 vote.**

Engineer Scott Hedlund noted Maintenance Person Rick Hansen will solicit quotes and get these back before the next council meeting on October 3, 2007. The city will try to get this project completed by the end of October and order the final hearing in November so it can be presented to the county prior to November 15, 2007 for placement on the 2008 tax rolls.

**Motion by Member Pfllepsen, second by Member Hagen, to assess this project for 5 years at 5% interest rate.**

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

**Motion passed on a 7 to 0 vote.**

Engineer Scott Hedlund questioned the council wishes for requiring a contract with contractors. This might slow down the process. The council doesn't believe this is needed. Member Volkmuth would like to see the city solicit lots of quotes to get the bests cost possible.

**ADJOURNMENT - Motion by member Volkmuth, second by member Pfllepsen, to adjourn the meeting at 8:00 pm.**

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

**Motion passed on a 7 to 0 vote.**

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**JULIE A. ZIMMERMAN-CMC**  
**FINANCE DIRECTOR**

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**BRIAN HERBERG**  
**MAYOR**

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