

**NEW YORK MILLS CITY COUNCIL  
PUBLIC HEARING AND SPECIAL MEETING  
October 18, 2016  
6:00 p.m.**

**CALL TO ORDER AND DETERMINATION OF A QUORUM**

The special meeting and Public Hearing of the New York Mills City Council was called to order at 6:01 p.m. in the Ballroom of the City Hall Building at 28 Centennial 84 Dr., New York Mills, Minnesota, all members of the Council having been notified of the meeting and the business to be transacted.

Members Present: Gerber, Maki, Roder, Hoaby, and Oakland

Members Absent: None

Staff Present: D. Berry, J. Geiser, C. Kopveiler, K. Mattson, J. Rud

Guests Present: Jon Pratt and Mike Weber

**Call to Order** The meeting was called to order at 6:01p.m. A quorum was present.

**PUBLIC HEARING MINUTES – 2015 Utility and Street Improvement Project: Main Avenue, Tousley Avenue, Gilman Street, Nowell Street, Cornwell Avenue, Park Street, and Downtown Alleyways**

**Residents/Interested Parties in attendance:** Dale & Sharon Thompson, Carolyn Wallgren, Brad Jacobson, David Delaney, Marlene Boedigheimer, Connie Vandermay, Jon Niemela, Tim & Diane Vaughn, Tim McKenna, Rick Fisette, Bonnie & Dan Welter, Matt Sweere, Roger Salo, Latham Hetland, Alice Martin, Mike Bennet, Dale Jokela

Mayor Gerber opened the public hearing for the 2015 Utility and Street Improvement Project. Mayor Gerber introduced Jon Pratt and Michael Weber of Apex Engineers. Pratt displayed a power point presentation covering the scope of the project and the project costs. Pratt explained the need for the project as being primarily driven by the old infrastructure in the project areas. He provided a history of the dates from the initial project proposal up to this hearing. Improvements were made to the sanitary sewer and water mains, the streets, curbs, and gutters, sidewalks, some storm drainage, trees, landscaping, and street lighting. He noted the methodology used for determining the assessment amounts. For this project, 75% of certain costs are being assessed to the property owners, and 25% to the City at large. Those costs subject to assessments include costs for sewer and water mains and service lines and streets. Assessable costs are done at standard amounts, in other words any oversizing done is not assessed but rather picked up as a City at large expense. So the City has 25% of the assessable costs and 100% of others. Those items picked up at 100% by the City at large include storm sewer, sidewalk, and lighting improvements, as well as all oversizing.

The total projects costs came in below the original as bid projections at \$3,254,160 versus \$3,405,827 as bid, for a savings of about \$150,000. The City funded the project expenses with a combination of low interest PFA loans and a municipal bond issue, while it will be repaid with special assessments and City-wide taxes.

Jon went thru his presentation explaining how assessments are determined per the City's assessment policy. He covered the rates applied for interior lots; corner lots; and irregular shaped lots. He explained how assessment frontage is determined in each case. Various areas of the project required differing types of improvements and so the assessment rates vary somewhat. For instance, Cornwell was reconstructed as a rural section street so it had no curbs, gutters, or sidewalks. This resulted in lower overall costs and lower per foot assessments. Nowell included no water main so costs were not as high along that stretch of the project. In his presentation he went through typical

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50' and 100' lot assessments and compared those to the initial estimates. Wrapping up his comments, Jon explained that the City would be spreading the assessments on the tax rolls at 3% for 20 years.

Mayor Gerber thanked Jon for his presentation and invited the audience to ask any questions. She asked that they give their name and address first.

**Marlene Boedigheimer, 19 E. Gilman:** Marlene noted that her assessment worksheet included a line listing a saddle, corporation stop, and curb stop. She asked what these items are for.

**Jon Pratt:** Jon explained that these are items that are unique to only one property relating to the water service. He explained that the terminology and rates are on all the worksheets, but only apply to one property and her worksheet should not actually include a charged amount for these items. It involved one property owner that had a water line bored from house to main at their own expense, but then during the project these items had to be installed by the City for City water services to be utilized.

**Bonnie Welter, 102 North Main:** Bonnie explained that the paper reported that the City had "let go" the late fees that the contractor was assessed, even though there were delays and late performance in the fall of 2015 that she and others had to deal with. Why would the City forgive those amounts when the contract called for liquidated damages?

**Jon Pratt:** Jon noted that the City did collect about \$27,000 in liquidated damages, which was in essence a reduction of the overall project costs and thus spread over the entire project, with all items receiving a share. He noted that per the contract the LDs totaled about \$55,000. He explained the costs associated with actually collecting the full amount of liquidated damages should the Contractor dispute it and the process go through mediation. The likelihood of that would be perhaps \$15,000 to \$20,000 in legal expenses and staff overtime, travel, preparation, etc. Also, mediation would not be expected to result in a settlement that matches the contract terms as to damages; rather, it would be likely that there would be a reduction to the contract terms and both sides would make a compromise, resulting in further expense to the City reducing the net overall damages collected. The City Council considered these matters and made the decision that in the long run the best interests of the taxpayers would be to avoid a protracted and expensive mediation process and seek to negotiate an acceptable compromise outside of a formal mediation process.

**Bonnie Welter:** It was wrong, the principal should have been maintained and the contractor held responsible for the contract terms. This would have saved all taxpayers as per the contract terms.

**Matt Sweere, 101 Gilman:** Matt explained that he purchased his home about one year ago, and so this was new for him. He asked whether the "savings" of \$150,000 already factored in the expense for the final paving which will now occur in the spring of 2017. He also commented that State laws stipulate that taxpayers cannot be assessed beyond the additional increase in value that the project had on the property value. He opined that his assessments far exceeded what he felt the additional value added to his property would be if appraised.

**Jon Pratt:** Yes, it is correct that State law has that language in it. However, this is a very subjective area and courts have often upheld cities in most cases that Jon is aware of. It is always a matter of discussion and debate for both sides and appraisals can be done with very different results.

**Josh Hoaby, Councilmember:** So Jon are you saying that a property owner cannot be assessed for more value than the project results in? Does this take appraisals on both sides to determine?

**David Delaney, 205 E. Gilman:** So if I understand I should get an appraisal and file a complaint today about my \$22,000 assessment?

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**Jon Pratt:** The policy is applied to be fair and consistent, and no one actually goes out and does the appraisal process for projects like this, rather, policies are developed and followed.

**Alice Martin, 115 N. Tousley:** We have to file a complaint today? My daughter was told she had 30 days after the hearing to file a written notice.

**Tim Vaughn, 24 Cornwall Avenue:** Yes, well I have two properties I'm being assessed on – my house and my business. The assessments on my house exceed what I paid for it as well as the sheds/outbuildings, what they cost me to build. There were problems all the way through the project that affected my business adversely and I had to work extra hours to make up for that.

**Bonnie Welter:** Bonnie asked how the City could assess so much? Our business as 102 N. Main will not see that amount of property value increase due to these improvements.

**Tim McKenna, 106 N. Main:** McKenna noted that he has a charge of \$1600 for sewer service and \$2000 for water service, and stated that he could have done those two items himself for far less money than that, with parts being available for about \$600 for both. How can this become inflated to this level of charge?? And what about you? Aren't you the general contractor (he asked Jon Pratt)?

**Jon Pratt:** In a project like this there are additional fees and expenses that are incurred well beyond the cost of the materials themselves. There is the installation, equipment charges, materials, hydrants, valves, fittings, etc. These are costs that a real for the City, as the Contractor bids based on all these line items costs, then the total cost is included in the bid, and the contractor has based his total bid on the best prices he can obtain for the many items included in his line item bid. The lowest bidder is awarded the contract, but the per item bid prices are what applies to actual numbers at the end of the day. All the costs that affect the total cost of putting in a water or sewer service are based on what the contractor will bill us for as well as the costs of the engineers, City staff, soil tests, permit fees, etc. These are then allocated over all services lines and a per service line cost is generated. There is simply more to it than the cost of the materials only. It is not an arbitrary number, rather, it is carefully calculated from the real expenses incurred. Pratt noted that in fact he is the Engineer but he is definitely NOT the general contractor, that would be R. L. Larson.

**Matt Sweere:** Did the City apply for grants?

**Jon Pratt:** They did but were not awarded any grant funds. The City did receive low interest loans from the Minnesota Public Finance Agency (PFA). The reason for no grants was that while in the past we had received grant funds based on the area median income, in the interim a new census was done that showed quite a jump in this area's median income, and the effect was that the State determined that a grant was not warranted due to the reported median income of New York Mills.

**Rick Fisette, 203 E. Gilman Street:** Rick asked for an explanation of the \$2.67 million listed as the loan amount yet elsewhere it listed the total costs as being higher, at \$3.25 million. This is not consistent.

**Jon Pratt:** The \$2.67 million is the low interest rate PFA loan the City got for eligible costs. The City also got a bond for the remaining costs. Together these were used to pay the \$3.25 million in project expenses.

**Josh Hoaby, Councilmember:** This is two things. First, the City didn't have \$3.25 million on hand, it had to go out and borrow it. It is like the City borrowed the money from two different banks. This is how the City paid the expenses. The assessments and City share is how the City pays back the loans.

**Darla Berry, City Clerk:** The City will use special assessments to pay back the loans. Also, the part that is the City share will be funded with the City's debt levy. The debt levy has remained flat for several years, and is

expected to remain flat even with this project debt. As other bonds from older projects are repaid we can now divert those taxes to pay this debt. We've carefully managed our debt servicing to maintain a flat debt levy.

**Sweere:** How much will our regular taxes increase because of this?

**Berry:** The debt levy will not increase. The operating levy is going to increase, at least based on the preliminary budget approved in September. The council can lower the levy in December but they cannot raise it. Right now the total levy would increase 5% as proposed. Last year the actual was about a 4.8% increase. This may or may not mean a 5% increase for the average taxpayer. It can be affected by what is happening with the overall taxable market value of all properties in town. For instance, I expect our tax base to grow due in part to the new Dollar General Store that opened earlier this year. That could absorb some of the proposed 5% tax increase and thus the actual increase experienced by the other taxpayers could be less than 5%.

**Tim Vaughn:** Tim explained his views that the tax base could be negatively affected by assessments because the houses in town will sell for less due to the large assessments, and so if assessor's valuations follow actual sales prices, it could pull down a lot of the market values and hurt our tax base.

**Berry:** It is really hard to tell. However, in the ten years I've worked here for the City we have done a number of projects, with high assessments going on properties in other areas in town. Despite this, the tax base has continued to grow and so if the assessments were pulling down the overall tax base I don't think I've seen evidence of that happening in the past with other project assessments.

**Alice Martin –** Who pays for the sidewalks? In front of my property the sidewalks have low areas where there are puddles after the rain. In the winter this becomes icy areas. The City should fix this, and replace areas where there are puddles.

**Jon Pratt:** Jon explained that the maximum slope allowed is 2%, which doesn't allow for much room for error, and it is based on Federal standards. It is hard to get good drainage at 2%. Jon indicated he would take a look at the sidewalks she is referring to.

**Marlene Boedigheimer –** I am wondering about the costs of landscaping, and the poor results. There is very little black dirt, and many challenges.

**Jon Pratt:** We have withheld some payments due to turf issues. It is difficult and takes TIME to reestablish a nice turf. We do require the contractor to use certified grass seed, and if we wanted to spend a lot more we could get a nicer outcome much quicker.

**Roger Salo, 110 Tousley Avenue:** What can be done? Is this all finished now?

**Jon Pratt:** The final deadline on the project is next June. The turf is for the most part starting to come in. It will be evaluated again in the spring, before the project is finalized. The best thing a property owner can do is to keep mowing and watering the turf, and it will improve with time.

**Alice:** The City should not have started the project so late, it should have put it off longer and tried again for grants.

**Dave Delaney:** How has the tax base and market value affected how these assessments were determined?

**Jon Pratt:** There is no relationship. The assessments were set per the policy based on actual project costs. Market values were not a factor.

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**Matt Sweere:** Was there any push to do this because we thought we'd get grants? When the decision to proceed was made, did we know that we wouldn't get the grants?

**Jon Pratt:** The City learned it would not receive grants before its final decision to move ahead was made.

**Dale Thompson, 18 Cornwell:** Please explain how we pay this, when and how it's due.

**Berry:** You can prepay all or any portion of the assessment by stopping up at the City offices. We then notify the county of how much was prepaid. Each year the regular property tax statements will include the amount due for the current tax year of the remaining assessments. So, once there is a current tax statement with an amount on it, you must pay that amount directly to the County with your property taxes. You cannot pay any of the current year amount directly to the City. The assessments will be on the taxes at 3% over 20 years.

**Jeff Oakland, Councilmember:** How do other cities do this? How does our assessment policy compare to those of other cities?

**Jon Pratt:** The Policy in New York Mills is kind of middle of the road compared with other cities that I've dealt with on these types of projects. The policy is very similar to that of Detroit Lakes. Some assess higher amounts, some lower. Again, New York Mills is in the middle of the road in my experience.

**Tim McKenna:** If we have these huge assessments will there be a reduction in the high utility rates we are charged? We are much higher than Perham for gas.

**Berry:** Our rates for utilities do not attempt to pay for improvements; they are for ongoing operating costs and maintenance, not replacement. If we are compared with Perham, I can tell you that Perham sells about 10 times more natural gas than we do. Yet, like Perham we must have qualified license personnel on call 24-7. So our overhead costs are similar yet we have much fewer sales to spread that over. So it is a given that our gas rates will be higher than those of a gas utility the size of the one in Perham.

He then asked Berry to discuss the options for prepayment. Berry explained that residents could choose to prepay some or all of their assessments. They can come to the City offices any time prior to December 15 to make a payment towards the assessments. The reason someone might want to do this is to save the interest expense on the assessments. Once the December 15 deadline has passed, the taxes payable in 2017 will include a principal and interest charge on the assessments for the first year. Those amounts then can only be paid with your property taxes to Otter Tail County. However, any amounts due in future years can be paid directly at the city offices prior to early December each year to avoid additional interest charges.

**Matt Sweere:** After my sewer was hooked up, it backed up due to roots being in the service line. This problem could have been prevented had the City taken the time to tell me there was a problem.

**Tim Vaughn:** I have a suggestion about the grass situation. Property owners were asked to put out water sprinklers for the new turn. But the City didn't give us a break on the water rates or extra usage. It could have been done and the City could go with the average usage to determine how much to reduce the bills.

**Dave Delaney:** Is the City set on this, these assessments?

**Betsy Roder:** We're happy that the actual costs came in below the bids, so these amounts are less than what you were initially provided as an estimate.

**Dave Delaney:** It is just too much for me.

**Jeff Oakland:** We have a policy we followed, and we already looked at it and made some adjustments.

**Josh Hoaby:** Yes, we made adjustments for large lots on Cornwell.

**Tim Vaughn:** Explain that adjustment made for the large lots please.

**Josh Hoaby:** Yes, we made adjustments, where lots in excess of 250' received a reduction of 50% for up to 150' over the 250' threshold. Josh explained that when an individual's assessments are reduced, the reduction is picked up as part of the City's costs, which is a cost borne by all taxpayers in town through the general property tax levy and debt levy that the City collects.

**Dale Jokela:** Dale asked whether both sewer and water lines existed and were replaced in Cornwell Street, and what the age and condition of those lines were. He felt that there had been a fairly recent project done already on Cornwell.

**Jon Pratt:** Jon explained that those utilities do exist in Cornwell, and the area improved was between Park Street and Centennial 84 Drive. The project Dale is referring to was from Gilman to Park Street, so that segment was not redone at this time. The segment done with this project had old utilities lines that had experienced breaks and failures in recent years. The City televised the lines to determine the condition, looking at cracks, roots, etc. The material of the old lines was clay tile for the sewer. It is a judgment call as to whether the utility infrastructure is at or near its end of life; it is most economical to replace them when the street is being done as well.

**Bonnie Welter:** I was wondering what the City's maintenance fees are used for that customers pay monthly with their bills. Ms. Welter suggested that the City should be saving those funds to pay for reconstruction.

**Darla Berry:** The maintenance fees are only at a level to pay for routine maintenance and not reconstruction. The fees wouldn't really be sufficient for the costs of a reconstruction project.

**Jon Pratt:** If there is no further discussion the City's next step would be to pass a resolution to adopt the assessment roll as is or with adjustments.

**Josh Hoaby:** I wish it could be cheaper, but it is what the costs are.

**Sharon Thompson:** Did we get the rate break on Cornwell?

**Jon Pratt:** Two properties received a break, I believe yours was one of those two.

**Darla Berry:** I am passing around a copy to the City Council members of the draft Resolution No. 10-18-2016 to adopt the assessment roll, which the council will be asked to consider after this hearing closes.

**Tim McKenna:** I have a problem with being assessed for the sewer service as it is there now but I'm not hooked up to it. My line runs with the neighbors, yet I was assessed for a service.

**Jon Pratt:** Sir that line is a benefit to your property, however, the City cannot install an actual service line on private property. That would be something you would have to get done, and at some point when you need to do so or decide to do so then the street and sidewalk won't have to be disturbed at that time. This is a benefit and City ordinance requires that each home have its own line.

Jon then addressed the Council, noting that if there were no more comments that it should close the Public Hearing. It was pointed out that should anyone have an objection, it must be filed with the clerk before the closing of the public hearing, it must be in writing.

Two residents then retrieved blank paper and wrote down written objections and presented them to the Clerk, these were from David Delaney and Matt Sweere.

The Public Hearing was closed at 8:03 p.m.

The Council then opened its special council meeting.

Mayor Gerber commented that the purpose now of the special meeting was to consider the two written objections received and act on the assessment roll, including deciding whether to make any adjustments.

**Consideration of Objection Submitted by David Delaney** – Dave explained that his property at 205 E. Gilman includes 163’ of assessed frontage. His house sits over on the corner of the lot and about 60’ of his property does him no good. He wants his assessment to be reduced to cover just 100’ not 163’. He further commented that about 30’ or 33’ of his lot was vacated as it was previously part of the right of way of the old highway 67; he got this essentially for free and shouldn’t now be assessed on it. He mentioned that when he bought his property this “gift” had already occurred and was already part of the property when he acquired it. He again noted he shouldn’t have to pay for that, his assessment of \$22,323.34 is too high for his liking.

Some discussion now occurred. Council Member Roder noted that this is a unique situation giving some reason for careful consideration. Others commented further that it was unique but it was given over and did that mean it should not be assessed. Roder then noted that it is a different situation being it was ROW. Further discussion ensued and it was thought that the ROW vacation occurred back in 1976 or 1977.

**A motion was made by Oakland to remove the 30’ length from the total length of Delaney’s property and remove that portion of the assessments.**

As there was no second, the motion failed.

Further discussion ensued.

**A motion was made by Maki and seconded by Oakland to assess the 30’ segment at half the normal assessment rate, thus effectively reducing the overall length by 15’. The motion carried without a dissenting vote.**

**Consideration of Objection Submitted by Matt Sweere** – Matt noted that he had only acquired his property at 101 E. Gilman about a year ago, and he felt that the appraisal done at that time established a market value that would not be significantly increased because of the improvements made with the project. He is questioning whether we can assess more than the realized increase in value from the improvements. His assessment of \$17,809.16 represents about 20% of the value of his house based on what he paid a year ago. He wants to put his objection on the record and take some time to research this more, although he explained that he does not intend to challenge this by filing something with the court system.

After discussing this, the following resolution was presented for consideration:

**RESOLUTION NO. 10-18-2016**

**RESOLUTION ADOPTING ASSESSMENT**

WHEREAS, pursuant to notice duly given as required by law, the City Council has met, heard and passed upon all objections to the proposed assessment for the 2015 Utility and Street Improvements of Gilman Street, Tousley Avenue, North Main Avenue, Nowell Street, Cornwell Avenue, and Downtown Alleyways, Project No.:

R14.216.003:Const., and has amended such proposed assessment as it deems just;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of New York Mills, Minnesota, as follows:

1. Such proposed assessment, a copy of which is attached hereto and made a part hereof is hereby accepted and shall constitute the special assessment against the lands named therein, and each tract of land therein is hereby found to be benefited by the proposed improvement.

2. Such assessments shall be as follows:

a. The assessments shall be payable in equal annual installments extending over a period of twenty (20) years, the first of said installments to be payable with general taxes for the year 2016, collectible with such taxes during the year 2017.

b. To the first installment shall be added interest at the rate of three percent (3.00%) per annum on the entire principal amount of the assessment from the date of this resolution until December 31 of the year in which such installment is payable. To each subsequent installment, when due there shall be added interest for one year at said rate on the unpaid principal amount of the assessment.

c. The owner of any property so assessed may at any time prior to the certification of the assessment or the first installment thereof to the County Auditor, pay the whole of the principal amount of the assessment on such property with interest accrued to the date of payment to the City Clerk, except that no interest shall be charged if the entire assessment is paid within 30 days from the date hereof; and such property owner may at any time prior to November 15 of any year pay to the City Clerk the entire principal amount of the assessment remaining due with interest accrued to December 31 of the year in which said payment is made.

3. The City Clerk shall forthwith transmit a certified duplicate copy of this assessment to the County Auditor to be extended on the tax list of the County.

Adopted by the City Council this 18th day of October, 2016.

\_\_\_\_\_  
City Clerk, Darla Berry

\_\_\_\_\_  
Mayor, Julie Gerber

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**A motion was made by Roder and seconded by Maki to adopt Resolution No. 10-18-2016 with the adjustment of the assessment roll to reflect the reduction in Delaney's assessment as noted earlier, and to remove the Sweere assessment at this time from the assessment roll pending more review, with a decision to be forthcoming at a later time. The motion carried without a dissenting vote.**

**Adjournment**

**A motion was made by Maki and seconded by Hoaby to adjourn. The motion carried without a dissenting vote.**

The meeting was adjourned at 8:19 p.m.

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Respectfully submitted by,

  
\_\_\_\_\_  
Darla Berry  
City Clerk