

## **MINUTES OF THE SPECIAL MEETING OF THE PORTAGE CITY COUNCIL OF JUNE 12, 2012 – CITY POLICY FOR UTILITY CONNECTION CHARGES AND APPLICATION OF CHARGES TO THE GREENSPIRE DEVELOPMENT**

Mayor Peter Strazdas called the meeting to order at 6:01 p.m. The following Councilmembers were present: Councilmembers Jim Pearson, Patricia Randall and Edward Sackley, Mayor Pro Tem Claudette Reid and Mayor Peter Strazdas. Councilmember Terry Urban arrived at 6:03 p.m. Councilmember Elizabeth Campbell was absent with excuse. Also present were City Manager Maurice Evans, Deputy City Manager Brian Bowling, Director of Transportation and Utilities Chris Barnes, City Attorney Randy Brown and Deputy City Clerk Adam Herringa.

At the request of Mayor Strazdas, the Director of Transportation and Utilities Chris Barnes handed out and reviewed an overview of the history and application of utility connection charges. He specifically reviewed unassessed utility benefit charges and how each are determined and applied in both commercial and residential circumstances. Mr. Barnes then reviewed the different ways sewer and water lines may be installed (such as developer installed and city installed), how fees are calculated and the advent of extension districts. Mr. Barnes then reviewed the reason for extension districts, how they can be created, how they differ from special assessments and what it means today when somebody wants to connect to an extension district. Next, Mr. Barnes reviewed how and when fees are collected, how much is collected from unassessed sewer and water and what future connections could mean by way of revenue. He also specifically reviewed developer installed sewer and related payback agreements. Councilmember Sackley questioned the payback time and arrangement on developer installed sewer. There was discussion and Deputy City Manager Bowling clarified that he believes the payback period is seven years from installation. Councilmember Randall questioned if the city receives any financial benefit from people connecting to a developer installed sewer or water. Mr. Barnes clarified that the developer may receive payback up until the cost of installation and that the city does not generate any revenue from the arrangement. Discussion followed.

Mr. Barnes reviewed maps of unassessed water and sewer benefit parcels. He pointed out that there are fewer connection opportunities for sewer because of the mandatory connection program. Councilmember Sackley inquired, in the instance of a special assessment situation, whether there was also a benefit charge. Mr. Barnes explained that the benefit charge was included in the special assessment. Discussion followed. Mr. Bowling clarified that there was still a connection charge to connect to sewer and plumbing costs (such as lateral costs) for water connection.

Next, Mr. Barnes reviewed three alternatives should City Council decide to eliminate unassessed benefit charges. Mayor Strazdas summarized the discussion to this point in the meeting. Councilmember Sackley discussed benefit charges, when they are applied and how they are calculated. Mr. Sackley referenced the 1991 Special Assessment Policy and that assessments may be paid over the course of twenty years yet developer installed utilities have a seven year payback. In the case of Greenspire, Councilmember Sackley stated that this situation involves a utility installation that occurred 37 years ago and wondered if a “sunset clause” would be appropriate. Mr. Barnes opined that he believes there is always a benefit for someone to connect to a utility.

The Mayor asked Joe Gesmundo of American Village Builders (AVB) to address the City Council. Mr. Gesmundo thanked City Council for holding the meeting and apologized for missing the last City Council Meeting. He stated that, from a developer's perspective, the City's special assessment policy is fair and competitive and does not need to be changed. He then explained that the Greenspire development is a special circumstance and that he believes the current policy does not apply. He continued by stating that applying such a fee as is being proposed would make Portage uncompetitive.

The attorney for AVB, Pat Lennon, thanked Mr. Barnes for his presentation and explained that the special assessment policy is not usually problematic. However, in this case he questioned why AVB was being charged when AVB paid to extend the sewer line across what is now 3201 W. Centre in the 1970s into the overall development project. He further explained that the parcel in question has always been a part of the Greenspire development plan and expressed surprise that there is now a charge after 37 years of continuous ownership and development. He then explained that it was his belief that the City was inappropriately interpreting the special assessment policy to apply it to Greenspire and expressed support for a review of the policy.

Mr. Barnes next drew a sketch diagram of the streets, parcel and sewer lines involved. He explained that it was the sewer line originally put in by the city that made Greenspire possible. Mayor Strazdas inquired if there was a charge levied against Greenspire in the 1970s when the original connection was made. Mr. Barnes stated that there was not and that he is not sure of the reasoning.

Councilmember Randall inquired as to the time and money spent on looking into what amounts to an approximately \$8,000 connection charge. City Manager Evans stated that he was uncertain as to the time but there was around \$1,200 spent on an attorney opinion.

Councilmember Urban inquired if the sewer put in by Greenspire was ever dedicated to the City. Mr. Barnes responded in the affirmative. Councilmember Urban then asked how this situation differed from a housing development in which a developer pays a connection charge, sells the lots and dedicates the utility infrastructure to the city. He questioned whether there would be a benefit charge should a homeowner buy a lot and connect to sewer. Mr. Barnes replied that there would not be a charge as the original charge is paid when developer connects the utility. He reemphasized that he is not sure why a fee was not charged in the 1970s. He also stated that should a similar development occur today, a connection charge would be levied. In response to discussion, Mr. Barnes stated that none of the sewer installed by the developer was necessary to service the parcel in question.

Mr. Gesmundo opined that he has been engaged in developments in Portage for 40 years and that this is the first time the City has attempted to charge him twice for sewer. Mr. Gesmundo then cited examples to support his assertion. Mr. Lennon interjected and stated that levying the charge in this circumstance is not supported by ordinance or the special assessment policy.

Mayor Strazdas explained that the situation would not be decided in this special meeting but rather in the upcoming regular meeting that is televised. Mayor Strazdas then asked City Administration to provide a report on how many other instances of owner developed land, which include a developer installed sanitary system and an unconnected piece or parcel, are present in the city. The Mayor further clarified by stating he is looking for a report of how many other situations are similar to that of Greenspire. Attorney Brown inquired of the Mayor if it mattered if the unconnected parcel is owned

by a third party or the original owner. The response was that it should be, as in the case of Greenspire, the original owner. Mr. Barnes replied that such a report would take time and emphasized that it would be a “snapshot in time.” Mayor Strazdas then emphasized the precedent-setting nature of any action by City Council and the importance of making sure the policy applies to all similar circumstances. Discussion followed.

Mayor Strazdas asked each Councilmember to share their thoughts on the appeal of AVB. Councilmember Urban indicated that he would be inclined to deny in the hopes of getting additional information. Councilmember Randall stated that enough time and resources had been spent on the matter and that she is ready to move on and supported the appeal. Councilmember Pearson questioned the time and money and emphasized the need for compromise on matters such as this. He said there was a reasonable question on whether the developer was going to be double-charged. He continued by saying that the recommendation by City Administration does not strike him as being business-friendly and that he would like to see a waiver in this circumstance.

Councilmember Sackley stated that he recognized that any decision be made on a firm legal foundation and expressed concern regarding any precedent that might be set. He stated that he wants to make sure that, should the appeal be granted, others don't approach City Hall looking for refunds or that it looks like only those who have friends at City Hall get heard. He indicated his support of the appeal and mentioned that he was working on a motion to present at the upcoming regular meeting which would emphasize the uniqueness of this situation.

Mayor Pro Tem Reid wondered what the rationale was in the 1970s for the City not applying a benefit charge in this circumstance and stated that the approach taken in the 1970s seems different than the one taken in the 1990s and today. She also wondered, when the developer installed the sewer, if the understanding was that it was for the entire Greenspire property or just the apartments. Mr. Gesmundo indicated that he was there in the 1970s and that the Greenspire development was conducted just like all of his other developments and that he only had to pay once, which was when he paid to install the system.

Mayor Strazdas thanked City Administration for their research and information. He then stated that he believes the connection charge would have been more appropriately applied in the 1970s and that it is difficult to ask the developer to pay to connect this parcel today, especially if the City wants to be consistent. He indicated his preference that the fee be waived but stated he would still like to know how many properties might be in a similar situation in the community. He then emphasized the importance of government conducting “due diligence” on issues and expressed the importance of being able to tell citizens the impact of this and any policy decision.

Attorney Brown emphasized the importance of protecting the integrity of the policy and that the policy should be upheld. He then opined if City Council decided to make an exception to the policy, it be detailed for this particular circumstance.

**ADJOURNMENT:** Mayor Strazdas adjourned the meeting at 7:24 p.m.

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Adam Herringa, Deputy City Clerk