

A public hearing for the proposed special assessments to be levied against the property owners in conjunction with the 2014 Infrastructure Replacement Project – Phase I was held on October 7th, 2014 at 6:00 P.M. in the Canby Community Center.

Members: Gene Bies, Nate Oellien, Nancy Bormann, Frank Maas

Absent: Denise Hanson

Visitors: Nicholas Johnson, City Administrator
Gerald Boulton, City Attorney
Dean Helstrom, City Engineer
Dave Verhelst
Pat Stanley
Lorraine Jerzak
Michelle Zobrist
Neva Kamrath
Jane Ellison
Mark Ellison
Myron Busse
Audrey Busse
Jody Olson
Lois Hughes
Maynard Hughes

The public hearing was opened.

Dean Helstrom gave a presentation on the Infrastructure Replacement Project – Phase I.

Pat Stanley inquired about if the City's fire rating would improve with new infrastructure. Dave Verhelst and Gene Eilers provided input. Dean said he could run calculations to see if the fire rating would be improved.

Dave Verhelst inquired about upgrading Ring Avenue South to be a 10-ton road to help with truck traffic which traverses over to the elevator. Dean stated given the good soil conditions it would not take much to upgrade to a 10-ton road.

Gene Eilers inquired about the timeframe in which the contractors will work. The concern is how tied up people will get and availability of access. The contractors will need to be substantially completed by November 1st, 2015. Access may be disrupted but notifications will be sent to property owners when work is to take place in their area.

Gene Eilers and Pat Stanley inquired about prepayment options. To avoid interest accrual on the first year it must be paid by November 30th, 2014. Otherwise, payment of the principal may be made at any time.

Dave Verhelst inquired about a water main installation on Highway 68 on the south side. Dean Helstrom explained the construction to take place in that area.

Dave Verhelst inquired into a water and sewer assessment for property he owns on Highway 68 where the old Snortum Nursery used to be. He stated he would not need water or sewer to that property and requested the assessments be removed. The assessment would be removed.

A woman asked about replacement of irrigation systems in the boulevard. The 2010 precedent was to fix damaged irrigation systems. The City wants to know if an irrigation system exists so it may be avoided. The City will work with property owners to avoid damage to systems if possible.

Jody Olson inquired about replacing tile lines by the Presbyterian Church. Contractors would work with property owners to help find them and reconnect them.

Gene Eilers asked if the storm sewer system would be replaced. It would be.

East View Road curb and gutter salvage was discussed. Given the few reconnections on East View Road it made sense to salvage curb and gutter as it is in good condition. If the City chose to keep the current curb and gutter it would reduce the per linear foot street assessment cost by \$4.75 to \$41.25.

East View Road mill and overlay on the south half of the street was discussed. The property owners are slated to be assessed the full \$46 per linear foot even though only a mill and overlay is being done. The correct cost for a mill and overlay would be \$16 per linear foot.

Division Street was discussed. Both abutting property owners have registered written complaints to request Division not be paved.

Three letters of written protest were registered with the City. The full letters are attached hereto and made a part of these minutes.

The public hearing was closed.

The public hearing to receive input on the proposed vacation of Custer Avenue between 3rd Street East and 4th Street East was held on October 7th, 2014 at 7:00 P.M. in the City Council Chambers.

Members: Gene Bies, Nate Oellien, Nancy Bormann, Frank Maas, Denise Hanson

Absent: None

Visitors: Nicholas Johnson, City Administrator
Gerald Boulton, City Attorney
Dean Helstrom, City Engineer
Todd Hagen, Ehler's Inc.
Ryan Feiock, Canby News
Jody Olson
Nick Kockelman
Linda Kockelman
Gerry Gingles

Nicholas Johnson discussed the request for the vacation by the adjacent property owners. The City felt the vacation of the street would not adversely impact the development of the City as Custer Avenue to the north had already been vacated as well as 4th Street East between Custer Avenue and Reno Avenue.

A motion was made by Bormann and seconded by Oellien to close the public hearing. All voted in favor. None voted against. The motion was carried.

A regular meeting of the City Council for the City of Canby, Minnesota was held on October 7th, 2014 at 7:00 P.M.

Members: Gene Bies, Nate Oellien, Frank Maas, Nancy Bormann, Denise Hanson

Absent: None

Visitors: Nicholas Johnson, City Administrator
Gerald Boulton, City Attorney
Dean Helstrom, City Engineer
Todd Hagen, Ehler's Inc.
Ryan Feiock, Canby News
Jody Olson
Nick Kockelman
Linda Kockelman
Gerry Gingles

Ordinance 323, an ordinance vacating Custer Avenue between 3rd Street East and 4th Street East, was reviewed. A motion was made by Oellien and seconded by Maas to introduce Ordinance 323. All voted in favor. None voted against. The motion was carried.

The minutes of September 16th, 2014 were reviewed. A motion was made by Hanson and seconded by Oellien to approve the minutes. All voted in favor. None voted against. The motion was carried.

The East View Drive north side assessments as described in the public hearing minutes were reviewed. A motion was made by Maas and seconded by Oellien to adjust the assessments from \$46 per linear foot to \$41.25 per linear foot. All voted in favor. None voted against. The motion was carried.

The East View Drive south side assessments as described in the public hearing minutes were reviewed. A motion was made by Hanson and seconded by Maas to adjust the assessments from \$46 per linear foot to \$16 per linear foot. All voted in favor. None voted against. The motion was carried.

The two letters of protest against Division Street being paved were reviewed. A motion was made by Oellien and seconded by Maas to leave Division Street gravel. All voted in favor. None voted against. The motion was carried. The assessments will be updated to reflect this change.

The one letter of protest against Lyon Avenue South being paved was reviewed. A motion was made by Maas and seconded by Bormann to pave Lyon Avenue South. All voted in favor. None voted against. The motion was carried.

Resolution 2014-10-7-1, a resolution adopting assessment, was reviewed. A motion was made by Oellien and seconded by Hanson to adopt the resolution along with the changes to the assessment roll. All voted in favor. None voted against. The motion was carried.

Resolution No. 2014-10-7-1
Resolution Adopting Assessment
City of Canby, Minnesota

WHEREAS, pursuant to proper notice duly given as required by law, the council has met and heard and passed upon all objections to the proposed assessment for Infrastructure Replacement Project - Phase I, the improvement includes the replacement of the sanitary sewer, water, storm water mains and sewer and water services, curb & gutter, sidewalk and street restoration for the following:

area located east of St. Olaf Avenue (US TH 75) from 1st Street East (MN TH 68) on the south to 5th Street East on the north; the area located south of 1st Street South from Lyon Avenue South on the west to Ring Avenue South on the east and goes south to Division

Street and the area of Oscar Avenue from 5th to 8th Street including 8th Street from St. Olaf to Oscar Avenue.

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

1. Such proposed assessment¹, 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 included is hereby found to be benefited by the proposed improvement in the amount of the assessment levied against it.
2. Such assessment shall be payable in equal annual installments extending over a period of thirty (30) years, the first of the installments to be payable on or before the first Monday in January 2015, and shall bear interest at the rate of 2.00 (two) percent per annum from the date of the adoption of this assessment resolution.² To the first installment shall be added interest on the entire assessment from the date of this resolution until December 31, 2014. To each subsequent installment, when due, shall be added interest for one year on all unpaid installments.³
3. The owner of any property so assessed may, at any time prior to certification of the assessment to the county auditor, pay the whole of the assessment on such property, with interest accrued to the date of payment, to the city treasurer, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption of this resolution; and he/she may, at any time thereafter, pay to the city the entire amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the next succeeding year.⁴
4. The city administrator shall forthwith transmit a certified duplicate of this assessment to the county auditor to be extended on the property tax lists of the county. Such assessments shall be collected and paid over in the same manner as other municipal taxes.⁵

Adopted by the council this 7th day of October, 2014.

Attest:

Mayor Pro Tem

City Administrator

END OF FORM

¹ If the council has changed the assessment, the phrase “as amended” should be added here.

¹ Alternatively special assessments may be made payable in equal annual installments including principal and interest, each in the amount annually required to pay the principal over such period with interest at such rate as the council determines, but not to exceed the legal maximum. If this course is followed, prepayments made pursuant to Minn. Stat. § 429.061, subd. 3, must include all installments due to and including December 31 of the year of payment, and the original principal amount reduced only by the amounts of principal included in the installments as computed on an annual amortization basis.

¹ If the council postpones the assessment for a sewer, storm sewer, or water main in the case of properties which are presently undeveloped or need a lateral before they can make use of the water or sewer main which is the subject of the assessment, the council may wish to state its intention in this resolution and refer to Minn. Stat. § 429.051. The provision could similarly reference Minn. Stat. § 429.052 to address postponed assessments on extra-jurisdictional roads which will later be annexed. Such statements would be for the information of future councils as well as present and future owners of the property concerned. No such statement of intention is necessary under the law and there is no provision for making the future assessment a present lien on the property concerned in any way.

If the council wishes to include some such language with reference to abutting property on which assessments are postponed, it may include a separate paragraph along the following lines, with subsequent paragraphs being renumbered accordingly: “3. It is hereby declared to be the intention of the council to reimburse itself in the future for the portion of the cost of this improvement paid for from municipal funds by levying additional assessments, on notice and hearing as provided for the assessments herein made, upon any properties abutting on the improvement but not herein assessed for the improvement when changed conditions relating to such properties make such assessment feasible in accordance with Minn. Stat. § 429.051 [or 429.052].” If the future assessment awaits construction of laterals to only nonabutting property, the following language may be used instead (if future assessments involve both abutting and nonabutting property, use this language in addition): “To the extent that this improvement benefits nonabutting properties which may be served by the improvement when one or more later extensions or improvements are made, but which are not herein assessed therefor, it is hereby declared to be the intention of the council, as authorized by Minn. Stat. § 429.051, to reimburse the city by adding the portion of the costs so paid to the assessments levied for any such later extensions or improvements.” Where it is feasible to describe specifically the property to which this intention to make future assessments relates, the council may wish to add some such language as this: “This declaration relates to, but is not necessarily limited in its application to, the following property:...”

If payment of assessments against unimproved property is to be deferred, the assessment roll and this paragraph will have to make clear the distinction between the schedule of payments for the unimproved and the improved properties and this resolution must specify terms and conditions for the deferment as well as standards and criteria to be applied in administering the deferment policy.

The local improvement code makes two procedures available for taking account of cases where an improvement abuts or traverses unimproved property and collection of a special assessment from such property on the same basis as from improved property served by the improvement would impose a hardship on the owner. These procedures may be outlined as follows:

A. **Postponement of assessment for water, sanitary sewer, storm sewer improvement, or extra-jurisdictional roads.** (Minn. Stat. §§ 429.051 and 429.052.) If the council utilizes this authority, there is no assessment at all against this property at the time the cost of the project is originally assessed. The city must meet that portion of the cost from other available funds and then levy an assessment later, presumably when the property is platted or improved. If a city wishes to postpone assessments, it must give notice and hearing of the assessment at the same time as any non-postponed assessments for the given project. There is no lien on the property until the later assessment is made. While there is no provision in these statutes on deferred interest, the interest cost on the bonds attributable to the deferred assessments would seem to be a part of the improvement cost which could be included in calculating the later assessment so long as it (1) does not make the assessment exceed the benefit to the property and (2) does not result in a yield to the city larger than the total cost of the improvement, including all interest paid.

Substantially the same procedure is authorized where property not contiguous to a sewer or water main improvement cannot make use of the improvement until an extension is made to serve it and similar properties. In that case the city may include the proportionate share of the original improvement in the assessment for the

extension if notice that such an additional amount is to be assessed is included in the notice and hearing on the assessment for the extension. See Form 6, note 2. This procedure can be used even though the area may not have been included in the notice of hearing on the original improvement.

While this procedure is ordinarily used only in the case of unimproved land, the statute does not restrict its use to those cases. The procedure may be used in any case where the land was not assessed in the first instance.

- B. Deferment of payment of assessments against unimproved property for any type of improvement.** (Minn. Stat. § 429.061, subd. 2.) Under this statute the assessment is made against unimproved property along with the assessment against improved property but the resolution making the assessment will provide for different installments in the two cases. In the case of improved property, payment of the first installment will be due along with the taxes covered in the first tax rolls completed after the resolution is adopted; however, as provided in the assessment resolution, the first installment on the assessment against unimproved land will not be due until (1) some designated future year, (2) upon platting of the property, or (3) upon the construction of improvements on the property. The last installment must be made payable no later than 30 years after the levy of the original assessment.

When payment is to be deferred against unimproved property, the resolution levying the assessment must specify terms and conditions for the deferment as well as standards and criteria to be applied in administering the deferment policy. Thus the council might provide that if unimproved property is later platted or improved by the construction of substantial buildings as defined in the resolution, payment of the assessment would be spread over a number of years commencing with the next tax levy following construction and ending 30 years from the date of levy of the assessment (assuming the 30-year maximum is to be used; it need not be that long). As an example, if property is neither platted nor improved within X number of years from the date of assessment, if platted or improved the next year, payment would be spread over (30 – X) annual installments.

When payment of assessments is deferred against unimproved property under Minn. Stat. § 429.061, subd. 2, the city must record with the county recorder a certificate containing the legal description of the affected property and the amount deferred. Presumably, this duty is performed by the city clerk.

With reference to the interest to be charged on deferred installments, the council has three options: (1) it may require interest to be paid annually at the same times as the principal installments of the assessment would have been payable if not deferred; (2) it may add interest for this period to the principal amount of the assessment when it becomes payable; or (3) it may forgive interest to December 31 of the year before the first deferred installment is payable. What the council does in the resolution levying the assessment will depend on such factors as its conception of fairness among owners of improved property, owners of unimproved property, and taxpayers; its interest obligations on the improvement bonds issued to finance the project; and the number of property owners in the two groups. The council may desire to state its policy in a general ordinance establishing a local improvement policy.

Because the second procedure results in creating a lien against all benefited property when the assessment is levied, and establishes at that time a payment schedule that assures collection of the total assessment, it is desirable to use this procedure, added in 1976, rather than the older and more limited one wherever possible. It should be emphasized, however, that neither procedure is mandatory; the council may prefer not to defer assessments or assessment payment in any case. Thus the court has sustained an assessment against nonabutting property for its proportionate share of the cost of a trunk main even though there was at the time of the assessment no lateral which would make the trunk main available to the property concerned. See *In re Appeal by American Oil Company v. City of St. Cloud*, 295 Minn. 428, 206 N.W.2d 31 (1973).

¹ Instead of certifying the assessment in installments for all of the years by a single certification, the council may direct the clerk to file all the assessment rolls in his/her office and to certify annually the total amount of principal and interest due the following year. In that case, all collections, except of the installment on the current tax list, are made to the municipal treasurer and only the principal and interest amounts unpaid for the following year are certified when the annual certification is made.

By ordinance the council may authorize the partial prepayment of assessments, in a manner provided by the ordinance, prior to certification of the assessment or the first installment to the county auditor.

¹ After adoption of the assessment the clerk is required, unless the council decides on the method mentioned in the previous paragraph, to transmit a certified duplicate to the county auditor which shows these amounts. This saves the

annual computation by the city clerk and avoids errors in later years. (The county auditor is entitled to a fee for all administrative expenses incurred by the county for each special assessment certified to him/her for collection. Minn. Stat. § 429.061, subd. 5.)

Todd Hagen was present to discuss the storm sewer bond sale. Present sale day report. Resolution 2014-10-7-2, a resolution providing for the issuance, sale and delivery of \$1,630,000 general obligation bonds, series 2014D and awarding the sale thereof, was reviewed. A motion was made by Hanson and seconded by Oellien to adopt the resolution. All voted in favor. None voted against. The motion was carried. This resolution is on file in the City Administrative Office for inspection.

Dean Helstrom presented two quotes to perform crack sealing operations on the 2010 Infrastructure Project area. Crack sealing quotes were received from RH Sealcoating and Borgen Incorporated. RH Sealcoating quoted \$12,731.93. Borgen quoted \$22,097.32. A motion was made by Maas and seconded by Bormann to approve RH Sealcoating. All voted in favor. None voted against. The motion was carried.

Dean Helstrom presented the pool assessment report completed by reengineered, inc. out of Big Lake, MN. A copy of the report is on file in the City Administrative Office for inspection.

Frank Maas spoke in regard to the comments made at the October 7th, 2014 meeting.

Gerald Boulton discussed an issue with Ordinance 309 which regulates truck tractors and combinations on streets. The way the ordinance is currently worded it would allow the parking of truck tractors without the trailer. The consensus of the Council was to allow truck tractors without a trailer attached. Nicholas Johnson and Gerald Boulton would work on a solution.

The Council discussed upgrading Ring Avenue South to 10-ton road. After discussion it was felt that leaving it a 9-ton road would be sufficient. No action taken.

A SCDP grant budget adjustment request from DSI was reviewed. A motion was made by Bormann and seconded by Oellien to approve the grant adjustment request. All voted in favor. None voted against. The motion was carried.

Vendor transactions for September 2014 in the amount of \$527,652.36 were reviewed. A motion was made by Hanson and seconded by Bormann to approve the transactions. All voted in favor. None voted against. The motion was carried.

A temporary liquor license for COBRA on November 15th, 2014 for the Wrestling Banquet was reviewed. A motion was made by Oellien and seconded by Bormann to approve the license. All voted in favor. None voted against. The motion was carried.

Application for payment #1 for the slurry seal project at the airport in the amount of \$131,527.63 was reviewed. A motion was made by Hanson and seconded by Oellien to approve the payment application. All voted in favor. None voted against. The motion was carried.

A joint powers agreement with MNDOT for professional/technical services was reviewed. A motion was made by Maas and seconded by Hanson to approve the agreement. All voted in favor. None voted against. The motion was carried.

A motion was made by Oellien and seconded by Bormann to adjourn the meeting. All voted in favor. None voted against. The motion was carried.

Attest:

Mayor Pro Tem

City Administrator