

# WEEKLY MEMO

**Date:** March 16, 2012

**To:** Mayor Lynn Stauss, Council President Craig Buckalew, Vice President Wayne Gregoire, Council Members Marc Demers, Ron Vonasek, Henry Tweten, Greg Leigh, and Mike Pokrzywinski.

**From:** Scott Huizenga

**RE:** Weekly Update

## **UPCOMING MEETINGS:**

*March 20, 2012 – 5:00 pm – Council Meeting – Council Chambers*

*March 27, 2012 – 5:00 pm – Work Session – Training Room*

*April 3, 2012 – 5:00 pm – Council Meeting – Council Chambers*

*April 10, 2012 – 5:00 pm – Work Session – Training Room*

## **WEEKLY UPDATE:**

### **Township**

The City Attorney and I meet with Huntsville Township on Tuesday afternoon regarding the proposed 14<sup>th</sup> Ave SE (Huntsville Road) paving project. The township board opted after much discussion to amend the agreement so that the township's obligation to the project is capped at the current project estimate. In other words, any excess costs would be solely the City's responsibility. The current estimate includes a contingency of 10 percent that the township's proposal incorporates. The Council will consider the amended agreement at the next work session and subsequent Council Meeting.

### **Legislative Update**

Friday is the last day for the Legislature to introduce new bills in the current session without special rules. The House Tax Committee is considering a delete-all tax bill (HB 2337) that contains two major provisions for Cities. The first change is that the state would freeze Local Government Aid (LGA) funding for fiscal year 2013 at 2012 levels. Overall, cities would lose about \$1.2 million in 2013. Ironically, East Grand Forks would benefit at least in the short term. The current LGA formula would reduce funding to East Grand Forks by approximately \$86,000 due to growth in the City in the last 10 years. A funding freeze at previous levels would keep East Grand Forks at an artificially high rate. Nonetheless, other cities lose significantly under the proposal. And, the long-term trend of this bill represents a downward spiral for LGA funding. The short-term benefit to East Grand Forks is no cause for celebration.

The proposed tax bill also would begin the "phase out" of the state commercial property tax. Generally, cities are not opposed to cutting commercial property taxes at the state level. However, the Department of Revenue projects additional deficits of up to over \$700 million in future fiscal years for which alternative funding sources are not identified.

## **DEPARTMENT REPORTS:**

### **Library, Charlotte Helgeson**

The Library hosted "Attracting Birds in Your Backyard" on Monday, March 12 to a standing-room only audience. More attendees were turned away due to lack of space. The presentation was done by the Director of the Agassiz Audubon Society. Discussions have started to create a series of birds and/or other series on wildlife or flora of the region.

The Waiting List for the Campbell Writers Workshop is growing. The class filled within days of notice going out to the public.

The Library is now checking out e-books. A small collection is available for patrons. The site can be reached by going to the city web site and traveling to the library's pages. The e-book page looks just like the other city pages and has had a positive response from patrons so far. Patrons say it is much easier to use than similar sites. Library patrons must use a 5-digit valid library card (add 10,000 to a current number) to checkout e-books.

### **Police Department, Chief Mike Hedlund**

#### **Flood Control Levees/River Safety**

While it is unlikely that we will have significant flooding problems in the GF/EGF area the EGFPD would like to ask people to try to stay off the flood control levees, and especially to keep all motorized vehicles (ATV's, trucks and golf carts) off of the levees as they are very soft right now and can easily be damaged. While there is still ice on the majority of the river and on local ponds the ice has thinned greatly and should not be considered safe anywhere at this point. Please stay safe and stay off.

#### **EGFPD Training**

The East Grand Forks Police Department's in-service training for March 2012 will focus on responding to domestic violence incidents. Domestic violence situations are one of the more common complaints for officers but are frequently quite volatile and can be very difficult to deal with.

## **AGENDA ITEMS:**

The Consent Agenda includes a resolution to participate in the nationwide Recyclebank program and a housekeeping resolution to clarify previously-approved waste water rates that take effect April 1, 2012.

Item 3 considers the request to purchase a new motor grader to replace an existing grader that is 25 years old and in poor condition.

Item 4 is public hearing regarding the proposed Special Assessment paving project on 15<sup>th</sup> Street NE. The current proposal assesses only 30 percent to property owners under the City's state aid assessment policy. The Council will open and close the public hearing and then consider the project separately under New Business.

The City Council will acknowledge and commend Tim Johnson, Truck Driver, on his pending retirement effective March 31.

Item 9 approves the petition for the special assessment project on 13<sup>th</sup> Street and Greenway Boulevard. This item simply acknowledges the petition and sets a public hearing date. **It does**

**not approve the project or the special assessment.** The petition is valid as presented because over 35 percent of property owners by frontage in the district have approved the project. A Street by street percentage is not required. I have attached Attorney General Opinion to this effect to this memo. I have also attached the percentage calculation on this district for your reference. This item is a reconsideration of a vote that failed at the previous Council Meeting by a 3-0 vote with 1 abstention. Four votes are required for passage. Section 3.09 of the City Charter states that, “No vote of the Council shall be reconsidered or rescinded at a subsequent meeting unless at such meeting there are present as many members of the Council as were present when said vote was taken.” In other words, this measure can be reconsidered as long as there are at least four Council Members at the Tuesday’s Council Meeting.

Item 10 considers the recommendation of Jason Stordahl to fill permanently the position of Public Works Director.

Item 11 considers ordering plans and specifications for 15<sup>th</sup> Street NE. This will be considered following the public hearing under Item 4.

Item 12 considers approval to proceed with the implementation of the ICON Pavement Management database.

Item 13 considers approval to purchase playground equipment from Midwest Playscapes. The proposed motion does not specify a location for the installation of the equipment based upon input at the previous work session.

" 'Sufficient cause,' or 'due cause,' means legal cause as distinguished from discretion, and is a cause which specifically relates to and affects the proper administration of the office involved. The cause assigned must not be a mere whim or subterfuge, but must be of substance, relating to the character, neglect of duty, or fitness of the person removed. It must be reasonable; \* \* \* ".

See also the leading case of *State ex rel. Hart v. Common Council of City of Duluth*, 53 Minn. 238, wherein Justice Mitchell reviewed on certiorari the action of the council in removing a fire commissioner for "cause"; M. S. Section 351.07 relating to a specific cause for removal; and Section 351.02 providing that every office shall become vacant on the happening of any of the events enumerated therein.

Your second question is therefore answered in the affirmative. To the extent that certain statements in our opinion O. A. G. 469-B-6, February 11, 1936, a copy of which you have, may be inconsistent with the conclusions herein reached, such prior statements are hereby modified.

MILES LORD,  
Attorney General.

O. T. BUNDLIE, JR.,  
Assistant Attorney General.

Hibbing Village Attorney.  
January 17, 1957

469-B-6

## 138

Villages—Local Improvements. Petition under M. S. 429.031, Subd. 1, as amended by L. 1955, c. 811, Section 1, need not be signed by not less than 35% in frontage of the real property abutting on each street named in petition.

### Facts

"A petition has been presented to the Village Council for the making of local improvements consisting of the construction upon certain village streets, of storm sewers, curbs, gutters and street surfacing pursuant to Minnesota Statutes, Sections 429.011 to 429.111. The streets named in the petition are an east-west street 4 blocks long and 3 north-south cross streets each 2 blocks long.

"The owners of more than 35 per cent in frontage of the real property abutting on all of the streets, except one cross street, have signed the petition. The owners of less than 35 per cent in frontage of the real property abutting on one of the cross streets named in the petition have signed.

"On several of the streets named in the petition there are one or more blocks for which none of the owners, or the owners of less than 35 per cent in frontage, have signed, although considering the entire length of street, the owners of more than 35 per cent in frontage have signed."

### Questions

"1. In determining the adequacy and legality of a petition for local improvements to be made pursuant to Minnesota Statutes, Sections 429.011 to 429.111, must the petition be signed by the owners of not less than 35 per cent in frontage of the real property abutting on each of the streets named in the petition, or is it sufficient if the petition is signed by the owners of not less than 35 per cent in frontage of the aggregate frontage on all streets named in the petition?"

"2. In determining the adequacy and legality of such a petition, must each block of every street named in the petition be signed for by the owners of not less than 35 per cent in frontage of the real property abutting on that portion of the street, or may one or more blocks of a street named in a petition be included in the petition even though none of the owners of abutting real property within such block or blocks have signed the petition?"

### Opinion

1. Those portions of M. S. 429.031, Subd. 1, material to your inquiry, now read as follows:

"The hearing may be adjourned from time to time and a resolution ordering the improvement may be adopted at any time within six months after the date of the hearing by vote of a majority of all members of the council when the improvement has been petitioned for by the owners of not less than 35 percent in frontage of the real property abutting on [each street] the streets named in the petition as the location of the improvement. When there has been no such petition, the resolution may be adopted only by vote of four-fifths of all members of the council. \* \* \* " (Emphasis supplied)

This subdivision as originally enacted by L. 1953, c. 398, Section 3, contained the words "each street" (see bracketed portion.) L. 1955, c. 811, Section 1, amended said Subd. 1 by striking out "each street" and inserting in lieu thereof the words we have emphasized. By making this significant change, the legislature, we think, clearly indicated that a petition under the above subdivision need no longer be signed by the owners of not less than 35% in frontage of the real property abutting on each of the streets named in the petition.

Accordingly, it is our opinion that a petition for local improvements pursuant to M. S. 429.011--429.111, need not be signed by the owners of not less than 35% in frontage of the real property abutting on each street

named in the petition and that it is sufficient if it is signed by the owners of not less than 35% in frontage of all of the streets named in the petition.<sup>1</sup>

2. What has been said above, we believe, is dispositive of your second question. In view of the change in the wording of said Subd. 1 to which we have alluded, portions or blocks of streets may be included in an improvement proceeding by majority vote of the council even though none of the owners of lands abutting thereon has signed the petition; provided, of course, that the aggregate owners of not less than 35% of the property abutting all of the streets named in the petition as the location of the improvement have signed such petition.

See in this connection "The New Minnesota Improvement-Assessment Procedure", 38 Minn. Law Rev. 582, 586.

MILES LORD,  
Attorney General.

HARLEY G. SWENSON,  
Assistant Attorney General.

Caledonia Village Attorney.  
June 9, 1958.

396-G-7

## 139

**Village council meetings—Exclusion of public from informal discussion of village business by individual council members at other than a "regular" or "special" meeting is not prohibited by M. S. 1953, Sec. 412.191, Subd. 2.**

### Facts

"The Village Council of the Village of Bloomington has asked for the construction of one sentence of M. S. A. 412.191, subdivision 2, which reads as follows: 'All meetings of the council shall be open to the public.'"

### Questions

"(1) May the Council members meet for informal discussions of Village business and bar the press and the public from such discussion sessions providing that no official action of the Council is taken at such sessions?"

"(2) May the Village Council at a regular meeting adjourn into an executive session for discussion and bar the press and public from

<sup>1</sup>We have not overlooked *Flynn v. City of Worthington et al.*, 177 Minn. 28, 224 N. W. 254. However, in view of the present language of 429.031, Subd. 1, the difference in the wording of the statutes involved, and the distinction the court makes in this case between a street and an alley, we do not feel that this case (involving an alley) has any bearing on the matter here considered.

PARCEL No.	OWNER	DESCRIPTION	BENEFIT FOOTAGE	SIGNED PETITION FOOTAGE
	UNKNOWN		124.00	
R 83.03338.00	LOWELL A & NANCY L BRANDNER	Lot-007	85.00	85.00
R 83.03339.00	CASEY A & AMANDA M ANDERSON	Lot-008	90.96	90.96
R 83.03346.00	SCOTT A JOHNSON	Lot-015	85.00	85.00
R 83.03347.00	DAVID E & MARY L ANDERSON	Lot-016	90.83	90.83
R 83.03376.00	DANIEL LEE FJESTAD	Lot-007 Block-003	85.00	85.00
R 83.03376.01	WILLIAM G & JENNIFER E STOCKER	Lot-006 Block-003	98.00	98.00
R 83.03378.00	CHAD A & RAEANN M BEAUCHAMP	Lot-005 Block-003	95.00	95.00
R 83.03381.00	MICHAEL T & NICOLE J KOLSTOE	Lot-008 Block-003	91.26	91.26
R 83.03388.00	DANIEL ZAVORAL / JODI SPOOR	Lot-015 Block-003	85.00	85.00
R 83.03389.00	JEFF R & LORI A ANDERSON	Lot-016 Block-003	91.14	91.14
R 83.03719.00	STEVEN D & JENNIFER A HOVDE	Lot-006 Block-001	55.09	55.09
R 83.03720.00	TODD R & NICOLE R JACKMAN	Lot-007 Block-001	110.18	110.18
R 83.03721.00	MICHAEL & MELISSA CASSANELLI	Lot-008 Block-001	99.64	99.64
R 83.03722.00	KEYARESH AFSHARI	Lot-009 Block-001	99.64	99.64
R 83.04238.00	ROBERT E & JEANINE H PEABODY	Lot-001 Block-001	100.00	
R 83.04239.00	ROBERT E & JEANINE H PEABODY	Lot-002 Block-001	95.00	
R 83.04240.00	ROBERT E & JEANINE H PEABODY	Lot-003 Block-001	95.00	
R 83.04241.00	CHRISTOPHER J LIZAKOWSKI	Lot-004 Block-001	95.00	95.00
R 83.04242.00	ROBERT E & JEANINE H PEABODY	Lot-005 Block-001	95.00	
R 83.04243.00	ROBERT E & JEANINE H PEABODY	Lot-006 Block-001	95.00	
R 83.04244.00	ROBERT E & JEANINE H PEABODY	Lot-007 Block-001	45.30	
R 83.04245.00	ROBERT E & JEANINE H PEABODY	Lot-008 Block-001	95.00	
R 83.04246.00	ROBERT E & JEANINE H PEABODY	Lot-009 Block-001	95.00	
R 83.04247.00	ROBERT E & JEANINE H PEABODY	Lot-010 Block-001	95.00	
R 83.04248.00	PAUL & KRIS DANIELSON	Lot-011 Block-001	95.06	95.06
R 83.04249.00	ROBERT E & JEANINE H PEABODY	Lot-012 Block-001	212.25	
R 83.04250.00	ROBERT E & JEANINE H PEABODY	Lot-013 Block-001	102.11	
R 83.04251.00	RYAN B & SADIE M STEENERSON	Lot-014 Block-001	97.29	97.29
R 83.04252.00	ROBERT E & JEANINE H PEABODY	Lot-015 Block-001	95.00	
R 83.04253.00	ROBERT E & JEANINE H PEABODY	Lot-016 Block-001	95.00	
R 83.04254.00	MATTHEW S & JENNIFER S LUKACH	Lot-017 Block-001	95.00	
R 83.04255.00	ROBERT & SANDRA JOHNSON	Lot-018 Block-001	95.00	95.00
R 83.04256.00	BRIAN & LAURIE NOYES	Lot-019 Block-001	45.30	45.30
R 83.04257.00	ROBERT E & JEANINE H PEABODY	Lot-020 Block-001	95.00	
R 83.04258.00	FORX BUILDERS ASSOCIATION	Lot-021 Block-001	95.00	95.00
R 83.04259.00	ROBERT E & JEANINE H PEABODY	Lot-022 Block-001	95.00	
R 83.04260.00	LAWRENCE C MISHLER	Lot-023 Block-001	95.00	95.00
R 83.04261.00	ROBERT E & JEANINE H PEABODY	Lot-024 Block-001	95.00	
R 83.04262.00	ROBERT E & JEANINE H PEABODY	Lot-025 Block-001	100.00	
R 83.04263.00	ROBERT E & JEANINE H PEABODY	Lot-001 Block-002	100.00	
R 83.04264.00	ROBERT E & JEANINE H PEABODY	Lot-002 Block-002	95.00	
R 83.04265.00	ROBERT E & JEANINE H PEABODY	Lot-003 Block-002	95.00	
R 83.04266.00	ROBERT E & JEANINE H PEABODY	Lot-004 Block-002	95.00	
R 83.04267.00	THOMAS \$ MICHELLE STREZISHAG	Lot-005 Block-002	95.00	95.00
R 83.04268.00	STEVEN & SUSAN CARIVEAU	Lot-006 Block-002	95.00	95.00
R 83.04269.00	ROBERT E & JEANINE H PEABODY	Lot-007 Block-002	95.00	
R 83.04270.00	ROBERT E & JEANINE H PEABODY	Lot-008 Block-002	95.00	
R 83.04271.00	ROBERT E & JEANINE H PEABODY	Lot-009 Block-002	95.00	
R 83.04272.00	TODD & JANET D ECKES	Lot-010 Block-002	95.00	95.00
R 83.04273.00	ROBERT E & JEANINE H PEABODY	Lot-011 Block-002	95.00	
R 83.04274.00	ROBERT E & JEANINE H PEABODY	Lot-012 Block-002	97.12	
R 83.04275.00	ROBERT E & JEANINE H PEABODY	Lot-013 Block-002	99.84	
R 83.04276.00	EAST GRAND FORKS CITY	Lot-001 Block-003	90.89	
R 83.04298.00	KORY L KNOFF	Lot-00B Block-001	99.64	99.64

**TOTAL FOOTAGE** 5,235.54 **2,264.03**  
**Percentage of those signing petition** 43.24%