

**CITY OF PARK RAPIDS  
CITY COUNCIL SPECIAL MEETING  
APRIL 27, 2012, 3:00 PM  
Public Library Lower Level Meeting Room  
Park Rapids, Minnesota**

**1. CALL TO ORDER:** The April 27<sup>th</sup>, 2012 Special Meeting of the Park Rapids City Council was called to order at 3:00 p.m. by Mayor Nancy Carroll.

**2. ROLL CALL:** Present: Mayor Nancy Carroll, Councilmembers Dave Konshok, Sue Tomte, and Paul Utke. Absent: Councilmember Patrick Mikesch. Staff Present: Administrator Bill Smith, Planner Dan Walker, Treasurer Angela Brumbaugh, and Clerk Margie Vik. City Attorney Chris Hood participated by telephone. Others Present: Thomas Spahn, Dean Klicker, Ron Jensen, Bridget Chard, Mike Johnk, Alan Zemek, Collette Baldwin, Scott McManus, Dick Devine, Roger Stewart, Ed DeLaHunt, Dave DeLaHunt, Dawn Johnson, and Anna Erickson from the Enterprise.

**3. BUSINESS:**

**3.1. Resolution Ordering the Improvement and Preparation of Plans for the Todd Township Phase III Annexation Area Watermain and Sanitary Sewer Improvement Project in the City of Park Rapids:** Carroll stated this item was tabled last Tuesday night to allow more time to get a few questions answered that we couldn't answer that night.

Smith stated we contacted our attorney and poised the questions to him and asked for his legal opinion. Our plan today is to call him and he will give the Council his opinion on this situation. There's two items on the agenda. The resolution to authorize the plans and specifications for the utility and street project, and Todd Township has also proposed a resolution that the main change is extending the agreement period out an additional ten years. The agreement was sent to our Attorney Chris Hood and we'll hear his thoughts on that proposed resolution when we get him on the phone.

Smith stated I visited with Todd Township Supervisor Jim Schauer. He indicated that the township board would be willing to enter into talks with the city, and I was encouraged by that conversation. We'll play it out and see where it goes.

Smith stated there's approximately \$307,000.00 in deferred assessments. Those are on parcels in area II and some parcels in area III. That's a concern for the city. We cannot start collecting those assessments until those parcels are actually annexed by the city. There are two parcels remaining in area II, and more parcels in area III. Smith showed the illustrated map to the audience.

**Attorney Chris Hood joined the meeting by telephone.**

Chris Hood stated the city and the township entered into a joint orderly annexation agreement in 2002. That was in settlement of a contested case at that time involving the

designation of three different orderly annexation areas. The city has completed the orderly annexation of area I and extended sewer and water service to area I. That was done in 2002. That involved about thirty-five acres. Now it's been a decade since the development of that agreement. That passage of time has resulted in another triggering event allowing the city to annex areas II and III. Area II, which is less than three acres, and then area III, which is about ninety acres. The original orderly annexation agreement included some specific findings by the city and township. That agreement is a binding contract. There are specific contractual terms that the city and township entered into at that time. Those include the township and the city agreed that orderly annexation and extension of municipal services is in the best interest of both communities and that the township and the city agree that orderly annexation and extension of municipal services will promote the public health, safety, and welfare of the community. And that the township and the City of Park Rapids desire to accomplish the orderly annexation and the extension of municipal service to areas legally described in the resolution in a mutually acceptable manner without the need for a contested case. Obviously the primary agreement and background for that agreement in 2002 was that the parties would move forward with annexation under the schedules contained in the agreement and that would also involve the extension of sewer and water service.

Hood stated with that context in mind for the agreement, I'll talk about what's required for annexation in area II and III. With respect to area II, which is a relatively small area, which was carved out of area I at the time this was done, and it certainly is my understanding, there is municipal sewer and water service that has been extended in that area. For area II, annexation may take place on and after ten years following the execution of the joint resolution or May 1, 2012, whichever comes first. The city isn't required to annex area II following May 1, 2012, but has the right to under this contract to do so for the period which is the term of the contract, which was fifteen years. The agreement goes for fifteen years, following 2002. You may annex area II now, or you could choose to wait and annex area II at some point before the agreement expires. I would note that with respect to area II, that after annexation of property in area II the agreement says that property shall be required to connect to city sewer and water service and pay all assessment charges and costs for city services that apply to the properties in area II. I'm reading from the contract that was entered into at that time. With respect to area II, you may annex area II, but there's time. If you choose to annex at this time, those properties would be required to hook up sewer and water service in that area, and of course pay the assessments that would be applicable to that.

Hood stated with respect to area II as well, the agreement also states that there is no contested hearing process associated with that, and that all the city needs to do is adopt an annexation resolution and submit that to the state. The state has thirty days and the annexation has to be ordered. The agreement also states expressly, that the township shall not object to an annexation of area II or any portion thereof initiated by the city in accordance with the triggering events provided in paragraph B. If following May 1, 2012 the city decided to move forward with annexation the agreement says that the township has no right to object to that annexation. That is what the agreement says with respect to area II.

Hood stated with respect to area III, the agreement is similarly structured to area II, but includes an additional requirement. Area III includes roughly ninety acres, and the timing for area III is that the city and the township agree that area III may be annexed by

the city, and that it may be annexed, not required to annex, on or after ten years following the date of execution of this joint resolution or May 1, 2012 if the city has complied with the requirements on paragraph 4F. I'll talk about that in a minute. Again, the city may annex area III following May 1, 2012 if it chooses to do so under certain conditions. The certain conditions really gets to the issue of paragraph 4, which is the issue of municipal sewer and water service. The city is not required to annex area III on May 1, 2012, but it could choose to do so if it wanted to. It could also choose to wait to annex area III for some period of time, and I'll talk about the period of time delay if that's a direction that you wanted to go. The city does have some options in terms of annexation of area III, or area II for that matter, would take place. If the city chooses to annex area III and move forward with that after May 1, or at some point after that, as with area II there is no requirement for a contested case hearing. There is a requirement however that the city provide notice to the township that an event triggering annexation has occurred so they are aware of that and it seems that they are aware of that, but a requirement is that we would have to give that written notice. If the city does adopt an annexation resolution following that notice then it would be submitted to the state and that process would be concluded with the state ordering the annexation. Again, provided that the city has followed the terms of the agreement the township does not have the right to object to the annexation. The agreement expressly states that in it, which gets to the triggering event of what the annexation of area III includes.

Hood stated before the city can adopt an annexation resolution for all or a portion of area III, the city has to first authorize plans and specifications for a sewer and water service project to the properties within area III to be annexed. That has to occur before you can adopt an annexation resolution. You do not have to do that right now. But you would have to do it before you can annex area III. So over the next year or two, if you decided that now is not the appropriate time to move forward with the sewer and water project, then you would not be able to annex that area until after you authorize plans and specifications for that sewer and water project. Now the one thing to keep in mind related to timing of annexation is, the orderly annexation agreement lasts until fifteen years following 2002. It lasts until roughly, May 22<sup>nd</sup>, of 2017. That's the period the agreement is in effect. There is a provision in paragraph 4F that states that the city shall within three years following May 1, 2012 commence substantial construction of the project for the provision of sanitary sewer and water service to area III. Reading all of these terms together, I read this to say that really if the city is going to initiate an annexation of area III it would have to authorize plans and specifications for the sewer and water project first and would have to do so at some time prior to May 1, 2015, which would be three years following May 1, 2012. You would still be able to annex at some point after that, but you would have to commence substantial construction of the sewer and water project in area III before May 1, 2015. Obviously, if you decided to move forward with that you'd have to have those decisions made relatively well in advance of May 1, 2015 that you could get plans and specs done, get contracts, award contracts, and have substantial construction commence for that area III prior to May 1, 2015. That's the basis framework of this agreement.

Hood stated to summarize, the city does have some options at this point. It does not have to annex area II or III at this time. It could choose to annex only area II at this time, if it wanted to do that. It could choose to annex both areas at this time if it wanted to do that. However, before any annexation of area III takes place, the city would have to authorize plans and specifications of a sewer and water project to serve area III. One other thing to

note at this point is I got an email from Bob Ruppe who is with the firm of Couri & Ruppe, he's the township's attorney. I asked for a copy of the proposal that the township had made. I reviewed that this morning. The township is proposing to extend the term for annexation another ten years. Basically, the city wouldn't be able to annex these areas until 2022. That's the proposal that the township has made at this time related to that. I'm not sure why the city would want to do that. If it wanted to modify or amend this agreement, I think there are certainly other things that you could do that would work better for your timing related to this. That's really a policy discussion for you. My view is if you wanted to negotiate changes to this agreement, and there is no requirement that you have to, I don't see that there would be a rush to do that. You could simply delay annexation for some period of time over the next year or two, if that's the direction that you wanted to go. That's a lot of information. I'd be happy to answer any questions.

Carroll questioned area II seems to be separate from area III as far as when it can be annexed? Hood answered that's correct. Carroll stated so we don't have to consider area II and III together. They can be handled separately. Hood answered yes. Carroll stated in our public hearing we were addressing area III. I couldn't tell from the contract if they were somehow linked. Hood stated they are not linked, and since you already have sewer and water service in area II, you have already authorized plans and specifications for a sewer and water project in area II, which means the only thing that you would have to do to annex area II is simply the City Council would have to adopt a resolution and file it with the state.

Carroll stated at our last meeting we were really concerned about the May 1, 2012 deadline, as if that were the cutoff. If we didn't order the plans and specifications then we would be in violation of the contract. It sounds as though you're saying that's not the case. Hood stated that is what I'm saying. That is not the case. You do have some time. May 1 is not a drop dead deadline.

Carroll questioned what do you think we should do with our resolution that we were considering? If we deny the resolution do we lose out on our opportunity to provide services? How should we handle that resolution? Hood questioned is it the resolution authorizing plans and specs for a sewer and water project in area III? Carroll answered yes. Hood stated I don't know that I'm in the best position to say when you should or should not extend a municipal sewer and water project into that area. The agreement says that before you annex it you have to do that. But there's no requirement that you have to do that right now. If you chose to, you can choose to delay that for the time being. Another option would be to negotiate with the township on a change to the agreement that says we won't annex this for another couple of years, but we want you to take out the requirement that we have to put sewer and water in right away, or something like that. There are options if you wanted to negotiate the terms of the orderly annexation agreement. Note that the development of that orderly annexation agreement was not an easy process, as you well know. As the city's legal counsel at that time, I'm a little reluctant to open that up, unless we can do it in a way that really meets the interest of the city and not result in a big dispute about, or trying to negotiate new terms. We have a contract that was negotiated in good faith and entered into a decade ago.

Carroll stated one option for the resolution would be to approve it, one would be to deny it, and in denying it we don't lose our opportunity forever to provide services to the area. Hood stated provided that you revisit that issue within the next two years. Carroll stated which gets us some time to negotiate with the township and perhaps come up with

some modifications to the agreement. Hood answered that's correct, yes, if that's the direction that you want to go. To be perfectly honest with you, I don't know if modifications to the agreement are perfectly necessary given that there is two to three years' worth of time between now and 2015 where you could weight these options and know in a year that maybe we should make modifications. Maybe that's the time to look at this agreement and see if you want to modify it.

Smith questioned I have a procedural question in regards to the resolution to order plans and specs. Would it be best if the City Council just for now tabled the matter indefinitely while they ponder the information they received today? Hood stated certainly that's an option and that might be procedurally the right way to go because I don't know that you're necessarily saying you don't want to do this, unless you're denying it because you just don't want to do it at this time. I think you could do either.

Carroll stated we have a printout of the chronology of events regarding the special assessments and the bond being issued in 2004 for annexation area phase I and II. The bond will be paid off in 2019. It's a fifteen year bond. We currently have \$307,607.00 in deferred assessments for this project. I think that alone scares me. How does that impact the city? Those deferments are based on the area II and part of III properties. The area II people we have learned we will be able to annex as described in the agreement. There are still some deferred assessments out there. That's one of my big concerns.

Hood stated I'm coming at this from a purely legal standpoint. I'm not quite sure why you wouldn't move forward with annexation of area II at this time, given the fact that you already put sewer and water in place. The city and its taxpayers are paying for the cost and interest related to the bonds. It would seem that you would want to if there are deferments at this point. Those deferments have been for a relatively lengthy period of time, eight years. If you have sewer and water in there, the agreement expressly states that area II can be annexed after May 1, 2012. At the time, in 2002, when this agreement was made there was an insistence upon, from the township board's perspective that sewer and water has to be put in place. You've certainly done that with area II. And since the city is paying those costs it would seem that, and the infrastructure is in place, there is not a reason to not annex area II at this time. That's my purely legalistic view of this. With respect to area III, my understanding is there are some areas of III that have been served. I don't know factually about where those areas are, but one of the options is to look at specifically annexing those areas and connecting those areas at this time. Again, the city continues to pay those costs of deferment. Those taxpayers of Park Rapids are paying those costs. Carroll stated I agree.

Tomte questioned if we're talking about just annexing the parcels that have the deferred assessments on them, that would imply renegotiating the whole agreement wouldn't it? Hood answered not necessarily. With area II that certainly would not be the case because that can happen now. With area III we might need to have some discussion on that so there is an understanding with the township on that. I don't know that I would say the agreement necessarily has to be changed. But the township may have a different point of view on that too. Carroll stated we can talk further on that about that piece.

Carroll stated I'm looking for the recommendation of what we should do to act in the best interests of the City of Park Rapids. We have a number of those people in the phase III annexation area here. They were here to participate in the public hearing on Tuesday night. We want to make the best decision so that we can finalize either approving, denying, or tabling indefinitely, the resolution. Smith stated my recommendation would be to table it

for now with the idea that we would immediately ponder the information that you've gathered now, and at a subsequent Council meeting take the matter up. Carroll stated that sounds good to me. Utke questioned why table it? If we deny the resolution we're basically doing the same thing. We have to go back and negotiate either way. Smith questioned procedurally, if the Council considers the resolution, takes a vote, and the resolution fails would it take a Councilmember voting nay to then make a motion to bring it back? Hood stated you can only reconsider at the Council meeting where action takes place. Usually it's typically the Councilmember that's voting on the prevailing side. However, if the resolution fails and you want to bring this back at a subsequent Council meeting there's nothing to prevent you from bringing the issue back.

Carroll stated we can go three ways, approve, deny, or table. Hood stated that's why I said initially if you table or simply deny the resolution it doesn't matter very much. You could revisit this issue at some point in the future again. Utke stated didn't we say the agreement was valid for fifteen years. It's another three just by the agreement the way it is. We would have to go forward with utilities or it goes away. Tomte stated the one thought was that we had to have the utilities done by 2015, but what I'm hearing is that they have to be ordered by the expiration of the annexation agreement. Hood stated commencement of substantial construction has to take place before May 1 of 2015. Tomte stated that's why it came up now. Carroll stated we can decide not to do it now and it will give us time to take further consideration of the other things we talked about. Construction would have to start by the fall of 2014.

Ed DeLaHunt stated it looks to me that you have a window. If you look at it long and hard because you don't know what's going to happen in this economy between then and now. And it puts the city in a big hurt if the economy keeps going down. The city don't need that.

Hood stated certainly that's an option. My recommendation would be to move forward with annexation of area II. If you wanted to wait on annexation of area III to look more at the issue of the sewer and water project in that area, obviously, that's in the Council's complete discretion at this point. You can choose not to move forward with annexation of area II as well, but I'm not sure why you wouldn't move forward with the annexation of area II. Carroll stated I agree.

Dave DeLaHunt questioned since you have already extended some services to a couple of parcels in area III would just providing hookups for those few parcels be considered significant construction? Carroll stated possibly. DeLaHunt stated then you wouldn't necessarily have to assess the other property owners until such time in the future that there was a need. Carroll stated it's a concern that there are properties in area III that are abutting the services and haven't been annexed yet and maybe we can work on that.

Hood stated one other issue to contemplate is obviously the properties out there have septic systems and wells. To the extent that those properties are approaching the useful life of their septic system, which is anywhere from fifteen to twenty-five years. I think one of the reasons was the initial agreement was for a decade was so that those properties that had septic systems who had relatively recently upgraded those septic systems that they would be able to get at least a portion of the useful life out of their septic system. Now, I don't know what's occurred over the last decade, if the county has required people, if they had failing septic systems to upgrade them. I hope not, because I don't think that would have been a terribly good idea for them to do because this agreement clearly contemplated annexation and services at some point to deal with the service issues with

those septic systems. There's weighing that as well. Perhaps waiting a year or two on the sewer project if that's something that you want to negotiate with the township. It seems to me that one of the issues that you should contemplate is pre-2002 when this agreement was put into place, what were the lives of those septic systems and have a substantial number of them come to the end of their useful life? Carroll stated we can check with the county on that. We've had some comments that would indicate that some septic systems have been upgraded. Hood stated that's unfortunate for those people and it shouldn't have happened in light of this agreement. Carroll stated I asked at city hall and we don't have any records of upgrades there. Konshok stated according to the county records there have been four upgraded in the last ten years. Walker stated there was no information on why they were upgraded, but he felt that the septic permits weren't triggered by construction. Spahn stated they were triggered by construction. Walker stated that's not what he indicated. Carroll stated some things have happened to upgrade some of the septic systems.

**Chris Hood discontinued the telephone conference.**

**A motion was made by Utke, seconded by Tomte, to deny the Resolution Ordering the Improvement and Preparation of Plans for the Todd Township Phase III Annexation Area Watermain and Sanitary Sewer Improvement Project in the City of Park Rapids.**

**Discussion:** Konshok stated I'm more in favor of tabling it. It sends the wrong message to deny it. To me this annexation needs to occur. We can talk about the timing of the project, but I think it's an important message that we send. To deny the resolution, in my mind, says that we are stepping away from it.

Utke stated the reason I threw the deny out is the original agreement only goes for three more years and I don't feel that's long enough time. If we go back into negotiations and we have something with ten years and the people are happy then we have something to work with. Two or three years to start construction I don't think solves the problem that everybody is here for. Konshok stated I agree with that but I think whether we table or deny we're still able to negotiate. We have the same amount of wriggle room. It's semantics. Carroll stated we were able to negotiate in good faith earlier. I would expect that to be the way in the future.

Collette Baldwin stated please tell me why do you feel the need, that it's so important to do this to our area. Why do you feel the need that we need to be on utilities? Carroll stated what we're getting ready to do here is to not move on the project. Baldwin questioned I mean in general, why go this far out of the city right now? Konshok questioned are you talking annexation or the project? Baldwin answered both. Konshok stated the simply point is that we are already out there. We extended a water and sewer main out into this area as part of good faith on an annexation agreement. If we had not done that, it would be a very different discussion. If the city had not committed resources and infrastructure then it would be of a mutual benefit to the township as well as us to potentially look back and reopen it. We've got a very long water and sewer line out there. The citizens of Park Rapids paid for that. We're sitting on \$307,000.00 that we're owed, and just to carry that out indefinitely, that's what concerns me.

Baldwin questioned why can't you just go to where the watermain stops? Tomte stated that's what we're talking about right now. That's part of the discussion here. It's the

process that we have to go through, the steps, consult the attorney before we just make those decisions. We can't come in here and make a decision that ten years ago got started. Many people were involved in that, and a lot of discussion and attorney's then. I would feel that would be insulting to their activity to just say we don't like it so we're just going to start over. We have to go through the process.

Dick Devine stated if I heard him right he said that you have until 2017 to annex. I had no part in that when the whole agreement was reached. I don't know any of the particulars of it. I'm not quite sure why the township forced the issue of water and sewer through the whole district. When they did it, it was because of the point and those little lots close to the lake. I think everybody understands the need that was there and how it was solved. It seems to me that there has to be some room with the township and the city where the township can make some type of agreement that releases you from the water and sewer. Then you're just dealing with the annexation, and not dealing with assessments and all of that which goes with it. My suggestion is to try and work from that perspective because you have until 2017 to annex. Get the township to make some type of agreement in that area because it's a much different area than the point.

Tomte stated it's definitely worth having the discussions and rethinking what was originally decided. Konshok stated this is our only annexation agreement that has that requirement for infrastructure. Carroll stated the Henrietta agreement says that if municipal services are needed in the area they must meet the same requirements as a city project which would mean they have to meet the standard of being cost-effective, and best long term solution.

Devine stated I think as citizens in Todd Township we can have some discussion with the Todd people because I don't see any reason why they would push this hard because they know the people in that area have big lots and don't have any problem. I don't really see why it should be such a big item in that area. I don't know how they would accept that, but they're reasonable people, and I don't see why it couldn't be settled.

Utke stated what I'm hearing by this, and actually Hood did say it's good for fifteen years, and I referred to three more years as he also mentioned 2015. Actually we do have until 2017 to still negotiate and work under this original agreement with even the resolution going away. Devine stated I don't believe that with input from the township people, they would be adverse to making some kind of agreement that would work for everybody. Konshok stated I'm guessing that we can count on the residents of the annexation area III to talk to the township board. Devine answered sure you can. Konshok stated there are areas in the city right now that we don't have served by water and sewer because it's not feasible. Devine stated it really becomes two different things because you're not dealing with that project, and it becomes a much different situation. Tomte stated but our predecessors put that in the agreement so we have to jump through all these hoops in order to figure out how to back out of it.

Konshok stated I'm concerned because I don't want to set the entire annexation aside. Devine stated I understand that. Konshok stated we try to avoid having these long skinny extensions of the city property line just to serve a few properties with water and sewer. If we just annex area I, that's exactly what we've got. We have a long, skinny finger going out onto the lake. From a city standpoint that's not a reasonable annexation. If we're going to put services out there we have to have a certain, critical mass out there. That's why this annexation was drawn out in total as it was, and it was broken into phases to

make it more manageable as far as construction. Devine stated fortunately you have time to work it out.

**The vote was called.**

**The following Councilmembers voted yes: Carroll, Konshok, Tomte, Utke.**

**The motion carried unanimously.**

**3.2. Resolution from Todd Township's Attorney: Amending the Orderly Annexation Agreement:** Carroll stated we are in agreement that we do have time so we don't need to act on this. The Council agreed.

**3.3. Deferred Assessments:** Carroll stated this item was for informational purposes.

Carroll thanked everyone for coming and listening to more detail on everything. She added she feels more secure about the agreement and that we have time for further negotiations, and what to do next. Tomte suggested having the annexation of area II on a future Council meeting for discussion. Carroll stated I'd also like to hear from the township board if there is any interest in having a discussion. Smith stated he would work on it.

**4. ADJOURNMENT: A motion was made by Tomte, seconded by Konshok, and unanimously carried to adjourn the meeting at 3:50 p.m.**

[seal]

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Mayor Nancy J. Carroll

ATTEST:

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Margie M. Vik  
City Clerk