CITY OF STOUGHTON
FINANCE DEPARTMENT
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Date: June 16, 2020

To: Finance Committee

From: Jamin Friedl, CPA
Director of Finance/Comptroller

Subject: Special Assessment Repayment Terms

The City of Stoughton Finance Committee requested the Finance Department to forecast the potential annual cash flow impact if we considered changing the special assessment repayment terms as summarized in the table below:

	Existing Term	Existing Interest Rate	Proposed Term	Proposed Interest Rate
>$0 and <$200 Principal Balance	Due in year of assessment	N/A	Due in year of assessment	0.0%
>$200 and <$1,499 Principal Balance	5 Years	3.5%	5 Years	0.0%
>$1,499 and <$4,999 Principal Balance	10 Years	3.5%	15 Years	0.0%
> $4,999 Principal Balance	10 Years	3.5%	20 Years	0.0%

As can be seen by the summary on page 3 of this document, the potential reduction in cash flow over a 20-year period related to existing and 2020 proposed special assessments is nearly $120,000. Over the next 10 years, the impact to the City's annual cash flows ranges from $16,800 to ($89,800). It is the Finance Department's opinion that the potential impact on the City's future cash flows does not create an immediate cause for concern. Amounts collected in future years will be used to smooth out the impact to the mill rate due to fluctuations in our debt service requirements. The City has used special assessment collections to add some flexibility to the CIP budgets as well; however, due to the forecasted impact to the cash flows, this may no longer be an option available to the City.

A memorandum from the City's attorney is also attached which addresses the potential legal concerns related to changing the existing and future special assessment repayment terms. The following questions were asked by City staff and considered by Attorney Dregne:

1. *Are zero interest and installment payments allowable?* This is up to the discretion to the governing body and is considered allowable.

2. *Can the City provide for different installment terms on different projects?* The governing body has the authority to establish interest rates and installment terms on a case-by-case basis.
3. *Can the City change existing special assessment interest rates and installment terms?* If the City decides to restructure the terms of the existing special assessments, it is recommended the City levy new special assessments on the existing balances following the required statutory procedures.
4. *What is the risk the City could potentially be exposed to if the City attempts to change the special assessment payment terms by simply adopting a resolution that purports to make the changes?* There is a significant risk that the resolution and proposed changes are invalid, because they would be made outside the statutory procedures and would be inconsistent with the statutory procedures.
5. *Will the original special assessments remain valid and enforceable if the attempted modifications are invalid?* This particular question requires additional research at this time.
6. *What is the risk that the City would actually face a legal challenge to changes in payment terms that are favorable to the property owners?* The risk appears to be low; unless the property owner is confident they could escape liability for paying the assessment under both the amended and original special assessment terms.

In relation to the concerns raised above, we currently have three options available to us to address the existing special assessments.

1. Do not follow the procedural requirements and simply make the changes to the interest rate and repayment terms. The individual payers will only benefit from this change and the City can limit its liability **if the original assessment is still valid**. See question 5 above.
2. Follow the procedural requirements and levy new special assessments on the remaining principal balance outstanding. This will require a significant amount of time by City staff and may cause confusion for residents who may think they are being assessed for a new project.
3. Make no changes to the existing special assessments and only apply the new terms to the 2020 and subsequent years' special assessments. Under the current structure, the largest anticipated individual annual payment is approximately $1,500 while under the proposed structure that amount is reduced to $497.

Regardless of the course of action selected by the Finance Committee, we do recommend charging a small interest rate to cover the administrative costs of handling the special assessments as well as providing some incentive to pay early.

Respectfully submitted,
Jamin Friedl, CPA
Director of Finance

Comparison of Forecasted Special Assessment Cash Flows

Year	Current Policy Principal	Current Policy Interest	Current Policy Total	Proposed Policy Principal	Proposed Policy Interst	Proposed Policy Total	Change in Cash Flow
2020	$ 131,318	$ 33,229	**$ 164,547**	$ 69,621	$ 24,678	**$ 94,299**	**$ (70,248)**
2021	$ 128,077	$ 28,596	**$ 156,673**	$ 66,852	$ -	**$ 66,852**	**$ (89,822)**
2022	$ 123,045	$ 23,812	**$ 146,857**	$ 66,852	$ -	**$ 66,852**	**$ (80,005)**
2023	$ 120,566	$ 19,215	**$ 139,782**	$ 66,852	$ -	**$ 66,852**	**$ (72,930)**
2024	$ 119,351	$ 14,709	**$ 134,060**	$ 66,852	$ -	**$ 66,852**	**$ (67,208)**
2025	$ 105,611	$ 10,245	**$ 115,856**	$ 44,239	$ -	**$ 44,239**	**$ (71,617)**
2026	$ 54,294	$ 6,266	**$ 60,560**	$ 44,239	$ -	**$ 44,239**	**$ (16,321)**
2027	$ 50,801	$ 4,356	**$ 55,157**	$ 44,239	$ -	**$ 44,239**	**$ (10,918)**
2028	$ 46,653	$ 2,569	**$ 49,223**	$ 44,239	$ -	**$ 44,239**	**$ (4,983)**
2029	$ 26,488	$ 929	**$ 27,417**	$ 44,239	$ -	**$ 44,239**	**$ 16,822**
2030	$ -	$ -	**$ -**	$ 44,239	$ -	**$ 44,239**	**$ 44,239**
2031	$ -	$ -	**$ -**	$ 44,239	$ -	**$ 44,239**	**$ 44,239**
2032	$ -	$ -	**$ -**	$ 44,239	$ -	**$ 44,239**	**$ 44,239**
2033	$ -	$ -	**$ -**	$ 44,239	$ -	**$ 44,239**	**$ 44,239**
2034	$ -	$ -	**$ -**	$ 44,239	$ -	**$ 44,239**	**$ 44,239**
2035	$ -	$ -	**$ -**	$ 25,433	$ -	**$ 25,433**	**$ 25,433**
2036	$ -	$ -	**$ -**	$ 25,433	$ -	**$ 25,433**	**$ 25,433**
2037	$ -	$ -	**$ -**	$ 25,433	$ -	**$ 25,433**	**$ 25,433**
2038	$ -	$ -	**$ -**	$ 25,433	$ -	**$ 25,433**	**$ 25,433**
2039	$ -	$ -	**$ -**	$ 25,051	$ -	**$ 25,051**	**$ 25,051**
	$ 906,205	$ 143,926	**$ 1,050,131**	$ 906,205	$ 24,678	**$ 930,882**	**$ (119,249)**

Note: This is an estimate. Actual cash flow will change due to prepayments, 2020 assessment changes, etc.

Existing Special Assessments	$ 660,882
Proposed 2020 Assessments	$ 245,323

Major Assumptions Include:

- All parties special assessed will pay over the maxium term allowed in both scenarios
- Assuming interest on existing special assessments will continue until 12/31/20
- The City will be required to pay the Utilities its portion of the Hults Road assessments as scheduled
  This is included in the estimates above

Confidential Memorandum
Privileged Lawyer-Client Communication

To Jamin Freidl, Finance Director

From Matt Dregne, City Attorney

Date June 2, 2020

Re Special Assessment Installment Payments

This memo responds to your request for information regarding the use of installment payments for the payment of special assessments. With respect to new special assessments, you asked whether the City may establish an interest rate of zero, and whether the city may allow the payment of installments over differing (and longer) periods of time as the amount of the special assessment increases. The answer to both of those questions is yes. You next asked whether the City could restructure the installment payments associated with previously levied special assessments (such as by reducing the interest rate or allowing a longer number of years to make installment payments). There is no statutory basis for such restructuring, and the statute forbids changing the interest rate during the course of the installment payments for a particular special assessment, leaving the City the option of levying new special assessments to replace existing special assessments. Finally, you asked whether the City could take different approaches to interest rates and installment payments in different circumstances (such as using one approach for sidewalk assessments, and another approach for a different kind of project). The answer to that is yes.

DISCUSSION

1. *Zero interest and installment payments are allowable.*

Section 66.0715(3) of the Wisconsin Statutes provides that "the governing body of a local governmental unit may provide that special assessments … may be paid in annual installments."[1] The statute goes on to say that "[i]nstallment payments of principal and interest shall be structured by the governmental body…." The statute leaves it to the

[1] Installment payments are not allowable for "sprinkling or oiling streets." Wis. Stat. § 66.0715(3)(a).

discretion of the governing body to determine what interest rate should be charged, and how to structure the installment payments, subject to the requirement that special assessments be reasonable.

2. *Changing existing special assessment interest rates and installments would likely require the City to levy new special assessments to replace the existing special assessments.*

There is no mechanism in the statutes to modify either the interest rate or installment payment terms established for an existing special assessment. Indeed, the statute expressly states that the interest rate set for special assessment installment payments "may not be changed during the course of the installment payments for a particular special assessment." Wis. Stat. § 66.0715(3)(b).

There are numerous procedural requirements that must be satisfied to levy a special assessment, and additional procedural requirements needed to allow payment in installments. Given the absence of any statutory basis to make changes to an existing, previously levied special assessment, and given the prohibition on changing the established interest rate, I recommend against attempting to simply modify the terms of existing special assessments. If the City decides to restructure terms, I recommend starting over and levying a new special assessment, following at least those procedural requirements beginning with the adoption of a final special assessment resolution. The resolution would need to address the existing special assessment in some way, likely by stating that the existing assessment is being replaced by the new assessment. Property owners would have the right to challenge the new assessments. I would consider drafting the resolution to say that if there were a successful challenge to the new special assessment, the existing (or prior) special assessment would be effective, but it is not clear such a provision would be enforceable.

3. *The City can provide for different installment terms on different projects*.

So long as special assessments are levied pursuant to the police power (rather than the taxing power), and so long as the special assessments are reasonable, the council has the authority to establish interest rates and installment terms on a case-by-case basis.

Cc: Mayor Tim Swadley
Rodney Scheel, Planning Director