## Deb Little

**From:** David DeLong
**Sent:** Tuesday, September 05, 2017 4:00 AM
**To:** Ben Martig
**Cc:** Deb Little; Rhonda Pownell
**Subject:** Motion to Amend Something Previously Adopted

Mr. Martig has asked that I not send mass emails as it may open the door for an open meeting violation. He feels that while it might not be illegal, it is opening the door for what could be interpreted as a open meeting violation. I have addressed this to him only and ask him to pass it along and include it in the supplemental memo.

I present for your consideration the following which truly is an illegal action.

At the request of the City, BRKW did a special benefits appraisal at 2008 Sibley View. It showed an increase in value of $4500. We assessed it $4640. This is an unconstitutional special assessment because it exceeds the special benefits.

As some of you are no doubt aware an amendment to bring the assessments into line with State law was considered to have failed but actually passed with 3 yes votes and 2 no votes, only a majority of those present for an amendment. The main motion required 4 votes. The chair failed to announce the results of the voting and failed to mention if it had passed or failed. This error could have been corrected at the meeting but wasn't. We can still correct this error and unconstitutional taking by considering a motion to Amend Something Previously Adopted.

I plan to make such a motion at tonight's meeting, I will move to Amend Something Previously Adopted( Res. 2017-068) This will need a second. This is not new business, it is a parliamentary motion. If the the Mayor wants to rule it out of order that's her prerogative. If it doesn't get seconded that's your prerogative. When deciding whether you may wish to second the motion that could cure this taking of property without fair compensation(a violation of the Fourteenth Amendment), please read what follows.

See
Leo C. BUETTNER, Respondent, v. CITY OF ST. CLOUD, Appellant. 277 N.W.2d 199 (1979)

At the request of the City BRKW did a special benefits appraisal at 2008 Sibley View. It showed an increase in value of $4500. We assessed it $4640. This special assessment the special benefits, this is an unconstitutional taking. I've included case links for Mr. Colby and Mr. Hood. I have highlighted parts for others but feel free to read the whole link.

There is also Charter Language
Section 10.1.
No assessment shall exceed the benefits to the property.

and

Language from the City code Sec. 66-25.
No assessment shall exceed the benefits to the property assessed.

some other Court cases,

John W. BUZICK, et al., Petitioner, Appellant,
v.
CITY OF BLAINE, Respondent.

Special assessments are presumed to be valid if the land receives a special benefit from the construction of the improvement, if the assessment is uniform upon the same class of property, and if the assessment does not exceed the special benefit to the property. Tri-State Land Co. v. City of Shoreview, 290 N.W.2d 775, 777 (Minn.1980).
Here is a link -
https://scholar.google.com/scholar_case?case=10580274911725984244

and
EHW PROPERTIES, Appellant,
v.
CITY OF EAGAN, Respondent.

The trial court found that "the more compelling evidence in this case is that there was a discernable increase [of at least $85,000] in the value of the two parcels attributable to the upgrading." The court affirmed the special assessment of $48,813.39, concluding that it was less than the special benefit received by appellant's two RB parcels, and therefore proper
Here is the link -
https://scholar.google.com/scholar_case?case=10118958681542282319

and
James J. SCHUMACHER, Arnold J. Feinberg, Robert H. Schumacher, and Ron McDaniels, Respondents,
v.
CITY OF EXCELSIOR, Minnesota, Appellant.
A special assessment that exceeds the benefit to the property, as measured by the difference in market value before and after the improvements, is a taking of property without fair compensation in violation of the fourteenth amendment. *Buettner v. City of St. Cloud*, 277 N.W.2d 199, 202 (1979).

This case involves only the factual issue of whether the improvements increased the market value of the property. Because an assessment which would exceed the increase in market value would be an unconstitutional taking of the owners' property without fair compensation, the trial court makes an independent review of the evidence. *Buettner*, 277 N.W.2d at 203.

We reverse and remand for this determination. If the assessment exceeds the market value increase, the trial court remands to the city council for reassessment after first determining the "[constitutionally] permissible assessment ceiling." *Buettner*, 277 N.W.2d at 205.
Here is the link -
https://scholar.google.com/scholar_case?case=6355752395743351868

and finally

277 N.W.2d 199 (1979)
Leo C. BUETTNER, Respondent,
v.

CITY OF ST. CLOUD, Appellant.

The sole issue presented to the district court had to do with the relationship between the value of the "specific benefits" conferred on the property by the project to the amount of the "special assessment" levied. No issue regarding the procedural regularity of the assessment adoption was raised.
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Initially, we note that the nature of the issues presented to a trial court reviewing a specific assessment may differ. Specifically, this court has established the rule that a special assessment which exceeds the special benefits to the property, measured by the difference in market value before and after the improvements, is a taking of property without fair compensation in violation of the Fourteenth Amendment. See, e. g., Southview Country Club v. City of Inver Grove Heights, 263 N.W.2d 385 (Minn.1978). This is the sole issue that was presented to the trial court in this case.

Challenges can be made to a special assessment on grounds other than this constitutional one, however. The proportionate distribution among property owners of the total costs of the improvement, the determination of the area actually benefited by a given construction project, the regularity of the assessment process — all may be contested by a property owner under Minn.St. 429.081.
.....

where the sole issue presented is whether there has been an unconstitutional taking, the trial court cannot abrogate its duty to uphold constitutional safeguards and defer to the judgment of the taxing authority. Decision must be based upon independent consideration of all the evidence. This is the basis of our opinion in Carlson-Lang Realty Co. v. City of Windom, 307 Minn. 368, 240 N.W.2d 517 (1976).
.....

See, *In re Assessment for Paving Concord Street, St. Paul, supra*. The principle that the apportionment of assessments is a legislative function cannot be extended, the court said, "so as to authorize an unconstitutional taking of private property" 148 Minn. 331, 181 N.W. 860, and continued:

"It was for the trial court upon the hearing on the application for the confirmation of the assessment to make its determination, having in mind the legislative character of the assessing body, and the weight to be accorded its findings, and the *fundamental constitutional provision inhibiting the taking of private property without just compensation.* We review the finding of the trial court. In our determination of the sufficiency of the evidence to sustain the finding we are guided by the rule, applicable in other cases, that *the evidence must be against the findings to justify a reversal. * *** The trial court makes its finding having in mind the considerations which should influence it in determining the validity of the assessment. *We pass upon the sufficiency of the evidence to sustain its finding as in other cases.*" (Emphasis supplied.) 148 Minn. 332, 181 N.W. 860.

David DeLong