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January 25, 2019

Robert F. Phillips, P.E.
City Engineer
City of Madison
210 Martin Luther King Jr Blvd., Room 115
Madison, WI 53703

Re: Notice of Objection Concerning Proposed Special Assessment for Traffic Signal at South Blount Street and Williamson Street

Dear City Engineer Phillips

I represent The Edge at 706, LLC, the owner of the properties located at 704 Williamson Street (Parcel No. 070913417139) and 302 S. Blount St. (Parcel No. 070913419010). From the outset, I would like to make it clear that my client appreciates the City's efforts and supports the various recommendations that have been advanced by the City to improve vehicle, pedestrian and bicycle traffic through the Blair/John Nolen/Wilson/Williamson intersection. However, my client believes that the current proposal to assess a select group of property owners for the traffic signal referenced above is contrary to the state statutes and city ordinances governing special assessments. For that reason, I am writing to provide written notice to the City of my client's objection to the proposed assessment. Rather than attempting to assess a \$68,000 portion of the cost of the traffic signal to a handful of properties at the intersection, my client believes the law requires the City to fund the full \$170,000 cost of the signal as a general obligation of the entire community.

Analysis

- 1. The special assessment procedures under Wis. Stat. § 66.0701 cannot be used to apportion the cost of the signal to specific property owners because the signal confers no "special benefit."**

The traffic signal is intended to benefit the general public; it confers no "special benefit" on the properties in the proposed assessment district. It is therefore improper to use the special assessment procedure authorized by Wis. Stat. § 66.0701 to assign a portion of the cost to specific property owners. State law authorizes the City to levy a special assessment for a "local improvement."¹ If an improvement's primary purpose and effect are to benefit the public, it is not a local improvement.² The law recognizes that, while general improvements grant substantially equal benefits and advantages to the property of the whole community or otherwise benefit the public at large, local improvements confer "special benefits" on property in a particular area.³ When called on to interpret the special assessment statute, Wisconsin courts have explained that a special benefit has the effect of furnishing an "uncommon advantage" that

¹ *Genrich v. City of Rice Lake*, 2003 WI App 255, ¶ 9, 268 Wis.2d 233, 673 N.W.2d 361.

² *Id.* at ¶ 12, citing 14 McQUILLIN MUN. CORP. § 38.11 at 83 (3rd ed. 1998).

³ *Hildebrand v. Town of Menasha*, 2011 WI App 83, ¶ 6, 334 Wis. 2d 259, 800 N.W.2d 502, citing *Genrich v. City of Rice Lake*, at ¶ 13.

either increases the services provided to the property or enhances its value.⁴ An uncommon advantage is a benefit that differs in kind rather than in degree from those benefits enjoyed by the general public.⁵

In the situation at hand, it is clear from the public record that the primary purpose of the proposed signal is to improve traffic flow through the Blair/John Nolen/Wilson/Williamson intersection and to enhance the operation of the Capital City Trail by relocating the pedestrian and bicycle crossing from the Blair/John Nolen/Wilson/Williamson intersection to the Blount/Williamson intersection. The resolution adopted by the City Council on June 19, 2018, approving a consultant's report with respect to the reconstruction of the public infrastructure in this area was explicitly premised on this fact:

Based upon the findings of the study, the study team recommends Alternative 1 should be moved forward into design as it best balances the multiple goals that have been identified as most important to a successful reconstruction project. Major design components of Alternative 1 Geometry includes: ... *Providing an alternate route for pedestrians & bicycles to avoid crossing Williamson St at Blair St by including a cycle track along the south side of Williamson St to Blount St and creating a new signal with bike crossing phase at the Blount St / Williamson intersection.*⁶ (Emphasis added.)

The report adopted by the City Council describes the important role that the Blair/John Nolen/Wilson/Williamson intersection plays for the entire community: "[it] is a cross roads for all transportation modes ... one of the most highly used intersections for pedestrians, bicyclists, motor vehicles, and transit ... [i]t serves as both an entrance to the near east isthmus/Capitol area as well as the Williamson Street corridor."⁷ These statements are a recognition of the importance of this intersection to the general public; the entire community.

With regard to the Blount/Williamson intersection, the adopted report states, "[t]he near and long-term recommendation at the Blount Street intersection is to provide a diagonal, signalized bicycle crossing connecting to the recommended cycletrack in front of Machinery Row."⁸ In fact, this is the one and only rationale offered for the signalization of the intersection. This is unequivocal evidence that the signal is intended to improve traffic flow through the Blair/John Nolen/Wilson/Williamson intersection and to enhance the operation of the Capital City Trail. Both objectives are laudable and both provide a general benefit to the community at large, rather than a special benefit that increases services to the handful of properties in the assessment district.⁹

My client is nearing completion of a new apartment building on the 706 Williamson Street parcel. When development of that parcel was originally considered by the City in 2014, the City had an opportunity to condition subsequent land use approvals on improvements to the adjacent public right of way. In fact, the City's Plan Commission recommended that the City's Traffic Engineering division review

⁴ *Id.*

⁵ *Id.* at ¶ 7.

⁶ City of Madison Common Council Resolution No. RES-18-00489.

⁷ *Blair Street Corridor Study Report*, Strand Associates, Inc., Executive Summary, p. ES-1.

⁸ Strand report at ES-8.

⁹ See e.g. Marquette Neighborhood Association letter dated April 23, 2018 ("We are happy to have seen the design for this complicated intersection evolve. In our estimation, positive features of the current plan include ... [a]dding a traffic light and signalized bike crossing at Williamson Street at Blount Street"), available in Legistar File No. 51170.

the operation of the Blount and Williamson Street intersection.¹⁰ The Plan Commission nonetheless found that the development met the criteria necessary to approve a conditional use permit for the project, including the required finding that the project was “so designed as to minimize traffic congestion and to ensure public safety and adequate traffic flow, both on-site and on the public streets.”¹¹ Ultimately, the City Council approved a development agreement for the project that required certain alterations to adjacent public infrastructure but, importantly, the plans and specifications approved by the City did not require the installation of traffic signals—or any other improvements to the Blount/Williamson intersection—in order to facilitate the new development.¹² Based on this record, it is clear that the new traffic signal was not necessitated by my client’s development.

When my client inquired with the Traffic Engineering Division as to the rationale behind the new signal, my client was advised that the signal would facilitate safer pedestrian and vehicular movements through the intersection of Blount and Williamson Street, which would benefit the residents of my client’s apartment building. While this may be true—and, again, my client appreciates all that City has done and continues to do to provide safe travel across city streets—it is clear from the record that the *primary* purpose of the proposed signal is to facilitate the re-routing of pedestrian and bicycle traffic from the Blair/John Nolen/Wilson/Williamson intersection and to enhance the operation of the Capital City Trail. This is a benefit to the general public.¹³ Wisconsin courts have held that, even in situations “where a general improvement may incidentally provide special benefits to particular properties” the improvement will nevertheless remain general, and it may therefore not be the subject of a special assessment.¹⁴

2. Even if the proposed traffic signal conferred a “special benefit,” the proposed assessment is inconsistent with City policy and is otherwise unreasonable.

The City has adopted a *Traffic Signal Assessment Policy*, which is intended to assist in the implementation of the City’s special assessment ordinance (Madison General Ordinances Section 4.09). The purpose of this section is to provide a mechanism to identify property owners benefitting from intersection signalization and develop a procedure to reasonably and equitably assign project costs to the properties benefitting from the improvement.¹⁵

The adopted policy recognizes that traffic signals “provide benefits to properties well beyond the signalized location.”¹⁶ To fairly apportion the cost of such signals, the policy requires the City to identify

¹⁰ See CUP Approval Letter, dated July 10, 2014, available in Legistar File No. 34335.

¹¹ See MGO Section 28.183(6)(a). The city staff report available in Legistar File No. 34335 indicates that this traffic-related standard had been met by the developer’s proposal.

¹² See Contract for the Construction of Public Improvements that will be accepted by the City of Madison for 704 Williamson Street - The Edge, with The Edge at 706, LLC, Private Contract No. 7932, approved July 11, 2017 pursuant to RES-17-00568, Legistar File No. 47746.

¹³ Not only does the official public record provide clear evidence that the proposed traffic signal is to improve traffic flow through the Blair/John Nolen/Wilson/Williamson intersection and to enhance the operation of the Capital City Trail—all of which must be construed as a benefit to the general public—this purpose is also reflected in contemporaneous media accounts of the project. See e.g. Rickert, Wis. State Journal, *Downtown Madison’s ‘hairball’ intersection up for approval amid opposition from neighbors*, Jun 18, 2008 (“Chief among the changes proposed by city traffic engineers are ... [m]oving the point at which the Capital City trail crosses Williamson east from the intersection to South Blount Street, where a bike-specific diagonal crossing and signals would be installed”).

¹⁴ *Hildebrand* at ¶ 9.

¹⁵ City of Madison, *Traffic Signal Assessment Policy*, § 3.12.

¹⁶ *Id.* at § 3.14.

the “area of influence.”¹⁷ For some reason, and contrary to the notion that traffic signals benefit properties well beyond the signalized intersection, the proposed assessment district identifies only eight properties that will receive a special benefit from the signal. This is contrary to the policy, which contemplates that “[t]he area of influence will generally encompass all properties within a ¼ to ½ mile radius from the signalized intersection.”¹⁸ As such, there are dozens of other properties that should be included in the assessment calculation as they all contribute to the traffic through the Williamson / Blount Streets intersection and might benefit, according to the City’s policy, from the addition of the traffic signal.

The documentation provided by the City provides no indication why certain properties that are otherwise within a ¼ to ½ mile radius of the signalized intersection were excluded. Indeed, there are commercial properties within half a block that discharge traffic directly onto Blount Street that were excluded from the district. For example, a significant amount of the traffic associated with the various uses at The Gateway project on the 600 block of Williamson Street exit the property onto Blount Street. Nonetheless, this property was excluded from the district. This is arbitrary and unreasonable.

Continuing on, the Madison Gas and Electric property located at 623 Railroad Street, which is one of the eight properties in the assessment district, has been classified as “Industrial Park,” with only 98 trips ascribed to the property according to the City’s analysis. In fact, the property has a 133,000 GSF office building, a multi-decked parking garage and a large surface parking lot on the north side of Railroad Street. It appears that this property has been misclassified and the number of trips ascribed to this use is substantially lower than the number actually generated by the property. This is arbitrary and unreasonable.

Additionally, whereas the owners of condominium units at The Fauerbach and visitors to the Elks Club (two of the eight properties in the district) have only one means of ingress and egress—the Williamson/Blount Streets intersection—the residents and customers of the commercial space within my client’s building have multiple routes to take to the north, east and west that *do not* include entering the Williamson/Blount intersection. As such, the traffic impact of my client’s project is considerably less than that of the Fauerbach condos and the Elks Club. It is unreasonable to treat these uses in the same manner.

The legal concept of uniformity in special assessments requires the assessment to be fairly and equitably apportioned among property owners in comparable positions.¹⁹ To accomplish this, the municipality must use a method of assessment that produces a uniform and equal value for all affected properties.²⁰ Regardless of the method used, the courts instruct that it must produce uniform and equal assessment amounts. For this reason, it is unreasonable to use the same method to assess a group of property owners when it results in an entirely disproportionate result.²¹ The examples cited above show that the assessment against my client’s property is disproportionate.

Finally, there is no evidence that the City collected any recent traffic counts or conducted a traffic impact analysis of the eight properties within the district prior to making a determination that a signal was warranted and would benefit these eight properties. As such, there is no comparison between the current

¹⁷ *Id.*

¹⁸ *Id.* at § 3.15.

¹⁹ *Lac La Belle Golf Club v. Lac La Belle*, 187 Wis. 2d 274, 285, 522 N.W.2d 277 (Ct. App. 1994).

²⁰ *Id.*

²¹ *Id.*

background traffic on Williamson and Blount Streets and the incremental traffic that the residents and commercial tenants of my client's building will contribute. This is important because the City maintains a prioritized list of intersections that is used when deciding whether to signalize an intersection.²² The Blount/Williamson intersection doesn't even make the first page of the prioritized list. In fact, the list indicates that the Blount/Williamson intersection falls well below the traffic warrants necessary to merit a signal. Thus, signalizing the intersection and attempting to assess the cost to a handful of adjacent properties is arbitrary and unreasonable.

In order for a special assessment to be lawfully imposed, it must be reasonable.²³ It is inherently unreasonable for the city to disregard its adopted policy and seek to impose an assessment against a handful of properties that happen to sit at an intersection that does not currently meet the warrants for a traffic signal according to the established criteria on which the City typically relies.

Conclusion

Public improvements fall into one of two categories: general or local.²⁴ A general improvement is one that confers a general benefit; a benefit to the public at large.²⁵ In contrast, a local improvement, although incidentally beneficial to the public at large, is made *primarily* for the accommodation and convenience of inhabitants in a particular locality and confers "*special benefits*" to their properties.²⁶ General improvements must be funded by general taxes whereas local improvements may be financed by special assessments levied against individual properties.²⁷

The public record clearly establishes that the primary purpose of the proposed signal at Blount and Williamson Streets is to improve traffic flow through the Blair/John Nolen/Wilson/Williamson intersection and to enhance the operation of the Capital City Trail by relocating the pedestrian and bicycle crossing from the Blair/John Nolen/Wilson/Williamson intersection to the Blount/Williamson intersection. The public record clearly establishes that the primary purpose of these improvements is to provide a general benefit to the entire community.

Even if the proposed traffic signal could somehow be construed as conferring a "special benefit" on the subject property, the proposed assessment is inconsistent with City policy and is unreasonable. Accordingly, the methodology would need to be reexamined if the City were to proceed in that direction.

My client welcomes the improvements that have been recommended for the John Nolen/William Street Corridor and appreciates all of the work that you, your staff and other stakeholders have invested in developing these recommendations—and my client will be contributing to these improvements as a taxpayer. However, for the reasons set forth above, my client respectfully requests that the entire \$170,000 cost of the Blount/Williamson Street signal be covered by the City's capital budget, rather than assigning a specific portion of the cost to a handful of property owners as a special assessment.

²² See Current Traffic Signal Priority List (TSPL), available at: <https://www.cityofmadison.com/trafficEngineering/trafficSignals.cfm>.

²³ See generally, *Lac La Belle Golf Club*.

²⁴ *Genrich v. City of Rice Lake*, 2003 WI App 255, ¶ 8, 268 Wis.2d 233, 673 N.W.2d 361, citing *Duncan Develop. Corp. v. Crestview San. Dist.*, 22 Wis. 2d 258, 264, 125 N.W.2d 617 (1964).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

Respectfully,

CARLSON BLACK O'CALLAGHAN & BATTENBERG LLP

A handwritten signature in black ink that reads "Dan O'Callaghan". The signature is fluid and cursive, with the first name "Dan" being more legible than the last name "O'Callaghan".

Dan O'Callaghan
Partner

cc:

Yang Tao, P.E., City Traffic Engineer and Parking Manager (via email: ytao@cityofmadison.com)

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