

CITY OF MINNEAPOLIS

MINNEAPOLIS CITY COUNCIL
STANDING COMMITTEE ON TRANSPORTATION AND
PUBLIC WORKS

In Re: The Stormwater Utility Appeal of
Custom Plastic Laminates, Inc.

**FINDINGS,
CONCLUSIONS
AND RECOMMENDATION**

BACKGROUND

This appeal has been brought pursuant to Minneapolis Code of Ordinances §510.70(f). In March 2005, the City of Minneapolis adopted a stormwater utility ordinance. Prior to that time charges for storm sewers and sanitary sewers had been combined and had, in all but a few cases, been collected based on the amount of drinking water used by a property owner. Property owners complained about the fairness of this system and at least one even brought a court action challenging the system. See JAS Apartments, Inc. v. City of Minneapolis, 668 N.W.2d 912 (Minn. Ct. App. 2003). The Minnesota Legislature adopted amendments to Minnesota Statutes § 444.075 which, as of January 1, 2006, prohibit a city from charging for storm sewer or stormwater services based on the amount of water consumed. Minnesota Statutes § 444.075 subd. 3b (4). Accordingly, the City of Minneapolis adopted a new method for establishing stormwater charges. This method is set out in Chapter 510 of the Minneapolis Code of Ordinances. As a part of this process and pursuant to the Ordinance, a stormwater charge was established for the property at 1720 Marshall Street N.E., which is owned by Marshall

Street Properties and operated by the property owner as Custom Plastic Laminates, Inc. Custom Plastic Laminates disputes the amount of the fee and has appealed pursuant to Minneapolis Code of Ordinances § 510.70.

Based on the files, records and proceedings of the City of Minneapolis in regard to the stormwater charge for the subject property, the Committee makes the following:

FINDINGS

1. Marshall Street Properties is the owner of record at 1720 Marshall Street N.E. which it operates as Custom Plastics Laminates, Inc., the Appellant.
2. On July 21, 2005, Custom Plastic Laminates, Inc., filed a dispute form with the City of Minneapolis, Department of Public Works which disputed the stormwater charge and alleged that the property did not use the City's stormwater system on the basis that the property is excavated such that runoff flows directly to the Mississippi River.
3. Public Works staff assigned to the Stormwater Utility examined the issues raised by Appellant and determined not to make an adjustment based upon the reason given. Staff, however, reviewed the property and determined that the gross lot area of 89,485 square feet which was used to calculate the monthly stormwater charges was incorrect. Hennepin County Property Records showed that the gross lot area was 75,584 square feet. See Exhibit 2 of the Report of the Department of Public Works (hereafter the "Report"). The Appellant has not disputed this figure. Further, using the drawings submitted with the Dispute Form and by using an aerial photograph it was calculated that the part of the property that was impervious to stormwater runoff was only 64,581 square feet. This was less than the 68,017 square feet that would result by applying the .90 runoff co-efficient factor that would be used for the property class to which the property

belonged pursuant to Minneapolis Code of Ordinances, Chapter 510. Accordingly, pursuant to the provisions of Minneapolis Code of Ordinances § 510.60 (b) that allows the Director of Public Works to change the calculation of the stormwater charge based on information and data deemed pertinent by the Director, the Department of Public Works reduced the impervious portion of the property for the purposes of the Ordinance to 64,581 square feet. This resulted in Equivalent Stormwater Units (ESUs) for the property of 42.21. Based on this adjusted determination of ESUs, the monthly fee was reduced from \$458.93 per month to \$368.07 per month.

4. On October 25, 2005, a Notice of Appeal was received by the Department of Public Works, accompanied by a copy of the October 14, 2005 billing for the monthly stormwater fee of \$368.07. The Notice of Appeal was made pursuant to the Minneapolis Code of Ordinances § 510.70 (a). The Notice of Appeal is Exhibit 5 to the Report prepared for the Committee. The Appeal claimed that the property received minimal benefit from the stormwater utility and that the charge was calculated incorrectly. Lois Eberhart and Robert Carlson were designated to hear the appeal. Neither of the designees was a person regularly assigned to utility billing or the stormwater utility. Written notice was issued of a time and place for the review. In attendance for the review were the designees of the Director of Public Works, the property owner, and the property owner's attorney and engineer. The designees listened to those in attendance, examined the property with the property owner, and reviewed the drawings that were furnished. In addition the designees reviewed the written record and consulted with the Office of the City Attorney.

5. Pursuant to Minneapolis Code of Ordinances § 510.70 (e) the Director's designees sent a written copy of the designees decision to the Appellant. This decision is Exhibit 7 to the Report furnished to the Committee. The decision of the designees was to make no further adjustment to the stormwater charge.

6. By letter of January 9, 2006, with receipt by the Minneapolis City Clerk on January 10, 2006, the Appellant filed a written request for review by the City Council based on the written record pursuant to Minneapolis Code of Ordinances § 510.70 (f). The request is attached as Exhibit 8 to the Report to the Committee. The appeal claims that Appellant's stormwater charge is disproportionately high and therefore does not satisfy the statutory requirement that stormwater charges be "equitable" and that the City Ordinance requires that a property must benefit from the stormwater utility and that the vast majority of the water on the property does not use the stormwater utility.

7. In Minneapolis Code of Ordinances § 510.30 the City Council found that "...improvement to the water quality in the storm and surface water system and its receiving waters are a benefit and provides services to all property within the city."

8. The "Stormwater Management System", "Sewer System" or "System" is defined in Minneapolis Code of Ordinances § 510.10 and includes, among other things, storm sewers that exist at the time the Ordinance is codified or that is later established, all appurtenances necessary in the maintaining and operating the same including, and as a partial list, "natural and man made wetlands; channels; ditches; rivers; and streams; wet and dry bottom basins, ..."

9. Appellant operates a commercial business on the property. It is not a residential property. The property has been developed with structures and other improvements. It is

also paved with a large parking lot. A reasonable estimate for the area of the property that is impervious to stormwater runoff based upon an examination of an aerial photograph of the property and a subsequent visit to the property is 64,581 square feet. The property is non-residential developed property within the meaning of the definition in Minneapolis Code of Ordinances § 510.10 and § 510.60 (a)(3).

10. Absent the use of information and data deemed pertinent by the Director, which resulted in the reduction of the estimated impervious area of the property to 64,581 square feet, the proper runoff coefficient for the property would be .90 based on the property's classification as "Ind. Warehouse-Factory" pursuant to Table 1 found in Resolution 2005R-064 designating utility rates for sewer rental and stormwater service. This was a proper classification for the property under the Ordinance.

11. Appellant, through its attorney, in both its October 25, 2005 Notice of Appeal (Exhibit 5 to the Report) and in its Appeal dated January 9, 2006 admits that the subject property benefits from the stormwater utility. In both letters of appeal the claim is not that there is no benefit but that the benefit is minimal and that it is out of proportion to the charge imposed. The data submitted regarding the property does not show that stormwater is retained on site. It particularly does not show that stormwater in substantial quantities during a "100 year flood" or even during a "10 year flood" would be retained entirely on site. The claim is that the great bulk of stormwater would not drain into a City provided fixture, but would likely make its way into the Mississippi without entering a City provided fixture. Appellant has made no showing that any of stormwater would be treated by any means in order to improve the quality of the stormwater runoff originating on this property.

12. Some of Appellant's property drains to Marshall Street and drains into City of Minneapolis fixtures of various kinds. Virtually all of the stormwater runoff from the property drains into the stormwater management system as defined in Chapter 510 of the Minneapolis Code of Ordinances. Stormwater drains from the east side of Appellant's building onto Marshall Street N.E. and into City streets and City provided fixtures.

13. Appellant obtains street access to his property, from Marshall Street N.E. and 18th Avenue N.E. These are City streets that are drained by the City's stormwater system. They are adjacent to Appellant's property. Appellant obtains benefit from the draining of these streets that provide access to Appellant's property.

14. Minneapolis Code of Ordinances § 510.60 (c) provides for a system of stormwater charge credits. A credit can be granted for non-residential developed property such as that of the Appellant pursuant to the Rules provided for by the Ordinance. These Rules provide substantial credits for those who employ structural or nonstructural best management practices or other stormwater practices on site that significantly reduce the quantity or significantly improve the quality of stormwater runoff from their property that enters the system as defined in 510.10. Appellant has not applied for such credit and has not, at this point, provided evidence establishing eligibility for such credit.

Based on the foregoing Findings, the Committee recommends that the Council make the following:

CONCLUSIONS

I. That the City of Minneapolis has adopted a system of charging for the City's storm sewers and the stormwater management system by adopting Chapter 510 of the Minneapolis Code of Ordinances.

II. That this system of charges is authorized by Minnesota Statutes § 444.075, by the general powers of the City under the Minneapolis City Charter, supplemented in part by various special laws of the State of Minnesota, including but not limited to Laws of Minnesota for 1994, Chapter 587, Article 9, § 4. Pursuant to Minnesota Statutes § 444.075 subd. 1a. the authority granted by Minnesota Statutes § 444.075 is "...in addition to all other powers with reference to the facilities otherwise granted by the laws of this state or by the charter of any municipality."

III. Minnesota Statutes § 444.075 Subd. 3b provides:

Subd. 3b. Storm Sewer Charges. Storm sewer charges may be fixed:

- (1) by reference to the square footage of the property charged, adjusted for a reasonable calculation of the stormwater runoff; or
- (2) by reference to a reasonable classification of the types of premises to which service is furnished; or
- (3) by reference to the quantity, pollution, and difficulty of disposal of stormwater runoff produced; or
- (4) on any other equitable basis, including any combination of equitable bases referred to in clauses (1) to (3), but specifically excluding use of the basis referred in Subd. 3a, clause (1); and otherwise without limit.

IV. In a typical case, in which a property owner has not asked for an individual analysis of their property, Minneapolis Code of Ordinances § 510.60 (3) normally results in stormwater charges for non-residential developed property, pursuant

to the Ordinance, being calculated by a combination of reference to the square footage of the property charged adjusted for a reasonable calculation of the stormwater runoff with the calculation determined by reference to a reasonable classification of the types of premises to which the service is furnished.

V. As a result of Appellant's protest of the stormwater charge assessed to Appellant's property, the property was examined individually. The area of impervious surface of the property was determined based upon an examination of Appellant's property to determine the square footage of the property that is impervious to stormwater runoff. Accordingly, the charge was fixed by reference to the square footage of the property charged, adjusted for a reasonable calculation of the stormwater runoff .

VI. Pursuant to Chapter 510 of Minneapolis Code of Ordinances and the Rules issued pursuant thereto, a property owner who applies for a credit can have the charge adjusted based on the quantity, pollution qualities and difficulty of disposal of storm water produced pursuant to Minnesota Statutes § 444.075 subd. 3b (3). Appellant has not yet applied for such credit.

VII. In JAS Apartments, Inc. v. City of Minneapolis, 668 N.W.2d 912 (Minn. Ct. App. 2003) it was established that methods for sewer charges that are specifically set out in 444.075 are methods that the legislature has deemed "equitable" for the purposes of the "equitable" language of Minnesota Statutes § 444.075 subd. 3. JAS Apartments, Inc. v. City of Minneapolis, 668 N.W.2d at 915

VIII. In JAS Apartments, Inc. v. City of Minneapolis, supra, the court held that any conflict between the statutes proportionality clause contained in 444.075 Subd. 3(b)

and a specific authorization for sewer charges based on a method listed therein, (water consumption in that case) must be resolved in favor of the specific authorization. The Court ruled that sewer charges which were set by a specific means set out in the statute are presumptively valid under the statute. The Court held that authorization of a specific method of determining a sewer charge prevailed over the general proportionality language.

IX. Charging the Appellant for stormwater services by reference to the square footage of the property charged with an adjustment for a reasonable calculation of stormwater runoff from the property pursuant to 444.075 Subd. 3b (1) based on a reasonable calculation of the area of the property with surfaces that are impermeable to stormwater runoff is just and equitable for the purposes of Minnesota Statutes § 444.075 subd. 3.

X. The method for calculating the storm sewer charges of Appellant was specifically authorized by 444.075. That specific authorization prevails over the more general provision contained in Minnesota Statutes § 444.075 subd. 3(b). 668 N.W.2d at 915.

XI. Minnesota Statutes § 444.075, Subd. 3c. (a) provides that:

Minimum charges for the availability of water or sewer service may be imposed for all premises abutting on streets or other places where municipal or county water mains or sewers are located, whether or not connected to them.

This provision provides an affirmative grant of power to impose minimum charges for people that are not connected to a water system or a sanitary sewer system or other

system. It does not remove or limit authority for those that are users of the system that are being charged pursuant to one of the methods listed in § 444.075 Subd. 3b.

XII. Appellant is liable for stormwater charges for the property at 1720 Marshall Street N.E.

XIII. Appellant has failed to demonstrate, by clear and convincing evidence, that the determination of the director, from which the appeal is being taken, is erroneous.

XIV. 77,584 square feet is a reasonable estimate of the area of the property based upon data received by the Department of Public Works.

XV. 64,581 square feet is a reasonable estimate of the square footage of the property surface that is impermeable to stormwater runoff.

XVI. The appropriate number of equivalent stormwater units (ESU) for the property is 42.21.

XVII. The appropriate 2005 stormwater charge for the subject property is \$368.07 per month pursuant to Chapter 510 of the Minneapolis Code of Ordinances.

Based on the foregoing Conclusions, the Committee makes the following:

RECOMMENDATION

1. That the appeal of Custom Plastic Laminates, Inc. is denied.
2. That the Minneapolis City Council adopt these Findings, Conclusions and Recommendations and make them part of the record herein.

BY THE COMMITTEE:
