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VIA E-MAIL
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Attorney Hector de la Mora
von Briesen & Roper, s.c.
20975 Swenson Drive, Suite 400
Waukesha, WI 53186

Re: Village of Lannon Water Project

Dear Attorney de la Mora:

I contact you again as the firm representing the Lannon Advocacy Group, which opposes the ongoing water project in the Village of Lannon, related impact fees, and special assessments. I write in response to the ongoing efforts of the Village to require that residents connect to the municipal water supply.

As indicated in my September 24, 2021 letter, residents might have been willing to consider a limited installation of equipment without a metered connection to the water supply until disputes regarding this project were resolved. To my knowledge, the Village is still demanding that every resident connect to Village water by the end of 2021 and is saying that a failure to do so will result in the forfeiture of Waukesha County Community Block Grant funds.

I strongly advise the Village to reconsider this. While it has always been our hope that we can cooperatively resolve this matter, the Village's approach to mandating connections did not follow Wisconsin law and thus demands the Village's immediate attention. Given that the Village has already agreed to revisit its impact fees for a group of its residents, it only makes sense to visit the connection issues and water assessment at the same time.

The Village is apparently pursuing these connection pursuant to its September 14, 2020 mandatory connections ordinance. What the Village neglects is that the fees imposed for such connections, ostensibly pursuant to Wis. Stat. § 66.0911, are themselves special assessments and thus to be valid the Village must follow the procedures set forth in § 66.0703. See *Dewey v. Demos*, 48 Wis. 2d 161, 168 (1970) (providing that the predecessor version of the statute, § 66.625, "authorizing municipalities to charge property owners the

cost of constructing lateral pipes connecting water mains to adjoining lots and providing that such charges would be a lien on the land[,] . . . ." actually "meets the requirements of a special assessment . . . ." and to be "valid" must be enacted pursuant to the predecessor to Wis. Stat. § 66.0703).

Here, the Village's compulsory connection ordinance was not a valid special assessment enacted pursuant to § 66.0703. The Village failed to issue a report, as required by § 66.0703(4)-(5) and it held no hearing on the mandatory connection issue as required by § 66.0703(7)(a). This even though the ordinance itself refers to the special assessment statute in several places.

It was not enough that the Village subsequently hosted hearings on its impact fees and special assessment. The vote to approve the mandatory connection resolution was held almost two full months before the hearing on the impact fee and the special assessment. Further, the connection assessment was different in amount and purpose from that imposed for the expansion of the water system, as the latter by its terms did not include costs for hook ups. The citizens could thus not fully voice their disagreements about the connections at those hearings. *See Weideman v. City of Abbotsford*, 118 Wis. 2d 824 (Ct. App. 1984) (finding a post hoc hearing after the assessment insufficient) (unpublished, per curiam).

In fact, the connection ordinance was passed even before the Village's mailing of individual property notices that residents must sign a contract for connection prior to the impact fee and special assessment hearing or else they would not receive grant funds. Notwithstanding the existence of grant monies for those who signed the contract, the coercive nature of this ordinance renders it is an assessment requiring the procedures of § 66.0703. *See De Pere v. Pub. Serv. Com.*, 266 Wis. 319, 328 (1954) (distinguishing between connection fees and an assessments because the former involve a "party who pays it originally has, *of his own volition*, asked a public officer to perform certain services for him[]") (emphasis added).

An improper assessment based on these procedural infirmities subjects it to annulment under Wis. Stat. Ann. § 66.0731(1), which does not require the assessed to file an appeal. Under such a proceeding, a court evaluates the matter de novo, allowing the court to "frame an issue and summarily try the issue and determine the amount that the plaintiff justly ought to pay or which should be justly assessed against the property in question."
Given this, the Lannon Advocacy Group would strongly recommend that the Village instead issue a re-assessment under Wis. Stat. § 66.0731(2), so that the disputed issues can be evaluated by the Village and established in the record. *See Area Bd. of Vocational, Tech. & Adult Educ., Dist. 4 v. Burke*, 151 Wis.2d 392, 401 (Ct. App. 1989) (discussing the difference between the appeal of an assessment and an action under the predecessor statute of § 66.0731(1)).

That the Village is already considering revising impact fees and replacing them with a new Reserve Capacity Assessment (RCA) is the perfect time to revisit all of these charges, which

are all obviously interrelated. There is a strong argument that that the impact fees should be reduced considerably when converted to the Reserve Capacity Assessment. The fundamental flaw in the Village's impact fee was that took the residents as "developers." But this was not simply a technical violation, as the purpose of an impact fee is specifically aimed at requiring those who benefit from future development to pay the costs of infrastructure. *Cf. Metro. Builders Ass'n v. Vill. of Germantown*, 282 Wis. 2d 458, 483 (Ct. App. 2005).

As we have previously noted, neither the Village's needs assessment report nor impact report provides evidence that all of the properties that are being assessed will benefit because they have any of the water problems the Board has claimed. Further, it is questionable how those assessed the impact fee and now subject to the RCA will get any benefit from the $1.5 million of the impact fee that were earmarked for future development so that they can be subject to special assessment via the RCA. These benefits are not "substantial, certain and capable of being realized within a reasonable time" as is required for special assessments. *Haase v. Town of Menasha*, 314 Wis. 2d 508, ¶ 12 (Ct. App. 1990) (unpublished, per curiam) (citing *Estate of Wolff v. Town Bd. Of the Town of Weston*, 156 Wis. 2d 588, 598 (Ct. App. 1990)).

Similarly, this begs the question about why those originally charged the special assessment would be also required to pay for any part of the original assessment aimed at water quality and future development—such the more expensive 12-inch connections traditionally used for larger developments. *Cf., e.g., Citizens for Responsible Improvement v. Cottrellville Twp.*, No. 276837, 2008 WL 3852662, *5 (Mich. Ct. App. Aug. 19, 2008) (throwing out a special assessment because a township could not demonstrate that the properties benefitted from the larger lines when they were already serviced by smaller lines).

At bottom, a failure to consider all of these assessments together opens the Village up to the charge that it is unreasonably inconsistent in applying the special assessments. *See Peterson v. New Berlin*, 154 Wis. 2d 365, 373 (Ct. App. 1990) ("An assessment is unfair when property owners in comparable positions face a marked disparity in cost for the receipt of equal benefits when an alternate, more equitable, method of assessment is feasible.")

Therefore, we urge the Village to not press forward with its connection charges until it issues a re-assessment, entailing both a report and hearing, and which can take place concurrently with reopening its original assessment and RCA.

I do realize that the County has made connections to the water system a requirement of its Waukesha Community Block Grant. But this grant is contingent upon the Village following all local and state laws. The Village failed to do so by, among other things, forcing the mandatory connection assessment without a report and hearing. I was heartened to hear that that the Village has recently asked the County for an extension of its current year-end deadline for completion of the work, as explained at the last Village Board meeting. I would

think that the County would be more than amenable to such an extension so that the Village can ensure that its assessments are in full compliance with the law.

Thank you. I look forward to hearing from you on this most pressing matter.

Sincerely,

PINES BACH LLP

Christa O. Westerberg

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