

THE LIMBAUGH FIRM
—ATTORNEYS AT LAW—
EST. 1916

Memo

To: Jim Roach
From: Curt Poore
Date: October 12, 2022
Re: Questions concerning formation of sewer district

Mayor Hahs has asked a number of questions related to the formation of a sewer district. The answers to those questions are as follows:

1. The steps for establishing a sewer district are set out in the excellent checklist provided by Larry Koenig. A copy of the checklist is attached.
2. Construction cannot begin until the sewer district is formed because the statutes require notice of the formation of a sewer district to the property owners and that the property owners are given an opportunity for public hearing to determine the propriety of forming a sewer district.
3. Although the statute is not completely clear, the best practice is to assess the costs for each property in the sewer district on a square footage basis. If all of the lots are of substantially the same size then an assessment on a per lot basis is allowed.
4. The City cannot pay part of the sewer district's construction cost except for the City's portion of property it owns in the sewer district.
5. As to the earliest opportunity to start construction in a sewer district, assuming plans and estimates are completed, and easements have been obtained:
 - a. Steps 4-8 (see checklist) are necessary to pass the resolution and ordinances, and provide notices to the property owners. Notice of the formation of the sewer district must be advertised for two weeks. It does not appear that construction could begin sooner than sixty (60) days, assuming no public hearing is required.
6. If no sewer district is formed, the City can pay all of the construction costs or enter into a cost sharing with owners who receive benefit from the project.

7. If condemnation for the easements is necessary, the process would slow considerably. The necessary steps for condemnation are listed below:

- a. The property owner is entitled to Notice of Acquisition from the City at least sixty (60) days prior to the actual filing of the condemnation petition in court. In this Notice, the City must provide the owner with details of why the property is being condemned and what the owner's rights are according to law.
- b. After the Notice of Acquisition is served, the City must give the property owner a formal written purchase offer for the easement. This offer must be presented to the property owner at least thirty (30) days before the City can file its court case to take the property through eminent domain. The written offer must enclose documentation to show how the purchase price was determined. This might include an appraisal or other market data supporting the purchase price offer.
- c. If the owner accepts the City's offer, the transaction will proceed along the lines of a regular real estate sale and there will be no need for the City to exercise its power of eminent domain through the condemnation process.
- d. If the owner rejects the offer, further negotiations can occur. If the property owner and the City are too far apart on the amount of compensation due, the matter must proceed into court through the condemnation process.
- e. The City files a Condemnation Petition and the owner must be served. The owner is granted thirty (30) days to file an answer to the City's Petition.
- f. Typically, the parties will conduct discovery in the form of written interrogatories requiring written answers under oath, and depositions. Most often, this centers around the respective parties' expert witnesses in determining the value of the taking.
- g. The case will be assigned to a judge who will eventually conduct a hearing on the Condemnation Petition. This is the owner's opportunity to argue that the taking is not legitimate. For example, the property owner can argue that the City did not negotiate in good faith, that the purpose of the taking is private rather than public, or that the owner's property is not necessary for the project. In most cases, the judge will allow the condemnation to proceed and will appoint three residents of the County to act as Condemnation Commissioners.
- h. The Condemnation Commissioners will view the property and hear the arguments for each side. The Commissioners will file their report with the Court setting forth their assessment of damages, or just compensation, due to the property owners for the taking of the property through eminent domain.

Once the City pays that amount into Court, the City may proceed to use the property for the construction of the sewers.

- i. Either the City or the property owner may disagree with the report of the Commissioners and may request a trial by jury. This jury would then decide the property owner's just compensation.

SPECIAL ASSESSMENTS FOR DISTRICT SEWER IMPROVEMENTS
CITY OF JACKSON
PROCEDURE CHECKLIST

	COMPLETED	DATE
1. Property owners submit petition to Board of Aldermen requesting sewer improvements or Board deems them necessary for sanitary or other purposes. §88.834		
2. Board motions for City Engineer to prepare plans, specifications and estimate of cost for sewer improvement.		
3. Engineer prepares plans, specs and estimate of cost of sewer improvement and files with City Clerk. §88.812 (a) All must be on file <u>in office of City Clerk before</u> resolution. They are open to public view. (b) Engineer estimate to include: i. Estimate of total costs (construction, construction contingency, fees and other expenses). ii. Estimate of cost, based on estimate for each property to be assessed.		
4. Resolution passed by Board declaring it necessary to improve sewers.		
5. Resolution published for two consecutive weeks in Cash Book Journal. §88.812		
6. Staff sends letters to affected property owners notifying them of City's plans to improve sewers and indicates engineer's estimate is on file with the City Clerk.		
7. If written request by three (3) citizens of City, must hold public hearing. §88.812		
8. Board passes ordinance to improve the sewers which ordinance sets the bid date (must be advertised in at least two publications of weekly newspaper).		
9. Staff sends second letter, if appropriate.		
10. Board accepts lowest, most responsive and responsible bid (must be under engineer's estimate). §88.824		
11. Board passes ordinance accepting the Contract with bidder.		
12. Property owner may request, in writing, ten (10) year payment plan. §88.816		

SPECIAL ASSESSMENTS FOR DISTRICT SEWER IMPROVEMENTS
CITY OF JACKSON
PROCEDURE CHECKLIST

	COMPLETED	DATE
13. Upon project completion, Engineer/PWD prepares final report on project listing total cost to be assessed, the method per tract cost to be assessed, the description of lot, lot owner, square footage assessed per tract, and amount of assessment. §88.822		
14. Engineer report accepted by Board.		
15. Ordinance levying special assessment passed by Board.		
16. Any property owner assessed a special tax may request a public hearing re: whether assessment is excessive or levied at greater sum than stated in public notices. §88.814		
17. Staff prepares special assessment tax bills and gives to contractor (bearing interest at rate of last Federal 10 Year Note sale rate starting 60 days from date of issue). §88.822 and 88.812		
18. Contractor usually discounts same to local bank and bank proceeds to collect.		
19. If bank cannot collect after a reasonable effort, tax bill reassigned to City, City pays bank and proceeds to collect tax bill.		

POLICY REGARDING THE ACQUISITION OF PROPERTY

This policy is written and adopted by the City Administrator of the City of Jackson, Missouri, on the day below written.

In all cases where the City of Jackson, Missouri determines it necessary to acquire property (rights of way and/or easements) for the completion of public infrastructure projects, City staff shall adhere to the following guidelines. These written guidelines provide for a minimum standard of acquisition and shall be met or exceeded by the City in all cases. However, City staff reserves the right to require additional guidelines on a case by case basis.

The Property Acquisition Process

1. **Survey Permission Letter:** City staff sends a preliminary notification letter to all owners of record indicating that it intends to access the property in order to conduct field surveys for the preliminary alternatives. The letter also advises the owner of the possibility of a future right of way and/or easement acquisition. Correspondence shall be sent via USPS Certified Mail Delivery.
2. **Plans & Specifications:** The City's project engineer prepares construction plans and specifications necessary for the completion of the project. Staffs from local, state, and federal agencies will then review and approve the construction plans and specifications. Engineer also obtains letter report showing all legal owners of the property.
3. **Easement Packet:** City staff sends the initial notification packet (including a cover letter, deed, and exhibit map) to all owners of record regarding the right of way and/or easement needed to complete the project. This letter includes (at a minimum) the owner's "bill of rights" pertaining to said acquisition in accordance with laws of the State of Missouri. Correspondence shall be sent to all owners of record via USPS Certified Mail Delivery. Additionally, City staff will distribute a memo to the Mayor and Board of Aldermen.
4. **Negotiations:** Prior to construction, City staff will discuss the value of the easement and make every effort to reach a fair and reasonable settlement with all owners of record. Communication with the owner may be in the form of meetings, telephone calls, correspondence and email. Said discussions, communications and negotiations will be memorialized by City staff in the form of "Negotiator's Reports". During this time, staff may discuss with the owner the following settlement options:
 - a. Donation of right of way or easement. The owner is first asked if they would donate the deed at no cost to the City and waive their right to an appraisal of their land. If agreeable, the owner also signs a "Donation and Waiver of Compensation Affidavit" (see attached sheet).

- b. Exchange for construction features. If a donation is not possible, City staff may offer the owner construction features or improvements upon their property in exchange for granting the easement. However, the features or improvements should be relevant to and in the general location of the project. In most cases, the owner (not the City) will obtain a work estimate from a private contractor.*
- c. Compensation (based on appraisal). If a donation or exchange for construction features is not agreed upon, City staff may order an appraisal of the land. Following receipt of the appraisal, staff is authorized to offer the appraised value of the land to the owner. At this point in the process, all correspondence between City staff and the owner will be copied to the Board of Aldermen for their consideration. In the event the owner demands an amount of compensation beyond the appraised value, City staff shall obtain Board of Aldermen approval of the amount of compensation due to all owners of record prior to agreement to pay same.*

* All owners of record will not receive both construction features and compensation in any settlement agreement without approval by the Board of Aldermen.

5. Follow-up Letter: If contact has not been made within a reasonable amount of time after the initial easement packet (item no. 3 above) was sent, City staff sends follow-up notification letter to all owners of record. This shall be accomplished by sending the information to the owner via USPS Certified Mail Delivery. If contact is made with the owner after the follow-up letter is sent, then staff will begin the negotiation process listed above (in item no. 4).

6. Conference with City Administrator: In the event a settlement agreement has not been reached between the owner and City staff throughout the negotiation process, a conference between the City Administrator and City staff (without the property owner's presence) is scheduled to determine what action is necessary to conclude the acquisition process and move the project forward. Additional contact, correspondence and negotiation between staff and the owner may be necessary following the City Administrator's conference.

7. City Attorney: When, in the opinion of the City Administrator, a fair and reasonable settlement cannot be reached with the owner following the negotiation process, the Board of Aldermen may then authorize the City Attorney to use condemnation action as necessary. If action is approved, the City Attorney orders a title report and appraisal on the subject property, as well as prepares an ordinance declaring public need and purpose. At this point in the process, the City Attorney officially assumes control of the project file and City staff no longer continues negotiating with the owners of record.

It should be noted that all administrative action letters sent by City staff or City Attorney to all owners of record shall be via both USPS First Class Mail delivery and Certified Mail delivery. Administration action letters describe the settlement agreement reached.

This policy shall be effective only on public infrastructure projects started after the date written below.

Dated this 21 day of September, 2009.


James D. Roach, City Administrator

JOURNAL OF THE BOARD OF ALDERMEN
CITY OF JACKSON, CAPE GIRARDEAU COUNTY, MISSOURI



MONDAY, SEPTEMBER 21, 2009 – REGULAR SESSION

The Board of Aldermen met in the Regular Session with Mayor Barbara Lohr in the chair and the following Board Members present: Joe Bob Baker, Larry Cunningham, Mark Dambach, David Hitt, Philip Penzel, Dale Rauh, Dave Reiminger and Timothy Welker. Present-8; Absent-0.

EXCERPT FROM REGULAR SESSION:

Motion to Adopt the Property Acquisition)
Policy)

On a motion by Alderman Rauh duly seconded by Alderman Hitt to adopt the Property Acquisition Policy. Ayes-8; Nays-0; Absent-0.

Motion to Adjourn the Meeting)

Meeting concluded at 7:45 p.m., on a motion by Alderman Cunningham duly seconded by Alderman Dambach, to adjourn the meeting. Ayes-8; Nays-0; Absent-0.

Barbara Lohr

Mayor

ATTEST

Mary Hawley
City Clerk