

*San. Comm. No.  
(5AD Paving)*

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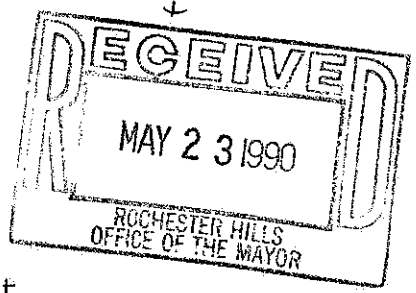
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May 22, 1990

Mayor Billie M. Ireland  
City of Rochester Hills  
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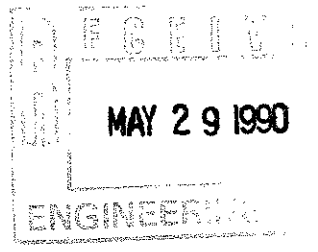
Re: Paving Special Assessment Apportionment

Dear Mayor Ireland:

This letter will set forth my conclusions in respect to the City paying 40% of the cost of repaving, when the City road policy provides only for the City to pay 10% of the cost of paving of gravel roads. The City Council raised a question as to whether or not that would be legal. Mr. Terence Donnelly of the Dickinson Wright firm, bond counsel, has provided us with a Memorandum of Law on the questions involved.

The primary question is whether or not the different percentage paid by the City in new paving vs. repaving circumstances might withstand an equal protection challenge. The law on equal protection issues looks to whether the circumstances in each instance are similar or dissimilar. If they are similar, property owners and taxpayers are required to be treated in a uniform fashion or, in other words, equally. In making this statement, it is understood the law does not require preciseness, only that those who are in similar circumstances be treated substantially in the same way.

Mr. Donnelly concludes there would not likely be a problem of the City paying a different share under the new paving and repaving circumstances. He has not been able to find any law that discusses the precise question of paving and repaving, but has, in the legal memorandum, included a review of general principles of law on the equal protection questions.



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After discussions with Mr. Donnelly, I have spent time with you and your staff, who believe the circumstances are distinguishable. When a road has been paved for a number of years and is breaking up, the following factors are involved:

1. Even though existing paving is breaking up, less benefit will accrue to adjoining property owners when repaving a street than when there is paving of a gravel road. The biggest increase in value of the adjoining property is likely to occur when paving a gravel road, than repaving a street.
2. Repaving is of the nature of maintaining the paving in a good condition, rather than a completely new paving with necessary roadbed, drainage, and ditching improvements. The nature of the work might be characterized as a form of maintenance, upgrading, rather than a capital-type improvement.
3. A road previously paved is a part of the infrastructure of the city. Maintenance of a paved road for many years would cost the city much less than maintenance of a gravel road. Paying 40% rather than only 10% is recognition of the cost for maintenance of the road has been less for perhaps 20 to 30 years. Also, a position might be taken that the city has an obligation to maintain a paved road in a serviceable condition once it becomes a part of the city's infrastructure, previously paid for by the property owner or its predecessor in title, either as a part of a new subdivision or under a special assessment.

In our opinion the above distinctions may in fact be true and if so, they would be a basis for the city paying a different percentage for paving vs. repaving. If the Council is satisfied that the two circumstances are different, paying a different percentage in the two circumstances is legally defensible. In making such determinations the courts allow governing bodies wide discretion. There are no factors present which would require the courts to apply a strict scrutiny test, such as age, sex, race, or other such classifications. Only a rational basis test would be applied and a court would likely

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defer on questions of this nature to the decision of the City Council.

Very truly yours,

BEIER HOWLETT



Lawrence R. Ternan

LRT/dj  
cc: Terence M. Donnelly, Esq.  
(2550D)