
OFFICE OF THE SPOKANE CITY ATTORNEY
INTEROFFICE MEMORANDUM

TO: MIKE TAYLOR, DIRECTOR OF ENGINEERING SERVICES
✓ ANNIE DEASY, PUBLIC INFORMATION COORDINATOR

FROM: BOB BEAUMIER, ASSISTANT CITY ATTORNEY
MICHAEL J. PICCOLO, ASSISTANT CITY ATTORNEY

SUBJECT: LEGAL OPINION ON USE OF 2004 STREET BOND PROCEEDS

DATE: JUNE 3, 2010

CC: MAYOR MARY VERNER
COUNCIL PRESIDENT JOE SHOGAN
MEMBERS OF THE CITY COUNCIL
TED DANEK, CITY ADMINISTRATOR
GAVIN COOLEY, CHIEF FINANCIAL OFFICER
DALLAS HAWKINS, CSAC

You have requested an opinion from our office clarifying what type of projects can be paid for using the 2004 Street Bond proceeds. The specific questions and our responses are set forth below.

QUESTION NO. 1: What type of projects can be paid for using 2004 Street Bond Ordinance proceeds?

ANSWER: Bond proceeds expenditures are limited to street and road improvements. Sidewalks, parking strips, landscaping, trees, shrubs or other non-road improvements are not within a permissible expenditure purpose.

DISCUSSION:

BOND ORDINANCE: The 2004 Street Bond Ordinance makes several references regarding the type of projects to be funded using bond proceeds, including the title of the ordinance, which states that the ordinance concerns a proposition proposed by the Mayor to finance "road improvements" and that a Citizens' Committee has developed a plan for "road improvement projects for major arterials, public safety corridors and residential street repair; to finance those repairs and to help pave unpaved streets..." [underlines added]. A copy of the 2004 Street Bond Ordinance is included with this memorandum as Attachment 1.

The preamble to the ordinance refers to a Citizens' Committee that developed a road improvement plan, the City Council's review of the Plan and its determination that the City should "undertake immediately certain road

INTEROFFICE MEMORANDUM

Mike Taylor, Director of Engineering Services

Annie Deasy, Public Information Coordinator

June 3, 2010

Page 2 of 6

improvement projects, including, but not limited to, the acquisition, construction and installation of certain repairs and improvements to major arterials, public safety corridor, helping pave unpaved streets and residential streets of the City; . . .” (underlines added).

The best description of what constitutes “road improvements” or “repairs and improvements” is found in Section 2 of the ordinance, which states:

Section 2. The proposed repairs and improvements to the City’s streets to be paid for with bond proceeds are as follows:

(a) the acquisition, construction and installation of repairs and improvements to certain streets within the City, including but not limited to major arterials, public safety corridors, and residential streets and helping pave unpaved City streets;

(b) the acquisition and installation of all necessary appurtenances, equipment, fixtures and furnishings for the foregoing as deemed necessary by the Council;

(c) the acquisition, construction and installation of all such other repairs and improvements to City streets, deemed necessary by the Council; and

(d) ancillary costs of engineering, architectural, construction management, attorney’s fees, costs of bond issuance, permits, accounting costs, easement and any other expenses or consultant fees incidental thereto, together with all necessary appurtenances, equipment, fixtures and furnishings thereto.

Such repairs and improvements and betterments are to be more fully described in the plans and specifications to be prepared by the City’s engineering staff and consultants and when prepared will be on file with the City Engineer.

[underlines added]

The general rule of law in interpreting statutes or ordinances is that such instruments are interpreted by the Court to reach the intent of the enacting body. Said intent is determined by the language used, not by language which could have been used or which might have been used. The court will not add words or clauses to an unambiguous ordinance, but must apply it as written. *Blueshield v. State Office of Ins. Com'r*, 131 Wash.App. 639 (2006).

INTEROFFICE MEMORANDUM

Mike Taylor, Director of Engineering Services

Annie Deasy, Public Information Coordinator

June 3, 2010

Page 3 of 6

CONCLUSION: It is established law in Washington state that when voters approve taxes for a public project any major deviation to the project is not within the government's lawful power. Any unlawful substantial deviation from plans approved by the voters is not permissible. While minor details in a public project may be changed by the governing agency, taxpayer funds may not be used to construct a substantially different project than the one approved by voters. *Sane Transit v. Sound Transit*, 151 Wn.2d 60, 68 (2004). Here, the bond ordinance language is clear and unambiguous. The bond ordinance limits expenditures to street or road improvements. It does not extend to sidewalks, parking strips, trees, shrubbery, or any non-street or road improvements. Any substantial deviation from what is permitted in the 2004 Street Bond ordinance would have to have been authorized as part of the ordinance.

DISCUSSION:

CITIZEN PLAN: The plan referenced in the title of the ordinance and in the ballot proposition is the October 1, 2004 plan entitled "Final Report To Mayor James E. West on a Proposed 10-Year Plan to Reconstruct and Rehabilitate Spokane Streets," submitted by the Citizens' Streets Advisory Committee. A copy of the plan is included with this memorandum as Attachment No. 2. The plan discusses the need to repair arterial and residential streets as well as paving unpaved streets. The plan references the need for full reconstruction, grind overlay process and surface seals on the City streets. The recommendation provided for in the plan calls for the complete reconstruction of thirty-seven miles of arterial streets and the reconstruction, rehabilitation and/or sealing of fifty-two miles of residential streets.

The Citizen Information sheet prepared for the 2004 Street Bond describes the projects to include complete reconstruction of thirty-seven miles of arterials and public safety corridors, complete reconstruction, repaving and sealing of fifty-two miles of residential streets and paving of fourteen miles of unpaved streets combined with LID projects. A copy of the information sheet is included with this memorandum as Attachment 3.

CONCLUSION: There is nothing in the Citizen plan to suggest a different result. The plan makes it clear that the intent is to use the Street Bond proceeds for street and road improvements exclusively.

INTEROFFICE MEMORANDUM

Mike Taylor, Director of Engineering Services

Annie Deasy, Public Information Coordinator

June 3, 2010

Page 4 of 6

DISCUSSION:

BOND COUNSEL REVIEW; BALLOT PROPOSITION: The City's bond counsel has also previously noted that the City's ability to spend bond proceeds on projects is likewise limited by the text of the ballot proposition and the ordinance calling for an election. It was the opinion of bond counsel that by the use of the term "road improvement," the ballot proposition appears to exclude non-road projects, that the proposition did not mention sidewalks, landscaping or other non-road projects, that ordinance language is consistent with the proposition language in that only road and street improvements are expressly authorized and that expenditure of bond proceeds be limited to road improvements, which is the core descriptive term used throughout the bond ordinance and ballot proposition. A copy of the bond counsel's opinion is included with this memorandum as Attachment No. 4.

It is also important to remember that whenever the City Council approves an ordinance for the actual sale of city municipal bonds on the bond market, the City's bond counsel must be satisfied that the description of the projects to be funded with bond proceeds meets the requirements of the original bond ordinance and ballot proposition. Use of bond proceeds for projects other than what was approved in the original ballot proposition and bond ordinance could hinder the sale of the bonds.

In a previous street bond sale, the bond issuance ordinance described the term "project" as follows:

Projects shall mean, as provided for in Ordinance C33492, the repairs and improvements to the City's streets to be paid for with bond proceeds as follows: (a) the acquisition, construction and installation of repairs and improvements to certain streets within the City, including but not limited to major arterials, public safety corridors, and residential streets and helping pave unpaved City streets; (b) the acquisition and installation of all necessary appurtenances, equipment, fixtures and furnishings for the foregoing as deemed necessary by the Council; (c) the acquisition, construction and installation of all such other repairs and improvements to City streets, deemed necessary by the Council; and (d) ancillary costs of engineering, architectural, construction management, attorney's fees, costs of bond issuance, permits, accounting costs, easement and any other expenses or consultant fees incidental thereto, together with all necessary appurtenances, equipment, fixtures and furnishings thereto.

INTEROFFICE MEMORANDUM

Mike Taylor, Director of Engineering Services

Annie Deasy, Public Information Coordinator

June 3, 2010

Page 5 of 6

CONCLUSION: Bond counsel's opinion and actions again confirm that the street bond proceeds must be used exclusively for street and roadway improvements.

SUMMARY: For all these reasons, it is our opinion that proceeds from the sale of 2004 Street bonds should only be used for the reconstruction, repair and paving of streets. The bond ordinance, ballot proposition and the ten year plan all reference the reconstruction and repair of streets. While there are additional provisions for the installation of other repairs and improvement deemed necessary by the City Council, in our view, those other repairs and improvements must still be related to the reconstruction or repair of the street. The further the City gets away from the basic language of the ordinance, ballot proposition and plan, the greater the likelihood that the City will not be able to sell the street bonds or that the City will violate the terms of the original bond ordinance and ballot proposition.

QUESTION NO. 2: Can street bond proceeds be used to pay for sidewalks as part of a LID?

ANSWER: No, but it is our understanding that LIDs including sidewalks also received funds paid for by property owners so that such projects did not rest exclusively on street bond proceeds, and that street bond proceeds could be apportioned to permissible road and street improvement purposes.

DISCUSSION: It is our understanding that street bond proceeds have not been used for construction of sidewalks. Given the language of the Street Bond Ordinance regarding use of proceeds to finance road improvement and repairs, we do not believe that use of the proceeds to construct sidewalks would be permissible. It appears that some road projects funded with 2004 Street Bond proceeds also included sidewalk projects funded with Local Improvement District (LID) funds paid for by the property owners. There may have been occasions where a portion of a sidewalk was repaired in order to facilitate the road improvement project, but such expenditures could be covered by property owner LID contributions. We are aware of no prohibition in combining a street improvement project with funds to include other purposes as part of a common project.

QUESTION NO. 3: How may 2004 Street Bond proceeds be spent if there is a surplus of bond funds after the streets outlined in the original program have been completed.

ANSWER: These funds may be spent for additional street or roadway improvements under the same restrictions as previously noted.

INTEROFFICE MEMORANDUM

Mike Taylor, Director of Engineering Services

Annie Deasy, Public Information Coordinator

June 3, 2010

Page 6 of 6

DISCUSSION: Section 2 of the 2004 Street Bond Ordinance provides that the City Engineering staff is to prepare plans regarding the proposed street repairs and improvements. It is our understanding that there is a general plan listing the proposed streets to be repaired or improved using 2004 Street Bond proceeds, which were part of the original discussion for the ballot proposition. Section 3 of the 2004 Street Bond Ordinance provides that if there are Bond proceeds or interest earnings still remaining after the repairs and improvements set forth in the plans have been completed, the Council may make additional repairs and improvements to the streets as are deemed necessary and desirable by the Council.

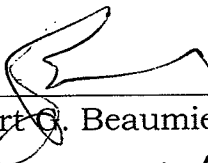
It is our opinion that if there are surplus funds available after the projects listed or anticipated in the plan have been completed, the City Council can make additional repairs and improvements to the streets. It is recommended that the Council use the same standards for determining the projects that were used for the original plan, and that the Citizen's Committee, Citizens' Streets Advisory Committee, be involved to provide a recommendation and oversight as it does for the current projects, and that the projects be equitably distributed between the council districts.

QUESTION NO. 4: Can the City elect to not sell additional bonds if the list of projects has been completed?

ANSWER: Yes. It is our understanding that the bonds have been sold as the projects proceed. If all of the projects contemplated under the 2004 Street Bond ballot proposition have been completed, there does not appear to be any requirement that the City proceed with additional sale of bonds.

QUESTION NO. 5: If there is a surplus, does the City have to go back to the voters for approval to include additional projects?

ANSWER: No. Section 3 of the 2004 Street Bond Ordinance anticipates that there may be surplus funds and grants to the City Council the authority to make additional repairs and improvements to the streets.



Robert G. Beaumier, Jr.



Michael J. Piccolo

Attachments

AGENDA SHEET FOR COUNCIL MEETING OF:

September 7, 2004

RECEIVED



Submitting Dept.
Mayor

Contact Person
James E. West

Phone No.
625-6250

AUG 26 2004

CITY CLERK'S OFFICE
SPOKANE, WA

ADMINISTRATIVE SESSION

- Contract
- Report
- Claims

LEGISLATIVE SESSION

- Emergency Ord
- Resolution
- Final Reading Ord
- First Reading Ord
- Special Consideration
- Hearing

CITY PRIORITY

- Communications
- Economic Development
- Growth Management
- Human Services
- Neighborhoods
- Public Safety
- Quality Service Delivery
- Racial Equity/Cultural Diversity
- Rebuild/Maintain Infrastructure

- CLERK'S FILE _____
- RENEWS _____
- CROSS REF _____
- ENG _____
- BID _____
- REQUISITION _____

STANDING COMMITTEES

(Date of Notification)

- Finance _____
- Neighborhoods _____
- Planning/Community & Econ Dev _____
- Public Safety _____
- Public Works _____

Neighborhood/Commission/Committee Notified: _____
Action Taken: _____

AGENDA WORDING:

AN ORDINANCE OF THE CITY OF SPOKANE, WASHINGTON, CONCERNING A PROPOSITION PROPOSED BY THE MAYOR TO FINANCE ROAD IMPROVEMENTS; A CITIZENS' COMMITTEE HAS DEVELOPED A PLAN FOR ROAD IMPROVEMENT PROJECTS FOR MAJOR ARTERIALS, PUBLIC SAFETY [con't]

BACKGROUND:

(Attach additional sheet if necessary)

Following a survey of citizen interests, this measure requests the City Council to submit a major 10 year street rehabilitation, reconstruction and finance plan. Projects are proposed to be selected for the larger arterials, smaller residential streets and unpaved streets in low income areas. For the larger arterials, projects would focus on arterial streets in public safety corridors. These are corridors designed to provide emergency vehicle access to citizens such as police, ambulance and fire services. Also proposed are improvements to arterials with a lower than "40" (failing street) street condition score as well as arterials with highest the traffic volumes. Options for selecting residential streets include those nearest emergency vehicle routes. Also included would be unpaved streets in low income areas. The projects would be coordinated through a citizens' committee. Repair efforts would be equitably distributed throughout all three City Council District regions.

RECOMMENDATION:

Fiscal Impact: <input type="radio"/> N/A	Budget Account: <input type="radio"/> N/A
<input type="radio"/> Expenditure: \$	#
<input type="radio"/> Revenue: \$	#
<input type="radio"/> Budget Neutral	

ATTACHMENTS: Include in Packets:
On file for Review in Office of City Clerk:

SIGNATURES:

Department Head
Paul Brandt
Legal

Division Director
James E. West
Deputy Mayor

Finance
Terri A. Kuster
Council President

DISTRIBUTION: Public Works
Spokane County Election
Manager Office- Paul Brandt
Doug Goe, Bond Counsel

COUNCIL ACTION:

* PASSED BY
SPOKANE CITY COUNCIL:
September 7, 2004
Terri A. Kuster
CITY CLERK

* See Council Action
date & September 10, 2004 C33492

Agenda Wording (con't)

CORRIDORS AND RESIDENTIAL STREET REPAIR; TO FINANCE THESE REPAIRS AND TO HELP PAVE UNPAVED STREETS, THE CITY WOULD ISSUE GENERAL OBLIGATION BONDS IN THE TOTAL AMOUNT OF \$117,351,000 MATURING IN TWENTY YEARS; THE BONDS WOULD BE REPAYED FROM AN ANNUAL EXCESS LEVY ON REAL PROPERTY WITHIN THE CITY; PROVIDING FOR THE ISSUANCE OF SUCH GENERAL OBLIGATION BONDS; PROVIDING FOR THE SUBMISSION OF THE PROPOSITION TO THE QUALIFIED ELECTORS OF THE CITY AT A SPECIAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 2, 2004 IN CONNECTION WITH THE STATE GENERAL ELECTION TO BE HELD ON THE SAME DATE; PROVIDING FOR THE NOTICE OF SUCH ELECTION; DECLARING AN EMERGENCY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

033492

ORDINANCE NO. C _____

AN ORDINANCE OF THE CITY OF SPOKANE, WASHINGTON, CONCERNING A PROPOSITION PROPOSED BY THE MAYOR TO FINANCE ROAD IMPROVEMENTS; A CITIZENS' COMMITTEE HAS DEVELOPED A PLAN FOR ROAD IMPROVEMENT PROJECTS FOR MAJOR ARTERIALS, PUBLIC SAFETY CORRIDORS AND RESIDENTIAL STREET REPAIR; TO FINANCE THESE REPAIRS AND TO HELP PAVE UNPAVED STREETS, THE CITY WOULD ISSUE GENERAL OBLIGATION BONDS IN THE TOTAL AMOUNT OF \$117,351,000 MATURING IN TWENTY YEARS; THE BONDS WOULD BE REPAID FROM AN ANNUAL EXCESS LEVY ON REAL PROPERTY WITHIN THE CITY; PROVIDING FOR THE ISSUANCE OF SUCH GENERAL OBLIGATION BONDS; PROVIDING FOR THE SUBMISSION OF THE PROPOSITION TO THE QUALIFIED ELECTORS OF THE CITY AT A SPECIAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 2, 2004 IN CONNECTION WITH THE STATE GENERAL ELECTION TO BE HELD ON THE SAME DATE; PROVIDING FOR THE NOTICE OF SUCH ELECTION; DECLARING AN EMERGENCY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

CITY OF SPOKANE
SPOKANE COUNTY, WASHINGTON

THE CITY OF SPOKANE DOES ORDAIN:

WHEREAS, the City of Spokane, Washington (the "City") is a first-class city duly organized and existing under and by virtue of the Constitution and the laws of the state of Washington and the Charter of the City;

WHEREAS, the City Council (the "Council") has reviewed a road improvement plan (the "Plan") developed by a Citizens' Committee appointed by the Mayor of the City;

WHEREAS, the Mayor has recommended that the Council implement the Plan;

WHEREAS, the Council has determined that the conditions of certain streets of the City constitute potential health and safety threats to the residents and inhabitants of the City and require immediate improvement;

WHEREAS, the Council has determined that it is necessary for the preservation of the health and safety of the residents and inhabitants of the City to undertake immediately certain road improvement projects, including, but not limited to, the acquisition, construction and installation of certain repairs and improvements to the major arterials, public safety corridors, helping pave unpaved streets, and residential streets of the City;

WHEREAS, future citizens of the City will reap the benefits of such repairs and improvements to the City's streets made with funding authorized by today's voters, making it appropriate to pay for those improvements over a period of time;

WHEREAS, to provide funds to acquire, construct and install such repairs and improvements in as timely a fashion possible and after due deliberation, the Council hereby deems it necessary and advisable that the City issue and sell its general obligation bonds in the aggregate principal amount of not to exceed \$117,351,000 in one or more series;

WHEREAS, RCW 39.36.020(2)(b) and 84.52.056 require that a special election be called for the submission of a proposition to the qualified electors within the City for their ratification or rejection prior to incurring such bonded indebtedness; and

NOW, THEREFORE, IT IS FURTHER ORDAINED, as follows:

Section 1. The Council hereby determines that the health and safety of the residents and inhabitants of the City requires the immediate acquisition, construction and installation of certain repairs and improvements and betterments to its streets, together with all necessary appurtenances, equipment, fixtures and furnishings thereof.

Section 2. The proposed repairs and improvements to the City's streets to be paid for with bond proceeds are as follows:

(a) the acquisition, construction and installation of repairs and improvements to certain streets within the City, including but not limited to major arterials, public safety corridors, and residential streets and helping pave unpaved City streets;

(b) the acquisition and installation of all necessary appurtenances, equipment, fixtures and furnishings for the foregoing as deemed necessary by the Council;

(c) the acquisition, construction and installation of all such other repairs and improvements to City streets, deemed necessary by the Council; and

(d) ancillary costs of engineering, architectural, construction management, attorney's fees, costs of bond issuance, permits, accounting costs, easement and any other expenses or consultant fees incidental thereto, together with all necessary appurtenances, equipment, fixtures and furnishings thereto.

Such repairs and improvements and betterments are to be more fully described in the plans and specifications to be prepared by the City's engineering staff and consultants and when prepared will be on file with the City Engineer.

Section 3. The total estimated cost of repairs and improvements specified in Section 2 above is hereby declared to be approximately \$117,351,000, which shall be paid from the proceeds of the sale, issuance and delivery of the City's unlimited tax general obligation bonds (the "Bonds") to be issued in one or more series in the aggregate principal amount of not to exceed \$117,351,000.

In the event the City has other legally available money or there are Bond proceeds (or interest earnings thereon) remaining after the repairs and improvements set forth in Section 2, subsections (a) through (d) hereof have been completed or duly provided for, the Council may make additional repairs and improvements to the streets of the City as are deemed necessary and desirable by the Council.

Section 4. . . . The Bonds provided for in Section 3 hereof, if approved and issued, shall be sold in such amounts and at such time or times as deemed necessary and advisable by the Council and as permitted by law. The Bonds may be issued in one or more series and shall bear interest at such rate or rates (not to exceed the maximum provided by law at the time such Bonds are sold) and in such manner as the Council shall determine at the time the Bonds are sold. The Bonds shall mature in such amounts and at such times within a maximum term of not to exceed twenty (20) years from the date of issuance of any series of Bonds, as determined by the Council and as provided by law. The Bonds may be subject to redemption prior to maturity as determined by the Council at the time or times the Bonds are sold. Such Bonds shall be unlimited tax general obligations of the City, and, unless paid from other sources, both principal thereof and interest thereon shall be payable out of annual tax levies to be made upon all the taxable property within the City without limitation as to rate or amount in excess of any constitutional or statutory tax limitation, including excess tax levies authorized under RCW 84.52.056. The exact dates, forms, terms and maturities of such Bonds shall be hereafter determined by Ordinance of the Council. The designation of the Bonds may be changed to reflect the actual date of issuance. After voter approval of the bond proposition and in anticipation of the issuance of such Bonds, the City may issue short-term obligations as authorized by Chapter 39.50 RCW.

In the event the proceeds of the sale of such Bonds, and other legally available money, are insufficient to make all the repairs and improvements hereinbefore provided for, the City shall use the available money for paying the cost of those improvements for which Bonds were approved and deemed most necessary and to be in the best interest of the City by the Council.

Section 5. The City Clerk is hereby authorized and directed to certify a proposition to the Spokane County Auditor in substantially the following form:

CITY OF SPOKANE
PROPOSITION NO. 1

GENERAL OBLIGATION
STREET REPAIR AND IMPROVEMENTS BONDS

THE MAYOR HAS PROPOSED AND THE SPOKANE CITY COUNCIL HAS PASSED ORDINANCE NO. C33492 CONCERNING A PROPOSITION TO FINANCE ROAD IMPROVEMENTS. A CITIZENS' COMMITTEE HAS DEVELOPED A PLAN FOR ROAD IMPROVEMENT PROJECTS FOR MAJOR ARTERIALS, PUBLIC SAFETY CORRIDORS AND RESIDENTIAL STREET REPAIR. TO FINANCE THESE REPAIRS AND TO HELP PAVE UNPAVED STREETS, GENERAL OBLIGATION BONDS IN THE TOTAL AMOUNT OF \$117,351,000 MATURING IN TWENTY YEARS WOULD BE ISSUED. THE BONDS WOULD BE REPAYED FROM AN ANNUAL EXCESS LEVY ON REAL PROPERTY WITHIN THE CITY. SHOULD THIS PROPOSITION BE:

APPROVED

REJECTED

Section 6. The special election will be held on Tuesday November 2, 2004 in conjunction with the state general election to be held on the same date. Polls will be open from 7:00 o'clock A.M. and will remain open until 8:00 o'clock P.M., when they will close.

Section 7. The location of the polling places shall be as determined by the Spokane County Auditor, as *ex officio* Supervisor of Elections for the City.

Section 8. In the event the proposition specified in Section 6 above is approved by the qualified electors of the City as required by the Constitution and laws of the state of Washington, there shall be levied and collected annual tax levies in an amount sufficient in each such year to pay and retire the Bonds until the full payment of both principal thereof and interest thereon, as will produce levy proceeds sufficient in amount to fully pay currently maturing installments of principal and interest on such Bonds as each becomes due. Such tax levies will be in excess of the regular annual tax levies permitted by law without voter approval.

Section 9. The Council hereby finds and declares that an emergency exists, due to the need for immediate repairs and improvements to the City's streets to preserve the health and safety of the residents and inhabitants of the City and to meet in a timely fashion the filing deadlines for bond measures under State law. Such emergency requires the City to conduct a special bond election and requires the submission to the qualified electors of the City, for their ratification or rejection at such special election, of the proposition as set forth above. The City hereby requests pursuant to RCW 29A.04.330(2) (as may be further reflected in a resolution of the City Council) the Spokane County Auditor, as *ex officio* Supervisor of Elections for the City, to call, conduct and hold within the City a special election on Tuesday, November 2, 2004 in conjunction with the state general election to be held on the same date, for the purpose of submitting to the qualified electors of the City, for their ratification or rejection, the proposal to make the repairs and improvements specified in Section 2 above, to incur indebtedness and issue Bonds to finance such repairs and improvements, and to levy taxes in excess of the regular property tax levies to pay the principal of and interest on such Bonds. The Clerk of the City is hereby authorized and directed to deliver a copy of this Ordinance to the Spokane County Auditor, as *ex officio* Supervisor of Elections for the City, at least 45 days prior to the special election date.

The Spokane County Auditor, as *ex officio* Supervisor of Elections for the City, is also hereby requested to find the existence of such emergency and to deem the same to exist and to call and conduct such special election on Tuesday, November 2, 2004 in conjunction with the general election of the state to be held on the same date for the purpose of submitting to the qualified electors of the City the proposition as described in Section 5 hereof.

Section 10. All actions heretofore taken by the Council, the Mayor, and the City's officers and employees, with respect to the road and street improvements described herein are hereby ratified and approved.

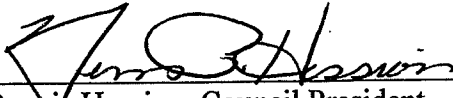
Section 11. If one or more of the provisions of this Ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void, and shall be deemed separable from the remaining provisions of this Ordinance, and shall in no way affect the validity of the other provisions of this Ordinance.


Section 12. The City's Bond Counsel, Orrick, Herrington & Sutcliffe LLP, is appointed as Bond Counsel for the Bonds.

Section 13. This Ordinance shall become effective upon its passage.

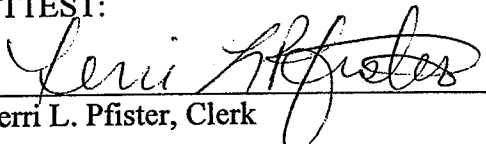
PASSED by the City Council of the City of Spokane, Washington, at a regular meeting thereof, held this 7th day of September 2004.

CITY OF SPOKANE
Spokane County, Washington


Dennis Hession, Council President


James E. West, Mayor - signed 9/10/04

ATTEST:



Terri L. Pfister, Clerk

(SEAL)



APPROVED AS TO FORM:


Michael F. Connelly, City Attorney


Douglas E. Goe, Bond Counsel

* * * * *

CERTIFICATE

I, Terri L. Pfister, the Clerk of the City of Spokane, Spokane County, Washington, hereby certify that the foregoing ordinance is a full, true and correct copy of an ordinance duly passed and adopted at a regular meeting of the City Council, duly held at the Spokane City Hall on September 7, 2004, of which meeting all members of said Council had due notice, and at which a majority thereof was present, and that at said meeting said ordinance was adopted by the following vote:

AYES, and in favor thereof, Councilmembers: Council President Hession and Council Members French, Rodgers, Shogan, Stark, and Verner

NAYS, Councilmembers: Council Member Apple

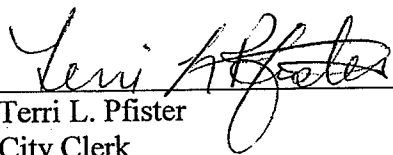
ABSENT, Councilmembers: N/A

ABSTAIN, Councilmembers: N/A

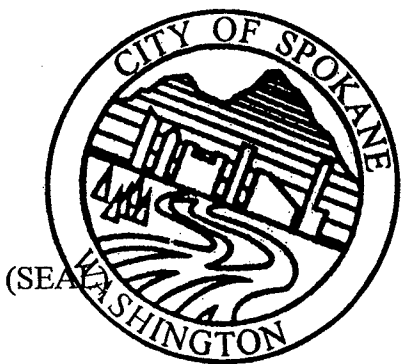
I further certify that I have carefully compared the same with the original ordinance on file and of record in my office; that said ordinance is a full, true and correct copy of the original ordinance adopted at said meeting; and that said ordinance has not been amended, modified or rescinded since the date of its adoption; and that said ordinance has been duly approved by the Mayor of the City and is now in full force and effect.

IN WITNESS WHEREOF, I have set my hand on this 7th day of September 2004.

CITY OF SPOKANE
Spokane County, Washington



Terri L. Pfister
City Clerk



CITIZENS' STREETS ADVISORY COMMITTEE

Dallas Hawkins, Chair

Final Report

REPORT TO MAYOR JAMES E. WEST

ON A PROPOSED

**10-YEAR PLAN TO RECONSTRUCT AND
REHABILITATE SPOKANE STREETS**

October 1, 2004

**Citizens' Streets Advisory Committee
Report to Mayor James E. West
10-Year Plan to Reconstruct and Rehabilitate Spokane Streets**

Background and History

The arterial framework of the City of Spokane's street system was almost entirely established prior to 1900. The streets are nearly always aligned north-south and east-west in a "grid" fashion. James W. Glover, Spokane's founding father, utilized this kind of right-of-way grid system when he platted most of Spokane's streets, with the exception being some South Hill neighborhoods such as Rockwood and Comstock.

The street system designed by Glover adequately met Spokane's transportation needs through the transition years when the automobile replaced the horse and buggy. The earliest vehicle registration records in Spokane County date from 1924 when 30,516 vehicles were registered. Since then, the use of automobiles, trucks, and buses has steadily climbed. In 1950, Spokane County had 80,576 registered vehicles; 250,000 in 1980 and 375,000 vehicles were registered in the County in 2001.

Today, our transportation infrastructure continues to age, and our streets are deteriorating at an increasing rate. Many streets have outlived their design life, and we have expanded to provide access for neighborhoods and to support business investment, economic vitality, and future growth. Our City crews now care for about 850 miles of paved streets and nearly 40 miles of unpaved streets within the City. In addition to increased traffic volume, allowable loads (weight) carried by buses and trucks also have increased, contributing to additional deterioration of the City's streets. Those problems, along with other demands on the City's funding priorities and declining revenues, create a continual challenge to appropriately fund street maintenance.

In April 2004, Mayor James E. West invited interested citizens to participate on the Citizens' Streets Advisory Committee (Citizens' Committee) whose purpose was to objectively develop a plan to reconstruct and rehabilitate Spokane's streets.

The Citizens' Committee was asked to develop a ten-year street construction plan with the assistance of staff. In addition, the Committee was asked to recommend to the Mayor how to allocate work among arterial and residential streets, consider whether to dedicate a portion of any future street bond to a fund to expedite paving of some 40 miles of unpaved streets, and make recommendations to the Mayor about accountability for the program. The Committee was to summarize its findings and recommendations in a report to the Mayor due by mid-October, 2004. The Committee understands that its purpose was not that of finance, technical or campaign committee.

Committee members are volunteers from across the community representing both small and large businesses, neighborhoods, transportation providers, and road paving companies, education, media and others, all of whom shared an interest in improving Spokane's streets.

**Citizens' Streets Advisory Committee
Report to Mayor James E. West
10-Year Plan to Reconstruct and Rehabilitate Spokane Streets**

Meetings were held on average twice a month, and at its July 14th meeting, Committee members nominated and elected Dallas Hawkins its voluntary chair. Mr. Hawkins accepted that nomination and immediately began serving in that capacity.

The Citizens' Committee asked City staff to help develop a 10-year plan, beginning construction in 2006 through 2015, to improve Spokane's streets. The Committee subsequently vetted the original plan before it went about the process of gathering public input. This 10-year plan was developed with the understanding that citizens would tolerate some level of street construction work each season, given all other transportation-related construction that occurs in Spokane, but beyond that level – estimated at approximately \$10 million to \$11 million of annual work – people likely would get very frustrated with their inability to efficiently move around the City.

The Committee also directed staff to ensure that improvement projects were identified by street for every year of the 10-year plan for both arterial and residential streets and to develop a draft proposal for a second 10-year plan. The Committee asked staff to prepare a plan with an estimated cost of \$100 million over 10 years and to divide that money, with 65 percent going to arterials and 35 percent to residential streets, all subject to citizen input.

Arterial Streets 10-Year Plan

Currently, there are approximately 235 miles of arterial streets in the City of Spokane, of which 77 miles are in good condition at this time and not in need of repair, leaving 158 miles in need of repair to one degree or another. As of this time, some 63 miles of arterials need full reconstruction, 64 miles require a grind overlay process, and 31 miles need surface seals. The Committee worked with staff to determine certain principles that would be considered in identifying arterials for this 10-year plan and determined that the "worst" arterials – those with a pavement rating of less than 40 -- should be addressed first. The proposed 10-year plan identifies 37 arterial miles to be fully reconstructed and may be found at the end of this report in the Addendum.

The Committee and staff also concluded that arterials that serve as public safety corridors – essentially emergency vehicle routes for police fire, hospitals, schools, and buses – should be given top priority. Consideration would also be given for arterials with high traffic volumes that extend corridor improvements, that serve our business and designated shopping centers, and that don't compete well for state and federal funding. The Committee also demanded that reconstruction work would be completed using best practices.

**Citizens' Streets Advisory Committee
Report to Mayor James E. West
10-Year Plan to Reconstruct and Rehabilitate Spokane Streets**

The initial plan has been revised to reflect citizen input to include specific street locations. Please see the recommendation section.

Residential Streets 10-Year Plan

Spokane has 615 miles of residential streets, of which 214 miles are currently in good condition and do not require repair. Currently, some 78 miles of residential streets require full reconstruction, 185 miles need a grind overlay, and 138 miles need surface seals. Staff was also directed by the Committee to select residential streets near or within public safety corridors and to employ best practices in conducting the work. Two options for addressing the approach to beginning to repair the City's residential streets were reviewed by the Committee and subsequently by citizens.

In Residential Streets Option 1, the proposed 10-year plan would have totally reconstructed 43 miles of residential streets. This, too, was a "worst first" approach based on the condition of the streets; the trade-off being that fewer miles would be repaired as all the identified streets in this plan would need to be reconstructed. This approach also would move crews and equipment in a somewhat haphazard way about the City, creating some inefficiency.

Residential Streets Option 2 repaired 69 miles of residential streets in a combination of reconstruction, rehabilitation (grind overlay) and the sealing of relatively good streets. This option would be conducted in a section-by-section approach where crews and equipment would stay in an area and complete all the work needed by the residential streets in that area including full reconstruction, rehabilitation or sealing. This approach repaired more miles of residential streets and was identified by staff as a more efficient use of resources, but the trade-off was that fewer of the City's worst residential streets would be initially reconstructed.

Ultimately, after a great deal of citizen input (see Citizen Input) about the two options, the Citizens' Committee recommends a hybrid approach of the two options. Please see the recommendations section.

Unpaved Streets Cost-Sharing Plan

Spokane currently has 90 miles of unpaved streets, of which the City maintains approximately 40 miles of these gravel streets that do see vehicular travel. The balance of these unpaved streets is not maintained. It is the Citizens' Committee's opinion that paving these 40 miles of gravel and unpaved dirt streets will improve air quality, increase property values and better facilitate emergency response.

Citizens' Streets Advisory Committee
Report to Mayor James E. West
10-Year Plan to Reconstruct and Rehabilitate Spokane Streets

Accountability

The Citizens' Streets Advisory Committee believes accountability to the public is critical as the City embarks on a 10-year construction plan to improve Spokane's streets. On August 25, 2004, the Citizens' Committee invited Doug MacDonald, Secretary of the Washington State Department of Transportation, to speak on the subject of accountability. Secretary MacDonald described how his agency developed "The Gray Notebook," a quarterly report to the Transportation Commission that discusses budget, employment, and the status of projects. The Secretary stated that his agency must first -- as must the City -- appropriately *perform*. Communicating and educating the public about transportation projects is critical. The next highest priority must be that citizens are continuously informed and educated on an on-going basis as the project unfolds. He noted that accountability procedures should be developed with local consumption in mind. He said that absolute honesty about both problems and successes would earn the City credibility among the citizens it serves.

The Citizens' Committee strongly recommends to Mayor West that he immediately establish a "blue-ribbon" technical accountability committee to oversee this 10-year street reconstruction and rehabilitation plan. It is the view of this Committee that the aforementioned group would operate much like the State of Washington's Transportation Commission and that City staff responsible for implementing this plan will be required to report to this accountability commission on the quality of the proposed work, the cost of the project compared to initial contract bids, the timeliness of the project, and the appropriate use of materials and technology, or other measures it sees fit. The intent is to ensure that the citizens of Spokane receive full value for their investment in street improvements. In addition, the committee also recommends that the work related to this bond be the subject of an annual financial audit.

Citizens and business leaders in Spokane are very interested in ensuring adequate maintenance of these streets once improved, so that these improvements and our investments in our streets will be well sustained over time. The Citizens' Committee strongly recommends to Mayor West that the City of Spokane consider increasing its annual routine street maintenance fund by three million dollars annually, as soon as funding sources can be identified.

The Citizen's Street Advisory Commission will define its reporting requirements, as well as the frequency of reports it will require from the City, and results will be reported to the public.

**Citizens' Streets Advisory Committee
Report to Mayor James E. West
10-Year Plan to Reconstruct and Rehabilitate Spokane Streets**

Citizen Input

The Citizens' Streets Advisory Committee solicited citizen input by hosting, along with Mayor West, a series of six Community Forums across the City. There were also presentations made to the Chamber of Commerce and the Downtown Spokane Partnership. Both of these organizations have endorsed the proposed plan. In addition, citizens provided input about the proposed 10-year plan by either an on-line survey at www.spokanestreets.com or hard copy form, letters, phone calls and e-mails.

The six Community Forums were designed such that two meetings were held in each of the City's three City Council Districts. The forums were held at East Central Community Center August 17th, West Central Community Center August 18th, Northeast Community Center August 19th, Five-Mile Grange August 24th, Southside Senior Center August 26th, and the Spokane City Council Chambers August 27th. In total, 195 citizens (not counting members of the Citizens' Streets Advisory Committee or staff) attended these meetings.

After a presentation by Mayor West and Citizens' Committee Chair Hawkins, citizens at the first five forums (186 citizens) were asked to participate in a straw poll about the proposed 10-year plan. Of the 186 citizens attending the first five forums, 64% voted to move the proposed plan forward to voters. One hundred twenty-seven (127) citizens voted on this subject, and of those who voted, 119, or an overwhelming 94%, voted to move the street plan forward to voters.

Response about the 10-year street plan to the on-line or hard copy survey through the first of September was low. Some 82 citizens responded to the survey, which asked, "If you could only fix 100 miles of Spokane's streets, how would you allocate this work?" Three choices were provided: Arterials/Public Safety Corridors, Residential Streets, and Unpaved Streets. Respondents selected 62 miles of Arterials/Public Safety Corridors, 26 miles of Residential Streets and 11 miles of Unpaved Streets. Comments from these Community Forums, surveys and other contacts are included in the Addendum.

A sizable majority of citizens with whom the Citizens' Streets Advisory Committee engaged spoke with about this 10-year plan supported the Committee requesting the Mayor move the issue forward to the public for a vote.

**Citizens' Streets Advisory Committee
Report to Mayor James E. West
10-Year Plan to Reconstruct and Rehabilitate Spokane Streets**

Recommendations

The Citizens' Streets Advisory Committee (CSAC) makes the following recommendations to Mayor James E. West and the City of Spokane:

1. Based on this Committee's review and involvement with the development of the proposed 10-Year Street Reconstruction and Rehabilitation Plan, and citizen input, CSAC recommends that the Mayor move this plan forward to the City Council and the ultimately to Spokane citizens for support.
2. Specifically, and based on citizen input, we recommend the revised 10-year street plan be supported. This includes complete reconstruction of 37 miles of Arterial streets, and the reconstruction, rehabilitation and/or sealing of 52 miles of Residential streets over 10 years.
3. CSAC also recommends the Mayor establish an Unpaved Streets Cost-Sharing Plan to help citizens pay to have their unpaved streets paved. Many of Spokane's 40 miles of maintained but unpaved streets are in low income areas. This fund will help neighbors in these areas buy down the cost of LID bonds, but the Citizens' Committee suggests the fund be made available to subsidize the paving of streets via local improvement districts (LID's) in all neighborhoods in Spokane, with emphasis on low-income neighborhoods. CSAC recommends that the Mayor direct his staff to develop an appropriate program to accommodate the establishment of this fund and to provide details of the process that will be used by citizens to access the fund. This program should be in place by January, 2005.
4. The CSAC recommends that the project include approximately seven million dollars for a utility projects matching fund. *

* When Utility Companies install and repair utility lines, they are required to rebuild and repave the travel lanes that are disturbed by their projects. These additional funds will pay to rebuild the remainder of the street in order to provide the public with a completely new street from curb to curb.

5. The Citizens' Streets Advisory Committee believes accountability on this (or any) street improvement program is critical and recommends to Mayor West that he immediately establish a City of Spokane Citizens' Street Advisory Commission, modeled after the Washington State Transportation Commission, that will objectively provide oversight to the construction of the projects identified in this 10-year plan, and to whom staff will routinely report.

Citizens' Streets Advisory Committee
Report to Mayor James E. West
10-Year Plan to Reconstruct and Rehabilitate Spokane Streets

6. We also recommend that the financial records related to these street construction projects be subject to an annual audit. This information will be available to the Commission as well as citizens and the intent is to ensure citizens of Spokane that they will receive full value for their investment in street improvements.
7. Finally, the Committee has identified a three million dollar (\$ 3,000,000) annual shortfall in the street maintenance budget. The Committee recognizes that the City is facing a large deficit in its General Fund Budget in 2005. Given this shortfall, we believe that it would not be realistic to increase the annual street maintenance budget by three million dollars at this time. Therefore, the Committee recommends that the Mayor and City Council consider seeking funding sources to provide an increase in the street maintenance budget of three million dollars per year as soon as practical, to better reflect the actual need.

Addenda

- 10-Year Arterial Street Plan Map (Revised by citizen input)
- 10-Year Arterial Street Plan Projects List (Revised by citizen input)
- 10-Year Residential Street Plan Map (Revised by citizen input)
- 10-Year Residential Street Plan Projects List (Revised by citizen input)
- "Communicating for Accountability," by Douglas B. MacDonald, Secretary, Washington State Department of Transportation
- "Measures, Markers and Mileposts ... The Gray Notebook for the quarter ending June 30, 2004," WSDOT's quarterly report to the Washington State Transportation Commission on transportation programs and department management, Douglas B. MacDonald, Secretary of Transportation
- Citizen Input/Comments



City of Spokane 2004 Street Bond **CITIZEN INFORMATION**

Background

As the City worked to revise its 2004 budget, it asked citizens to rank the City's top priorities. Some 1,300 responses were returned, and streets ranked second, scoring behind only public safety. These results mirror what citizens have been telling us in surveys for a decade or more.

The City of Spokane has about ^{1,300}850 miles of streets. Our streets are naturally aging and increased traffic volume and loads (weights) allowed on City streets simply accelerate the deterioration of our streets. The City cannot fund those repairs through its normal operating resources because the cost of street repair is growing at a far greater pace than revenues, which have declined.

The Proposal

Spokane City voters are being asked to consider a \$117,351,000 Street Bond. The Citizens' Streets Advisory Committee proposed the 10-year plan. The group met over a six-month period, developing its proposal; the members confirmed their findings through a series of six public forums held in August. Nearly 200 citizens attended the forums. Then, in a vote on Sept. 7, 2004, the Spokane City Council approved the Bond Issue's addition to the Nov. 2, 2004, ballot.

The Bond would be paid for through an assessment on property. It is designed to be paid off in 20 years. Property owners annually would pay about 68 cents for each \$1,000 in assessed valuation. That means the owner of a \$100,000 property would pay \$68 a year toward the repayment of the Bond.

Accountability

All of the money raised through the Street Bond would be spent repairing our Streets. The City would establish a local Transportation Commission comprised of citizens to provide accountability and auditing of the plan and the progress the City is making.

And, we will maintain these streets. We're looking at current City Street operations and dollars to establish an appropriate maintenance plan. Just bringing more streets up to a "good" condition will reduce maintenance costs, because a healthy road base protects against potholes and cracking.

The Road to Repair

The proposed Street Bond would be used to fund a 10-year plan that would repair 110 miles of Spokane city streets. Here's the breakdown:

- 37 miles of major arterials and public safety corridors. These are complete reconstructions.
- 52 miles of residential streets. These repairs include complete reconstruction, repaving, and sealing.
- 14 miles of unpaved streets. The City would help neighborhoods that form LIDs pave unpaved streets.
- 7 miles of streets impacted by utility work. This would allow for better repairs of streets that are subject to underground utility work.

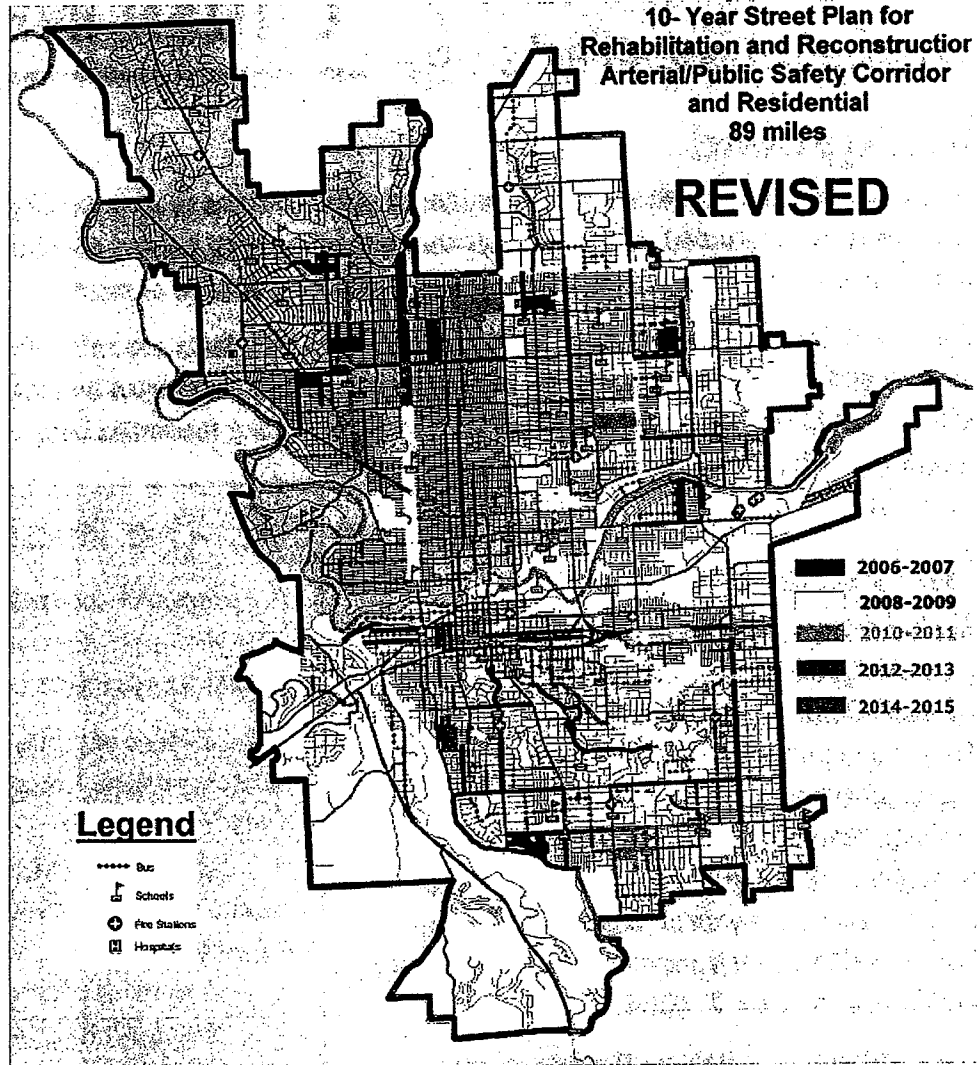
Arterials, Public Safety Corridors, and Residential Streets

The Streets

The 10-year plan would repair 110 miles of Spokane Streets, including 89 miles of arterials and public safety corridors and residential streets. The adjacent map gives you an idea of where those streets are and when during the 10 years they would be repaired.

More than 450 jobs in the community would be needed annually to complete this work.

Copies of the plan with all the projects identified are available at www.spokanestreets.org. Citizens also may call the Mayor's Office at 625-6250 or the Office of Neighborhood Services at 625-6733 for additional information.



This map shows the arterials, public safety corridors and residential projects that would be repaired. Lists of projects are available at www.spokanestreets.org.

City of Spokane Officials

Mayor
James West

Council President
Dennis Hession

Council Members
Bob Apple
Al French
Cherie Rodgers
Joe Shogan

Brad Stark
Mary Verner

Deputy Mayor
Jack Lynch

More information on the City of Spokane's 2004 Street Bond is available on the City's streets web site at www.spokanestreets.org.

City of Spokane
September 2004



Tom Arnold; Bernard Street Project; DRC
Page 4 of 5

Jack,

You requested guidance on appropriate uses of proceeds from our December 2004 \$24.2 million Street Bond issue (first of four planned issuances pursuant to the \$117.4 million Street Bond Issue approved by the voters on November 2, 2004).

The following guidance is provided through Mike Schrader of Orrick Herrington & Sutcliffe, Bond Counsel for the Street issue:

The ability of the City to spend bond proceeds on projects is limited by the text of the related ballot proposition and the Ordinance calling the election. The text of the ballot proposition reads as follows: "The Mayor has proposed and the Spokane City Council has passed Ordinance. No. C33492 concerning a proposition to finance road improvements. A citizens' committee has developed a plan for road improvement projects for major arterials, public safety corridors and residential street repair. To finance these repairs and to help pave unpaved streets, General Obligation Bonds in the total amount of \$117,351,000 maturing in twenty years would be issued. The bonds would be repaid from an annual excess levy on real property within the city. Should this proposition be: Approved/Rejected?" The proposition language is narrowly drafted. By use of the term "road improvements," the proposition would seem to exclude non-road projects. Certainly, there is no express mention of sidewalks, landscaping or other non-road projects.

The Ordinance calling the election contains similar limiting language. Section 2 of the Ordinance allows bond proceeds to be used for "repairs and improvements to the City's streets" in four ways. According to Section 2, the bonds can be used to (1) repair and improve certain streets within the City, including but not limited to major arterials, public safety corridors, and residential streets and to help pave unpaved City streets, (2) acquire and install all necessary appurtenances, equipment, fixtures and furnishings for the foregoing as deemed necessary by the City Council, (3) acquire, construct and install such other repairs and improvements to City streets deemed necessary by the City Council, and (4) pay other soft and hard costs related to the projects. The Ordinance language is consistent with the proposition language in that only road and street improvements are expressly authorized.

Although not controlling, the materials contained in the voter pamphlet, including the statements for/against and the citizen information guide, mention only road and street improvements, not sidewalks, landscaping or other non-road improvements. There is no indication from such materials that voters or the City Council believed non-road projects were to be paid for with proceeds of the bonds.

We believe it would be a strained reading of the proposition and the Ordinance to conclude that non-road improvements such as sidewalks and landscaping were authorized by voters and the City Council. The voter pamphlet further indicates that the City Council and voters did not contemplate non-road improvements when considering the proposition. We therefore recommend limiting the expenditure of bond proceeds to "road improvements," which is the core descriptive term used throughout the materials relating to the proposition and the bonds.

Please let me know if you have further questions on this matter,

Gavin

GREGORY A. BLONDE
ORRICK, HERRINGTON & SUTCLIFFE LLP
1125 NW COUCH STREET
SUITE 800
PORTLAND, OR 97209
tel 503/943-4823