MEMORANDUM

TO: Mayor Allender and Common Council
FROM: Wade Nyberg
DATE: January 31, 2020
RE: Fisk Land Surveying Appeal – Item 37 on Feb 3, 2020 Council Agenda

After listening to the discussion from the Public Works Committee meeting, I wanted to reach out to address a few issues with the idea that a street improvement can be deferred to a road district. By way of background, all subdivisions in the county are required to provide for their own road maintenance. Since Pennington County does not accept new roads, that is one of the stipulations of approval of plats approved in the 3-mile limit outside of the city. Road districts are one option. Homeowner associations or other shared maintenance agreements are other options.

**Issues with Deferring Improvements**

There are several issues with deferring pavement of a road. First, it should be pointed out that this is a shift of the responsibility of subdivision improvements from the developer to the property owners. The City has a history of allowing a similar shift through the WORP (Waiver of Right to Protest) process. The Council has discontinued this process, as it was of questionable usefulness and rarely, if ever, used. It generally resulted in the city’s taxpayers assuming responsibility for deferred improvements. While it can be said the property owners pay this cost one way or the other -- through higher lot prices or as an assessment or road district tax levy -- it is also true that by the time a road district is set up, levies imposed, and taxes collected, the costs of pavement will likely be higher. Also, road districts have the same competitive bid requirements as cities and counties, and developers are often able to construct the same infrastructure for less. Developers who wish to postpone improvements until after platting may post surety to do so, but shifting that responsibility to property owners is not part of that process.

Second, the City has no ability to require that a road district be formed. There is a statutory scheme that allows property owners to petition for formation of a road district. The County Commission must approve the incorporation, and a majority of property owners must affirmatively vote in favor of formation. The City’s only role in this process would be approval of the formation prior to County Commission approval. (This step is only required where a district is within the City’s 3-mile platting jurisdiction.)
Further, if a road district is formed, the City has no way to require the road district to construct or pave a road. The road district is a political subdivision of the state, much like the City. It has its own rules for expenditure of funds, annual elections, powers of trustees, referendums, etc. The district cannot be required to levy taxes, issue bonds, or appropriate revenue for pavement.

Lastly, the tax base of the to-be-formed district is not yet known. Depending on the types and sizes of homes and other improvements constructed, and to an extent how quickly homes are built, there is a wide range of what the tax base might be. The amount of money needed to pave the roads would be spread across the tax base, which could become problematic depending on development and timing. In speaking with the Pennington County Auditor’s office, many road districts adopt the same levy that most others in the county pay, which shows up on tax bills as the unorganized road district levy. That levy is 1.092 mills, or slightly over $1 per thousand in valuation. (A $200,000 house pays roughly $218 per year.) Other road districts do not adopt a levy, and are incorporated to avoid paying the unorganized road district levy. Once a road district sets its base levy upon incorporation, it has to follow the same rules as the city and county, increasing only by CPI plus growth. It can also opt out, or impose special assessments, with processes mirroring the City’s. The Engineering Division roughly estimates a cost in the neighborhood of $250,000 for the paving in question. That would amount to almost $11,000 for each of the 23 lots to be platted.

**Recommendation**

If it is the Council’s desire to allow this property to be platted without paved roads, a waiver of the pavement requirement may be approved. I will let the planners, engineers, and air quality experts weigh in on the merits of that. But I wanted to let you know that “deferring” pavement to a road district is something the City cannot accomplish.