



City of Grand Forks
Staff Report
City Council – October 17, 2022
Special City Council – October 24, 2022

APPROVED & ACCEPTED
by City Council

10/24/2022

Maureen Storstad
Maureen Storstad
City Auditor

Agenda Item: Hear appeals, certify assessments and approve Findings on October 24, 2022 on Project No. 7539.00, District No. 737, Paving & Street Lights – Oscarville.

Submitted by: Maureen Storstad, City Auditor

Staff Recommended Action:

Certify special assessments and approve Findings for Project No. 7539.00, District No. 737.

Committee Recommended Action: N/A

Council Action:

Motion by Council Member Sande, second by Council Member Weber, to approve the recommendation certifying the special assessments for Project No. 7539.00, District No. 737, and approve the findings for that project. Motion carried unanimously.

BACKGROUND:

The Project, as listed on the attachment, has been reviewed by the Special Assessment Commission and benefits established for affected properties. The Commission held hearings on this project on September 29, 2022. The Commission forwards this project for your recommendation for certification to the County Auditor for collection. Following the hearings, the Commissioner's approved the Findings with no changes.

ANALYSIS AND FINDINGS OF FACT:

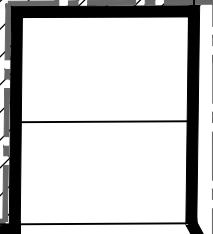
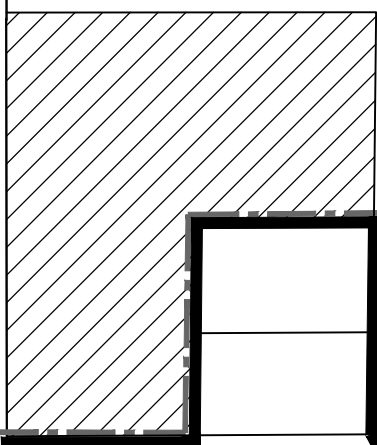
- Work is complete on the project listed on the attachment.
- Bonds have been issued to finance this work.
- The Special Assessment Commission has spread the benefits to the affected properties.
- The Commission has forwarded these assessments to the council for certification.
- The Council needs to certify these so they can be forwarded to the County Auditor by November 1, 2022
- An appeal was submitted by one property owner in the district, James Senske and Senske Rentals, LLC

SUPPORT MATERIALS:

- Copy of district map approved by Council.
- Copy of Findings.
- Letter from Johnston Law Office on behalf of James Senske and Senske Rentals, LLC



1215'



27TH AVE N

26TH AVE N

N 42ND ST

24TH AVE N

N 44TH ST

N 43RD ST

20TH AVE N

PAVING & STREET LIGHTS FOR OSCARVILLE

LEGEND

PROJECT # 7539

DISTRICT # 737

 ASSESSMENT DISTRICT BOUNDARY

 PROJECT LIMITS

 CITY LIMITS

 FUTURE ASSESSMENT DISTRICT

BEFORE THE GRAND FORKS SPECIAL ASSESSMENT COMMISSION

In the Matter of the Special Assessments
For Paving & Street Lights Oscarville
(District#737) (Project#7539)

FINDINGS

The Special Assessment Commission for the City of Grand Forks, North Dakota, having met on the 22nd day of January, 2021, a quorum being present at each meeting, and the Special Assessment Commission having considered the matter of special assessments in District #737 for Project #7539 now adopts the following Findings in support of and in explanation of its actions approving the special assessments.

1. That the Special Assessment Commission has jurisdiction and is exercising its judgment and discretion in the determination and certification of assessments and benefits for Project#7539, Special Assessment Improvement District#737.
2. That at all times the Special Assessment Commission acted in good faith with due diligence in carrying out the responsibilities vested within the Special Assessment Commission for the City of Grand Forks, North Dakota.
3. That the special assessment district was created by the Grand Forks City Council on the 19th day of January, 2021.
4. That the Grand Forks City Council has directed the Special Assessment Commission to assess the sum of \$2,539,720.89 for the cost of the project.
5. Project location area consists of the area on 27th Avenue North (N. 44th Street to N. 42nd Street), 26th Avenue North (N. 43rd Street to N. 42nd Street), 24th Avenue North (N. 44th Street to N. 42nd Street), 20th Avenue North (N. 44th Street to N. 42nd Street), North 44th Street (20th Avenue N. to 27th Avenue N.), North 43rd Street (24th Avenue N. to 26th Avenue N). To serve the following land platted to the City of Grand Forks: Lot 1, Block 1, Auditor's Twentieth Addition; Lots 1 & 2, Block 1, Auditors SubDivision No. 51; Lot 1 & Vac E 30' of N 43rd St W of & Adj Thereto, Lot 2 & Vac E 30' of N 43rd St W of & Adj Thereto, Lot 3 & Vac E 30' of N 43rd St W of & Adj Thereto, Lots 4 & 5 & Vac E 30' of N 43rd St W of & Adj Thereto, Lots 6 & A & Vac E 30' of N 43rd St W of & Adj Thereto, Lot B & Lot 10 & Vac E 30' of N 43rd St W of & Adj Thereto, Lots 11, 12 & 13 & Vac E 30' of N 43rd St W of & Adj Thereto, Lot 14 & Vac E 30' of N 43rd St W of & Adj Thereto, Lot 15 & Vac E 30' of N 43rd St W of & Adj Thereto, Block 1; Lot 1 and 2, Block 2, Lemms Acres Subdivision; Lots 1, 2, 3, 4 & 5, 6, 7 & A, B, 9, 10, 11, 12, 13, 14, 15, 16 - 19, C, D, 26, 27 and 28, Block 1 and Lot 1, Block 2, Oscarville Subdivision; Lots 1 and 2, Block 1, Oscarville 2nd Subdivision; Lot 1, Block 1, Oscarville Third Resubdivision; Lots 1 - 2, A, B & C, Block 2, Senske's First Addition; Lots 1, 2, 3 - 8, 9, 10, 11, 12, 13 & 15, 14, 16, 17 and 18, Block 1; Lots 1 & 2, 3, 4, 5, 6, 7, 8, 9 and 10, Block 2, Senske's Second Addition; Lots 1 & 2, Block 1; Lots 1, 2, 3, 4, 5 and 6, Block 2, Senske's Third Addition; Also to include unplatted parts of Grand Forks Township: All that of the NE ¼ NE ¼ of Section 31, Township 152 North, Range 50 West of the Fifth Principal Meridian, lying between N 42nd St and N 43rd St and north of and adjacent to Oscarville 2nd Subdivision and south of 27th Ave N (Bommer Tract); To serve the flowing platted, unannexed areas of all that part of the Southeast Quarter of the Southeast Quarter of Section 30, Township 152 North, Range 50 West of the Fifth Principal Meridian, Grand Forks County, North Dakota, more particularly described as the South 1215 feet of the East 1,112.01 feet of said Southeast Quarter of the Southeast Quarter, except any public right-of-ways therein, containing 968,311 square feet or 22.23 Acres, less Lot 1 & 2, Block 1 of Auditors Resubdivision No. 51;
6. That the Special Assessment Commission is familiar with the area within the improvement district and is familiar with the project.

7. That the publication of the proposed assessments appeared in the Grand Forks Herald on the 14th and 21st day of September, 2022.
8. That the Special Assessment Commission for the City of Grand Forks, North Dakota specifically finds that all properties within Project#7539 Special Assessment Improvement District #737 are especially benefited from the project and the amounts of the assessments are set forth in attachment A.
9. Benefits received from the project are for access, both for property and fire protection, dust suppression, pedestrian accommodations and provides some drainage control and to provide lighting for pedestrian safety.
10. That the Commission has received no comments or objections with respect to the special assessments. The Commission considered all public comments, whether oral or written, concerning the project, the manner of assessments, the benefits therefrom, and objections thereto at the Special Assessment Commission Hearings on September 29, 2022.
11. That the Special Assessment Commission finds that the project provides primary benefits to property located within Special Assessment Improvement District#737.
12. That the special assessments levied against the property described in attachment A are made in accordance with the city's standardized policies and formulas utilizing square footage & frontage assessments.
13. Notice of Approval by the Special Assessment Commissioners of Project #7539 ran in the Grand Forks Herald on October 1, 2022.
14. The minutes of Special Assessment Commission meetings held on the 22nd day of January, 2021 and the minutes from the Special Assessment Hearings on September 29, 2022 are hereby incorporated by reference.
15. Approval of assessments for certification was done by City Council on October 17, 2022. The minutes are hereby incorporated by reference.

The foregoing Findings have been approved and adopted by the Special Assessment Commission for the City of Grand Forks, North Dakota, on the 29th day of September, 2022.



Allan Page, Chair



Ryan Graf, Commissioner



Brian Poykko, Commissioner

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October 17, 2022

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mstorstad@grandforksgov.com

RE: Appeal from the Special Assessment Commission Determination
Project No. 7539.00, District #737 Oscarville Paving and Lighting

Dear Ms. Storstad,

James Senske and Senske Rentals, LLC. as aggrieved persons, through the undersigned Counsel, brings this Appeal to the September 29, 2022 Special Assessment determination made by the Special Assessment Commission. It is further respectfully requested that Mr. Senske's appeal be heard by the City Council at a future date as the undersigned, DeWayne Johnston, has been infected with the SARS-CoV-2 virus and as a result will not be able to appear before the Council to present this appeal orally.

The Oscarville\Senske Addition has been specially assessed in three of the last five years beginning in 2018 with the Sanitary Sewer Project No. 7529, District No. 527. In 2021 an assessment was levied for the Oscarville Stormwater Pond and Station Stormwater Sewer Project No. 7540, District No. 567¹. Before the Council today in 2022 is a special assessment levy request for Project No. 7539.00, District #737 - Oscarville Paving and Lighting.

The Special Assessment Commission acted in contravention of law in addition to acting in an arbitrary, capricious, or unreasonable manner by:

1. Failing to comply with the statutory requirements of Section 40-23-07, N.D.C.C. as the Commission did not use—or simply adopted the City Council's improper use—of an assessment method that fails to fairly, justly, and equitably provide an assessment amount equal to or less than the benefit especially conferred unto the property serviced by the storm water infrastructure.
 - a. In response to inquiry about the benefit calculation being employed by the Special Assessment Commission at the September 29, 2022 Special Assessment hearing the Commission indicated that the appellant would be required to discuss that matter with the Assistant City Engineer.

¹ Appellant hereby incorporates as if fully set forth herein the October 15, 2021 letter of appeal to the Project No. 7540, District No. 567 and corresponding argument made to the Council sitting in whole.

- b. The Assistant City Engineer on the Oscarville Paving and Lighting Project indicated to Mr. Senske when he visited the project that the grade was wrong and the street had been dug too deep. This error, affected the streets and requiring additional cost to move catch basins from the street to the ditches. There is no or a negative benefit due to the improper project plan. Further, the error was pointed out by Mr. Senske whom requested the grade be corrected prior to the streets being installed. That request was declined;
- c. The improper grade of the street has resulted in driveway grades that a loaded stretched trailer cannot clear, which is especially concerning given the fact that the area is primarily used by trucking companies and related trades;
- d. Cost overruns have not been quantified nor has the cost of mistakes made on the project. The Special Assessment Commission in the absence of the cost associated with mistakes, poor design, or improper over runs could not properly weigh the affect these items have on any received benefit. The Special Assessment Commission failed to indicate if it was proper to include the cost of city mistake or cost over runs as project expense and therefore benefit under their calculated method.
- e. The method by which the assessment benefit is being calculated—expressed as “the project cost” less some “portion of the project paid by the city does not reflect the value of the benefit received by the land owner. Conversely, if the cost of the project is being measured by “the project cost” less some “portion of the project paid by the city in the assessment of the proposed special assessment represents an unconstitutional taking regarding all Senske Rental properties in the assessment district generally under the theory that a financial benefit calculation fails in this case as the exceptional cost sought denies any calculable benefit. For example, Mr. Senske’s main shop, office, and out parking area is denoted as parcel 44.2935.001.00²:

i. According to the Grand Forks City Assessor³ the value of parcel 44.2935.001.00 in 2020 to 2022 is as follows:

Prior Year	Comment	Value Type	Location	Class	Land Value	Dwelling Value	Improvement Value	M & E Value	Total Value
2022	3-13-2022	Appr	Urban	Comm	\$428,500	\$0	\$454,800	\$0	\$883,300
2021	4/6/2021	Appr	Urban	Comm	\$357,100	\$0	\$468,500	\$0	\$825,600
2020	3-20-2020	BofR	Urban	Comm	\$251,100	\$0	\$500,200	\$0	\$751,300

- ii. To obtain the value of the above noted numbers Mr. Senske built a 1,463 ft² office building, an 11,920 ft² shop, and paved 13,629 ft² of parking lot surface.
- iii. The cost imposed by the special assessments including this currently proposed assessment total:

² Referenced in the Project 7539.00 Findings Binder Provided by the City on October 7, 2022 at pgs. 45, 63, 83, 103, 124, 127, 129, 131, and 147.

³ <https://grandforkscity.northdakotaassessors.com/parcel.php?parcel=44.2935.001.00>

Date	Project	Amount	% of Land	% Total
2018	Sanitary Sewer	\$131,641.11	30.7	14.9
2021	Stormwater\Pond	\$427,061.93	99.6	48.3
2022	Paving & Lighting	\$171,660.85	40.0	19.4
	Total	\$730,363.90	170.4	82.6

- f. It is not possible to believe that assessing an additional \$171,660.85 on a piece of property that is already assessed at 130.3% of the land value and 63.2% of the total value of the property with all of its structures is providing a benefit as the merely tangential benefit is that you can drive on a paved street—something that is assumed to be economically provided once annexed into the city. In the case of Mr. Senske, he has been waiting and paying tax at the city level for 30 years. In calculating a benefit, the Special Assessment commission did not consider these factors as either an offset or paid forward item.
2. Considering a resolution pursuant to N.D.C.C. §40-23-05 does not relieve the commission from its duties under N.D.C.C. §40-23-07
 3. Finally, the Commission erred in failing to indicate how the benefit of driving on a paved road provides the land that that paved road runs beside can be different just because the road is in a new part of town or an old part of town. Everyone with a paved road beside their property would seem to glean the same benefit.

Sincerely,

/S/ DeWayne Johnston
DeWayne Johnston

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