

24162
October 24, 2022

**PROCEEDINGS OF THE CITY COUNCIL
OF THE CITY OF GRAND FORKS, NORTH DAKOTA
October 24, 2022**

The city council of the city of Grand Forks, North Dakota met for a special meeting in the council chambers in City Hall on Monday, October 24, 2022, at the hour of 5:30 o'clock p.m. Mayor Bochenski presiding. Present at roll call were Council Members Weigel, Osowski, Weber, Lunski, Kvamme, Sande, and Vein-7; absent: None.

Mayor Bochenski announced that anyone wishing to speak to any item may do so by being recognized prior to a vote being taken on the matter and that the meeting is being televised.

PLEDGE OF ALLEGIANCE

City Council led the Pledge of Allegiance.

HEAR APPEAL ON SPECIAL ASSESSMENT FROM SENSKE
RENTALS, LLC FOR PROJECT NO. 7539, DISTRICT NO. 737,
CERTIFY SPECIAL ASSESSMENTS AND APPROVE FINDINGS

The staff report from the finance department regarding hearing appeals, certification of special assessments, and approval of findings on October 24, 2022, on Project No. 7539.00, District No. 737, Paving & Street Lights – Oscarville, with a recommendation to certify the special assessments and approve the findings for Project No. 7539.00, District No. 737. The City Council at its October 17, 2022 meeting, took action to postpone the hearing of the appeal from James Senske and Senske Rentals, LLC to this special meeting as Mr. Senske's attorney was unavailable on October 17, 2022.

Ed Liberman, Asst. City Engineer, provided a brief history of special assessment projects that have been completed in the area and provided details of Project No. 7539, District No. 737, Paving & Street Lights – Oscarville. Prior to the paving project, the roadways were rural gravel roads with ditches. The project installed urban paved roads including curb and gutter, and driveway cuts for property owners. Liberman also reviewed the cost shares for classified streets (80% city/20% assessed to benefitting properties) and local streets (100% assessed to benefitting properties). Public Input meetings were held on the project and property owners expressed concern with the high cost of the project and the City approved an adjustment to the cost shares with a larger city participation for local streets to a 40% city share/60% assessed to benefitting properties, and maintain the classified streets at 80% city share/20% assessed to benefitting properties. This resulted in an overall project cost split of 50/50. Only 1 protest was received on the project during the initial protest period and that was from Red River Archers. James Senske and Senske Rentals, LLC did not protest the project. The bid was awarded to the low bidder, Strata Corporation, and the project was constructed according to city standards. During construction, Mr. Senske expressed concern about the grade of the driveway connection for his property, which has specialized equipment that will enter and exit his property. To address this concern, the city initiated a change order in the amount of \$27,000 with the contractor, Strata Corporation, to raise the roadway. This change order was split 50/50 with the assessed portion being included in the total amount assessed to all benefitting properties in the district. A series of letters was sent out to all properties within the district: an estimated assessment based on engineer's estimate, estimated assessment based on bid, and final assessment upon completion of the project and final assessment amount.

24163

October 24, 2022

Samantha Bergan, Sr. Accountant, provided information on the assessments applied to the James Senske and Senske Rentals, LLC lots, as well as copies of sample letters sent relating to one of the Senske properties.

DeWayne Johnston, Johnston Law Firm, shared comments on behalf of his client relating to the benefit and their belief that the benefit was not appropriately assigned to the properties. He stated that the Special Assessment Commission applied the benefit according to the manual they have for assigning benefits, however given this situation, they believe that a modification should have been made and further analysis given as the benefit assigned placed a large cost on some properties that was at the same level as improvements made to the property by the property owner. He concluded that their assertion is that the special assessment commission did not provide an adequate analysis of the benefit as required by law separate from the cost factors and would request the City Council send this project back to them for further review.

Dan Gaustad, City Attorney, asked whether the appealing party is saying that the Commission did not follow the special assessment policy as adopted by the City Council. Johnston replied that while they may have followed the manual per se, there are times to do further analysis and vary from the policy and in that regard doesn't think they did. He continued that there was no rationale as to why they just followed the manual, and they did not recognize this was a different situation or listen to the concerns of Mr. Senske and just took the process in the manual and recommendation of city staff. Johnston suggested that they should have run several scenarios to assign benefit to ensure that the one they set was the best one and not just looked at what was included in the manual.

Gaustad stated that based on the infrastructure improvements there is typically an increase in value to a property. Johnston stated that his client does not see that for his properties. He provided additional comments regarding the need for the infrastructure and questioned benefit to the client's properties.

Council Member Sande asked for information on how benefits are assigned for special assessment projects and if we followed the standard method in this case. Gaustad provided information to the City Council on the requirements in Century Code for special assessing a project, the adopted city policy of the City of Grand Forks, and that the process was followed for this project. A person challenging an assessment has the burden of proof to show that the process was not followed and the assessment is invalid. Gaustad also provided information on case law relating to special assessments including those arguments relating to changes in cost and comparison of property value to special assessment amounts and market value. In conclusion, the Special Assessment Commission applied our policy as adopted and there is basis to uphold the special assessment for this property.

Mayor Bochenski asked whether the appealing party would be willing to pay a higher cost if this was reviewed and found that was appropriate. Johnston stated that he did not believe that the cost can be increased from the total amount assessed.

It was moved by Council Member Sande and seconded by Council Member Weber to approve the recommendation, certify the special assessments for Project No. 7539.00, and District No. 737, and approve the findings for the project. Motion carried unanimously.

24164

October 24, 2022

ADJOURN

It was moved by Council Member Sande and seconded by Council Member Osowski that we adjourn at 6:05 p.m. Motion carried unanimously.

Respectfully submitted,



Maureen Storstad
City Auditor



Approved:

Brandon Bochenski, Mayor

24165
October 24, 2022

(This page was left blank intentionally)