



City of Grand Forks  
Staff Report  
Committee of the Whole – N/A  
City Council – June 2, 2025

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**Agenda Item:** Hear appeals and approve benefit determination on June 2, 2025 for Project 7539.00, District 737 – Paving & Street Lights – Oscarville.

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**Submitted by:** Maureen Storstad, City Auditor  
Dan Gaustad, City Attorney

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**Staff Recommended Action:**  
Approve Benefit Determination for Project 7539.00.

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**Committee Recommended Action:** N/A

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**Council Action:**

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**BACKGROUND:**

This project was reviewed by the Special Assessment Commission and benefits established for affected properties. The Commission held a public hearing for this project on September 29, 2022. The Commission forwarded this project for your recommendation for certification to the County Auditor for collection. An appeal was submitted by one of the property owners in the district, James Senske and Senske Rentals, LLC immediately preceding the City Council meeting on October 17, 2022. Mr. Senske was not able to attend the October 17<sup>th</sup> Council meeting, therefore the City Council approved all projects except 7539.00, and held a special City Council meeting the following week on October 24<sup>th</sup>, 2022. This allowed Mr. Senske to be in attendance. City Council approved the recommendation to certify special assessments and approved the findings for project 7539.00 with no changes at its meeting on October 24, 2022.

In November, 2022, Senske Rentals, LLC then appealed the special assessment decision by the City Council to the district court. The district court upheld and affirmed the City Council's decision. Senske Rentals, LLC then appealed the district court's decision to the North Dakota Supreme Court. The ND Supreme Court issued a decision on September 12, 2024 reversing the decision of the district court and remanding the back to the district court to make a "determination of the special benefits to Senske's lots independent of the cost of the project and application of that special benefit as a limit on assessments to each of Senske's lots." The district court then remanded the matter back to the City to make such determination. It should be noted this was a 3-2 decision, with a lengthy dissenting opinion, and overruled prior caselaw

that had been relied on in previous appeal by Senske with respect to the special assessments on prior improvement projects.

The ND Supreme Court, in its decision, cited to N.D.C.C. § 40-23-07, which in relevant part provides there is to be a determination of the “amount in which each of the lots and parcels of land will be especially benefited by the construction of the work for which [a] special assessment is to be made” and an assessment against each lot is also to be determined, which assessment cannot exceed the benefits. Senske Rentals, LLC v. City of Grand Forks, 2024 ND 172, ¶18. The Court went to state that the primary requirements that must be satisfied for a special assessment to comply with N.D.C.C § 40-23-07 are (1) special benefit from the particular improvement project to each lot or parcel must be determined, (2) the special assessment that is levied against each lot or parcel must be limited to its just proportion of the total cost of the improvement project and (3) the assessment against any lot or parcel must not exceed the benefit that was determined to have accrued to the lot or parcel.

The focus of the appeal and decision by the ND Supreme Court was the quantification of special benefits because the Court stated that without such quantification, the ability to determine whether the assessment (that is in terms on money) did not exceed benefits could not be made. The Court noted that to compare two things and determine if one exceeds the other, the two compared things must be in the same unit of measurement – since the special assessment are denominated in dollars, then to determine whether the special assessment does not exceed the special benefits, then the special benefits must likewise be in dollars. Senske Rentals, LLC v. City of Grand Forks, 2024 ND 172, ¶25. In sum, a monetization of the special benefits is to be made.

In making this determination of the special benefits, the ND Supreme Court also stated that it will defer to the factual determinations of benefits based on the special assessment commission’s City Council’s consideration of the information before each of these bodies, and it will not re-weigh the information that is relied on in determining special benefits. Senske Rentals, LLC v. City of Grand Forks, 2024 ND 172, ¶23. Further, the Court stated that detailed findings of fact are not required, but rather these determinations are to be based on the “exercise of independent judgment in estimating present and future benefits based on evidence and personal knowledge.” Senske Rentals, LLC v. City of Grand Forks, 2024 ND 172, ¶40. Of course, there must be some basis for the benefit determination, and the ND Supreme Court cited to prior cases as to the information considered for this determination – cases that described reducing overland flooding, enhance and promote commercial development, future development, fire protection, facilities that moderate development growth, valuation increases.

Finally, the ND Supreme Court provided an example of how the monetized benefits could then be applied to the lots and parcels by use of a formula. The example given was Benefit = Frontage Feet of Lot x estimated benefit per foot. Senske Rentals, LLC v. City of Grand Forks, 2024 ND 172, ¶32. The Court noted that the “estimated benefit per foot” is to be quantified. Nonetheless, the use of formulas in this manner to spread or assign the monetized benefit was given as an acceptable method.

Based on this ND Supreme Court decision, and recommendations of our City Attorney, staff has worked on monetizing or placing a dollar value on the special benefit received by the lots or parcels from project that are subject to being specially assessed. In doing so, several departments provided professional opinions, data, and other information that was used and relied on to monetize these special benefits. This effort was done in order to assist the special assessment commission and the City Council in their respective evaluation as to whether the special benefits of this project to the lots or parcels outweighs the cost assessed to lot or parcel for this project or in this case to the Senske parcels. The formula used to spread the special assessment costs to the lots and parcels was also applied to spread the monetized benefits to the lots and parcels so that the comparison of benefits and costs was not only based on the same unit of measurement (dollars) but also applying the same formula methodology.

These corresponding documents are attached to this staff report.

The Special Assessment Commission met on May 1, 2025. A representative of Senske was present and provided information to the commission, which information was not accepted or relied upon by the special assessment commission. Rather, the special assessment commission accepted the rational of and the underlying professional opinions, data and information presented by the City staff to monetize the special benefits associated with this project. Based on this, the special assessment commission determined the special benefit accruing to each lot or parcel from this project, and likewise had previously determined the special assessment accruing to each lot or parcel both being based on the same proportional formula, and found that assessment against any lot or parcel does not exceed the benefit which was determined to have accrued to each lot or parcel. The Commission forwards this project to City Council for your approval of the benefit determination.

#### **ANALYSIS AND FINDINGS OF FACT:**

- Work is complete on the project in 2022.
- City Council approved certification of project on October 24, 2022
- Bonds are issued to finance this work.
- Special Assessments were certified to the County Auditor November 1, 2022.
- Appeal was filed with the district court, it affirmed the City's prior decision, and that district court decision was then appealed to the ND Supreme Court.
- ND Supreme Court reversed the district court decision, which has resulted in this matter being remanded back to the City for a determination of benefit, in terms of dollars, independent of the cost of the project to evaluate whether the special assessment for any lot or parcel exceeds the special benefit.
- The Special Assessment Commission has spread the benefits to the affected properties based on the same proportional formula used to spread the assessments to each lot or parcel.
- The Special Assessment Commission has determined the special assessment to each lot or parcel does not exceed the benefit which was determined to have accrued to such lots or parcels.
- The Special Assessment Commission approved special benefit determination at its May 1,

2025 meeting and has forwarded this determination and to the City Council for its consideration.

**SUPPORT MATERIALS:**

- Copy of district map
- Copy Benefit Value Analysis
- Supporting Documentation of Benefit Value Calculations