

SPECIAL ASSESSMENT COMMISSION MEETING
Minutes

Thursday, May 1st, 2025 – 3:00 p.m. – 2nd Floor Conference Room and Teams

Commission Members Present: Allen Page, Brian Poykko, Emily Fossen

Finance Departments: Samantha Bergan, Stefanie Coleman, Maureen Storstad

Others Present: DeWayne Johnston (Senske Attorney)

1. Approve Minutes

No minutes were presented.

2. Assign Benefit to the following projects:

No projects were presented.

3. Determination of Benefit to the following projects:

a. Project #7539.00, District #737 - Paving & Street Lights – Oscarville

At the request of Senske attorney DeWayne Johnston at the Commission meeting on March 27, 2025 the Commission postponed the determination of benefit to May 1, 2025 to allow him and his client, a property owner in the district, time to review the data the City used in calculating the project benefits and to produce their own analysis of the project benefits to present to the Commission.

City Attorney, Dan Gaustad explained to the Special Assessment Commission that state statute requires the Commission to determine the amount each parcel is specially benefited. He stated that North Dakota Century Code requires the Commission to make or cause to make a complete list of benefits and the amount each tract is benefited. He stated that North Dakota Century Code also requires that the Commission determine that no assessment exceeds the benefit for each parcel being assessed. Gaustad explained that after the hearing, the Commission is to confirm a list of assessments and certify them to be correct, then file the assessment list with the auditor. He went on to say that a publication must then be made with respect to City Council approving confirmed assessments. During such City Council meetings, anyone who is grieved by a presented assessment determination will have the opportunity to present to the Council their reasons. The City Council can then adjust the assessment and adjust the aggregate amount, with the adjusted assessments not exceeding the benefits.

Gaustad explained that prior to the Senske Hearing regarding special assessments, the Commission's policy derived the benefit dollar amount from the cost dollar amount.

He stated that, according to a ruling made by the ND Supreme Court, to compare the cost to assure the benefits exceed cost, the benefit must be compared using the same unit of measurement used to determine the cost, such as dollars. He explains this case as described in the Senske decision the benefits were property and fire protection, dust suppression, pedestrian accommodation, drainage control and lighting for pedestrian safety. The court in Senske must have a bases for its determination of benefit, it does not just have to be the present use but a possible future use can be considered. He explained that formulas are allowed when determining the cost or benefit proportion, such as per square foot or front footage, and that the courts stated that there is no precise formula to quantify the benefit. An example formula that was given from a recent case was, front footage multiplied by the estimated benefit per square foot equals the total estimated benefit used to compare with costs. Gaustad explained that the courts ruled that you do not have to make detailed findings of fact, but rather to exercise independent judgement in estimating present and future benefits based on evidence and personal knowledge.

The process that has been used for the benefit determination on this street improvement project there is information compiled by City Staff from Fire Chief, Gary Lorenz and Interim Police Chief, Dwight Love and Sarah Sesselman from Engineering that calculated delayed response time, and value of a human life from the enhancement of public safety that was described from Chief Lorenz and Chief Love. Gaustad explains that with street and water there is protection of buildings that exist in the development. In the calculation for this project the value of the existing buildings was not used in the benefit, only the value of future development was used as a conservative approach. Future development value methodology used by the Assessing department comes up with a comparable analysis looking at a similar area and coming up with an average cost per acre and reducing that by 25% and taking out the cost of the existing value to come up with a conservative development value for the area.

Senske Attorney, DeWayne Johnston, was then given the opportunity to talk through the letter and documents he provided immediately preceding the meeting. Johnston explains after the prior meeting where he was given 6 weeks to come up with his benefit value, he was unable to get anyone in that time frame. Johnston goes on to say that he feels that the information the City Staff compiled and presented to the Commission is not a valid way to determine benefit value. Johnston states that there is no difference in fire response times and feels there is no benefit added by having a paved road. He went on to say that the benefits presented to the Commission should be specific to the properties and not a general benefit used for all projects and areas. The study adopted by the Department of Transportation determining the value of a life is a compilation study, and it is just used to increase the benefit dollar. Johnston explains he does not think the dollar amount listed in the study would be the same for someone in Grand Forks and a survey should be done to determine what people in this area would be willing to pay for a human life. Johnston states the City is just presenting the Commission with this information but the Commission should independently hire a consultant to compile information to determine the benefit.

Commission President Poykko, stated that the Commission has been using these criteria to determine benefit and asked Commission members Fossen and Page if they have questions or concerns with the current benefit determination methods. Commission members Page, stated that City staff has researched and compiled information and dollar amounts supporting the benefit amount and without an

alternative number and reasoning presented to compare they do not have any other information to base their determination.

**Motion by Page, second by Fossen to approve the determination of benefits as presented.
Aye: All. Motion Carried.**

Meeting adjourned at 3:35pm

Respectfully submitted,

Samantha Bergan
Accountant, Senior