

SPECIAL ASSESSMENTS

Issues and Options

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I. Introduction.

Special Assessment Bonds are the most common way that cities in North Dakota finance streets, water lines, sewer lines, storm water lines and retention ponds, street lights, sidewalks and related items. Special Assessment Bonds are payable from special assessments that are assessed against benefitted property but are backed by the full faith and credit of the city. There will be another presentation on municipal borrowing at this convention so I will not get into the subject of special assessment bonds in this outline. But before a city can issue special assessment bonds, the city needs to follow the steps set out in the North Dakota Century Code Chapter 40-22 from creating a special assessment district to letting a construction contract. After that a city needs to follow the steps in NDCC Chapter 40-23 or 40-23.1 to levy the assessments against benefitting property in the district. Although the steps are set out in detail in the century code, some cities have gotten into trouble by not completely following those steps. More often, although a City follows the proper steps, there is litigation over the subjective decision process in creating a district, and in determining benefits and assessments to individual property in the district. As a result, there has been a considerable amount of litigation involving the special assessments process. The good news for cities in North Dakota, unlike cities in many other states, the City generally will prevail if they followed the procedural steps (sometimes even if they did not) and articulated a rational decision on the spreading of the special assessments.

II. Statutory Authority.

North Dakota Century Code Chapter 40-22, "Improvements by Special Assessment Method," is the basic chapter of the state statutes dealing with special assessments. Pursuant to that chapter, a wide variety of improvements may be paid by special assessment financing. They include construction of a water supply system, sewerage system, street system, pedestrian tunnels and bridges, curbs, gutters, sidewalks, street lights, Christmas street lighting decorations, improvement of boulevards, flood protection works, construction of parking lots, ramps, garages, etc.¹ There are, however, other chapters also dealing with special assessments just for sidewalks,² curb and gutter,³ street lights,⁴ boulevards,⁵ promotion of business activity,⁶ and pedestrian mall and skyway improvements⁷. In addition, park districts are authorized to issue special assessments for the purpose of opening, establishing and improving parks, boulevards, and ways or streets about the park.⁸ No election is required prior to issuing Special Assessment Bonds, but instead there is a procedure in which a majority of the property owners can protest certain improvements.

¹ N.D. Cent. Code § 40-22-01.

² N.D. Cent. Code Ch. 40-29.

³ N.D. Cent. Code Ch. 40-31.

⁴ N.D. Cent. Code Ch. 40-30.

⁵ N.D. Cent. Code Ch. 40-32.

⁶ N.D. Cent. Code Ch. 40-22.1.

⁷ N.D. Cent. Code Ch. 40-62.

⁸ N.D. Cent. Code § 40-49-12(4).

III. Procedural Requirements Relating to Creation of Districts.

The first step in the process is to create an improvement district including all properties which, in the judgment of the governing body, will be benefitted by the construction of the improvement project.⁹ Typically, the engineer for the City will provide the City with a proposed district, and the governing body must determine if that proposed district includes all of the benefitting property, or if it is too big and also includes property not benefitting from the improvements. The first decision is the most important, because if the district does not include all benefitting property, the benefitting property not in the district can not be assessed at all. If a City includes too much property initially, they can correct that later in the assessment process by simply not assessing the property in the district which has no benefit. The problem of including too much property initially, is the risk of the improvement district may be protested out which will be discussed later. Normally, the decision of the size of the district is simple. Most improvement district are created when a land developer requests a City to create a special assessment district just to provide street, sewer and water service to a new platted development owned entirely by the developer. However, often the decision is more complex, especially when repaving main streets, redoing storm drains, flood protection etc. The next step is for an engineer selected by the municipality to prepare a report as to the general nature, purpose, and feasibility of the

⁹N.D. Cent. Code §§ 40-22-08 and -09. Robertson Lbr. Co. v. City of Grand Forks, 147 N.W. 249 (N.D. 1914).

proposed improvement, and an estimate of the probable cost of the work.¹⁰ A relatively new requirement, is for the engineer to provide a separate statement of the estimated cost of the work for which proposals must be advertized, (the construction work) and other items of estimated costs which are anticipated to be assessed as part of the project. The other items may include engineering costs, land acquisition, testing costs, an administration fee, construction costs, and capitalized interest on the bonds to be issued.

After that report has been approved by the city, the governing body shall, by resolution, declare that it is necessary to make the improvements described in the report. This resolution will then be published once each week for two consecutive weeks in the official newspaper of the municipality.¹¹ If, within thirty (30) days after the first publication of the resolution protests are not filed by a majority of the landowners in the district by area, the city may proceed with the project.¹² There are, however, exceptions provided by statute where the resolution for necessity does not have to be published and where there is no ability to protest the project . Those exceptions are for improvements which constitute a water or sewer improvement, or if a written petition for the improvement was signed by owners of a majority of the area in the improvement district.¹³ In addition, if a city has entered into an agreement

¹⁰ N.D. Cent. Code §40-22-10.

¹¹ N.D. Cent. Code §40-22-15. Serenko v. City of Wilton, 1999 ND 88, 593 N.W.2d 368.

¹² N.D. Cent. Code §40-22-17, 40-22-18, Murphy v. City of Bismarck, 109 N.W.2d 635 (N.D. 1961); and City of Fargo v. Fahrlander, 199 N.W.2d 30 (N.D. 1972).

¹³ N.D. Cent. Code §40-22-15.

with a state agency or federal agency for the improvement, and if the cost of the project to be assessed does not exceed twenty-five percent (25%) of the total cost of the project, a written protest by owners of seventy-five percent (75%) of the property liable to be assessed for the improvement is required to bar further proceedings.¹⁴

The City must direct the engineer to also prepare plans and specifications, which must be approved by the governing body prior to advertising for construction of the improvement.¹⁵ The construction work must be advertised by the governing body in the official newspaper of the municipality once each week for two consecutive weeks, with the first publication being at least fourteen (14) days before the bid opening.¹⁶ The exception in State law of not having to advertise for bids on projects less than \$100,000 does not apply to improvement districts due to North Dakota Century Code §40-22-19. The construction bids must be sealed bids, and attached to each bid in a separate envelope there must be a bid bond in an amount equal to 5% of the bid.¹⁷ In the bid bond envelope there must also be a copy of the license or certificate of renewal thereof of the contractor.¹⁸ Once bids are opened

¹⁴ N.D. Cent. Code §40-22-06.

¹⁵ N.D. Cent. Code § 40-22-11.

¹⁶ N.D. Cent. Code §48-01.2-04; 40-22-19..

¹⁷ N.D. Cent. Code §48-01.2-05(4); 43-07-12..

¹⁸ N.D. Cent. Code §43-07-12, and Haugen v. City of Berthold, 267 N.W.2d 198 (N.D. 1978).

and deemed proper, the city may award the bid to the "lowest responsible bidder"¹⁹ if the bid does not exceed the engineer's estimate by 40% or more.²⁰ Before awarding the bid the engineer must file a detailed statement of the cost of the work advertized. It is important to note that the 40% limit only applies to cost of the work advertized, not to the other items included in the engineer's first report such as land acquisition, construction interest etc. Before the actual construction contract can be awarded by the city, a contractor's bond covering performance, payment of subcontractors, and taxes must be provided to the city by the contractor.²¹

It is important I note that there is a statutory exception to the bid requirement outlined above. If the governing body determines that an emergency situation exists, a contract for a public improvement may be made without seeking bids.²² Emergency situation in Section 48-01.2-01(13) to mean a "sudden generally unexpected occurrence that requires immediate action to protect public health, safety or property and which ends when the immediate threat to public health, safety or property ceases, and services are restored. The term does not include a lack of planning on the part of the governing body, architect, engineer, landscape architect or contractor". Thus a very narrow exception, and unlikely to be used for special assessment projects.

¹⁹ N.D. Cent.Code 48.01.2-07; 86 A.L.R. 131 and 64 Am. Jur. 2d "Public Works and Contracts" §§67-70.

²⁰ N.D. Cent. Code §40-22-29.

²¹ N.D. Cent. Code §48-01.2-10.

²² N.D. Cent Code §48-01.2-04(2)..

The above discussion outlines the procedures set out in Chapter 40-22, Improvements By Special Assessment Method. The other chapters involving special assessments for sidewalks, curb, gutter, street light, and boulevards have some differing requirements and the procedures for those particular chapters must be followed.²³ In addition, where federal funds are involved, it may be necessary to follow federal bidding and advertising requirements, which may be different from state law. Attached as Exhibit A is a standard set of resolutions used by the City of West Fargo for improvement districts.

IV. Determination of Assessments.

A. Procedural steps.

In order to pay for the cost of improvements in an improvement district, it is necessary to spread special assessments against the property benefitted by the assessment. There are two statutory procedures for determining the assessments, Chapter 40-23 and Chapter 40-23.1, N.D.C.C. In that the alternate method set out in Chapter 40-23.1 is rarely used, this section will discuss procedure set out in Chapter 40-23. Section 40-23.1 basically allows the City Auditor to determine the assessments without the need for a special assessment commission, and provides a mathematical formula for determining the assessments based upon the distance the property is away from the improvement.²⁴ There may be a unique situation in which that alternate assessment method would work, but, generally, cities follow the more flexible procedures in Chapter 40-23. Also, if improvements are done under

²³ See, e.g., footnotes 2-8 above.

²⁴ N.D. Cent. Code §§ 40-23.1-02 and 40-23.1-03.

chapters other than 40-23 for sidewalks, curb and gutter, street lights, boulevards, promotion of business activity, and pedestrian mall and skyway improvements, those particular chapters set out their own assessment procedure.

Pursuant to Chapter 40-23, the procedural steps in establishing assessments are quite straightforward. However, the task of determining the proper assessments in certain cases can be very difficult. The city, through its executive officer, must first appoint a special assessment commission comprised of three members who must be residents and property owners in the city and who may not hold any other municipal office.²⁵ At any time after the contract and bond for any work in a special assessment commission has been entered into, the City may request the special assessment commission to assess a specified amount of costs within the district.²⁶ Normally, a city does not direct the special assessment commission to determine the assessments until the project has been completed so that the total cost estimate is completely accurate. However, there is a statutory procedure for additional assessments to be levied if the city's original cost estimate was low.²⁷

The special assessment commission is required to determine which land should be assessed within the district, what the benefit for each parcel of land was from the project, and what amount to assess against each lot.²⁸ They must assess the amount set by the City

²⁵ N.D. Cent. Code §§ 40-23-01 and 40-23-02.

²⁶ N.D. Cent. Code §40-23-05.

²⁷ N.D. Cent. Code §40-26-02.

²⁸ Farmers Union Cent. Exch., Inc., v. Grand Forks County, 443 N.W.2d 907 (N.D. 1989).

governing body, within the district created by the governing body of the city. They can not assess more or less, and can not assess property not in the district even if it benefits from the project. The amount to be assessed on any property cannot exceed the benefit for that lot from the project.²⁹ The special assessment commission must then prepare a special assessment list which contains the legal description of the property as well as the list of benefits and assessments.³⁰ The commission shall then cause the assessment list, which need not include the amount benefitted, to be published once each week for two consecutive weeks in the official newspaper of the municipality.³¹ The notice shall set forth the hearing date, which may not be less than 15 days after the first publication of the notice, and that a copy of the notice must be mailed to each public utility having property on the assessment at least 10 days before the hearing to its address shown on the tax rolls.³² If the assessment list includes more than 5,000 lots or tracts, the entire list does not need to be published, but notice must be given which makes the list available for public inspection during reasonable business hours. Furthermore, as an alternative to the publication requirement, the commission may send a letter to all property owners of record on the assessment list stating their assessments. The letter must be sent by certified mail or by regular mail attested to by an affidavit of mailing signed by the City Auditor. In addition to the letter, the commission

²⁹ N.D. Cent. Code §40-23-07.

³⁰ Id.

³¹ N.D. Cent. Code §40-23-10.

³² Id.

shall cause publication of a map outlining the assessment district with a notification stating that if the individual has not yet received a letter regarding that assessment that person should contact the City Auditor.³³ This individual mailed notice provision may be less expensive than publishing the assessment list in the paper, especially if you have a lot of long legal descriptions. It also gives better notice to the persons being assessed.

At the assessment hearing, the commission may make such alterations in the assessment as in its opinion may be just or necessary to correct any error in the assessment list. However, no assessment shall exceed the benefit as determined by the commission for that particular piece of land.³⁴ After the hearing, the special assessment commission shall confirm the list and attach to it its certificate certifying that the list is correct as confirmed and then file that list with the City Auditor.³⁵ The City Auditor shall publish at least once in the official newspaper of the municipality a notice stating that the assessment list has been confirmed by the special assessment commission and that it has been filed in his office and is open to public inspection.³⁶ The notice shall also state the time and place where the governing body will act upon such assessment list, which must be more than 15 days after publication of such notice.³⁷ **Prior** to the meeting at which the governing body will act upon the assessment, any aggrieved person may appeal from the action of the special assessment

³³ Id.

³⁴ N.D. Cent. Code §40-23-11.

³⁵ N.D. Cent. Code §40-23-12.

³⁶ N.D. Cent. Code §40-23-13.

³⁷ Id.

commission by filing with the City Auditor a written notice of the appeal stating the grounds upon which the appeal is based.³⁸

It is important to note that a person may appeal to the city commission even though they did not attend the special assessment commission meeting or file an objection with the special assessment commission.³⁹ However, if the person does not file an appeal to the city prior to the meeting at which the city is going to confirm the list, the determination as to such benefits is final and will not be disturbed by a court of equity in the absence of fraud or other grounds for equitable relief.⁴⁰ If a person has filed an appeal prior to the meeting, that person may appear before the governing body at the meeting and state his case. The governing body shall hear and determine the appeals and objections and may alter the assessments, except that the aggregate amount of all assessments cannot be changed, and no assessment as adjusted shall exceed the benefits to the parcel of land to which it is assessed as determined by the assessment commission.⁴¹ At the completion of the meeting, the city commission shall confirm the assessment list. The City Auditor shall attach to the list his certificate that the same is correct as confirmed by the governing body.⁴² As stated above, the procedure is quite simple, and most of the trouble cities get into is not strictly following the procedures. If you follow the procedures, almost all contests of your assessments will fail in North

³⁸ N.D. Cent. Code §40-23-14

³⁹ Soo Line R. Co. v. City of Wilton, 172 N.W.2d 74 (N.D. 1969).

⁴⁰ Reed v. City of Langdon, 54 N.W.2d 148 (N.D. 1952).

⁴¹ N.D. Cent. Code §40-23-15.

⁴² N.D. Cent. Code §40-23-16.

Dakota. Attached as Exhibit B is a standard set of resolutions used by the City of West Fargo for assessing a project.

B. Determining Benefit and assessments.

Although the actual determination of the benefits and assessments may sometimes be quite simple, it often is more of an art than a science. Most street and water line projects are computed on a front-foot basis of the property fronting the street or water line, and often storm sewer improvements are based on the area of the property in the district. However, those methods are not free from challenge where the benefits conferred upon the assessed property are not equal and uniform.⁴³ Clearly, special assessment commissions are not limited to front-foot basis or area basis and can be quite innovative in coming up with a proper answer.⁴⁴

Again in one of the most common scenarios, a developer approaches the City about developing a tract of property the developer owns, and all assessment will be against lots in that developments. Typically the City would spread street, water and sewer, and street lights on front foot basis, and storm water on area basis. If there are cul de sacs you often get small street frontage for big lots so often cities give those lots an average assessment, or go into the property 30 to 50 feet and use that as lot frontage. In these situations it is beneficial to discuss assessments with developer early, and he may want all lots to have same assessments for marketing purposes, or have one assessment amount for all smaller lots and another for

⁴³ Northern Pac. Ry Co. v. City of Grand Forks, 73 N.W.2d 348 (N.D. 1955).

⁴⁴ Haman v. City of Surrey, 418 N.W.2d 605 (N.D. 1988); and Cloverdale Foods Co. v. City of Mandan, 364 N.W.2d 56 (N.D. 1985).

larger lots. As long as the assessments, make sense there is no harm in following suggestion of developer. A city just does not want to put too much assessments on some lots and have the others low and risk the more expensive lots coming back to city for back taxes.

Where assessments get more difficult is, for example, for main streets that have no lots fronting them, or limited access, that are really collector streets for a large part of a city. Often these streets are built wider than a typical street and thus cost more. The lots abutting this street often abut another street from which they get their access. To just add up the cost of the street and assess it on a front foot basis on the abutting lots may not be an equitable solution. Those lots may already be paying a normal street assessment for the street from which they have access. Most often the people on those lots do not want a wider street and the associated traffic which they feel devalues their lot. Some cities use sales tax to pay for part of those street because of the large city wide benefit. Some create an assessment district a 1/2 mile wide on each side of those streets, some 1/4 mile wide. If there is direct access to the street than typically a "normal" cost of a street is assessed against property having access. If a lot does not have direct access and is being assessed for another street, that lot gets assessed the same as all lots in the district. The theory being each lot must pay for its own access street plus one or more collector streets. Others may have a prorated assessment, the closer to the collector the higher the assessment. Typically in these types of assessments each residential lot is treated the same, regardless of size, since they are just as likely to use the collector street.

Flood protection is another tough call on assessments. Do you do it by area alone, some cities do that, or do you take into account elevations of property, whether or not they

are in a flood plain, the value of the house and other relevant factors. Storm water retention ponds and lines sometimes are difficult to assess. People on the higher land claim they are getting no benefit since they are dry in heavy rains, and the benefit is to people who are on lower land and get flooded during heavy rains. Obviously, the people in the lower property say they are getting flooded because of the run off from the higher land. Most cities have the engineer determine which properties drain into the retention pond or storm drain , or storm water lift station and include them in district and assess on the area of each lot, since rain falls equally on each lot. However, it is not always easy to determine whose drainage goes where, and it may vary with a different size rain event.

Another issue that is often raised, especially where you put in an improvement to serve a big area, such as a sewer lift station, is that some of the property is already developed. some may be developing and some property may be years from developing, and if you ask the farmer, his property will never be developed. The Supreme Court has said that you do not look at the current use of the property, but at its potential use.⁴⁵ If you were bound by actual use, you could never assess a vacant lot in a developed subdivision. It would be extremely hard to plan for future growth, and develop the infrastructure in an orderly manner. Thus, Cities can look to future use, and will win on that basis if challenged. However, these assessments often lead to heated meetings, court threats and bad blood between property owners on the edge of a growing city. Unfortunately, there is really no way to avoid the conflict between a growing city, and surrounding property owners who really do not want

⁴⁵ Soo Line Railroad v. City of Wilton, 172 N.W.2d 74 (N.D. 1969); Farmers Union Central Exchange Co., Inc. v. Grand Forks County, 443 N.W. 2d 907 (N.D. 1989).

to develop. Communication helps, but when one property owner wants to develop, and others do not but their property will be benefitted, there will be conflict.

Another tough issue for a growing City is that a City can not assess property outside its city limits, even if it benefits from the improvement. An example is a section line road improvement where the section line is also the City boundary. Normally the street would be assessed one half to each side, but in this case a city can only assess the property inside the City, which must either get 100% of the assessment, or the City must hold 50% of the costs. The state has provided a mechanism to later assess property outside the City when it is annexed under section 40-23-19. In a nut shell, the City at the time of annexation or thereafter, creates anew assessment district and goes through the normal process of creating a district except there is no new contract and no protest procedure since the improvement is already completed. The same assessment procedure is also followed, spreading the costs to the newly annexed area that the city did not spread to other property. This procedure works, but a City has to have the ability to carry those assessments during the period prior to annexation. There is also a similar procedure for assessing property that was in the City when the improvement was done, but such property was not in the original assessment district. When another improvement district is created, the cost of the first project attributable to the new area can also be added to the assessment amount. Typically this has been used when a major water line is constructed in one district which is being served immediately, but the line is sized to serve an adjoining area not yet ready for development. It is, of course, cheaper in the long run to size the original line to serve two or more areas, than size it just for the first district and then have to construct a parallel line later to serve the next area.

V. Related issues and options concerning improvement districts and special assessments.

A. Risks to City in creating assessment district.

Any time a City approves a contract in a special assessment district they are taking on a risk. They will be issuing a bond which the city is legally liable to pay, including the requirement of levying a general property tax city wide to make up any deficiency, or projected deficiency. Although under the state constitution, the obligation is not a debt for purposes of determining the debt limit of the city, it is for all other purposes a debt of the city. If no special assessments are not paid, there is no source of revenue to pay the bonds, and the City must do a city wide levy. It is not that rare for a landowner not to pay special assessments, and until currently, the landowner could fall 4 years behind on taxes before the year long process to forfeit the property would occur. The 2007 legislature changed that four year period to a two year period which helps considerably and thus shortens the potential cash flow problem normally to two years. However, sometimes the property owner will let the property come back for failure to pay special assessments, and thus the City ends up with the property but still no cash flow unless the City can sell the tax forfeited property.

The end of the oil boom in Western ND, the enactment of flood plain regulations, and high interest rate periods are three examples of where this has happened to some cities in North Dakota.

B. Option to eliminate or reduce the risk.

1. Cities in North Dakota have and are using several techniques to eliminate or reduce the risk on nonpayment of special assessments. The first and most effective way is for a city

not to do special assessment projects at all, and make the developer up front all of those infrastructure costs. That is common in some parts of the country. The problem in North Dakota is will that policy kill, or greatly reduce all development in a city. It may work in Denver and Minneapolis, but are there big enough developers in North Dakota to accept that level of risk and have the cash flow to do so?. Cities are not required to provide special assessment financing.

2. A more common approach in North Dakota is to require the developer to put in the underground improvements at its cost, and the City will special assess streets and street lights. Obviously, this reduces the risk by about one half since each part costs roughly the same. However, it is probably more effective than that since a developer must think twice before putting his own money up front, and will take more care to properly size the district and have some sales of property lined up before starting.

3. Another common approach is for the City to special assess the entire project, but require a letter of credit from the developer covering 25% to 50% of the project costs. If assessments are not timely made the City can draw on the letter of credit to make the bond payments. Generally, under those agreements you start with 25% to 50% coverage, but end up with 100% coverage of specials as lots are sold and built upon. Attached as exhibit C is a standard form of agreement used in some cities.

4. Another strategy that can work with options 2, and 3 , or by itself is for the City to only finance through special assessments projects that are properly sized for their community and have a good chance of success. Although there are economies of scale that make bigger developments cheaper per lot, do not allow a developer to talk a City into too big of a project.

Normally once the lots are built upon there is very little risk of non payment of special assessments. If a developer proposes a development that will take ten or more years to sell all of the lots, that is ten years of risk for the city. What is the right size depends on the situation in each city, and may change from time to time. Thus there is no right answer, but something for every city to always consider when approving a project.

C. Option of combining tax increment financing with special assessment bonds.

In order to give an incentive to new development some cities have combined tax increment financing and special assessments. Chapter 40-58-07 NDCC provides a mechanism to do tax increment financing. Typically this is done for commercial and industrial properties where no finding of blight is necessary. However, some cities have made a finding of blight and used tax increments in connection with residential development. It is outside the scope of this presentation to get into the procedural requirements to establish a tax increment district, but those requirements must be followed. Normally, it is almost impossible to market straight tax increment bond financings since they are not backed by the full faith and credit of the City, but only from the increased property value of property after the district is created. Some times the bank that is providing the private financing for a project, is willing to buy tax increment bonds, but that is about it. To get around that problem some cities agree to special assess the normal street, sewer, water type of improvements, but pursuant to section 40-58-20 NDCC, assess the tax increment district instead of individual properties. The end result is the full faith and credit of the city is behind the bonds, but the property owner in effect pays his special assessments by his general tax payments, a great benefit for the owner. Some cities have through developer agreements assess the individual

properties in the district but reduce the special assessments by the amount that property is contributing to the tax increment fund by its regular tax payments.

A couple of warning lights should be flashing by now in regard to these options. First the City is losing its general tax revenue from these properties until the special assessments are paid off which may be as long as 20 year. (as well as the county and school district). Other developer's, especially in residential projects may cry foul that you are placing them at a competitive disadvantage. If the development is going to occur anyway there is no reason to use this incentive. Also make sure the school district is on board before you do it.

D. When to stop special assessments.

Obviously, a city must stop levying special assessments on a lot when that lot has paid all of the special assessment levied on that property, whether by annual payments or prepayments. However, the North Dakota Attorney General has stated in a number of opinions that once the underlying special assessment bonds are paid off, all special assessments must stop, whether or not a property owner has paid the full amount of special assessments levied against the owner's property. This occurs with some frequency because generally, as permitted by law, the interest rate set by cities is 1.5% higher than the interest rate on the bonds. Often there are prepayments, and the cities may earn more interest in the sinking fund than the rate on the bonds. Sometimes the market for tax exempt bond interest improves, and a city may refund the bonds at a lower interest rate. In any event, when there is enough money in the sinking fund to pay or prepay the bonds a city is mandated to stop levying and special assessments. Normally, there is extra money left over, and the law permits the city to transfer that money to its general fund. But a city may not keep doing so

after enough money is collected to pay the bonds. There may be delinquent special assessments outstanding at the time the bonds are paid and the City may continue to collect those delinquent assessments. Also, although not addressed in any attorney general opinion, it is likely that if a city advanced some monies from the general fund to make bond payments because of an earlier deficiency, that it could continue to levy special assessments until the general fund had been reimbursed.

E. Options for not assessing 100% of the costs of a project.

Normally, Cities assess 100% of the cost of a project. But there are a number of options under which cities can assess less than 100% of costs in certain cases.

1. The simplest method is for a City to just pay part of the cost of a project from funds available in the general fund or from another source, like sales tax revenues. For example, one city has a policy on major roads to just assess the typical cost of a street, and use sales tax funds to pay the balance since the extra width of the road benefits the City at large. For most cities this is not a viable option due do lack of available funds.

2. Another method is often used for projects that are paid for in major part with federal or state funds. The state allocates these funds for certain major projects, usually main roads or bridges. As stated earlier, under section 40-22-06 NDCC, if you use special assessment financing for the local share of these projects, which share is 25% or less of total cost of project, there is a 75% protest requirement to kill the assessments, as opposed to the normal 50%. Also, pursuant to 21-03-7(3) NDCC, instead of special assessing the local share a City can publish a resolution in it official paper and if not more than 5% of the

assessed value of property in the City does not file a protest within 60 days of the publication, the City can issue general obligation bonds to pay the local share.

3. Section 40-24-10 allows a city the option of levying up to 20% of an assessment project city wide, as part of the general tax levy. This method can not be used under that statute for opening or widening of streets, or the laying of sewer and water connections from the main to the curb line. The part to be levied as a general assessment is considered a debt of the City for purposes of the debt limit limitations.

4. There is an obscure chapter, 40-56 NDCC entitled “Residential Paving Projects”, which provides another alternative for assessing less than 100% of residential streets. It only applies to paving in blocks in which 75% of block is residential in character, including churches, schools and vacant lots. Under this chapter, a City can normally assess 80% of project and use general obligation levy for the remaining 20%. It thus is similar to 40-24-10 NDCC discussed above, but it would apply to opening and widening of streets in residential areas, not permitted under 40-24-10 NDCC. In addition, the governing body, because of heavy traffic or other valid reason, can by resolution increase the 20% general levy to a higher figure (no upper limit set). If more than 50 % of cost to be levied city wide, than protest must be at 75% level to stop project. Otherwise a city follows normal assessment procedures for this type of district..

5. Section 40-22-16 NDCC allows a city, for a sewer or water project, or parking lot project, to in the resolution creating the district provide that a certain per cent of project is to be paid by revenues (no upper limit set), and just assess the remainder. However, the entire amount is backed by the full faith and credit of the City. The City issues improvement

bonds for the entire amount, and places the designated revenues into the improvement bond fund. along with the assessments collected.

EXHIBIT A

The Board of City Commissioners next took under consideration the question of the establishment of a _____ district for the City of West Fargo.

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION CREATING _____ DISTRICT NO. _____
OF THE CITY OF WEST FARGO, NORTH DAKOTA

WHEREAS, Kevin Bucholz, a Registered Professional Engineer, is the Engineer for the City of West Fargo, and the Board of City Commissioners has consulted with him relating to the establishment, size and form and other matters with regard to _____ District No. _____ of the City of West Fargo; and

WHEREAS, it is deemed necessary to establish a _____ district within the said City of West Fargo;

NOW THEREFORE, be it resolved as follows:

That there is hereby created _____ District No. _____ of the City of West Fargo, North Dakota, the boundaries of which shall be as follows:

SEE ATTACHED.

APPROVED:

President of Board of City
Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote the following commissioners voted aye: _____. The following commissioners voted nay: _____. The following commissioners were absent and not voting: _____. The majority having voted aye, the motion carried and the resolution was duly adopted.

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION DIRECTING ENGINEER TO PREPARE REPORT

BE IT RESOLVED by the Board of City Commissioners of the City of West Fargo, deeming it necessary to make certain improvements consisting of _____ and all other appurtenances, contrivances and structures used or useful in connection with the above specified improvements, be constructed and made in _____ District No. _____ of the City of West Fargo, the City hereby directs Kevin Bucholz, the Engineer for the City of West Fargo and being a competent engineer, to prepare a report as to the general nature, purpose and feasibility of the proposed improvement and an estimate of the probable cost of the work.

APPROVED:

President of Board of City Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote the following commissioners voted aye: _____
_____. The following commissioners voted nay: _____. The following commissioners were absent and not voting: _____. The majority having voted aye, the motion carried and the resolution was duly adopted.

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING ENGINEER'S REPORT

BE IT RESOLVED by the Board of City Commissioners of the City of West Fargo, North Dakota, that the report of the Engineer for the City of West Fargo as to the general nature, purpose and feasibility of the proposed improvement in _____ District No. _____ and an estimate of the probable cost of the work has been filed with this Board and that the same is hereby approved.

APPROVED:

President of Board of City
Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote the following commissioners voted aye: _____
_____. The following commissioners voted nay: _____. The following commissioners were absent and not voting: _____. The majority having voted aye, the motion carried and the resolution was duly adopted.

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION DIRECTING ENGINEER
TO PREPARE PLANS AND SPECIFICATIONS

BE IT RESOLVED by the Board of City Commissioners of the City of West Fargo, deeming it necessary to make certain improvements consisting of _____ be constructed and made in _____ District No. _____ of the City of West Fargo, the City hereby directs Kevin Bucholz, the Engineer for the City of West Fargo and being a competent engineer, to prepare plans and specifications for such work.

APPROVED:

President of Board of City
Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote the following commissioners voted aye: _____.
_____. The following commissioners voted nay: _____.
_____. The following commissioners were absent and not voting: _____. The majority having voted aye, the motion carried and the resolution was duly adopted.

The City Auditor presented to the Board of City Commissioners the plans and specifications and estimates of cost for improvements in _____ District No. _____ of the City of West Fargo, North Dakota, as prepared by Kevin Bucholz, the Engineer for the City. Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR IMPROVEMENTS IN _____ DISTRICT NO. _____ OF THE CITY OF WEST FARGO

BE IT RESOLVED by the Board of City Commissioners of the City of West Fargo, North Dakota, that the plans and specifications and estimates of cost for improvements in _____ District No. _____ of the City of West Fargo heretofore prepared by Kevin Bucholz, Engineer for the City, be and the same hereby are approved, ratified and confirmed as the plans and specifications and estimates of cost in accordance with which said improvements shall be constructed and the City Auditor shall file the same in his office open to public inspection.

APPROVED:

President of Board of City Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote the following commissioners voted aye: _____
_____. The following commissioners voted nay: _____. The following commissioners were absent and not voting: _____. The majority having voted aye, the motion carried and the resolution was duly adopted.

Commissioner _____ introduced the following resolution
and moved for its adoption:

RESOLUTION DECLARING WORK NECESSARY FOR
AN IMPROVEMENT IN _____

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WEST FARGO, CASS COUNTY, NORTH DAKOTA, that it is hereby found, determined and declared to be necessary and expedient for the City of West Fargo to construct an improvement in and for _____ consisting of _____ and all other appurtenances, contrivances and structures used or useful in connection with the above specified improvements, in accordance with and as described in the resolution creating said district adopted _____ and the Engineer's Report which has been prepared by the Engineer for the City of West Fargo and approved by this commission which resolution and Engineer's Report, together with an estimate of the probable cost of the work, are now on file in the office of the City Auditor and are open to public inspection.

BE IT FURTHER RESOLVED that the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

BE IT FURTHER RESOLVED that the owners of the property liable to be specially assessed for said improvements may file written protests against the said improvements within thirty (30) days after the first publication of this resolution, and this Board shall at its next meeting after the expiration of said period, to-wit: On the ____ day of _____, 20____, at 5:45 p.m. meet at the City Commission Rooms in the City Hall, 800 Fourth Avenue East, West Fargo, for the purpose of hearing and determining the sufficiency of any protests so filed and of taking any such further action with respect to said improvements as may then be deemed necessary and expedient.

BE IT FURTHER RESOLVED that the City Auditor is hereby authorized and directed to cause this resolution, including a map of the improvement district, to be published once each week for two consecutive weeks in the West Fargo Pioneer, the official newspaper of the City of West Fargo, North Dakota.

APPROVED:

President of Board of City
Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote, the following commissioners voted aye: _____.

_____ . The following commissioners voted nay: _____.

The following commissioners were absent and not voting: _____.

_____ . The majority having voted aye, the motion carried and the resolution was duly adopted.

Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION DIRECTING AUDITOR TO
ADVERTISE FOR BIDS

WHEREAS, this Board has heretofore created _____ of the City of West Fargo; and

WHEREAS, plans and specifications and estimates of costs for said _____ district have heretofore been directed to be prepared by the Engineer for the City of West Fargo; and

WHEREAS, said plans, specifications and estimates of cost have been prepared and have been approved by the Board of City Commissioners of the City of West Fargo; and

WHEREAS, it is necessary to advertise for bids for the work in said district;

NOW THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of West Fargo, Cass County, North Dakota, that the City Auditor be, and he is hereby authorized and directed to cause notice of Advertisement for Bids for the construction of the work heretofore directed to be made in _____ No. _____ to be published once each week for two consecutive weeks in the West Fargo Pioneer, and that the City Auditor and Engineer will meet at the City Hall in the City of West Fargo on the _____ day of _____, 20____, at 10:00 a.m. for the purpose of opening sealed bids received prior to the time of such meeting in accordance with such published advertisement for bids for the purpose of taking such other and further action with reference thereto as shall then be deemed necessary and expedient. Such advertisements shall be published in form as provided in Section 48-01.1-05 of the North Dakota Century Code as amended.

APPROVED:

President of Board of City
Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote the following commissioners voted aye: _____.

_____ . The following commissioners voted nay: _____.

The following commissioners were absent and not voting: _____.

_____ . The majority having voted aye, the motion carried and the resolution was duly adopted.

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION ACCEPTING BID, SHOWING
RECEIPT OF ENGINEER'S STATEMENT OF ESTIMATED COST
AND DIRECTING EXECUTION OF CONTRACT

WHEREAS, bids have heretofore been received for the making of certain improvements in _____ District No. _____ of the City of West Fargo, North Dakota; and

WHEREAS, said bids were opened and made public and are on file in the office of the City Auditor of the City of West Fargo; and

WHEREAS, the Engineer for the City of West Fargo has made and filed a careful and detailed statement of the estimated cost of said work; and

WHEREAS, it is necessary to accept the bid for the work to be completed;

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

That the fact is and that the minutes show that the bid of _____, in the amount of \$ _____, is the lowest bid received and that said company is the lowest responsible bidder; that said bid was accompanied by a bidder's bond in the sum of 5% of the bid and in conformity with the provisions of Chapter 48-01.1-05 of the North Dakota Century Code.

That Kevin Bucholz, Engineer for the City of West Fargo, has made and filed with the Board of City Commissioners of the City of West Fargo a careful and detailed statement of the estimated cost of said work in said improvement district;

That the contract for the construction of said improvement for which advertisement for bids is made, be and the same is hereby awarded to the said _____, in the amount of \$ _____, and that the President of the Board of City Commissioners and the City Auditor are hereby authorized and directed to enter into a contract with the said contractor for the making of the improvements for which advertisement for bids was heretofore made and for which they were the low bidder.

APPROVED:

President of Board of City
Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote, the following commissioners voted aye: _____.

The following commissioners voted nay: _____. The following commissioners were absent and not voting: _____.

The majority having voted aye, the motion carried and the resolution was duly adopted.

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING CONTRACT AND CONTRACTOR'S BOND
IN _____ DISTRICT NO. _____

BE IT RESOLVED by the City Commission of the City of West Fargo, North Dakota, that it is hereby found, determined and declared that the contract heretofore entered into by and between the City of West Fargo and _____ is in full conformity with the law, including Section 40-22-36 of the North Dakota Century Code; that the contractor's bond of _____ heretofore received and filed with the City Auditor is in full conformity with the law including Section 48-02-06.2 of the North Dakota Century Code; and that the contract and contractor's bond are hereby approved.

APPROVED:

President of Board of City
Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote, the following commissioners voted aye: _____.
_____. The following commissioners voted nay: _____. The following commissioners were absent and not voting: _____. The majority having voted aye, the motion carried and the resolution was duly adopted.

EXHIBIT B

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION DIRECTING ASSESSMENTS TO BE LEVIED

Be it resolved by the Board of City Commissioners of the City of West Fargo that the City Commission has estimated the cost in _____ District No. _____ and does hereby direct assessments to be levied for the payment of such cost as follows:

Total Construction	\$
Engineering	
Administration	
Legal	
Construction Interest	
Capitalized Interest	
Bond Discount	
TOTAL:	\$

and that the City Auditor be and he is hereby directed to notify the Chairman of the Special Assessment Commission and shall certify to the Chairman of the Special Assessment Commission the items of the total cost set forth herein.

APPROVED:

President of Board of City
Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____, and upon vote being taken thereon, the following voted in favor thereof: _____
_____. The following commissioners were absent and not voting: _____. The following commissioners voted nay: _____. The majority having voted aye, the motion carried and the resolution was duly adopted.

NOTICE AND CERTIFICATION

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

TO THE CHAIRMAN OF THE SPECIAL ASSESSMENT COMMISSION OF THE CITY OF WEST FARGO, NORTH DAKOTA:

I, James Brownlee, do hereby certify as follows:

That I am the City Auditor of the City of West Fargo; that the City Commission of the City of West Fargo has directed assessments to be levied against benefitted property in _____ of the City of West Fargo, for payment of \$ _____ as the cost of construction of said _____;

And you are hereby notified of said action by the City Commission and directed to forthwith call a meeting of the Special Assessment Commission and proceed as expeditiously as possible to make and return the special assessments as provided by law;

I do further certify that the items of total cost of said work so far as has been ascertained is as follows:

Total Construction	\$
Engineering	
Administration	
Legal	
Construction Interest	
Capitalized Interest	
Bond Discount	
 TOTAL:	 \$ _____

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of West Fargo, this ____ day of _____, 20__.

James Brownlee, City Auditor
West Fargo, North Dakota

(SEAL)

MINUTES OF MEETING OF SPECIAL ASSESSMENT COMMISSION

The Special Assessment Commission of the City of West Fargo met on the ____ day of _____, 20____, at _____ .m. at the City Hall. Commissioners present were _____.

The Commission proceeded to complete the determination of the particular lots and parcels of land within _____ District No. _____ especially benefitted, and the assessment of benefits against each such parcel of land.

Commissioner _____ moved the adoption of the following resolution:

WHEREAS, the members of the Special Assessment Commission have reviewed the property within _____ which may be subject to such special assessments, and have determined from such inspection the particular lots and parcels of land which in the opinion of the Commission will be especially benefitted by the construction of such work for which special assessments are to be made, and have assessed against each such parcel of land such sum not exceeding the benefits as may be necessary to pay its just proportion of the costs of such work including all expenses incurred in the making of special assessments, and publishing notices with reference thereto and the per diem of the Commission; and

WHEREAS, said Commission has caused to be made a complete list of the benefits and assessments setting forth each lot or improvement, and the amount assessed against each such lot or tract of land; and

WHEREAS, said list has been completed and there has been attached to said list of assessments a certificate, signed by all members of the Special Assessment Commission, certifying that the same is a true and correct assessment of the property therein described, to the best of their judgment, and stating the several items of expense included in the assessment;

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Special Assessment Commission has determined the particular lots and parcels of land which in the opinion of the Commission will be especially benefitted by the construction of such work for which such special assessments are to be made.

2. The Special Assessment Commission has assessed against each such parcel of land such sum not exceeding the benefits as shall be necessary to pay its just proportion of the costs of such work, including all expenses incurred in the making of special assessments and publishing necessary notices with reference thereto and the per diem of the Commission.

3. The Commission has caused to be made a complete list of the benefits and assessments setting forth each lot or tract of land assessed, the amount each lot or tract is benefitted by the improvement, and the amount assessed against each such lot or tract of land; that each of said lots or tracts of land is hereby assessed the amount shown on said assessment list.

4. The list has been completed and there has been attached thereto a Certificate signed by all of the members of the Special Assessment Commission certifying that the same is a true and correct assessment of the property therein described to the best of their judgment and stating the several items of expense included in the assessment.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call, the following commissioners voted in favor of said Resolution: _____ . No one voted against the Resolution so the motion carried and the Resolution was duly adopted.

It was moved by Commissioner _____ and seconded by Commissioner _____ that the assessment list for _____ District No. _____ be published in the West Fargo Pioneer, the official newspaper of the City of West Fargo, and that the Commission meet on the _____ day of _____, 20____, at _____ .m. in the City Commission Chambers of City Hall, 800 - 4th Avenue East, in the City to hear objections made to any assessment by any interested party, his agent or attorney. On roll call, _____ voted aye, no one voted nay, so the motion carried.

There being no further business to come before the meeting, it was moved, seconded, and unanimously carried that the meeting adjourn.

Chairman

MINUTES OF SPECIAL ASSESSMENT COMMISSION APPROVING
ASSESSMENT LIST

The Assessment Commission of the City of West Fargo met on _____, 20____, at _____ .m. at the City Commission Chambers of City Hall. Commissioners present were _____.

The Assessment Commission provided an opportunity for any interested parties, their agents or attorneys, to object to the assessments in _____ District No. _____ of the City of West Fargo, North Dakota.

It was moved by Commissioner _____ and seconded by Commissioner _____ that no changes be made in the assessment list for _____ District No. _____ and that said assessment list be and the same is hereby confirmed. On roll call, Commissioners _____ voted aye. No one voted nay, so the motion carried.

Upon motion duly made, seconded and carried the meeting adjourned.

Chairman

CERTIFICATE

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

We, the undersigned, being the Commissioners of the Special Assessment Commission of the City of West Fargo, North Dakota, do hereby certify that attached hereto is the list of special assessments for _____ District No. _____ of the City of West Fargo, North Dakota; that said special assessment list was confirmed at a meeting of the Special Assessment Commission held on _____; and that the original Special Assessment List has been filed in the office of the City Auditor for the City of West Fargo, North Dakota.

Dated this ____ day of _____, 20__.

Milton Moen

Marvin Leidal

Todd Zabel

NOTICE OF CONFIRMATION
OF ASSESSMENT LIST
IN _____ DISTRICT NO. _____
OF THE CITY OF WEST FARGO, NORTH DAKOTA

Notice is hereby given that the Special Assessment Commission of the City of West Fargo has confirmed the Special Assessment List for _____ District No. _____ of the City;

Notice is further given that said confirmed list has been filed with the City Auditor, is open for public inspection and the City Commission will conduct a public hearing on said list at _____ .m. on the _____ day of _____, 20____, at the City Commission Rooms in the City Hall in said City to act upon said list;

Notice is further given that any person aggrieved may appeal from the action of the Special Assessment Commission by filing with the City Auditor prior to the hearing a written notice of appeal stating thereon the grounds upon which the appeal is based. Any person having filed such a written notice may appear before the City Commission and present his reasons why the action of the Special Assessment Commission should not be confirmed.

Dated this _____ day of _____, 20____.

City Auditor
West Fargo, North Dakota

(SEAL)

The Board considered the question of approval of the assessment list for _____ District No. _____ as confirmed by the Special Assessment Commission of the City of West Fargo.

It was moved by Commissioner _____ and seconded by Commissioner _____ that the assessment list for _____ District No. _____ of the City of West Fargo, as confirmed by the Special Assessment Commission of the City of West Fargo, be and the same is hereby confirmed. On roll call, the following commissioners voted aye: _____ . The following commissioners were absent and not voting: _____. No one voted nay, so the motion carried and the resolution was approved and confirmed.

CERTIFICATE

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

I, James Brownlee, being the Auditor of the City of West Fargo, North Dakota, do hereby certify that attached hereto is the list of special assessments for _____ District No. _____ of the City of West Fargo, North Dakota; that said special assessment list was confirmed at a meeting of the City Commission of West Fargo held on _____.

Dated this _____ day of _____, 20____.

James Brownlee, City Auditor

EXHIBIT C

IMPROVEMENT DISTRICT AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2006, by and between the City of Kindred, Cass County, North Dakota, hereinafter referred to as the "City", and PVI Developers, Inc., hereinafter referred to as the "Developer."

WHEREAS, the Developer is the owner of certain property in the City of Kindred, being within Street Improvement District No. 2006-2 and Water and Sewer Improvement District No. 2006-3; and

WHEREAS, the City has created Tax Increment District No. 2 covering all of Newport Ridge First Addition; and

WHEREAS, the Developer has requested the City to create said Improvement Districts; and

WHEREAS, the City has created said Improvement Districts and will contract for certain improvements to be constructed upon said property and within said districts, and the cost of which will be assessed against the benefitted properties therein; and

WHEREAS, the City desires to place itself in a more secure position relating to the collection of special assessments against said property.

NOW THEREFORE, it is agreed between the parties as follows:

1. The Developer has filed a letter of credit with the City in a form satisfactory to the City Attorney in the sum of _____, a copy of which is attached hereto. The City may only draw upon the letter of credit upon the conditions set forth in paragraphs 5 and 8 of this agreement.

2. The City has created Street Improvement District No. 2006-2 and Water and Sewer Improvement District No. 2006-3 and

will contract for certain improvements to be constructed upon said property, and assess the cost of the project against the benefitted property within the districts and Tax Increment District # 2.

3. The property covered by this agreement is as follows:

All of Newport Ridge First Addition in the City of Kindred, Cass County, North Dakota.

4. The Developer agrees that pursuant to this agreement the special assessments on all lots covered by this agreement, and which have not been "developed", must be kept "current". For purposes of this agreement, "current" is defined to mean that all special assessments for a given year must be paid by February 15 of the subsequent year. For example, the special assessments certified by the City Auditor to the County Auditor in 2007 for collection in 2008 must be paid by February 15, 2008.

5. It is agreed between the parties that if special assessments on lots covered by this agreement and which have not been "developed", are not paid as set out in the above paragraph, that City Auditor of the City of Kindred shall give written notice to the Developer of the lots covered by this agreement for which special assessments were not paid by February 15. The City Auditor shall notify the Developer that if the delinquent special assessments are not paid by March 1 of that year, or within 14 days of the mailing of the notice, whichever is later, that the City Auditor will give the issuing bank of the letter of credit written demand for the payment out of the letter of credit to the City of an amount sufficient to satisfy the deficiency.

6. The City, upon receipt of funds from the bank pursuant to paragraph 5 of this agreement shall place those funds into the sinking fund of the special improvement district. The City will not apply those sums to pay special assessments on any property covered by this agreement, but will be used to pay principal and interest payments on outstanding bonds for the Districts. If the principal amount of delinquent special assessments is subsequently paid to the County by the Developer or subsequent owner, the City, upon receipt from the County of those funds will transfer them to the bank. If a lot covered by this agreement comes back to the City for failure to pay special assessments, upon the sale of that property by the City the proceeds of the sale shall be applied in the following order:

A. To the sinking fund of Street Improvement District No. 2006-2 to cover any deficiencies in the sinking fund for lots covered by this agreement which have come back to the City.

B. To the sinking fund of Water and Sewer Improvement District No. 2006-3 to cover any deficiencies in the sinking fund for lots covered by this agreement which have come back to the City.

C. To the City to cover its reasonable costs and expenses, including attorney fees incurred by the City in marketing and selling the lot.

D. To the bank to the extent necessary to reimburse the bank for the amount of funds paid as a result of the letter of credit to

the sinking fund as a result of delinquent specials on the lot sold.

E. To the general fund of the City.

7. The Developer agrees that the letter of credit issued pursuant to this agreement is to be used to secure payment of special assessments which are not "current" on all lots covered by this agreement. The letter of credit's obligation to pay delinquent assessments on lots is only extinguished when that lot is "developed", or when all special assessments for that lot, certified or uncertified, for this improvement district are paid. For purposes of this agreement the term "developed" means that a structure for which a building permit has been granted by the City has been constructed on the lot. The sale, tax sale, transfer or other disposition of any lot covered by this agreement shall have no effect on the obligation of the letter of credit to pay special assessments which are not current.

8. The bank issuing the letter of credit is authorized to reduce the principal amount of the letter of credit issued hereunder upon written notice signed by the Kindred City Auditor and the Developer. The City Auditor, upon request of the Developer, shall give written notice to the bank to reduce the amount of the principal amount of the letter of credit when the amount of unpaid special assessments, whether certified or uncertified, for the improvement district covered by this contract are less than the principal amount in the letter of credit. The City Auditor shall give the bank authority to reduce part of the

principal so that the amount of the unpaid special assessments, whether certified or uncertified, covered by this agreement and the principal amount to remain secured by the letter of credit are equal. The reduction of the principal amount in the letter of credit by this procedure is only required to be made by the City Auditor once in each six (6) month period. At the time the amount of unpaid specials, whether certified or not, on lots covered by this agreement becomes zero, as a result of the development of all the lots, or the payment of the specials on all of the lots, and the obligations of the municipal ordinances of the City of Kindred are complied with, the City Auditor shall, upon the request of the Developer, immediately give written notice to the bank to release the letter of credit.

9. For all notices required to be given to the Developer pursuant to this agreement, the City Auditor shall mail the notice by ordinary mail to the Developer at the following address:

PVI Development, Inc.
P.O. Box 25
Kindred, ND 58051-0025

Notice sent to that address shall be sufficient notice pursuant to this agreement unless the Developer gives the City Auditor written notice of a change of address to be used for purposes of this agreement.

10. The failure of the City to enforce at any time any of the provisions of this agreement, or to exercise any option which is herein provided, or to require at any time performance by Developer or bank of any of the provisions hereof, shall no way be construed a waiver of such provisions, nor in any way to affect the validity

of this agreement or any part thereof, or the right of the City to thereafter enforce each and every such provision.

11. This agreement cannot be altered, modified or amended without the written consent of all parties to this agreement.

12. The terms of this agreement are hereby made binding upon all parties hereto their successors and assigns, and no party under this agreement can assign their interest in the agreement to any other person or entity without the written consent of all other parties.

CITY OF KINDRED

BY: _____
Mayor

BY: _____
City Auditor

DEVELOPER

PVI Development, INC.

BY: _____
Its _____

BY: _____
Its _____

provement proceedings are not fatal. If the proceedings are for a lawful purpose, unaffected by fraud, and do not violate any constitutional limitation or restriction, defects or irregularities in proceedings under this chapter do not invalidate the proceedings. No action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any defects or irregularities in proceedings under this chapter, unless commenced within thirty days of the adoption of the resolution of the governing body awarding the sale of warrants to finance the improvement.

Source: S.L. 1987, ch. 494, § 1.

40-22.1-14. City auditor's statement of estimated cost required — Governing body to enter into contracts. Before adopting or rejecting any contract proposed under this chapter, the governing body shall require the city auditor for the municipality to make a careful and detailed statement of the estimated cost of the work. The governing body may not award the contract if the city auditor's estimate prepared under this section exceeds the estimate prepared under section 40-22.1-04. If all proposals are not rejected, the governing body shall award the contract to that person, firm, corporation, limited liability company, or other entity best able to perform the work, upon the basis of cash payment for the work.

Source: S.L. 1987, ch. 494, § 1; 1993, ch. 54, § 106.

CHAPTER 40-23

ASSESSMENT OF BENEFITS

- 01. Special assessment commission — Appointment of members — Terms of office.
- 02. Commissioners — Appointments subject to confirmation — Qualifications — Chairman — Compensation.
- 40-23-03. Removal of commissioners — Filling vacancies.
- 40-23-04. Municipal officers and employees to advise commission.
- 40-23-05. Notice to special assessment commission.
- 40-23-06. Assessments in improvement districts before work completed.
- 40-23-07. Determination of special assessments by commission — Political subdivisions not exempt.
- 40-23-07.1. Validation of prior assessments — Repealed.
- 40-23-07.2. Assessment of common area in townhouse development.
- 40-23-08. Assessments collected by suit from beneficial user of exempt property.
- 40-23-09. Assessment list to be prepared — Contents — Certificate attached to assessment list.
- 40-23-10. Notice of assessments and notice of hearing of objections.
- 40-23-11. Alteration of assessments at hearing — Limitations.
- 40-23-12. Confirmation of assessment list after hearing — Filing list.
- 40-23-13. Publication of notice of confirmation of assessment list and meeting for action upon assessments.
- 40-23-14. Aggrieved person may file notice of appeal.
- 40-23-15. Governing body to hear and determine appeals and objections to assessments — Altering assessments — Limitations.
- 40-23-16. Confirmation of assessment list by governing body — Certifying and filing list.

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- 40-23-17. Authority to levy assessments on property not originally assessed.
- 40-23-18. Assessments on property within the corporate limits.
- 40-23-19. Assessments on annexed property for previous benefits.
- 40-23-20. Equalization of original assessments.
- 40-23-21. Use of collections of subsequent assessments.
- 40-23-22. State property subject to special assessments.
- 40-23-22.1. City flood control special assessment exemption for state property — Limitations.
- 40-23-23. Assessments for parking improvements.
- 40-23-24. Audit of certain special assessment improvements.
- 40-23-25. Future assessments on annexed property.

40-23-01. Special assessment commission — Appointment of members — Terms of office.

The executive officer of each municipality, when it shall be found necessary, shall appoint three reputable residents and freeholders of the municipality as members of a commission which shall be known as the special assessment commission. The members appointed to the first special assessment commission in a municipality shall hold office, respectively, for terms designated by the executive officer when the appointments are made, as follows:

1. One member shall hold office until the first meeting of the governing body in April in the first odd-numbered year following that member's appointment.
2. One member shall hold office until the first meeting of the governing body in April in the second odd-numbered year following that member's appointment.
3. One member shall hold office until the first meeting of the governing body in April in the third odd-numbered year following that member's appointment.

At the first meeting of the governing body in April of each odd-numbered year, or as soon thereafter as practicable, the executive officer shall appoint a member of such commission. After the members of the first special assessment commission have been appointed as provided in this section, each appointment shall be made for a term of six years.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 8; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326h, 2327; S.L. 1905, ch. 62, § 164; R.C. 1905, § 2799; C.L. 1913, § 3724; R.C. 1943, § 40-2301.

40-23-02. Commissioners — Appointments subject to confirmation — Qualifications — Chairman — Compensation. All appointments made to the special assessment commission shall be subject to the confirmation of the governing body. Upon appointment and confirmation, each commissioner shall file with the city auditor a written acceptance of the appointment and shall take and subscribe the oath required of other municipal officers, which shall be filed with the city auditor. The member of the commission having the shortest term to serve shall act as chairman. No member of the commission shall hold any other municipal office while serving as such member. Each member of the

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interested party or an interested party's agent or attorney.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 166; R.C. 1905, § 2801; S.L. 1913, ch. 85, § 1; C.L. 1913, § 3726; R.C. 1943, § 40-2310; S.L. 1965, ch. 288, § 1; 1971, ch. 406, § 1; 1989, ch. 491, § 2.

40-23-11. Alteration of assessments at hearing — Limitations. At the hearing, the commission may make such alterations in the assessments as in its opinion may be just or necessary to correct any error in the assessment list. The commission may increase or diminish any assessment as may be just and necessary to make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which such assessments are made or the part of such cost to be paid by special assessment. No assessment shall exceed the benefits as determined by the commission to the parcel of land assessed.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 166; R.C. 1905, § 2801; S.L. 1913, ch. 85, § 1; C.L. 1913, § 3726; R.C. 1943, § 40-2311.

40-23-12. Confirmation of assessment list after hearing — Filing list. The special assessment commission, after the hearing, shall confirm the list and attach thereto its further certificate certifying that the list is correct as confirmed by it. The commission thereafter shall file the assessment list in the office of the city auditor.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 166; R.C. 1905, § 2801; S.L. 1913, ch. 85, § 1; C.L. 1913, § 3726; R.C. 1943, § 40-2312; S.L. 1967, ch. 323, § 156.

40-23-13. Publication of notice of confirmation of assessment list and meeting for action upon assessments. The city auditor shall publish at least once in the official newspaper of the municipality a notice stating that the assessment list has been confirmed by the special assessment commission and filed in the city auditor's office and is open to public inspection. The notice also shall state the time when and the place where the governing body will act upon such assessment list. The assessment list shall be acted upon by the governing body at a regular or special meeting occurring more than fifteen days after the publication of such notice.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 166; R.C. 1905, § 2802; S.L. 1909, ch. 53, § 1; C.L. 1913, § 3727; R.C. 1943, § 40-2313; S.L. 1961, ch. 276, § 1; 1967, ch. 323, § 157.

40-23-14. Aggrieved person may file notice of appeal. Prior to the meeting at which the governing body will act upon the assessment, any aggrieved

~~person may appeal from the action of the special assessment commission by filing with the city auditor a written notice of the appeal, stating therein the grounds upon which the appeal is based.~~

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 166; R.C. 1905, § 2802; S.L. 1909, ch. 53, § 1; C.L. 1913, § 3727; R.C. 1943, § 40-2314; S.L. 1967, ch. 323, § 158.

40-23-15. Governing body to hear and determine appeals and objections to assessments — Altering assessments — Limitations. At the regular or special meeting of the governing body at which the assessment list is to be acted upon, any person aggrieved by the determination of the special assessment commission in regard to any assessment who has appealed therefrom as provided in section 40-23-14 may appear before the governing body and present the person's reasons why the action of the commission should not be confirmed. The governing body shall hear and determine the appeals and objections and may increase or diminish any of such assessments as it may deem just, except that the aggregate amount of all the assessments returned by the commission shall not be changed and no assessments as adjusted shall exceed the benefits to the parcel of land on which it is assessed as determined by the assessment commission.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, §§ 9, 10; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326j, 2327; S.L. 1905, ch. 62, § 167; R.C. 1905, § 2803; C.L. 1913, § 3728; R.C. 1943, § 40-2315; S.L. 1985, ch. 460, § 1.

40-23-16. Confirmation of assessment list by governing body — Certifying and filing list. The governing body shall confirm the assessment list. The city auditor shall attach to the list the city auditor's certificate that the list is correct as confirmed by the governing body and then shall file the list in the city auditor's office.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 167; R.C. 1905, § 2803; C.L. 1913, § 3728; R.C. 1943, § 40-2316; S.L. 1967, ch. 323, § 159.

40-23-17. Authority to levy assessments on property not originally assessed. Any municipality that pays or provides for the payment of part or all of the cost of an improvement may subsequently levy special assessments for the cost of the improvement upon properties benefited by the improvement in the cases and in accordance with the procedure and subject to the conditions set forth in sections 40-23-17 through 40-23-21.

Source: S.L. 1959, ch. 379, § 1; 1993, ch. 404, § 1.

40-23-18. Assessments on property within the corporate limits. A subsequent assessment may not be levied for any improvement on any

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provement proceedings are not fatal. If the proceedings are for a lawful purpose, unaffected by fraud, and do not violate any constitutional limitation or restriction, defects or irregularities in proceedings under this chapter do not invalidate the proceedings. No action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any defects or irregularities in proceedings under this chapter, unless commenced within thirty days of the adoption of the resolution of the governing body awarding the sale of warrants to finance the improvement.

Source: S.L. 1987, ch. 494, § 1.

40-22.1-14. City auditor's statement of estimated cost required — Governing body to enter into contracts. Before adopting or rejecting any contract proposed under this chapter, the governing body shall require the city auditor for the municipality to make a careful and detailed statement of the estimated cost of the work. The governing body may not award the contract if the city auditor's estimate prepared under this section exceeds the estimate prepared under section 40-22.1-04. If all proposals are not rejected, the governing body shall award the contract to that person, firm, corporation, limited liability company, or other entity best able to perform the work, upon the basis of cash payment for the work.

Source: S.L. 1987, ch. 494, § 1; 1993, ch. 54, § 106.

CHAPTER 40-23

ASSESSMENT OF BENEFITS

- n
- 01. Special assessment commission — Appointment of members — Terms of office.
 - 02. Commissioners — Appointments subject to confirmation — Qualifications — Chairman — Compensation.
 - 40-23-03. Removal of commissioners — Filling vacancies.
 - 40-23-04. Municipal officers and employees to advise commission.
 - 40-23-05. Notice to special assessment commission.
 - 40-23-06. Assessments in improvement districts before work completed.
 - 40-23-07. Determination of special assessments by commission — Political subdivisions not exempt.
 - 40-23-07.1. Validation of prior assessments — Repealed.
 - 40-23-07.2. Assessment of common area in townhouse development.
 - 40-23-08. Assessments collected by suit from beneficial user of exempt property.
 - 40-23-09. Assessment list to be prepared — Contents — Certificate attached to assessment list.
 - 40-23-10. Notice of assessments and notice of hearing of objections.
 - 40-23-11. Alteration of assessments at hearing — Limitations.
 - 40-23-12. Confirmation of assessment list after hearing — Filing list.
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- 40-23-22.1. City flood control special assessment exemption for state property — Limitations.
- 40-23-23. Assessments for parking improvements.
- 40-23-24. Audit of certain special assessment improvements.
- 40-23-25. Future assessments on annexed property.

40-23-01. Special assessment commission

— Appointment of members — Terms of office. The executive officer of each municipality, when it shall be found necessary, shall appoint three reputable residents and freeholders of the municipality as members of a commission which shall be known as the special assessment commission. The members appointed to the first special assessment commission in a municipality shall hold office, respectively, for terms designated by the executive officer when the appointments are made, as follows:

1. One member shall hold office until the first meeting of the governing body in April in the first odd-numbered year following that member's appointment.
2. One member shall hold office until the first meeting of the governing body in April in the second odd-numbered year following that member's appointment.
3. One member shall hold office until the first meeting of the governing body in April in the third odd-numbered year following that member's appointment.

At the first meeting of the governing body in April of each odd-numbered year, or as soon thereafter as practicable, the executive officer shall appoint a member of such commission. After the members of the first special assessment commission have been appointed as provided in this section, each appointment shall be made for a term of six years.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 8; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326h, 2327; S.L. 1905, ch. 62, § 164; R.C. 1905, § 2799; C.L. 1913, § 3724; R.C. 1943, § 40-2301.

40-23-02. Commissioners — Appointments subject to confirmation — Qualifications — Chairman — Compensation. All appointments made to the special assessment commission shall be subject to the confirmation of the governing body. Upon appointment and confirmation, each commissioner shall file with the city auditor a written acceptance of the appointment and shall take and subscribe the oath required of other municipal officers, which shall be filed with the city auditor. The member of the commission having the shortest term to serve shall act as chairman. No member of the commission shall hold any other municipal office while serving as such member. Each member of the

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Improvement proceedings are not fatal. If the proceedings are for a lawful purpose, unaffected by fraud, and do not violate any constitutional limitation or restriction, defects or irregularities in proceedings under this chapter do not invalidate the proceedings. No action may be commenced or maintained and no defense or counterclaim in any action may be recognized in the courts of this state founded on any defects or irregularities in proceedings under this chapter, unless commenced within thirty days of the adoption of the resolution of the governing body awarding the sale of warrants to finance the improvement.

Source: S.L. 1987, ch. 494, § 1.

40-22-1-14. City auditor's statement of estimated cost required — Governing body to enter into contracts. Before adopting or rejecting any contract proposed under this chapter, the governing body shall require the city auditor for the municipality to make a careful and detailed statement of the estimated cost of the work. The governing body may not award the contract if the city auditor's estimate prepared under this section exceeds the estimate prepared under section 40-22-1-04. If all proposals are not rejected, the governing body shall award the contract to that person, firm, corporation, limited liability company, or other entity best able to perform the work, upon the basis of cash payment for the work.

Source: S.L. 1987, ch. 494, § 1, 1993, ch. 54, § 106.

CHAPTER 40-23

ASSESSMENT OF BENEFITS

- 1. Special assessment commission — Appointment of members — Terms of office.
- 02. Commissioners — Appointments subject to confirmation — Qualifications — Chairman — Compensation.
- 40-23-03. Removal of commissioners — Filling vacancies.
- 40-23-04. Municipal officers and employees to advise commission.
- 40-23-05. Notice to special assessment commission.
- 40-23-06. Assessments in improvement districts before work completed.
- 40-23-07. Determination of special assessments by commission — Political subdivisions not exempt.
- 40-23-07.1. Validation of prior assessments — Repealed.
- 40-23-07.2. Assessment of common area in townhouse development.
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Section 40-23-17. Authority to levy assessments on property not originally assessed.

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- 40-23-23. Assessments for parking improvements.
- 40-23-24. Audit of certain special assessment improvement.
- 40-23-25. Future assessments on annexed property.

40-23-01. Special assessment commission — Appointment of members — Terms of office.

The executive officer of each municipality, when shall be found necessary, shall appoint three reputable residents and freeholders of the municipality members of a commission which shall be known as the special assessment commission. The members appointed to the first special assessment commission in a municipality shall hold office, respectively, for terms designated by the executive officer when the appointments are made, as follows:

1. One member shall hold office until the first meeting of the governing body in April in the first odd-numbered year following the member's appointment.
2. One member shall hold office until the first meeting of the governing body in April in the second odd-numbered year following the member's appointment.
3. One member shall hold office until the first meeting of the governing body in April in the third odd-numbered year following the member's appointment.

At the first meeting of the governing body in April of each odd-numbered year, or as soon thereafter as practicable, the executive officer shall appoint a member of such commission. After the members of the first special assessment commission have been appointed as provided in this section, each appointment shall be made for a term of six years.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 8; 1899, ch. 3; R.C. 1899, §§ 2320, 2326h, 2327; S.L. 1905, ch. 62, § 164; R.C. 1905, § 2799; C.L. 1913, § 3724; R.C. 1943, § 40-2301.

40-23-02. Commissioners — Appointment subject to confirmation — Qualifications — Chairman — Compensation.

All appointments subject to the special assessment commission shall be subject to the confirmation of the governing body. Upon appointment and confirmation, each comm

mission shall receive such suitable compensation for the member's services while actually engaged in the duties of the commission as determined by the governing body.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 8; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326h, 2327; S.L. 1905, ch. 62, § 164; R.C. 1905, § 2799; C.L. 1913, § 3724; R.C. 1943, § 40-2302; S.L. 1987, ch. 329, § 1.

40-23-03. Removal of commissioners — Filling vacancies.

Any member of the commission may be removed by the executive officer, with the consent of a majority of the members of the governing body, or neglect or refusal to perform the duties of the office or for misconduct in office. A vacancy occurring in the commission by removal, resignation, or death shall be filled by appointment by the executive officer as soon as practicable after the vacancy occurs.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 8; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326h, 2327; S.L. 1905, ch. 62, § 164; R.C. 1905, § 2799; C.L. 1913, § 3724; R.C. 1943, § 40-2303.

40-23-04. Municipal officers and employees to advise commission.

Each officer and employee of the municipality shall give to the special assessment commission such information, advice, and assistance as may be requested.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 8; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326h, 2327; S.L. 1905, ch. 62, § 164; R.C. 1905, § 2799; C.L. 1913, § 3724; R.C. 1943, § 40-2304.

40-23-05. Notice to special assessment commission.

At any time after the contract and bond for work for which a special assessment is required has been executed and approved by the governing body of the municipality and the total cost of such work shall have been estimated as nearly as practicable, the governing body may direct assessments to be levied for the payment of all or any part of such assessments and the city auditor shall notify the chairman of the special assessment commission and shall certify to the chairman the items of the total cost thereof so that the same have been ascertained. The chairman immediately shall call a meeting of the commission, which shall proceed as expeditiously as possible to determine the amount in which the special assessment may be levied and return the total cost of the improvement to the governing body. The assessment commission shall include the estimated construction cost under

ments therefor. If any error in the governing body assessment to be made.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 8; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326h, 2327; S.L. 1905, ch. 62, § 164; R.C. 1905, § 2800; C.L. 1913, § 3725; S.L. 1949, ch. 269, § 1; ch. 323, § 154.

40-23-06. Assessments before work completed.

Improvements on or adjacent to parcels already installed or all bids for such work work done by the municipality, or engineer acting for the municipality, in separate sections be necessary that all of the special assessments for the body, by resolution adopted after the work has been what part of the improvement separate section or work unit the work in one or more of work units, the special assessment in the same manner and will as if all of the work in district had been completed complete the work in any or work unit included in district shall not affect the assessments made or the warrants issued for the work

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 8; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326h, 2327; S.L. 1905, ch. 62, § 164; R.C. 1905, § 2800; C.L. 1913, § 3725; S.L. 1949, ch. 269, § 1; ch. 323, § 154.

40-23-07. Determinations by commission — not exempt.

Whenever the special assessment, the cost of the particular lots and parcels, the opinion of the commission effected by the construction assessment is to be made determine the amount in which the special assessment may be levied and return the total cost of the improvement to the governing body. The assessment commission shall include the estimated construction cost under

interested party or an interested party's agent or attorney.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 166; R.C. 1905, § 2801; S.L. 1913, ch. 85, § 1; C.L. 1913, § 3726; R.C. 1943, § 40-2310; S.L. 1965, ch. 288, § 1; 1971, ch. 406, § 1; 1989, ch. 491, § 2.

40-23-11. Alteration of assessments at hearing — Limitations. At the hearing, the commission may make such alterations in the assessments as in its opinion may be just or necessary to correct any error in the assessment list. The commission may increase or diminish any assessment as may be just and necessary to make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which such assessments are made or the part of such cost to be paid by special assessment. No assessment shall exceed the benefits as determined by the commission to the parcel of land assessed.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 166; R.C. 1905, § 2801; S.L. 1913, ch. 85, § 1; C.L. 1913, § 3726; R.C. 1943, § 40-2311.

40-23-12. Confirmation of assessment list after hearing — Filing list. The special assessment commission, after the hearing, shall confirm the list and attach thereto its further certificate certifying that the list is correct as confirmed by it. The commission thereafter shall file the assessment list in the office of the city auditor.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 166; R.C. 1905, § 2801; S.L. 1913, ch. 85, § 1; C.L. 1913, § 3726; R.C. 1943, § 40-2312; S.L. 1967, ch. 323, § 156.

40-23-13. Publication of notice of confirmation of assessment list and meeting for action upon assessments. The city auditor shall publish at least once in the official newspaper of the municipality a notice stating that the assessment list has been confirmed by the special assessment commission and filed in the city auditor's office and is open to public inspection. The notice also shall state the time when and the place where the governing body will act upon such assessment list. ~~The assessment list shall be acted upon by the governing body at a regular or special meeting occurring more than fifteen days after the publication of such notice.~~

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 166; R.C. 1905, § 2802; S.L. 1909, ch. 53, § 1; C.L. 1913, § 3727; R.C. 1943, § 40-2313; S.L. 1961, ch. 276, § 1; 1967, ch. 323, § 157.

40-23-14. Aggrieved person may file notice of appeal. Prior to the meeting at which the governing body will act upon the assessment, any aggrieved

~~person may appeal from the action of the special assessment commission by filing with the city auditor a written notice of the appeal, stating therein the grounds upon which the appeal is based.~~

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 166; R.C. 1905, § 2802; S.L. 1909, ch. 53, § 1; C.L. 1913, § 3727; R.C. 1943, § 40-2314; S.L. 1967, ch. 323, § 158.

40-23-15. Governing body to hear and determine appeals and objections to assessments — Altering assessments — Limitations. At the regular or special meeting of the governing body at which the assessment list is to be acted upon, any person aggrieved by the determination of the special assessment commission in regard to any assessment who has appealed therefrom as provided in section 40-23-14 may appear before the governing body and present the person's reasons why the action of the commission should not be confirmed. The governing body shall hear and determine the appeals and objections and may increase or diminish any of such assessments as it may deem just, except that the aggregate amount of all the assessments returned by the commission shall not be changed and no assessments as adjusted shall exceed the benefits to the parcel of land on which it is assessed as determined by the assessment commission.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, §§ 9, 10; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326j, 2327; S.L. 1905, ch. 62, § 167; R.C. 1905, § 2803; C.L. 1913, § 3728; R.C. 1943, § 40-2315; S.L. 1985, ch. 460, § 1.

40-23-16. Confirmation of assessment list by governing body — Certifying and filing list. The governing body shall confirm the assessment list. The city auditor shall attach to the list the city auditor's certificate that the list is correct as confirmed by the governing body and then shall file the list in the city auditor's office.

Source: S.L. 1887, ch. 73, art. 16, § 6; 1893, ch. 36, § 1; R.C. 1895, § 2320; S.L. 1897, ch. 41, § 7; 1899, ch. 41, § 9; 1899, ch. 42, § 3; R.C. 1899, §§ 2320, 2326i, 2327; S.L. 1905, ch. 62, § 167; R.C. 1905, § 2803; C.L. 1913, § 3728; R.C. 1943, § 40-2316; S.L. 1967, ch. 323, § 159.

40-23-17. Authority to levy assessments on property not originally assessed. Any municipality that pays or provides for the payment of part or all of the cost of an improvement may subsequently levy special assessments for the cost of the improvement upon properties benefited by the improvement in the cases and in accordance with the procedure and subject to the conditions set forth in sections 40-23-17 through 40-23-21.

Source: S.L. 1959, ch. 379, § 1; 1993, ch. 404, § 1.

40-23-18. Assessments on property within the corporate limits. A subsequent assessment may not be levied for any improvement on any

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Vacating
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