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WISCONSIN SPECIAL ASSESSMENTS

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INTRODUCTION

In these times of burgeoning tax burdens real property owners face spectacular increases in taxes, assessments and charges. Mounting property taxes are posited as major issues by politicians and vilified by the media as the primary cause of various economic maladies. In an effort to stem general property tax increases, a great number of municipal governments have turned to a favorite cousin of the ad valorem tax, that of the special assessment. Unlike the annual general ad valorem property tax, special assessments are levied only for particular benefits conferred upon specified properties. Being based on specific improvements to designated parcels of real estate, special assessments can be attacked by property owners if the proposed improvements are unnecessary, undesirable or extravagant. The object of this article is to outline the general contours of the Wisconsin law on special assessment and to discuss some of the current issues and trends. Because the law of special assessment consists of detailed statutes, considerable attention will be devoted to the specific statutory language. The more important opinions of the Wisconsin Supreme Court will also be discussed, particularly those of more recent vintage.

I. THE NATURE OF SPECIAL ASSESSMENTS

A. Distinguished from General Tax Levies

Unlike general real estate taxes, special assessments are levied against selected real properties for specific benefits to those properties which would not otherwise accrue to members of the community as a whole.¹ The Wisconsin Statutes limit

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1. 14 E. McQuillen, THE LAW OF MUNICIPAL CORPORATIONS § 38.02 (3d ed. 1970) [hereinafter cited as 14 McQuillen].
special assessments to "property in a limited and determinable area for special benefits conferred upon such property." A determinable benefit must be conferred upon the properties in the special assessment district since this is the legal foundation upon which the assessment is based. The special assessment must be carefully distinguished from general tax levies because different substantive and procedural consequences result. The major difference is that a particular advantage must be conferred upon specifically ascertainable properties.

An assessment differs from a general tax, however, in that it is imposed to pay for an improvement which benefits a specific property within the political division imposing it. For that reason an assessment is always made against the land in proportion as it enhances the value of that land, and it fixes a lien on the land.

Thus, the determinative factor is whether it can be shown that the improvement benefits the entire community to a greater extent than it benefits particular lots or a limited area.

The requirement of a specific and discernible benefit most frequently turns upon the geographical relationship of the improvement to the property assessed. A parcel of realty located an extraordinary distance from the improvement is unlikely to be benefited unless some definite physical association is found such as a connection to a storm sewer, a water line or a lift station. However, the fact that a tract of land cannot immediately utilize the improvement does not always mean a lack of benefit. For example, the cost of erecting an elevated water tank was held to be specially assessable against all properties in a sanitary district, including unplatted acreage, because of the resulting adaptability of the land to a higher and more valuable future use. Conversely, acquiring and leasing industrial sites benefits the entire community and confers no particular tangible benefit upon specific properties, thus mak-

3. Hale v. City of Kenosha, 29 Wis. 599, 605 (1872); 14 McQUILLIN, supra note 1, at § 38.02.
4. See, e.g., Plymouth v. Elsner, 28 Wis. 2d 102, 135 N.W.2d 799 (1965).
7. Id.
ing it impermissible to specially assess all of the landowners in a municipality for such an acquisition.  

B. The Requirement of Special Benefits

Traditionally, sewer and water mains, sidewalks, street paving, curbs, gutters and other physical improvements abutting real properties are funded by special assessments. Although these improvements are located on public ways or municipal easements, the abutting properties enjoy the principal usage. When a governing body requires lateral connections to water, sewer, heat or gas mains, and the work is to be completed by the municipality, the cost of such work can be charged against the parcel served. Temporary or minor improvements, such as street and sidewalk repair or snow removal, may also be funded by special charges, which are levied under separate statutory procedures.

Certain extraordinary improvements may also be assessed against property owners, and for some of these the statutes provide specific authority. For example, a city of the first class (i.e., Milwaukee) is authorized to construct and operate pedestrian malls as local improvements and to fund the cost either by special assessment or from general funds. The mall however, must be adjacent to a business district, and detailed statutory procedures must be followed. The cost of an elevated water tank may also be funded by special assessment, although such tanks are usually financed by mortgage revenue bond issues. Special assessments are often levied to finance parking systems and light, heat or power utilities, and in such cases, it is not necessary that the properties assessed abut the improvements made, if the properties are benefited by the improvement.

11. E.g., In re Dodge County Farm Drainage Dist., 50 Wis. 2d 1, 183 N.W.2d 52 (1971) (land drainage facilities).
13. Id. § 66.610(3)(c).
15. Id. § 66.610(5)-(13).
16. See Duncan Dev. Corp. v. Crestview Sanitary Dist., 22 Wis. 2d 258, 125 N.W.2d 617 (1964).
18. Id. § 66.08.
A municipality cannot construct an improvement for private purposes. The Wisconsin statute requires that the resolution preliminary to the exercise of a special assessment state that a "municipal purpose" is being served. There has been little significant Wisconsin litigation on this issue but it is clear that a municipal or public purpose is easily found in the traditional types of improvements for which special assessments are levied: public sewers, public water mains, public streets, public parking, etc. Yet, the "municipal purpose" requirement would appear to preclude the inclusion of private driveway aprons as part of a street improvement special assessment. The affected property owners usually must contract privately (often with the contractor performing the street installation) for such improvements, although municipalities sometimes arrange for driveway aprons as a part of the assessment process.

The municipal work or improvement must confer a benefit upon property within a "limited and determinable area." Extending sewer or water mains to serve a limited section of a municipality obviously satisfies the statutory language and is deemed to be a "local" improvement. Conversely, a new waterworks plant or an electric power operation generally benefits the entire community rather than a specific area and must therefore be financed by general fund revenues rather than by special assessments.

In some instances the improvement may abut property to be assessed, but the chief benefit accrues to more distant property owners. This often occurs in older communities which suddenly experience rapid growth. For example, property owners in well-established neighborhoods may presently be receiving adequate sewer and water service. Unfortunately, these older mains may be of insufficient size to provide adequate service to newly developing fringe areas and thus may need to be replaced. The existing users receive no additional benefit from the improvement in water and sewer service and thus lacking a special benefit, the provisions of section 66.60 of the Wisconsin Statutes preclude a special assessment. Since the develop-

19. *Id.* § 66.60(2).
20. *See* 14 *McQuillan, supra* note 1, at § 38.11.
22. 14 *McQuillan, supra* note 1, at § 38.11. In Wisconsin a sewerage system may be financed by general funds, taxes, special assessments or bonds. *Wis. Stat.* § 66.076 (1975).
ing areas not only benefit from, but also necessitate the project, these properties should be assessed for all or most of the cost. If this cost is to be apportioned fairly, it is essential that the municipality expend funds for long range planning and engineering.

Projected future benefits sometimes present an even more challenging question. Improvements which cannot be immediately utilized by a property owner are of questionable value, particularly if future use appears improbable. The Wisconsin court has held however, that a benefit can accrue to a land owner even though there is no actual use of the improvement. If the existing zoning regulations preclude immediate use of the improvement, but the existing practice of the governing body would allow rezoning to a higher and better use, the property may nevertheless be subject to a special assessment if a benefit can be derived from the improvement. Generally, adaptability for other future uses can be considered in determining benefits received.

C. Constitutionality

Governmental actions such as special assessments are, of course, subject to federal and state constitutional limitations, specifically procedural due process. In the past, constitutional attacks have been directed to the statutes authorizing special assessments, as well as to the implementing administrative actions taken by local governments. For the most part, direct constitutional attack has failed.

Most state constitutions expressly forbid municipal corporations from taking private property for public use without the payment of just compensation. The Wisconsin constitution prohibits the taking of private property for public use without the owner's consent, unless the legislature prescribes the manner of determining the necessity thereof.

Although it has been urged that a denial of equal protection

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23. Soo Line R.R. v. City of Neenah, 64 Wis. 2d 665, 669, 221 N.W.2d 907, 909 (1974); Duncan Dev. Corp. v. Crestview Sanitary Dist., 22 Wis. 2d 258, 125 N.W.2d 617 (1964).
26. 14 McQUILLEN, supra note 1, at § 38.03.
27. Wis. Const. art. 11, § 2.
results when no benefit accrues to a property being specially assessed, such arguments have been rejected by the courts. For example, when a street improvement is made along a railroad right of way, the railroad may argue that it does not benefit to the same extent or in the same manner as other properties. However, most cases hold that there is nevertheless some benefit to the railroad. Even if no immediate benefit can be found, it is sufficient if the land is increased in value for future uses.

Improvements, such as storm sewers, may be designated as either a local or general improvement at the option of the municipal governing body. While storm sewers benefit the community as a whole and can be financed from general funds, a particular storm sewer installation which specifically benefits a designated area can be financed by special assessments. Thus, City A may finance storm sewers from general funds while City B may levy special assessments. A problem arises when City C, which for years paid for storm sewers out of general funds, elects to require special assessments in the rapidly developing fringe area of a community. Does such a change in policy constitute a violation of state or federal equal protection clauses?

It appears that Wisconsin municipalities may legally change their policies prospectively in favor of special assessments, although few Wisconsin cases have addressed this issue. With present taxpayer resistance and tax levy limitations, there are few persuasive reasons why municipalities should continue to subsidize and finance new residential development. However, a forceful equal protection argument can be made when a municipality which has traditionally paid for municipal improvements out of general funds, levies special assessments for one year and then reverts to the previous practice. The unfortunate land developers who were singled out to pay special assessments during that year should be afforded some relief.

The due process clause has been of much more utility to property owners in attacking the procedures by which special assessments are levied. The requirements of adequate and timely notice in addition to an opportunity to be heard, have

28. See 14 McQuillen, supra note 1, at § 38.04 and the cases cited therein.
been particularly useful weapons in the landowner's defense. The necessity for proper notice is particularly significant. Constructive notice by publication in a newspaper, for example, does not comport with the constitutional mandate of timely and adequate notice.30

A different form of assault is waged when the property owner relies upon the constitutional provision requiring uniformity of taxation.31 If special assessments were real estate taxes, uniformity would be lacking, because they are not based upon the value of the realty, but upon the value of the improvement. The Wisconsin Supreme Court has held however that the uniformity clause does not apply to special assessments, because in actuality they are not taxes.32 Although special assessments have been upheld as a valid exercise of the taxing power, they are clearly distinguishable from other taxes.33 Though levied and collected together with other real estate taxes, special assessments are not taxes in the constitutional sense.34

II. THE AUTHORITY FOR SPECIAL ASSESSMENTS

A. Statutory History

The Wisconsin special assessment statute first appeared in its present form in the 1945 statutes.35 That statute, which was quite similar to the present one, empowered any city or village to levy and collect special assessments for any municipal work or improvement.36 Towns, which were formerly authorized to specially assess under separate statutes37 are now included in the present statute.38 These separate statutes still exist, although it would appear that the broad powers conferred by the

31. Wis. Const. art. 8, § 1.
33. Hale v. City of Kenosha, 29 Wis. 599 (1872).
34. Wisconsin Gen. Ry. v. Village of Shorewood, 181 Wis. 321, 193 N.W. 97 (1923); Milwaukee Elec. Ry. & Light v. Village of Shorewood, 181 Wis. 312, 193 N.W. 94 (1923). See also 14 McQuillin, supra note 1, at § 38.05.
35. Wis. Stat. § 66.60 (1945).
36. Id. § 66.60(1).
37. See, e.g., id. § 60.29(26) (street improvements); id. § 60.309 (sanitary districts).
present statute are enjoyed by towns as well as cities and villages. The retention of these special assessment statutes relating to towns creates an ambiguity as to the procedures to be followed. The present statute authorizes town boards to improve or construct streets, curbs or gutters upon the petition of a majority of all of the property owners on both sides of the street. A petition is not required by section 66.60, and it is clearly the intent of the legislature to permit special assessments without the need for a petition by property owners. It would seem that the petition is now an alternative procedure, and a town board can proceed without it.

One former special assessment statute did not allow a city council to open or improve a street and assess the property owners unless the owners petitioned for the improvement or two-thirds of the council approved the improvement. The present statute is not so limiting. The former statute additionally granted special assessment power to city councils only on the basis of benefits conferred to the property assessed. The present statute allows for assessments on the basis of benefits received, but also provides for special assessments under the police power.

Current statutes also confer broad powers upon village boards to construct and improve streets, sewer and water mains and to levy special assessments for costs. The former statutes conferred such powers only upon the basis of benefits received by the properties assessed. As is the case with cities, villages now have the alternative procedure of assessing under the police power without the additional requirement that

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39. Towns, of course, do not have home rule under Wis. Const. art. 11, § 3, the home rule provision. Since municipalities generally have no inherent power to specially assess (see 14 McQuillin, supra note 1, at § 38.06), the interpretation of the special assessment statutes as they apply to towns is of particular importance.

40. These town special assessment statutes have existed for many years. See, e.g., Wis. Stat. § 60.29(26) (1925).

41. Wis. Stat. § 60.29(26) (1975). A sanitary district cannot be created in a town unless 61% of the property owners petition therefor. Id. § 60.302(1).

42. Wis. Stat. § 62.16(4)(a) (1943). If the expense did not exceed $500, this limitation did not apply.

43. Id.

44. Wis. Stat. § 66.60(1)(b) (1975).

45. Id. § 61.36.

46. Id. § 61.34(1).


there be a petition by the majority of the land owners in order for a street or alley improvement to be authorized by the village board. 49

B. The Role of Home Rule

Under existing Wisconsin law municipalities have no inherent power to levy special assessments. 50 In Wisconsin, the authority to levy special assessments is specifically enumerated in the statutory grant of village home rule powers 51 and while not mentioned in the statutory grant of powers to city councils, 52 would appear to be within such powers. It may be argued that cities and villages have the power to levy special assessments under the Wisconsin constitutional home rule amendment, 53 but this is debatable. Cases decided prior to the home rule amendment held that special assessments without legislative authority were void. 54 One case, decided after the amendment, held that a city may levy a special sewer charge under the statutory home rule section 55 where the assessment statute normally used was inapplicable because of a unique fact situation. 56 Apparently no subsequent decision has cited this case for the general proposition that Wisconsin home rule authorizes special assessments in the absence of specific statutory language.

The common council of each Wisconsin city is granted the "power to act for the government and good order of the city, .... and for the health, safety, and welfare of the public, and may carry out its powers by .... tax levy, .... and other necessary or convenient means." 57 This is a general grant of police power, as well as the legislative grant of home rule which finds its source in the constitutional home rule provision. 58 The breadth of this grant would appear to implicitly permit special assessments, but most authority in this country would require

50. 14 McQuilln, supra note 1, at § 38.06.
52. Id. § 62.11(5).
53. Wis. Const. art. 11, § 3.
56. Williams v. City of Madison, 15 Wis. 2d 430, 440, 113 N.W.2d 395, 400 (1962).
57. Wis. Stat. § 62.11(5) (1975). This is part of the statutory charter for second through fourth class cities.
58. Wis. Const. art. 11, § 3.
more specific legislation.\textsuperscript{59}

The legislature has provided detailed special assessment statutes for exercising either the taxing power or the police power.\textsuperscript{60} The primary statute, section 66.60, provides that:

\begin{quote}
any city, town or village may, by resolution of its governing body, levy and collect special assessments upon property in a limited and determinable area for special benefits conferred upon such property by any municipal work or improvement; and may provide for the payment of all or any part of the cost of the work or improvement out of the proceeds of such special assessments.\textsuperscript{61}
\end{quote}

The statute also provides that this grant of power is "a complete alternative to all other methods provided by law."\textsuperscript{62} It would seem with such liberal statutory authority, that there would never be a need to rely upon home rule to specially assess. Nevertheless, there could be unusual situations where the special assessment statutes would not attach, and in those cases the municipality would wish to argue the power of home rule.

\textbf{C. Two Distinct Powers for Special Assessments}

The principal Wisconsin special assessment statute\textsuperscript{63} and the reported cases\textsuperscript{64} make it abundantly clear that two separate and distinct powers coexist under which municipalities may opt to levy special assessments. They are the taxing power and the police power. The municipality must determine in the first instance which power will be used since different statutory requirements apply. Moreover, once the municipality has elected to proceed under the taxing power, it is precluded from later changing to the police power.\textsuperscript{65}

Section 66.60 of the Wisconsin Statutes immediately indicates substantive differences between the taxing power and the police power in its introductory subsection:

\begin{quote}
The amount assessed against any property for any work or improvement which does not represent an exercise of the
\end{quote}

\textsuperscript{59} 14 McQuillen, \textit{supra} note 1, at § 38.06.
\textsuperscript{60} Wis. Stat. §§ 66.60, .604, .605, .62, .625, .63, .635, .64, .645, .65, .694, .695, .699, .54(7)-(15) (1975).
\textsuperscript{61} Id. § 66.60(1)(a).
\textsuperscript{62} Id.
\textsuperscript{63} Id. §§ 66.60(1)(b), .60(3)(d).
\textsuperscript{64} See, e.g., Atkins v. City of Glendale, 67 Wis. 2d 43, 226 N.W.2d 190 (1975).
\textsuperscript{65} Thomas v. City of Waukesha, 19 Wis. 2d 243, 120 N.W.2d 58 (1963).
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police power shall not exceed the value of the benefits accruing to the property therefrom, and for those representing an exercise of the police power, the assessment shall be upon a reasonable basis as determined by the governing body. . . .

This distinction between the exercise of the two powers also exists with regard to the procedural requirements of the statute. Special assessments under the taxing power require particularized estimates of the net amount of benefits accruing to each parcel of property assessed. The report of the municipal official made pursuant to the preliminary resolution of the governing body must include, as to each parcel of property: (1) an estimate of the assessment’s benefit; (2) any damages; and (3) the net amount of benefits over damages or vice versa.

Strictly interpreted, this means that the municipality must be prepared to show that the improvement monetarily benefits each parcel assessed, at least to the extent of the amount to be levied. If the postimprovement value of the property does not show an appropriate increase, the assessment may be challenged. When the assessment is based on the taxing power, i.e., on the basis of benefits received, a presumption arises in favor of the assessing body that “the officers proceeded regularly and performed their duties until the contrary is made to appear by competent evidence.” Any presumption that the benefits received exceed the damage to the property is however, rebuttable. To rebut such a presumption, the property owner must show that the property is worth less than it was prior to improvements. For example, if as a result of street widening and road improvement there is an increase in traffic flow and street noise, it may be possible to show a detriment due to the improvement rather than a benefit. However, judicial review of such an issue is impossible should the taxpayer stipulate to the amount of the assessment along with other operative facts.

When the assessment is made under the police power, the statute does not require an estimate of net benefits over damages. Instead, the report of the municipal officer must contain

67. Id. § 66.60(3)(c).
a statement that each property assessed "is benefited," in addition to a schedule of the proposed assessments. This schedule replaces the estimates called for under the taxing power.\textsuperscript{71} The municipality is not required to show that the property is benefited to the full extent of the dollar amount collected, but merely that some benefit has accrued to the property. The issue of the necessary degree of benefit has never been addressed by the Wisconsin Supreme Court, but presumably the court would hold that the benefit must be reasonable in view of all of the circumstances.

Although the police power requirement relating to benefits is much more liberal than that of the taxing power, this cannot be construed to mean that municipal governing bodies have complete discretion to ignore the question of benefits conferred. In the recent case of \textit{In re Installation of Storm Sewers v. City of Glendale},\textsuperscript{72} a municipality proceeding under the police power attempted to rely upon the naked statement in the report that the property was benefited. The court ruled that the mere statement as to benefit was inadequate, and that the actual existence of benefits had to be determined. A contrary interpretation of the statute would mean that a municipality could assess property without regard to the existence of any consequential benefit to the property owner. This would abrogate the legislative intent.\textsuperscript{73} The municipal official making the statutory report should inspect each parcel of property subject to the assessment and develop documentation of the net benefit so as to prevent the possibility that the property owner could claim he was not benefited by the improvements.

In proceeding under the police power, the statute has no requirement that there be a reduction for damages.\textsuperscript{74} However, if there are no net benefits over damages, the levy of the special assessment would be voidable. If a street project results in damages, for example, by a change in the established street grade, section 62.16(1) of the Wisconsin Statutes provides that an assessment under the police power does not preclude property owners from suing for their damages.\textsuperscript{75} Additionally, the statutory limitation that the total revenues of the assessment

\textsuperscript{71} Wis. Stat. § 66.60(3)(d) (1975).
\textsuperscript{72} 79 Wis. 2d 279, 255 N.W.2d 521 (1977).
\textsuperscript{73} Id. at 287, 255 N.W.2d at 525.
\textsuperscript{74} Wis. Stat. § 66.60(3)(d) (1975).
\textsuperscript{75} Id. § 62.16(1).
may not exceed the total cost of the project applies to police power assessments as well as those made under the taxing power.

The governing body of a municipality proceeding under the police power is required to make assessments "upon a reasonable basis."\(^7\) The statute provides no definition of reasonableness, but determining and apportioning the total amount to be assessed in a fair and equitable manner should satisfy the statute. If the project includes benefits to the community at large, the general benefits should be assessed. The total amount to be specially assessed should be apportioned under a formula whereby each parcel is assessed only an amount no more or less than its equitable share.

When the benefit is apparent and immediately enjoyed by the property owners, it makes little difference whether the municipality employs the taxing power or police power. For example, in the initial construction of streets, sewer mains and water mains, abutting properties clearly benefit to the extent of the proportionate cost of the project (see appendices and diagram). In other types of projects the exact amount of the benefit is not nearly so ascertainable. Examples would be the replacement of deteriorating curbs and gutters, an area assessment for storm sewers (particularly relating to property located on higher ground), street widening projects and an area assessment for sewerage lift stations for land which will not be developed in the foreseeable future. For these improvements the municipality should proceed under the police power and thereby avoid the necessity of showing that the properties received a net benefit equal to the full amount of the assessment.

### III. Special Assessment Procedures

#### A. Responsibility of the Municipality

The Wisconsin special assessment statute is detailed and complicated, but strict compliance is necessary for local governments to extract funds from their constituencies. When there is a taking of property, procedural due process must be observed, and the Wisconsin statute endeavors to comply with this requirement. Because the elaborate procedural specifications may trap the unwary practitioner who has had little experience with special assessments, it behooves the lawyer to study

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\(^7\) Id. § 66.60(1)(b).
and follow the statute carefully. Being extremely technical in nature, a discussion of the detailed procedural steps of the statutes will be dispensed with. For those interested in this area, a chronological list of the required procedural steps is provided in Appendix A of this article.

B. Variance in Costs or Invalidity of the Assessment

As will be discussed below,\textsuperscript{77} material variance in costs or invalidity of the assessment empowers the governing body to reconsider the project and reassess the properties if additional notice and the right to be heard are provided.\textsuperscript{78} The requirement of additional notice or hearing is excepted if the cost of the project is less than the levied assessments, but the municipality must reduce each special assessment proportionately.\textsuperscript{79} An interesting question arises when a city wishes to assess for existing improvements and the current improvements cost less than those already in existence.\textsuperscript{80} Even though a municipality may fail to correct a special assessment when actual costs are less, the property owner may nevertheless be precluded from a recovery if the statutory requirements of section 66.60(12) are not met.\textsuperscript{81}

Care must be taken in the drafting of the preliminary resolution since the correction of a special assessment may hinge upon whether the municipality has relied upon the police power or the general taxing power. If a municipality begins the special assessment procedure by indicating that the police power is to be used, correction and reassessment can be carried out under the police power.\textsuperscript{82} But if special assessment is initiated under the general taxing power, the lack of the required statement that the property to be assessed is benefited\textsuperscript{83} prevents reliance upon the police power to correct the assessment.\textsuperscript{84}

\textsuperscript{77} See text accompanying note 125 infra.
\textsuperscript{78} Wis. Stat. § 66.60(10) (1975).
\textsuperscript{79} Id. § 66.60(11).
\textsuperscript{80} This question was posed, but not answered in Atkins v. City of Glendale, 67 Wis. 2d 43, 226 N.W.2d 190 (1975).
\textsuperscript{81} Id. at 54, 226 N.W.2d at 196.
\textsuperscript{82} Christenson v. City of Green Bay, 72 Wis. 2d 565, 568, 241 N.W.2d 193, 195 (1976).
\textsuperscript{83} Wis. Stat. § 66.60(3)(d) (1975).
\textsuperscript{84} Thomas v. City of Waukesha, 19 Wis. 2d 243, 250, 120 N.W.2d 58, 62 (1963).
C. Collection of the Special Assessment

A properly levied special assessment becomes a lien on the real estate and the municipality is empowered to receive and collect assessments in the same manner as the general real estate tax. Delinquent payments are extended upon the tax roll, as are real estate taxes, and penalties for late payment may be made. The property lien attaches regardless of the authority under which it is levied.

The governing body may defer payment of the special assessment during a period when no use is being made of the improvement. This permits land developers to enjoy a temporary reprieve from the burdens of the assessment when sewer or water mains are extended into unplatted tracts. The statute does not however contemplate that the developer will permanently escape the payment; municipalities may limit the time deferral to a designated number of years or until the improvement is used, whichever is first. The same statutory section permits the governing body to collect the assessment in installments.

When the municipality chooses to collect the special assessment in annual installments, the election must be stated in the preliminary resolution. Each installment must comprise a proportionate part of the principal of the assessment together with one year's interest on the unpaid balance. Installments are entered on the tax roll for each year and are treated like other municipal taxes. Delinquent installments are collected like delinquent general taxes on real estate. Real estate may be acquired by tax deed through a tax certificate for nonpayment of delinquent special assessments, but the applicant for a tax deed based on a special assessment must pay all the delinquent, general and school taxes due on the property as well.

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86. Id. § 66.60(15).
87. Id. § 66.604.
88. Id. § 66.605.
89. Id.
90. Id. §§ 66.54(7), .605.
91. Id. § 66.60(2). There is a specific installment assessment notice provided in the statutes in id. § 66.54(7)(e).
92. Id. § 66.54(7)(b).
93. Id. § 66.54(7)(c).
94. Id. § 66.54(7)(d).
95. Id. § 66.54(14).
Should the property owner wish to avoid paying the annual interest included in each installment, an election to pay the entire assessment must be filed with the clerk of the municipality within thirty days after the notice of the installment assessment. Failure to make a timely election allows the municipality to determine the amount of interest to be included in any installment the property owner may wish to prepay.

Many municipalities, allowing special assessments to be paid in installments, finance construction costs by issuing special assessment “B” bonds payable out of the proceeds of the assessments. These bonds are specifically authorized by detailed statutory provisions and do not constitute a general municipal liability. Alternatively, improvements may be paid out of the general fund of the municipality, but in this instance, amounts to be collected must be placed in the general fund. Cities, villages and towns are also empowered to borrow money and issue bonds other than “B” bonds to finance improvements for which special assessments will be made. County governments are not so empowered.

D. Remedies of the Property Owner

An aggrieved person having an interest in land affected by a special assessment can appeal to the circuit court of the county in which the land is located. The statute mandates exacting procedures. Within ninety days of the publication of the final resolution, written notice of appeal must be served upon the clerk of the municipality and a $150 bond from two sureties or a bonding company must be delivered to the clerk. The clerk is to then prepare a brief statement of the proceedings of the governing body and transmit it to the clerk of the circuit court. The statute states that this appellate procedure is the sole remedy of an aggrieved person and if the assess-

96. Id. § 66.54(7)(e).
97. Id. § 66.54(7)(f).
98. Id. §§ 66.54(10), .54(15).
99. Id. § 66.54(10)(a).
100. Id. § 66.54(12).
101. Id. §§ 67.04(2)(e), .04(2)(k), .04(2)(l).
102. Id. § 67.04(4)(a).
103. Id. § 67.04(5).
104. Id. § 67.04(1).
105. Id. § 66.60(12)(a).
106. Id. § 66.60(12).
107. Id. § 66.60(12)(e).
ment is not paid when due, the appeal must be dismissed.\textsuperscript{108} Though the appeal has no effect on any existing contract or bonds,\textsuperscript{109} the court can annul or modify the assessment.\textsuperscript{110}

The burden of proof is, naturally, on the property owner. The owner must show either that the statutory procedures were not followed, or that the assessment was not based on benefits received by the property, or that the assessing authority did not view the premises prior to making its determination of benefits. The plaintiff may also show by other competent evidence that the assessment was in error.\textsuperscript{111} If the amount of the assessment is contested, it is imperative that the property owner come forward with specific proof that the assessment is greater than the benefit received.\textsuperscript{112} The quantitative measurement of benefit to the property owner is a factual determination and a trial court's finding will be affirmed unless contrary to the great weight of the evidence.\textsuperscript{113}

As an alternative to the statutory appeal of section 66.60(12), section 66.635 may be utilized to base an action for the recovery of damages or to set aside an assessment.\textsuperscript{114} Dissident property owners have made good use of these provisions.\textsuperscript{115} The statute requires the court to summarily try the issues and to stay the assessment proceedings if it finds the assessment invalid.\textsuperscript{116} The court is also empowered to modify the assessment. The statute also allows the governing body itself to reopen and reconsider an invalid special assessment.\textsuperscript{117}

The practitioner is cautioned that an action under section 66.635 may be unavailable if the ninety day statute of limita-
tions of section 66.60(12)(a) has expired. Although an action for recovery of an excessive assessment might be commenced by serving a summons and complaint, the court might nevertheless deem it to be an appeal under section 66.60(12) and subject to the statutory procedures.118

Property owners may be reimbursed for assessments already paid if the contract for the improvements has been declared void by a court of last resort. Contracts can be declared void for want of power to make the contract, failure to contract in a specified way, or prohibition under the statutes.119 This provision could have implications for transactions involving the transfer of real estate where the reimbursement is made after closing and the assessment has preceded it. If the seller has deducted the amount of an impending assessment, as is provided for in the usual real estate purchase contract, the buyer is certainly not entitled to a return of the assessment when the proposed improvement is abandoned.120

E. Alternative Procedures

Because the municipality must strictly comply with all statutory requirements in order for the special assessment to be valid,121 judicial or statutory allowances for deviation from the prescribed procedures are extraordinary. Section 66.60(18) does however provide that the notices and hearing may be waived if all of the owners of property affected by the assessment agree in writing.122 More importantly, the statutes allow municipalities to create individual special assessment procedures by ordinance, provided that reasonable notice and hearing are included and the right to appeal is retained.123 It is likely that many municipalities would embrace this opportunity to escape the rigid stricture presented by the present statutes.124 For example, whenever the actual cost of a project is found to vary materially from the estimates in the city engineer’s report,

118. Atkins v. City of Glendale, 67 Wis. 2d 43, 226 N.W.2d 190 (1975).
120. State ex rel. Allis v. Mayor of Milwaukee, 15 Wis. 274, 277 (1862).
121. Dewey v. Demos, 48 Wis. 2d 161, 167, 179 N.W.2d 897, 899 (1970); Green Tree Estates, Inc. v. Furstenberg, 21 Wis. 2d 193, 197, 124 N.W.2d 90, 92 (1963).
123. Id. § 66.62.
124. This statute should probably be implemented by the passage of a charter ordinance pursuant to id. § 66.01. For examples of such charter provisions, see Lathrop v. City of Racine, 119 Wis. 461, 97 N.W. 192 (1903); Winnebago Furniture Mfg. Co. v. Fond du Lac County, 113 Wis. 72, 88 N.W. 1018 (1902).
the governing body must reopen the assessment and repeat the previously executed notice and hearing requirements. The assessment procedure then must be fully repeated. The municipality can avoid this annoyance by adopting its own special assessment ordinance having shorter procedures.

The Charter of the City of Milwaukee has detailed special assessment procedures which include adequate notice and hearing provisions. The material differences from the procedures found in section 66.60 relate to the governmental organization of Milwaukee. The charter also contains legal specifications for sewers and laterals in addition to water works.

F. Special Charges

Wisconsin municipalities are also authorized to impose special charges for current services with all or part of the cost to be charged to the property served. Examples of the types of services which may be specially charged are: (1) Snow and ice removal; (2) weed elimination; (3) street sprinkling; (4) street oiling and tarring; (5) repair of sidewalks, curbs and gutters; (6) garbage and refuse disposal; (7) sewer service; (8) tree care and (9) soil conservation.

Special charges must be preceded by a notice and a hearing if street tarring or repair of sidewalks, curbs or gutters is contemplated. In all other cases notice and hearing is optional for services to be specially charged. Special charges cannot be paid in installments and they become a lien upon the property if they are not paid. Additionally, the preliminary resolution required for special assessments is not required for special charges. Municipalities are also permitted to utilize the procedure outlined in certain separate statutes to specially as-

127. Id. ch. 12.
128. Id. ch. 14.
130. Id. § 66.60(16)(a).
131. See also id. § 66.615(5). Authorization for a town board to assess for snow removal is in id. § 66.345.
132. Sidewalk repair may be charged to the adjacent lot. Id. § 66.615(3)(f). A notice and hearing is required. Part of the expense may be borne by the city. Id. § 66.615(6).
133. Id. § 66.345.
134. Id. § 66.60(16)(a).
135. Id.
136. Id. § 66.60(16)(b).
137. Id. § 66.60(16)(c).
sess the costs of taking private property by eminent domain,\(^\text{138}\) whether they be villages\(^\text{139}\) or cities.\(^\text{140}\) A specific procedure is outlined in the statutes.\(^\text{141}\) The actual cost of a tax assessor’s plan for general tax assessment purposes can also be assessed specially against the land so platted by the assessor.\(^\text{142}\) However, there must be compliance with the provisions of section 66.60 relating to the collection of the assessment before the levy can be collected.\(^\text{143}\) Other possible assessments include highway taxes by a town board\(^\text{144}\) or special town taxes for repairing bridges and culverts.\(^\text{145}\) These are assessed generally and are added to the entire tax roll. Costs of flood control may be assessed against benefited lands by the Department of Natural Resources,\(^\text{146}\) and a drainage district may assess costs against each parcel of land benefited.\(^\text{147}\) Soil and water conservation districts may require contributions from landowners as a condition to receiving benefits.\(^\text{148}\)

IV. METHODS OF APPORTIONING THE SPECIAL ASSESSMENT

A. Determining the Total Cost

To find the amount of an individual special assessment, the total cost of the project must first be determined. The total cost is not limited to that part of the project work represented by construction bids based on the plans and specifications. The municipality may also include all other costs that may legitimately be attributable to the project. These include engineering fees (or the cost attributable to the municipal engineer), legal fees, the cost of street restoration, interest costs during construction and reasonable administrative costs. A reasonable contingency fund should also be included. It may be legally feasible to add the cost of prior improvements which benefit the property if they have been financed by general municipal funds or municipal utility funds.

\(^\text{138. Id. § 66.63.}\)
\(^\text{139. Id. § 61.34.}\)
\(^\text{140. Id. § 62.22.}\)
\(^\text{141. Id. § 66.63(2)-(4).}\)
\(^\text{142. Id. § 70.27(1).}\)
\(^\text{143. Dittner v. Town of Spencer, 55 Wis. 2d 707, 201 N.W.2d 45 (1972).}\)
\(^\text{144. Wis. Stat. § 81.11 (1975).}\)
\(^\text{145. Id. § 81.39.}\)
\(^\text{146. Id. § 87.09.}\)
\(^\text{147. Id. § 88.35. See In re Dodge County Farm Drainage Dist., 50 Wis. 2d 1, 7, 183 N.W.2d 52, 55 (1971) (discusses special assessments by drainage districts).}\)
\(^\text{148. Wis. Stat. § 92.08(9) (1976).}\)
For some years it appeared to be the law in Wisconsin that a municipality could not construct improvements financed out of municipal funds and then years later "reach back" and levy a special assessment. However, the Wisconsin Supreme Court has recently indicated in Atkins v. City of Glendale, that the proportionate cost of past improvements may be added to the cost of current assessments, if the present improvement is related to the earlier project. For example, suppose an eight inch sewer main is currently being installed in a designated district of a municipality. Some years prior, the municipality had installed and financed a lift station and large collector mains located outside of, but benefiting, the special assessment district. Under the Atkins case, the municipality could determine the percentage of the previous improvement benefiting the district and add it to the current assessment.

Even though it appears that a municipality may now legally reach back and recoup part of the cost of previous improvements, the better practice would be to levy a special assessment at the time each improvement is installed. In the above example, the municipality would have levied a special assessment for the entire area benefited by the lift station and the collector mains, and then deferred, with interest, the special assessment on vacant property not immediately enjoying a benefit.

B. Determining the Total Amount of the Special Assessment

The statute provides for the election by the governing body of the municipality to assume part of the cost of the special assessment. The policy reasons for a municipality contributing to the cost of a special assessment vary and may include continuing a practice begun years before of equalizing the cost of the assessment with previous assessments or lowering the cost to the property owners when the cost is abnormally high, etc. However, the common practice is to levy assessments covering the total net cost of the project. Nevertheless, certain deductions must be made from the assessment.

Since municipalities cannot profit from special assessment

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149. Marquette Homes v. Town of Greenfield, 244 Wis. 588, 592-93, 13 N.W.2d 61, 64 (1944).
150. 67 Wis. 2d 43, 226 N.W.2d 190 (1975).
151. See text accompanying notes 26-34 supra.
projects,\textsuperscript{153} any state or federal grants to be received must be deducted from the cost of the assessments. The municipality must also determine and pay the portion of the cost attributable to its own property. In addition, the municipality is required to pay the cost of the improvement attributed to property which has received some benefit but is exempt by law, such as federally owned property or the town portion of a border street improvement when no town assessment is levied.\textsuperscript{154}

Conversely, it would appear that the cost of the project attributable to nonbenefiting property must be spread over the remaining assessable property within the district. Such nonassessable property would include street crossings, portions of corner lots and certain property which, because of size or shape, receives no benefit. A parcel of land too small to build upon is generally not benefited by the city improvements. Normally the cost of these improvements, attributable to exempt properties, is not overly burdensome. However, in instances when a large percentage of the improvement abuts land which does not receive benefit therefrom, the municipality may opt to assume part of the cost.

The statutes provide that a parcel of land subject to special assessments for sanitary sewer or water installations along more than one side of the parcel must receive special consideration from the governing body of the municipality levying the special assessment.\textsuperscript{155} Obviously, a residential lot receives little or no benefit from a second water or sewer line. As for other municipal improvements, the municipality may elect to grant a similar exemption or assess all of the cost.

Most municipalities establish a formula to cover this situation such as totaling the cost of both systems and assessing half the total footage. It should be noted that the municipality may not rely entirely on this formula. Since the statutes require that each parcel be given individual consideration,\textsuperscript{156} the governing body should examine each corner parcel individually and specifically determine whether the formula operates equitably in that instance.

Large parcels of industrial and commercial land under single ownership present special problems in determining a fair

\begin{itemize}
\item \textsuperscript{153} Id. § 66.60(11).
\item \textsuperscript{154} Id. § 66.60(6).
\item \textsuperscript{155} Id. § 66.60(6a).
\item \textsuperscript{156} Id.
\end{itemize}
exemption. Certainly some "corner lot" exemption should be granted, but often industrial and commercial land will benefit from sewer and water mains installed on the second, third or even the fourth side of the parcel.

The subject of special benefits versus general benefits has previously been discussed.\textsuperscript{157} In determining the total amount to be assessed, certain improvements, such as major street construction projects, require a determination of the benefit to the community as a whole versus that accruing to the specific landowners. Only the remaining special benefits are assessable.

\textbf{C. Arriving at the Assessment Formula}

After the cost of the project and the amount to be assessed has been determined, the next step is to apportion the cost of the project to the property benefited in a fair and equitable manner. There are several methods and combinations of methods that may be employed. In any case however, the ultimate objective must be that no property owner pay more or less than his proportionate share of the total assessment.

The three most common assessment methods are the unit assessment, the front foot assessment and the area assessment. The nature and complexity of the project will determine the final formula. The unit assessment, which was quite popular some years ago, is seldom used any more.\textsuperscript{158} Its use has always been limited to sewer and water projects. This method provides that each residential and commercial unit pay a pro rata share of the total cost. For example, the assessment would be the same for a twenty room home on a five acre lot as it would be for a small home on a sixty foot lot. The justification for this approach is that each residence receives the same service and thus should pay equally. The inequities are quite apparent. The cost of serving the five acre estate will be five or ten times that of the sixty foot lot and the larger tract will receive considerably greater benefit. Undeveloped land would also create special problems. The unit method operates equitably only in fully developed small communities having lots roughly the same size.

The front foot assessment is presently the most commonly used method of assessment. It is employed in projects involving

\textsuperscript{157} See text accompanying notes 1-25 supra.

\textsuperscript{158} Duncan Dev. Corp. v. Crestview Sanitary Dist., 22 Wis. 2d 258, 125 N.W.2d 617 (1964).
street improvements, curb and gutter construction, sidewalk maintenance and sewer and water main construction. It is justified because parcels of varying sizes usually benefit in proportion to size. Municipalities in many instances can rationally charge a higher front foot cost for commercial and industrial property\textsuperscript{159} than is levied against residential property.

Although the front footage method is often the fairest, care must be exercised to prevent inequities. Irregularly shaped lots with disproportionately large or small front footage will require special treatment. The formula should provide for averaging the front and rear footage or provide for an area assessment of such parcels. The same is true for cul-de-sacs where a hundred feet of sewer or water main may serve five or six homes. The assessment of corner lots has already been discussed.\textsuperscript{160}

The same kind of equitable considerations are usually applied to establishing the cost of the laterals, service pipes which run between the main service pipe and the lot line. Although laterals result in special charges rather than special assessments, the cost is usually included in the special assessment. Through no fault of the property owners, the length of laterals vary greatly. Rather than charging on a per foot basis, most municipalities establish an average annual charge.\textsuperscript{161}

Usually front foot assessments are applied only where the public improvement abuts the property to be assessed. However, there may be exceptions. For instance, in 1861 the Wisconsin Supreme Court determined that the City of Milwaukee had the authority to levy a special assessment for a breakwater which benefited lakeshore property located a quarter of a mile away.\textsuperscript{162} As another example, a municipality electing to put sidewalks on one side of a residential block may be justified in assessing two-thirds of the cost to the abutting property and one-third to the property across the street.

The area assessment method is applicable where much of the benefited property does not abut the municipal improvement. This would be the case with oversized water mains intended to serve a large area, collector mains, lift stations or

\textsuperscript{159} Molbreak v. Village of Shorewood Hills, 66 Wis. 2d 687, 225 N.W.2d 894 (1975).
\textsuperscript{160} See text accompanying notes 152-57 supra.
\textsuperscript{161} Wis. STAT. § 66.625 (1975).
\textsuperscript{162} Miller v. City of Milwaukee, 14 Wis. 699 (1861). Cf. Soens v. City of Racine, 10 Wis. 214 (1860).
downtown parking facilities. Suppose that a municipality constructs lift stations and collector mains which will eventually serve a five hundred acre area (see appendices and diagram). Part of the area is developed while the rest remains unimproved. In this situation, the municipality may determine the total cost and divide by the number of assessable acres to determine the per acre assessment. Since street acreage is excluded in developed areas, a deduction for streets, usually twenty or twenty-five percent, should be made in undeveloped areas. Also, since the undeveloped area receives no immediate benefit, the assessment may be deferred until the land is platted or the service is used. Although the statutes no longer impose a time limit on the improvement, the municipality may provide one.

Quite often a particular project will lend itself to a combination of assessment methods. Add to the above area assessment example the installation of eight inch mains for part of the project. This portion of the project will normally be assessed on a front foot basis. However, segregating the cost of each segment of the project is not a matter of simple mathematics, since each segment includes elements of the other. As for the area assessment, property abutting the large collector lines may hook up directly and should therefore be assessed the equivalent of an eight inch main on a front foot basis, in addition to the area special assessment. As for the installation of eight inch mains, assuming that some of the mains are installed at an extraordinary depth in order to serve future development, this portion of the cost should be assigned to the area benefited through the use of an area assessment. Again, the objective throughout the process of determining the assessment formula is to equitably spread the cost of the project among the benefited properties. While the municipality should attempt to maintain consistency from project to project, old formulas should not be followed blindly. Each new project may involve special situations requiring new approaches.

D. Property Owned by Nonprivate Individuals

Properties owned by the state, municipalities, special districts and public utilities, are in all respects subject to special assessments. With the exception of state property, special

164. Id. § 66.64. If property of the state is subject to special assessment, a copy of
assessment liens are fully enforceable against such property.\textsuperscript{165} Moreover, a special assessment may be levied against property of an adjacent municipality if it abuts upon, and benefits from, the work or improvement.\textsuperscript{166}

The legislature has seen fit to direct particular attention to the assessment of railroad property, and it is clearly subject to special assessment levies.\textsuperscript{167} The pertinent statutes were apparently created to delineate more clearly the rights of municipalities against railroads rather than to exempt railroads from any liability or responsibility. The statute leaves no option to the municipality to exempt railroad property. Street grading, curbing, paving or other improvements must be assessed against railroad property on the same unit cost basis as that assessed against other properties along the street.\textsuperscript{168} Should the railroad corporation ignore the claim duly made against it, the municipality can maintain an action to collect this assessment.\textsuperscript{169} Not only are railroads specifically subject to special assessments, but the statutes further require that railroads maintain and improve streets used by their tracks should the governing body of the municipality determine that this is necessary.\textsuperscript{170} Failure to comply with this provision allows the municipality the option of contracting out for the improvement and then to assess the railroad for the costs.\textsuperscript{171}

\textbf{E. Exempt Property}

Wisconsin exempts certain enumerated entities and organizations from general property taxes\textsuperscript{172} but such exemptions do not automatically embrace special assessments.\textsuperscript{173} In general, municipal corporations have no implied power to exempt lands from special taxation or local assessments unless express statutory authorization exists.\textsuperscript{174} Religious, charitable\textsuperscript{175} and educat-

165. \textit{Id.} § 66.64.
166. \textit{Id.} § 66.65.
169. \textit{Id.} § 66.695.
170. \textit{Id.} § 66.696.
171. \textit{Id.} § 66.698.
172. \textit{Id.} § 70.11.
174. See 14 McQuILNN, supra note 1, at § 38.80.
175. \textit{Id.} at § 38.81.
tional institutions, as well as cemeteries and burial grounds, are not automatically exempted from special assessments by reason of exemption from general property taxation. Should certain real property be exempt from a special assessment, the share of the assessment is not to be distributed among the remaining assessed properties, but must be computed and paid by the municipality. That certain property may be statutorily exempted from special assessment is well established, but the power to exempt extends only to the legislature. Section 66.60(6)(a) does however permit the governing body to determine a reasonable and just deduction or exemption for individual parcels of land should extenuating facts dictate. Such exemptions can be used for inequitable situations, such as cemetery land or other properties which are incapable of any future benefit from the improvement. The statute also allows deductions for sewer or water main assessments against corner lots.

V. Conclusion

The statutory prerequisites necessary to levy a valid special assessment are lengthy, detailed and specific. Numerous pitfalls await the municipality which fails to strictly comply with the statutory language. The special assessment process is a valuable adjunct to other means for gathering revenues for local governmental purposes, but because municipalities lack inherent power to specially assess, caution must be observed so as to satisfy all the procedural requirements contained in the statutes.

The special assessment is at once both a means for extracting payment for demonstrable benefits and a visible governmental monetary levy which can become a rallying point for venting the overburdened taxpayer's spleen. It will undoubtedly continue to constitute a basic resource for civic improvement, and it will certainly continue to be an object of intense interest for real property owners.

176. Id. at § 38.82.
177. Id. at § 38.83.
179. Lamasco Realty Co. v. City of Milwaukee, 242 Wis. 357, 378, 8 N.W.2d 372, 382 (1943).
181. Id.
APPENDIX A

General procedures applicable to the governing body:

(1) The governing body of the municipality must first pass a preliminary resolution which includes:

   (a) An intention to exercise special assessment powers for a stated municipal purpose;
   (b) A general description of the contemplated purpose;
   (c) The limits of the proposed assessment district;
   (d) The number of installments in which the assessments may be paid, if installments are to be allowed; (Alternatively, the number of installments may be determined at a hearing which must thereafter be held.)
   (e) A direction that the proper municipal officer (usually the city engineer or director of public works) or other employee make a report on the assessment.

(2) The report of the city engineer (or other designated employee) must include:

   (a) Preliminary or final plans and specifications;
   (b) An estimate of the entire cost of the project;
   (c) If the general taxing power is being relied upon, as to each parcel of property, an estimate of:
      (i) The assessments of benefits to be levied;
      (ii) Damages for property taken or damaged;
      (iii) Net amount of benefits against damages;
   (d) If the police power is being exercised, a statement that the property to be assessed is benefited and, instead of the estimates required by (c), a schedule of the proposed assessments. (A mere statement that property to be assessed is benefited is insufficient; the

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1. Many practitioners realize that the contemplated improvement is usually born in the proceedings of a public works committee or in some other preliminary discussion of which the property owner is unaware. It frequently happens that an improvement can be staved off much more easily at this stage than at the time the common council or village board takes any initial action.
3. Id. § 66.60(3).
4. The practitioner should note that, by this time, the municipality has already invested considerable time and expense in the assessment and success in changing the minds of the governing body members decreases substantially with the passage of time.
SPECIAL ASSESSMENTS

... report must actually establish the fact of benefit to the property.)

(3) The report must be filed with the municipal clerk for public inspection.

(4) The municipal clerk must publish a notice containing:

(a) The nature of the proposed work or improvement;
(b) The general boundaries of the assessment district;
(c) The time and place where the report may be inspected by the public;
(d) The time and place of the hearing to be held before either the governing body, or a committee thereof, or the board of public works.

(5) The public hearing on the proposed work or improvement must then be held from ten to forty days after publication of the notice.

(6) The governing body must then approve, disapprove or modify the proposed improvement. The common council or village board can:

(a) Refer the report back to the city engineer, with directions, or
(b) Adopt the final resolution approving the plans and specifications and direct that the work be commenced and the assessments levied. Assessment of benefits or an award of damages can only be the difference between the two estimates as to any particular property.

(7) The municipal clerk must thereafter publish the final resolution and additionally, mail a copy of the resolution to every interested person, which includes, of course, each prop-

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7. The notice must be a class 1 notice under Wis. Stat. ch. 985 (1975).
9. Id.
10. Id. § 66.60(8)(a).
11. Id. § 66.60(8)(c).
property owner to be specially assessed. A special notice is required when the assessment is to be collected in installments.¹³

(8) Send copy of final resolution to property owners.

APPENDIX B

Computation of assessments for typical sewer project:

A. Sewer project costs:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lift stations and force mains (Per contract)</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>Large collector sewer mains (Per contract)</td>
<td>600,000.00</td>
</tr>
<tr>
<td>20,000 ft. 8 inch sewer main (Per contract)</td>
<td>480,000.00</td>
</tr>
<tr>
<td>Manholes, risers and appurtenances (Per contract)</td>
<td>20,000.00</td>
</tr>
<tr>
<td>Street restoration (Per contract)</td>
<td>35,000.00</td>
</tr>
<tr>
<td>9,000 ft. 4 inch main (laterals) (Per contract)</td>
<td>90,000.00</td>
</tr>
<tr>
<td>Engineering fees (Estimated)</td>
<td>110,000.00</td>
</tr>
<tr>
<td>Legal fees (Estimated)</td>
<td>12,000.00</td>
</tr>
<tr>
<td>Administrative costs (Estimated)</td>
<td>10,000.00</td>
</tr>
<tr>
<td>Interest during construction (Estimated)</td>
<td>35,000.00</td>
</tr>
<tr>
<td>Contingency (Estimated)</td>
<td>45,000.00</td>
</tr>
</tbody>
</table>

Total project cost $1,587,000.00

B. Summary of recommended assessment charges and city contribution:

1. Area assessment:
   - Platted lots, 700 acres: $571.89 x 700 = $514,700.00
   - Unplatted acreage, 900 acres: $571.89 x 900 = 400,300.00
   - Total assessment: $514,700.00 + $400,300.00 = $915,000.00

2. Front foot assessment:
   - 30,000 assessable feet, each $18.33: 30,000 x 18.33 = 550,000.00

3. City contribution: 32,000.00

4. Laterals:
   - 300 laterals, each $300: 300 x 300 = 90,000.00

Total: $1,587,000.00

C. Explanatory notes:

1. The area assessment was determined as follows:
   - Assessable acreage: An engineering study determined that 1,900 acres benefited by the installation of lift stations and collector mains, 700 acres of platted land (excluding streets) and 1,200 acres of unplatted land. In order to equalize the assessment, a 25% deduction was made from unplatted land to account for future street dedications, or 900 acres (1,600 total assessable acres).
   - The amount of the area assessment was determined
as follows: The cost of lift stations and collector mains was $750,000. To this was added the prorated ancillary costs of $165,000, or a total of $915,000. $915,000 ÷ 1,600 acres = the $571.89 per acre assessment.

(2) The front foot assessment was determined as follows:

(a) 20,000 linear feet of 8 inch pipe × 2 (both sides of street) = 40,000; less 10,000 feet for street crossings and exempt property = 30,000 assessable feet.
(b) The amount of the front assessment was determined as follows: the cost of the 8 inch main was $480,000. To this was added the prorated ancillary costs of $70,000, or a total of $550,000. $550,000 ÷ 30,000 assessable feet = a front foot assessment of $18.33 per foot.

(3) The $32,000 city contribution was based upon the front footage and area of property that did not benefit. Note that pursuant to section 66.60(1) the city council could have opted to contribute more which would have resulted in reducing the area and/or front foot assessment.

(4) Rather than charging the actual cost to each property owner, the current cost was charged.