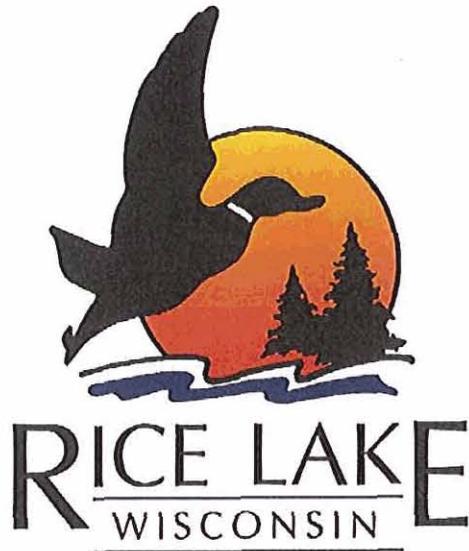
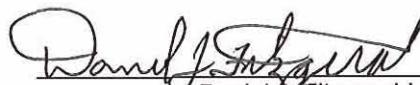


CITY OF RICE LAKE, WISCONSIN
Special Assessment Policies

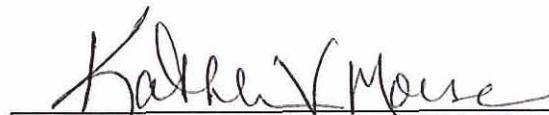


Adopted by the Rice Lake Common Council
February 9, 2010

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Daniel J. Fitzgerald
Mayor



Kathleen V. Morse, MMC, CMTW, WCPC
City Clerk-Treasurer

I. INTRODUCTION

The League of Wisconsin Municipalities, in a League Handbook entitled "Special Assessments in Wisconsin" (revised and reprinted in 2001), defines "special assessments" in its "preface" in the following manner:

Special assessments are charges levied by local governments against real property to defray the costs of public work or improvements which benefit such property. For over a century, Wisconsin municipalities have used special assessments as a method to finance local public works and improvement projects. Special assessments are flexible. They can be used to pay for street construction, curb and gutter, storm and sanitary sewer improvements, water mains and facilities, tree removal, park land condemnation and many other public improvements. Because only those properties which specially benefit from the improvement bear the cost of the improvement, the general property tax is not burdened. Special assessments, therefore, are useful financial tools for municipalities. Indeed, their usefulness increases as demand grows for each municipal dollar.

Municipalities are given the "power" to levy "special assessments" by Wisconsin State Statutes 66.0701. This statute allows municipalities to proceed with such assessments by means of two (2) "optional powers", they are: the police power or the taxing power.

- (1). The police power allows the local governing body to enact ordinances and take action "...for the health, safety, and welfare of the public."
- (2). The taxing power is the general power of any government to levy taxes to pay for improvements and services provided.

Under either the police power or the taxing power, some special benefit must accrue to property in order for it to be burdened with a special assessment. The difference between specially assessing under one or the other power lies in the criteria necessary to establish the amount to be assessed and the procedures to be followed. Under the police power, the governing body must determine the actual existence of benefits while, under the taxing power, it must calculate the actual value of the benefits conferred (League Handbook, 2001, Page 2).

The League of Wisconsin Municipalities handbook goes on further to differentiate between "police power" and "taxing power". A special assessment made under the general taxing power must be based on the actual benefit accruing to the involved property. The maximum legal limit of an assessment based on the taxing power is the actual value of benefits conferred on the property by the public improvement.

A special assessment under the police power action must satisfy two (2) basic requirements:

- (1) the property must in fact benefit from the improvement [Wisconsin Statutes 66.0703 (1)]; and
- (2) the amount of the assessment must be made on a "reasonable basis".

Benefits under police power assessments need not be precisely determined although they must exist and must be special as opposed to benefits conferred on an entire community. "The whole theory of special assessment [under the taxing power] is that the property owner is merely rendering an equivalent for the benefit which he has received." "If the amount of the special assessment exceeds the amount of the benefits there is a taking of private property without due process of law." Regardless of the "power" invoked to support the levy, the total sum of special assessments levied and collected cannot exceed the total cost of the project (League Handbook, 2001, Pages 2 and 3).

In the City of Rice Lake, all special assessments are levied under the police power unless specifically stated otherwise by the Common Council. The decision to not use police power shall be specifically stated in the necessary resolution, otherwise the "default" action shall be the use of police power.

Wisconsin State Statutes 66.0705 (1) (a) declares the following as to what properties are subject to special assessments for local improvements:

The property of this state, except that held for highway right-of-way purposes or acquired and held for purposes under s. 85.09, and the property of every county, city, village, town, school district, sewerage district or commission, sanitary or water district or commission, or any public board or commission within this state, and of every corporation, company or individual operating any railroad, telegraph, telecommunications, electric light or power system, or doing any of the business mentioned in Chapter 76, and of every other corporation or company whatever, shall be in all respects subject to all special assessments for local improvements.

Wisconsin courts have applied the following “principles” regarding benefit which will support a special assessment:

- (1). The assessment is presumed to be based on actual benefits.
- (2). The benefits supporting a special assessment must be unique and special, not general.
- (3). Special benefit reasonably certain to be realized in the future will support an assessment.
- (4). Taxing power assessments may not exceed actual benefits over damages.
- (5). Police power assessments must confer some special benefit and not be arbitrary or allocated unequally or unfairly.
- (6). Mere uniform treatment does not establish reasonableness or an assessment (League Handbook, 2001, Pages 4-5).
- (7). City sidewalks are assessed by authority of §66.0907, under which installation, removal, repair and maintenance costs of sidewalks are levied under police power and do not require a showing of benefit to the property charged.

The League of Wisconsin Municipalities handbook also describes in detail various “alternative assessment formulas” and special uses for special assessments (League Handbook, 2001, Pages 6-9). The various “alternative assessment formulas” described in the handbook are: front foot assessments, area assessments, combined area-front foot assessments, corner lots, residential equivalency units (REUs), and transportation improvements methodology. There are special uses for special assessments that can be levied against benefiting properties such as assessor’s plats, Business Improvement Districts (BIDs), condemnation and special assessments, current services assessments, parking systems, sidewalks, tree care, utility laterals, and utility acquisition.

The City of Rice Lake does not utilize all the types of special assessments aforementioned in this section of the special assessment policy document. This information, for the most part, is outlined to the reader to be instructive of the various types of special assessments that are allowed by the State of Wisconsin. The federal constitution allows only the federal government and the “states” to have “sole taxing authority” on their own right, but, these entities may permit lower forms of government (like counties, cities, townships, villages) to tax by establishment of law. Therefore, because the sovereign State of Wisconsin has established Wisconsin State Statutes 66.0701, it has permitted such special assessments to be levied by “lower forms of government” within its boundaries. It is also fact that how “special assessments” are levied in accordance to the law has been subject to much legal interpretation by the Wisconsin State Court system. The City does levy some form of “special assessments” to be of benefit through its policies that reflect state statutes and community values.

Of the various types of special assessments permitted by law, the City of Rice Lake directs that the engineering consultant utilize the most reasonable basis available. The application of this basis is to be outlined in the engineering report that is to be made a part of the special assessment proceedings.

II. OVERVIEW

The City’s current special assessment ordinance/policy has “evolved” over the years to its current status as we know it today. The City of Rice Lake had as a special assessment policy the practice whereby the municipality assumed most if not all of the assessments in the 1960s and 1970s when there was much growth ongoing at that time. The “pendulum” on the City’s participation then swung to where the developer was compelled to pay for most, if not all of the special assessments—around the latter portion of the 1970s to early 1980s. The

change in who pays for infrastructure improvements was a decision made by the municipality at that particular time when the City's Subdivision and Platting Code was being rewritten.

The City made several other "amendments" to its special assessment procedures, most notably in the latter 1990s. These "amendments" have allowed for the current municipal practice whereby, unless for extraordinary reasons, the developer pays most (80%) of development costs and the City "participates" (in an "incentive" manner) with infrastructure improvements (to no more than 20%). The City has also attempted to achieve various "incentives" to be catalysts for continued and sustained growth in the community by adoption of a special assessment policy on April 13, 1999. The City has amended this policy document to place more of the public improvement costs upon the "developer" on January 9, 2001.

III. CURRENT SPECIAL ASSESSMENT PROCEDURES

The City of Rice Lake developed an infrastructure extension procedure policy to better coordinate such projects in 1993. That procedure policy was adopted to better facilitate infrastructure projects among various departments within the City of Rice Lake, the Rice Lake Utilities, City Engineer and potential developers. This procedure has resulted in meetings between the aforementioned parties to discuss a wide range of development issues that are important to each and every infrastructure project. City representatives make known the Chapter 259 Land Division Code and special assessment policy requirements. The City Engineer develops an "engineer report" in accordance with municipal codes, policies and Wisconsin State Statutes. The City or its agents outline various policies to affected property owners through either verbal or written correspondence on various infrastructure projects over the years and will continue to do so in the future.

Information will be provided to and input sought from the public in advance of the holding of any special assessment hearing in accordance with the following outline:

- An initial meeting will be held of all owners of benefitting property to inform them of the pending project, to notify them of the justification for pursuing the project at this time, and to seek their input.
- A second meeting will be held which shows the project plan including as many of the ideas presented by the public at the first meeting which the engineer and / or staff deem feasible to incorporate into the plan.
- All comments of the public, whether incorporated into the plan or not, will be submitted with the Engineer's Report which is provided to the Council as a part of the special assessment process.

IV. SPECIAL ASSESSMENT POLICIES

Special assessments are a necessary part of any infrastructure project being built within the community that involve amenities such as curb and gutter, blacktop, sand and gravel, storm sewer, sewer and water, electric distribution facility extensions, sidewalks, street lights, excavating, removal of unsuitable materials, professional service costs for surveying, inspection, and engineering, etc. Such public improvements add to the physical makeup of the community that allow for development of homes, schools, parks, churches, industries, commercial businesses and the like. Such public improvements allow for delivery of various public and private sector services—police, fire, ambulance, telephone, snowplowing, cable television, postal delivery and many others. Such "development" in its many diverse ways create the "community" that is known as Rice Lake. This development has allowed the community to grow to its present size and becoming a "primary growth center" in Northwestern Wisconsin.

Listed in this section are the various "special assessment policies" that have been adhered to by the City of Rice Lake since at least the adoption and amending of the policy document in 1999. What is written in this section form the "major aspects" of the City's "special assessment policies." Other "public improvement standards" subject to the City's attention and that serve as "reinforcement" to these policies are Chapter 259 Land Division Code and Wisconsin State Statutes 66.0701 and 236. The reader of this document is cautioned to realize that this policy document is not all inclusive of all special assessment regulations/procedures nor do they address all unique situations that can sometimes occur with public improvements.

The “major aspects” of the City’s “special assessments” policy include, but are not limited to, the following:

- (1). The City “underwrites” nearly all development projects. This means that “temporary funds” for the construction of the project are provided by the City (either through borrowings or with cash-on-hand). At the conclusion of construction, these costs are then allocated to the developer and other benefiting properties.
- (2). Developers and other benefiting properties (i.e. those to be special assessed) pay for:
 - curb and gutter
 - sidewalks (new sidewalk installation on existing residential streets will not be assessed)
 - water and sanitary sewer main lines up to ten (10) inches in diameter
 - installation and replacement of water and sanitary sewer service laterals from the main line to the right-of-way*
 - half of the cost to replace existing water main lines less than six (6) inches in diameter (subject to 10” maximum stated above)
 - storm sewer up to 24 inches (24”) in diameter
 - sand and gravel
 - two inches (2”) of hard surface paving
 - prorated surveying, inspection and engineering fees

The City pays for:

- excavation for streets and sidewalks
- half of the cost to upgrade water mains as discussed above
- water, sanitary sewer, and storm sewer utility main line diameter (including storm sewer) greater than that aforementioned
- blacktop in excess of two inches (2”)
- reconstruction, maintenance and replacement of existing pavement systems,
- replacement of curb and gutter
- replacement of storm sewer
- replacement of water main lines six (6) inches in diameter or greater
- prorated surveying, inspection and engineering fees
- installation of replacement trees in the boulevard if desired by the adjoining property owner

*Note: Rice Lake Utilities will reimburse the cost of water and sanitary sewer lateral replacement from the main to the right-of-way if the property owner replaces the lateral line from the right-of-way to the building.

However, for new construction the City’s “general fund”, exclusive of the Rice Lake Utilities, share of the “public improvements” shall be capped at no more than twenty percent (20%) of the total project and Rice Lake Utilities share shall be as allowed in the Wisconsin Public Service Commission rate tariffs for the electric and water utilities

Developers shall be responsible for one hundred percent (100%) of project improvements should their “public improvement” projects not be part of the City’s Capital Improvements Program (CIP). The deadline for requesting that project improvements be part of the CIP shall be September 1 of the year prior to the requested development.

- (3). The Wisconsin Public Service Commission rate tariffs for the extension of electric service shall be followed. Generally, this means that at least 50% of the cost of the extension is paid “up front” with the remainder being paid on completion.
- (4). Large projects are “phased” over several years for budget or bonding purposes. The City places such “phased” development projects within its annual Capital Improvements Plan (CIP) when undertaking the

municipal budget process. Such placement of large, phased infrastructure projects within the CIP will allow for consideration of them during the budget process for the given year that they are scheduled.

- (5). Developers who “initiate” a project (this shall not be construed to include complaints or suggestions from citizens) are asked to pay for them upon “project completion.” “Initiation” shall be defined as a request to have the project done sooner than such would have been completed as a part of the City’s capital improvement process.

A “developer” shall be defined as someone who requests in writing or by petition the public improvements to be accomplished sooner than the CIP process allows. A “developer” shall also be defined as the original owner of the remaining contiguous benefitting property from which the development has been subdivided.

The City defines “project completion” as being the placement of the first lift of blacktop on a roadway for new development projects. “Project completion” for reconstruction projects is defined as when the project is entirely completed for infrastructure placement and engineering.

Other benefitting property owners—“caught in the middle”—who are not requesting the improvements are assessed as follows:

- If principal cost of assessment is less than \$250, all in one year including interest accrued thereon together with the first half of property taxes.
- If principal cost of assessment is greater than \$250, but less than \$1,250, in five equal installments (totaling the principal cost of the assessment), paid annually with interest accrued thereon, together with the first half of property taxes at an interest rate of 2% above the interest rate¹ charged to the City during the most recent general obligation bond borrowing with an amortization period of ten (10) years.
- If principal cost of assessment is greater than \$1,250, in ten equal installments (totaling the principal cost of the assessment), paid annually with interest accrued together with the first half of property taxes at an interest rate of 2% above the interest rate charged to the City during the most recent general obligation bond borrowing with an amortization period of ten (10) years.

The “other benefitting property owners” are also billed for public improvements upon “project completion” (with interest accruing 30 days after such billing), as specified for the dollar amounts noted in this subpoint.

Someone labeled as “other benefitting property owner” shall be defined as a person whose property is served by “public improvements”, but did not make the initial request for them in writing or by petition.

- (6). As part of the special assessment process, developers and other benefitting property owners are given the “engineer’s report”, the “Lien Acceptance” document, and a map of the project area. They are also informed that if they “object” to the project or “special assessments” that a “public hearing” will take place to consider their input along with expected benefits of the project and that the governing body would make final decisions on the project once all necessary input/information had been received on the proposed project. The governing body, by Wisconsin Statute 66.0701, can impose all, part or none of the special assessments after taking testimony at a public hearing.
- (7). Property owners who own undeveloped agricultural land which is not likely to be developed in the near future can be granted a “deferment” of special assessments in compliance with Wisconsin State Statutes and City policy. This deferment can be for up to ten (10) years or until the property is rezoned, subdivided, improved, or sold—whichever comes first. Wisconsin State Statutes allow for properties zoned for and in use as “exclusive agricultural lands or for which a farmland preservation agreement”

¹ Charging “2% above the cost of borrowing” is intended to cover the City’s cost of administering special assessments including recording, collection, management of delinquencies, etc.

under Subchapter V of Chapter 91, Wisconsin Statutes., has been recorded, are exempt from special assessments for sanitary sewers, water, lights or nonfarm drainage unless the assessments were imposed prior to the recording of the agreement or prior to zoning of the land for exclusively agricultural use under Subchapter V. Land covered by this exemption must be denied use of an improvement created by the special assessment as long as the owner of the land has a recorded agreement under Subchapter V or the land is zoned for exclusively agricultural use under Subchapter V, unless the owner pays the amount that would have been paid had the land not been excluded (League Handbook, 2001, Page 3).

- (8). The City's "special assessment" policy of assessing on the longer side of corner lots has been past practice and adhered to when "benefit" is assigned through the state statute mandated "engineer report". The cost of the short side is "spread" over the entire project unless the short side is 150' or longer, in which case the difference between the length of the long side and 150' is assessed directly to the benefiting property. The reason for the 150' limitation is that—at this point—virtually any property could be subdivided with the new parcel receiving "full" benefit of the improvements adjoining the "short" side.

This "corner lot rule" only applies to low-density residential (i.e. RS, R, and RE zoning districts) storm sewer, water and sanitary sewer. In all other zoning districts, curb and gutter, sand and gravel, hardsurfacing, and any other assessable improvements—including prorated surveying and engineering—are fully assessed to the short as well as the long side.

- (9). New construction special assessments are one time only public improvement costs as specified by this policy to be borne by developers and property owners. Such special assessments, unless otherwise specified, shall be deemed to be exercised as a "police power" deriving benefit to those properties affected by such public improvements as allowed by law.

Reconstruction projects are those that have, to a significant extent, already borne public improvements based upon past demand and specially assessed as benefit as an exercise of "police power" as allowed by law.

An exception to the policy to not assess reconstructed infrastructure concerns existing sidewalks. In the case of sidewalks, the City pays for the removal of the dilapidated sidewalk and installation of base grade, but the property owner is responsible for the cost of reinstallation.²

- (10). Sidewalks shall be placed in the City of Rice Lake in a manner outlined in this section for all new construction and reconstruction projects.

Sidewalks shall be placed in all residential, commercial, and industrial areas of the community. Sidewalks shall be placed upon both sides of roadways that are defined as "new construction" in the community and special assessed accordingly. Sidewalks shall be placed on only one (1) side of an existing roadway being "reconstructed" in the community and special assessed accordingly. Sidewalks to be placed on one (1) side of an existing roadway being "reconstructed" shall be placed adjacent to existing waterlines, unless conditions dictate otherwise. Sidewalks in reconstruction projects shall be connected to streets that have them as a "connecting link", even though their placement may be outside the reconstruction project scope.

An "exception" to sidewalk placement shall be for road construction deemed as "pavement replacement" projects found in the community.

Other exceptions to sidewalk placement shall be for cul de sacs and dead end streets.. Sidewalks will not be required on these streets, as they do not continue and connect to other streets.

- (11). A special assessment deemed to be a "utility cost" is one borne by the Rice Lake Utilities (water and sewer) for "oversizing" of a utility mainline greater than ten (10) inches in diameter. Similarly, only storm

² In general, this policy results in the property owner paying 40% of the total cost of sidewalk replacement.

sewer up to 24 inches (24") in diameter is specially assessed to the benefiting properties; with the City General Fund to pay the incremental cost of storm sewer greater than 24 inches in diameter.

- (12). Water and sanitary sewer special assessment costs deemed to be considered as "connecting links" are defined as that portion of a public improvement system that crosses an area where there are not benefiting properties to appropriate such costs against (EX: U.S. Highway 53 or Red Cedar River) or it involves lift stations. Rice Lake Utilities, in such cases, shall pay entirely for such "connecting links" as opposed to "spreading" such costs over the entire public improvement project.
- (13). Public improvement requests by (a) property owner(s) representing at least forty percent (40%) of the benefiting frontage will be considered by the City of Rice Lake once it is in receipt of a petition for such infrastructure project. The City Engineer will then prepare an engineering report in accordance with various municipal ordinances, policies and Wisconsin State Statutes for presentation in writing to the property owners for their consideration. The property owners will be provided a "lien acceptance" document, when the engineering report is presented in writing to them, to decide whether or not they will pay for their special assessments that they have been determined to "benefit" from either upon "project completion" or over a ten (10) year time period.

Should the property owners fail to collectively provide "lien acceptance" documents for either "upon project completion" or "over a ten (10) year time period" for forty percent (40%) of the benefiting frontage, the City will consider that the property owners are not "in favor" of such "public improvements" and such consideration will "cease and desist" with no special assessment public hearing scheduled to consider their imposition. The City considers those who duly sign a petition or written letter for public improvements as the "developer", who will then pay their special assessments upon "project completion" as defined in (5).³

- (14). The Common Council may grant an exception to any portion of the special assessment policy in those cases in which unusual, exceptional factors or conditions exist.

V. CONCLUSION

The City of Rice Lake's special assessment policies for public improvements conform to Wisconsin State Statutes and its Subdivision and Platting Code. Wisconsin State Statutes do allow municipalities to contain different or added procedures from those already established by law, but at a minimum must include provisions for notice to owners of property being assessed and a hearing on the proposed special assessment (League Handbook, 2001, Page 2).

Special assessment policies do have variations to them, as there are no "right or wrong" answers as to how public improvement costs are paid for when development occurs. If such policies could be "defined" in a "right or wrong" application, they would have been "boiler plated" in ordinance form by many Wisconsin municipalities years ago. However, this is not the case, as noted in the introduction section of this document that describes a "flexibility" need for special assessments as they are being administered. Policies, no matter how well written (like laws or ordinances), cannot simply address all public improvement cost concerns that come about as projects are undertaken.

Rice Lake's special assessments are applied as a "police power" action to insure "...the health, safety, and welfare of the public". Efforts are made to levy special assessments for public improvements in a just and fair manner as practicable under the law. Not all property owners who are deemed to "benefit" from any and all public improvements will agree with the special assessments levied against them. These disagreements then become part of a special assessment decision-making process during and after a "public hearing" on them.

³In order to be valid, the petition must clearly indicate that the signatories will be assessed on project completion. The requirement for a petition to contain 40% of the benefitting properties is to insure (1) the City does not incur engineering costs for a project which is not desired by a significant number of property owners, (2) that the Council will be receiving significant upfront financing to help advance the project from its current schedule, and (3) and that the benefitting property owners are aware of the proposed project.

What is most important during any special assessment decision making process is that the local government be consistent, fair, and administers its special assessment policy in a manner that leaves no doubt that it is in full force and effect. Otherwise, should the policy be not interpreted and administered properly, it will lose its "direction" and "purpose" in the realm of local government decision making.

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AMENDED: February 9, 2010