

Special Assessments - A Common Way to Recover Costs of Public Improvements

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Several months ago a state legislator called me into his office to discuss a question he had received from a constituent. The constituent had called to complain about the city charging her a special assessment of over \$1,000 for sidewalk and curb and gutter repairs. The legislator asked me whether the city could do this and if so whether other municipalities charge property owners for similar public improvements. I assured the legislator that municipalities have clear and longstanding authority to specially assess property owners to help pay for public improvements and that it was common for communities to do so.

I was surprised the legislator was unaware that communities have been able to specially assess property owners to recover the cost of public improvements for over 100 years. Our conversation started me thinking that perhaps other legislators and even some local officials are unfamiliar with this traditional method of paying for public work.

Special assessments are charges levied by municipalities against real property to recover some or all of the costs of a public work or improvement that specially benefits such property. Special assessments can be used to pay for street construction, sidewalks, curb and gutter, storm and sanitary sewer improvements, water mains, tree removal, parkland condemnation, and many other public improvements. Special assessments may be levied against nearly all public¹ and private property, including tax exempt parcels, for all or a portion of the cost of a public work or improvement as long as the following basic requirements are met:

1. The property is in fact specially benefited by the improvement; and
2. The amount of the assessment is made on a "reasonable basis." *CIT Group v. Village of Germantown*, 163 Wis.2d 426, 471 N.W.2d 610 (Ct. App. 1991).

The procedure for levying special assessments is set forth in the statutes at Wis. Stat. sec. 66.0703. The Wisconsin special assessment statute first appeared in its present form in 1945.² That statute was quite similar to the current one, which generally enables and sets out a process for municipalities to levy and collect special assessments for any municipal work or improvement. Prior to 1945, separate grants of authority to levy special assessments were sprinkled throughout the statutes and were connected to the specific type of work being performed.

Over the years, court decisions have made it clear that the procedure for levying special assessments set forth in the statutes must be strictly followed. Failure by a municipality to strictly adhere to the procedural requirements may result in a court voiding the assessment and requiring that the assessment be refunded.

The process for levying special assessments includes the following critical steps:

1. **Preliminary resolution.** The governing body adopts a preliminary resolution declaring that the governing body intends to exercise its police or taxing power to specially

assess for a stated municipal purpose. The resolution must contain a description of the purposes for which the assessment is to be levied and other information specified in Wis. Stat. sec. 66.0703(4). The preliminary resolution must also order the public works director or other appropriate municipal officer or employee to prepare a report on the proposed work or improvement and the proposed special assessments.

2. **Report.** The public works director or other appropriate municipal officer shall prepare a report consisting of:
 - a. Preliminary or final plans and specifications.
 - b. An estimate of the entire cost of the proposed work or improvement.
 - c. An estimate, as to each parcel of property affected, of the assessment to be levied.
3. **Public Hearing.** The governing body, one of its committees, or the board of public works must conduct a hearing prior to the levying of the special assessments. When the report mentioned above has been completed and filed with the clerk, the clerk sets a hearing date and publishes a class 1 notice of a public hearing on the proposed work and special assessment. In addition, a copy of the hearing notice must be mailed to every interested party whose post office address is known or can be ascertained with reasonable diligence. After the public hearing the governing body may approve, disapprove, or modify

the report. Alternatively, the governing body may re-refer the report to the officer or employee who prepared it with directions to add or alter the plans and specifications and to accomplish a fair and equitable assessment.

4. **Final Resolution.** When the governing body determines to proceed with the work, it must approve the plans and specifications contained in the report and adopt a final resolution. The resolution should contain:

- a. A direction that the public work or improvement be performed and the special assessments levied as indicated in the report or as modified after the public hearing and set forth in the resolution.
- b. The number and terms of any installment payments allowed.
- c. A provision for collection of the assessment and any penalties

imposed for failure to timely pay the assessment or any installments.

- d. A statement that all assessments or installments not paid by the date specified shall be extended on the tax roll as a delinquent tax and collected in the same manner as delinquent real estate taxes.
- e. The terms and conditions of any allowed deferral of an assessment while no use is made of the improvement.

The final resolution must be published as a class 1 notice in the assessment district and mailed to each interested person whose address is known or can be ascertained with reasonable diligence.

In addition to the general special assessment enabling law, the statutes also allow a common council or village board to establish local special assessment procedures by ordinance provided

the ordinance includes provisions for reasonable notice and hearing. Wis. Stat. sec. 66.0701. Also, the statutes provide a simplified procedure to order sidewalks constructed or repaired at the abutting property owners' expense. Wis. Stat. sec. 66.0907. The statutes even allow a municipality to specially assess property in an adjacent town, city, or village which abuts and benefits from an improvement as long as the governing body of the adjacent municipality adopts a resolution approving the levy. Wis. Stats. sec. 66.0707.

Municipalities have discretion whether to use special assessments. Some communities don't. Many do. Communities also have discretion regarding the types of public improvements for which they specially assess. For example, some communities may specially assess for new sidewalks, but not for sidewalk repairs. Others may specially assess for curb and

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gutter, but not full street repairs. A community that specially assesses must also decide the percentage of the cost of a public improvement that it chooses to recover from special assessments. Some communities may recover 50 percent or less of the cost of a project through special assessments. Others may, depending on the type of work, specially assess 100 percent of the cost.

Some communities have adopted special assessment policies guiding staff and informing the public about what types of improvements and how much of the cost of the improvement will be specially assessed.

The special assessment process can be complex and at times controversial. The League has several resources providing more information on this important

tool for recovering the cost of municipal work. Contact the League office for more information about the following:

- League legal opinions on the topic of special assessments. (League attorneys have written hundreds of formal opinions in the last 70 years covering many different special assessment issues.) Use the search function on our website.
- The League publishes a *Special Assessments in Wisconsin Manual*, which includes sample forms.
- Special Assessment FAQs are posted under the legal tab on the League's website: <http://www.lwm-info.org/1095/Special-Assessments>
- The League has collected sample municipal special assessment policies,

resolutions, and ordinances, which are posted on the League's website: <http://bit.ly/SpecialAssessments>

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About the Author:

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1. Property of the United States is exempt from special assessments. Wis. Stat. sec. 1.04. Other property specified in Wis. Stat. sec. 66.0705, such as state property held for highway right of way purposes, is also exempt from special assessments.
 2. Sec. 66.60, Wis. Stats. (1945).



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