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March 20, 2018

Kathleen Brengosz
Fiscal Planning Specialist
City Hall, Room 307
200 East Wells Street
Milwaukee, WI 53202

Via email: Kathleen.Brengosz@milwaukee.gov

Re: Special Assessments for Traffic Calming Installation

Dear Kathy:

You requested information to assist you and Alderman Murphy as you explore whether it would be permissible to construct speed humps in certain strategic locations in a neighborhood, and then specially assess all property owners in that neighborhood for the installation costs. This is not an opinion of the City Attorney; rather it is background information designed to help you explore permissible types of special assessments. If Alderman Murphy would like the City Attorney to issue a formal opinion, please let me know.

I. State law.

A. When special assessments may be imposed.

Section 66.0703(1)(a), Wisconsin Statutes, provides all cities,¹ towns and villages with the power to “collect special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal work or improvement...” (emphasis added).

¹ Wisconsin Statutes § 66.0701(1), which allows certain cities, towns, and villages to impose special assessments by ordinance does not apply to cities of the first class, such as Milwaukee.



Therefore, a city may only specially assess property for the costs of improvements that receive (1) special benefits, and (2) are in a limited and determinable area. *Id.*, see also Goodger v. City of Delavan, 134 Wis.2d 348 (1986).

1. Special benefits. Only those improvements that convey a “special benefit” on property may be paid for through special assessments. Improvements that are general in nature must be funded by general taxes, not special assessments.

“Special benefits” are not defined by the statute. However, the courts have differentiated general benefits, which confer substantially equal benefits and advantages on the public at large, from special benefits, which are “local improvements” provided to a property “either in the form of enhanced services or increased property value, although they incidentally may benefit the public at large.” See Hasse v. Town of Menasha Utility Dist., 314 Wis.2d 508, *2 (2008) (unpublished), citing Duncan Dev. Corp. V. Crestview Sanitary Dist., 22 Wis.2d 258, 264 (1964). Put another way, a special benefit is an “uncommon advantage” accruing to a property that is “in addition to that benefit enjoyed by other property owners in the municipality” and which “differ[s] in *kind* rather than in degree from those which accrue to the public generally.” See Goodger v. City of Delevan, 134 Wis.2d 348, 352 (1986) (emphasis original). The benefits must also be “substantial, certain and capable of being realized within a reasonable time.” See Wm. H. Heinemann Creameries v. Village of Kewaskum, 275 Wis. 636, 641 (1957).

2. Limited and determinable area. A city may not selectively impose special assessments on property in a limited area if the improvements also provide the special benefit to property outside of the assessment area. See Goodger, 134 Wis.2d at 353. The courts have not explained what constitutes a “limited and determinable area;” however, it follows that the city must provide some reasonable and logical methodology for determining where the special benefit accrues, and where it does not.

B. Permissible amounts of special assessments.

Generally, cities can impose special assessments either through their taxing authority, or through their police power. The limits on the amount of the special assessment are different depending on whether the city imposes the assessment through the police power or taxing authority.

1. Special assessment through taxing authority. When a special assessment is imposed through a city’s taxing authority, Wis. Stat. § 66.0703(1)(b) provides that the amount of the assessment “may not exceed the value of the benefits accruing to the property.” The city must be able to demonstrate that the amount of the special assessment does not exceed the value of the benefits received. See Steinbach v. Green Lake Sanitary Dist., 291 Wis.2d 11, 24 (2006).

2. Special assessment through police power. If the assessment is imposed through the city’s police power, the statute requires that “[t]he assessment shall

be upon a reasonable basis as determined by the governing body of the city, town or village.” Wis. Stats. § 66.0703(1)(b). Wisconsin courts have interpreted this to mean that while (1) the property must be benefited, and (2) the assessment must be reasonable, the amount of the assessment is not limited to the value of the benefits received. See Steinbach, 291 Wis.2d at 24-25.

To be considered reasonable, a city “must use a method of assessment that yields a uniform and equal value for all affected properties;” however, the assessment method “must not affect unique properties in a disproportionate way.” See Steinbach, 291 Wis.2d at 204. The city must consider the degree, effect, and consequences of the special benefits on any unique property, the end result being that the special assessment must be “in proportion to the benefits accruing to [a unique property] when compared with the benefits accruing to all benefited properties.” Id. at 203-204 (internal citations omitted). A city can support its special assessment method by, for example, providing an outline of logical and formulaic cost assessment, and demonstrating that the burden has been fairly and equitably distributed among the benefited properties. Id. at 203 (internal citations omitted.)

II. City ordinance.

Milwaukee City Ordinance 115-42.5 “Traffic Calming Installations” provides, in part, that when a request for a traffic calming installation is initiated by citizens and the procedures of that ordinance are followed, the eventual “recovery ratio provided s. 115-43-2-a-4 shall be applied to those properties or parcels abutting the street or alley within which the installation is placed or constructed, as determined by the commissioner.” The length of section of street or alley to which the special assessment would apply is not defined in the ordinance, although presumably the Commissioner of Public Works would make that determination. If a traffic calming installation was requested by citizens through this process, the special assessment could not be applied to property owners who do not live on the parcels abutting the street or alley within which the installation is placed without first changing the ordinance. However, MCO 15-42.5 is specifically intended to “supplement and not replace other processes for initiating public works,” and probably would not preclude installation of traffic calming measures through the procedures set forth in MCO 115-42.

I am happy to discuss special assessments further with you or Alderman Murphy if you still have any questions after reviewing this letter.

Very truly yours,

/s/ Andrea Fowler

Andrea Fowler
Assistant City Attorney

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