

**Testimony of Steve Vogelpohl
Bismarck Property Owner and Taxpayer
To Senate Finance and Taxation Committee
In Opposition to HB 1237
Wednesday, March 1, 2023**

Mr. Chairman and members of the Committee, my name is Steve Vogelpohl. I am a Bismarck resident, property owner and taxpayer.

I have attended the meetings of Bismarck's Special Assessment Task Force and its Subcommittee since July, 2021. HB 1237 relates to the Subcommittee's Memorandum commentary and recommendations (attached) regarding the City of Bismarck's infrastructure "fee" proposal.

The present North Dakota Century Code Section 57-15-41 empowers governing bodies of 5 specified political subdivisions to levy property tax to pay special assessments made in accordance with Title 40 against property owned by the political subdivision. As you are aware, the prerequisite to a special assessment is a determination that the property specially assessed is specially benefitted by the improvement (the special assessment not to exceed the amount of special benefit to the particular parcel).

Under the City of Bismarck's infrastructure "fee" proposal, special assessments for future street improvements (maintenance) are to be discontinued. Instead, the owners of property within the City, including political subdivisions, will be billed a monthly "fee" to establish and maintain a fund to pay for these improvements. The funded improvements will be made for streets **anywhere** (*i.e.*, all City streets) within the City corporate limits, with no end date to the "fee."

By reason of the special benefit prerequisite, a special assessment effectively ties an improvement to specific property. Not willing to pay for *non-arterial* street improvements not specific to (*i.e.*, not determined through statutory process as specially benefitting) my property, I will vote against the "fee" proposal if the City Commission persists in its pursuit.

If the "fee" proposal passes and is implemented and HB 1237 has become law, I of course will also have to pay the property taxes levied by the governing bodies of the political subdivisions to pay the "fee" billed them.

Perhaps the *present* governing bodies of the County, School District and Park District have given due consideration to the consequences of the City's "fee" proposal and believe that their financial responsibilities should be expanded to include improvement of **all** streets in the City. I believe, however, that funding improvements of all streets in the City, unnecessarily grows the roles of the these political subdivisions beyond their present primary functions.

I ask that this Committee consider the financial obligation of a special assessment versus that of the City of Bismarck's proposed "fee" (no end date).

A special assessment is a *limited* obligation - an amount of principal and interest is paid in full at the conclusion of the period of years over which the City has certified the annual installments for payment.

The City of Bismarck's proposed "fee" is an *unlimited* obligation - the property owner will receive monthly billings for an amount set and changeable by the City and the monthly billings are continuous with no ending date.

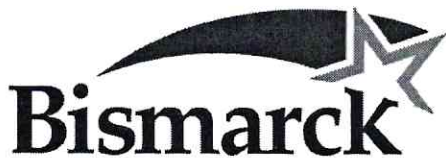
The present Section 57-15-41 allows the levy of property tax in the amount sufficient to pay the limited obligation.

HB 1237 will *also* allow the levy of property tax in the amount sufficient to pay the unlimited obligation. As such, HB 1237 effectively authorizes a **new** property tax, one *both* of unlimited duration and of amounts set and changeable in reaction to the City's "fee" and its adjustments.

I prefer a limited obligation and avoiding the growth and duplication of roles across governmental units that HB 1237 empowers.

I ask your Do Not Pass for this Bill.

Thank you.



City Administration

DATE: June 21, 2022
FROM: Keith Hunke, City Administrator
ITEM: Special Assessment Task Force Update

REQUEST:

Receive an update from the Special Assessment Task Force.

Please place this item on the June 28, 2022, City Commission meeting agenda.

BACKGROUND INFORMATION:

The City Commission directed the Special Assessment Task Force (SATF) to reconvene in July of 2021. Membership of the SATF reflected stakeholder groups and residents of the city. City Commissioner Mark Splonskowski and former City Commissioner Nancy Guy were appointed co-chairs of the SATF. The City Commission approved the request of the SATF to create a working group subcommittee of five members of the SATF, which included Commissioner Mark Splonskowski, Kevin Strege, Mike Schmitz, Kate Herzog, and Dustin Gawrylow. The SATF working group subcommittee has completed its work and the SATF received and approved recommendations of the subcommittee on June 15, 2022. Recommendations of the SATF are attached.

RECOMMENDED CITY COMMISSION ACTION:

Receive update from the Special Assessment Task Force.

STAFF CONTACT INFORMATION:

Keith Hunke | City Administrator | 701-355-1300 | khunke@bismarcknd.gov

Memorandum of Recommended Direction to the Bismarck City Commission

From: Bismarck Special Assessment Task Force Sub-Committee

To: Bismarck City Commissioners

Commissioners,

Attached you will find our suggested language for a Home Rule Charter Amendment enabling the City Commission to pursue a policy to replace the use of special assessments for street maintenance with a monthly street maintenance utility fee. This proposal is now five years in the making, and the details of the actual ordinance must be worked out before we can expect 60% of Bismarck's electors to approve such a change.

The Home Rule Charter Amendment contents are designed to allow this and future commissions the flexibility to transition away from special assessments for street maintenance and provide guardrails to protect property owners, taxpayers, and all residents in general. Our genuine hope is that this can be the first step to proving that city infrastructure can be financed with a more stable and sustainable monthly fee rather than the long-time practice of special assessments. With that said, we do understand no system is perfect, and the need to modify or even reverse this transition may be desired if economic conditions fluctuate such that the fee would exceed what an average person would call reasonable.

In addition to the proposed language for the actual amendment, which we have consensus agreement is a minimum level of detail and protection for both the city government and its citizens, we would like to make the following statements for the record as to the direction of the city commission should go in this process:

1. A draft ordinance and policy outline should be developed before asking voters to approve this Home Rule Charter Amendment. The city should be able to provide a well-defined model of what the voters can expect if they vote to approve this amendment.
2. There has been some ambiguity as to whether property owners could see special assessments for Arterial/Collector Roadways in addition to the Monthly Street Utility Infrastructure Fee. It is our strong preference that city policies be modified to eliminate the need for any future special assessments for street projects that would be considered "maintenance". Special consideration to widening or other work that may create a different designation. If Greenfield Specials are eliminated, and Street Maintenance Specials are replaced, it makes no sense to leave the possibility for specials for "Area Wide" Arterial/Collector Roads. If this is not possible, the city must develop a way to explain why this is ahead of time to avoid "bait and switch" complaints.
3. Upon approval by the voters, the city commission must facilitate public communications and public input beyond the bare minimum required by law. We would encourage the city to develop a calendar showing the public what they can expect as far as the timeline for development, discussion, debate, and implementation. We request that you as a commission commit to holding several stand-alone meetings (in addition to the legally required public hearings) where the public gets to have their voices heard and that serious and informed public input be incorporated into the revision process.

4. Expedite the discussion and decision on ending the policy of using the city's debt capacity for facilitating the financing of new "greenfield development." We believe that an approved plan, prior to a public vote on the home rule charter amendment, to phase out "greenfield" special assessments will be seen by the public as an act of good faith on the city's part.
5. The sub-committee was divided on how specific the policy regarding minimum and maximum ending fund balances should be addressed. We had a consensus on requiring that the city commission have some sort of policy in the ordinance. One discussed approach was as follows:

Alternative Subsection D.

Minimum and Maximum Ending Fund Balances: To ensure adequate funding and limit excess funding, the street utility fee shall be adjusted annually within the defined rate framework. A three-year projection of income and outflow will be calculated, and fees adjusted so the projected balance at the end of year three does not exceed 100% of the projected average annual outflow.

6. Work with city staff to facilitate a Citizen Inquiry process for residents to request a re-evaluation of street conditions in their neighborhood. The general consensus among subcommittee members was that this was a good idea, while staff indicated they essentially already do this. Legal counsel indicated there were dangers in placing such a process in the home rule charter as it created a new "right." A process greater than the current but less than a new "right" is desirable.
7. When determining how to assume the annual payments of existing specials, we recommend earmarking the ~\$8 million in sales tax revenue currently used to reduce special assessments generally. This way, the new street maintenance utility fee is not used to pay down existing balances. (No one's new fee should pay for other people's existing balances, having those dollars come from existing sales tax dollars is more tolerable.) As existing debt is retired and sales tax revenue is freed up, those unrestricted dollars should be used to offset increases commiserate with the minimum/maximum ending fund balance policy.

Sub-Committee Proposed Home Rule Charter Amendment (As Approved on May 23, 2022)

17. To levy and collect an infrastructure fee for street maintenance purposes.

- a. For the purposes of this fee, "street maintenance" shall be defined as "needed street maintenance projects" determined by the city commission and adopted "industry-accepted pavement management system." The city commission may temporarily expand this scope only with a unanimous roll call vote during the annual budget process.
- b. Upon implementation, the city commission shall remove street maintenance and arterial road reconstruction special assessment balances from the accounts of property owners.
- c. The city commission shall annually approve a non-binding preliminary draft outlining expected street projects for the next five (5) years as defined by the city commission's capital improvement plan criteria.
- d. Before full implementation, the city commission shall approve an ordinance defining the minimum ending fund balance and maximum ending fund balance.
- e. Implementation will commence upon the earlier of:
 - a) North Dakota Century Code allows the exemption of the infrastructure fee from tax-levy limitations for political subdivisions, or
 - b) Receipt of letters of support from both the Bismarck Public School District and Bismarck Parks and Recreation District.

Home Rule Charter Language "Footnotes of Intent"

The following is a brief line-by-line description of intent for the sub-committee approved Home Rule Charter language.

17. Enables the city to utilize statutory powers granted to Home Rule Charter cities.
 - a. After in-depth discussions, it was agreed to minimally define in the Home Rule Charter what would be covered by the new "street maintenance fee." The subcommittee intends that the ordinance list very specifically defines what the new fee would cover and requires annual unanimous approval of the city commission to go beyond that. The sub-committee will not oppose placing detail lists in the Home Rule Charter if the commission wishes to go that route.
 - b. This line assumes the city commission wishes to assume the existing street maintenance special assessment balances. This line can be redacted if the commission decides not to go down that road. The subcommittee would not oppose such action, but would like to make it clear that it would require even more transitional planning. There are no easy or right solutions to this particular piece of the equation.
 - c. The sub-committee placed this requirement in the Home Rule Language to ensure the public has a general idea of what to expect from the city on street maintenance in the near and mid-term.
 - d. The sub-committee agreed that there should be a requirement for policies limiting both minimum ending fund balance and maximum ending fund balance. We did not agree on approach or language but gave further suggestions in the attached "Memo."
 - e. To address concerns by the park district and school district, we recommend the city will advocate amending state law that affects them on implementing this new fee, OR that the city will negotiate with the schools and parks to find a solution. Burleigh County indicated impact can be absorbed by the general fund.

- Expenditure Assumptions (Revenue Requirements) – Annually
 - \$20,000,000 street improvements
 - Includes one year of catch up bonding for previous year's projects that would not be special assessed
 - \$7,000,000 street maintenance existing special assessment debt repayment
 - Includes \$500,000 in debt repayment for previous arterial road assessments. No fee revenue increase. Anticipated to be absorbed without rate increase.
 - \$27,000,000 total
- Revenue Assumptions – Annually
 - \$20,000,000 street utility fee
 - \$7,000,000 sales tax
- Classes
 - Residential Class
 - 1 unit, 2 unit, 3 unit and residential condo building
 - Multi Family Class
 - Apartments, 4+ unit buildings
 - Manufactured Home Parks
 - Non-Residential (commercial) Class
 - Everything else
 - Exceptions - Bismarck Parks and Rec parcels without buildings (121 parcels, 40,774,359 SF)
- Revenue Split
 - 40% Residential/Multi-Family (\$8,000,000) & 60% Non-Residential (commercial) (\$12,000,000)
- Parcel Basis
 - All parcels would have a utility account created, even vacant parcels and those developed parcels without water/sewer.
 - Exceptions
 - New vacant residential single family and twin home parcels exempted initially
 - Graveyards (3 parcels)
 - Federal (11 parcels)
 - Condo properties were apportioned their estimated equivalent parcel SF of the larger common interest parcel. (ie 100,000 SF parcel with 10 equal owners were each assigned 10,000 SF parcel area)
 - Residential and Non-Residential (commercial) class use parcel square foot (SF) as basis
 - Tiered System
 - 0.5X to 2X median parcel SF pays base fee.
 - Adjustments to smaller and larger parcels based on ratio to median parcel square foot similar to current special assessment policy.
 - Option to group non-residential (commercial) tiers
 - Caps on tiers
 - 3X median residential parcel SF (2X fee)
 - 6X median non-residential (commercial) parcel SF for exempt property (3X fee)
 - 20X median non-residential commercial parcel SF for non-exempt property (10X fee)
 - Calculated SF
 - \$/SF calculated and applied to each parcel. Caps on SF similar to tiered system.
 - Multi-family class based on \$/dwelling unit (proposed \$7.00 dwelling unit)

PARCEL_ID	PROPERTY_ADDRESS	PROPERTY_OWNER	Approx Adjust Lot SF	% of Median	Capped Factor	Capped Monthly Revenue	Uncapped SF Monthly Revenue	no Min/6x median exempt max/20x median non-exempt max Calculated SF monthly revenue	.25x min/6x median except max/20x median non-exempt max Calculated SF monthly revenue	SQRT SF Adjusted Monthly Revenue				
0001-052-015	110 N 3RD ST					51	4	9	17	57				
0001-112-053	309 N MANDAN ST 1	KETTERLING, DARIN & JULIE	1,875	0.068	0.25	51	4	9	17	57				
2020-001-151	3401 HAMILTON ST A	BLUE CHAMPAGNE ENTERPRISES INC	3,125	0.113	0.25	51	7	15	17	73				
0001-040-025	802 E MAIN AVE	DAHL, MARK	2,671	0.097	0.25	51	6	13	17	68				
1125-001-005	3200 ROCK ISLAND PL 1	VUE COMMUNITY CREDIT UNION	3,750	0.136	0.50	102	9	19	19	80				
0001-046-025	101 N 5TH ST	BJH OIL INC	4,536	0.164	0.50	102	10	22	22	88				
0001-064-045	301 E THAYER AVE	MORRIS, SUSAN MAE LIVING TRUST	9,750	0.353	0.75	153	22	48	48	129				
0001-045-001	200 S 5TH ST	DUEMELANDS OFFICE LLLP	10,520	0.381	0.75	153	24	52	52	134				
0001-048-025	420 E MAIN AVE	DAKOTA EYE INSTITUTE	26,250	0.952	1.00	204	60	130	130	212				
0001-108-015	214 E THAYER AVE	PATTERSON PLACE LIMITED PARTN	15,800	0.573	1.00	204	36	78	78	164				
0115-003-700	2422 E BOWEN AVE	FIRST PRES CH OF BISMARCK	52,500	1.903	1.00	204	119	259	259	300				
0600-006-060	805 S 7TH ST	MC CABE METHODIST CHURCH	80,750	2.928	1.50	306	183	399	399	371				
0926-003-200	1640 BURNT BOAT DR	CONLIN'S FURNITURE INC	56,317	2.042	1.50	306	128	278	278	310				
2135-005-001	4100 SARATOGA AVE	UNIVERSITY OF MARY	60,082	2.178	1.50	306	136	297	297	320				
0600-004-005	410 S 5TH ST	BIS-MAN CHAMBER OF COMMERCE	86,489	3.136	2.00	408	196	427	427	384				
0600-006-060	805 S 7TH ST	CENTURY AMOCO LLC	83,422	3.024	2.00	408	189	412	412	378				
2195-001-150	201 TRANSPORT LN	BISMARCK, CITY OF CIVIC CENTER	131,961	4.784	2.50	511	300	652	651	475				
0906-001-100	3420 MIRIAM AVE	REAL HARDWARE LLC	117,098	4.245	2.50	511	266	579	578	447				
1989-001-001	1608 N WASHINGTON ST	MME INC	137,743	4.994	2.50	511	313	681	680	485				
2302-005-001	4401 IVORY LN	JEROME PROPERTIES LLP	174,253	6.317	3.50	715	396	861	860	546				
0756-001-001	1401 W CENTURY AVE	MISSOURI VALLEY YMCA INC	254,534	9.228	3.00	613	578	818	817	660				
1180-001-401	3225 N 14TH ST	TARGET CORPORATION	472,245	17.121	9.00	1,838	1,072	2,333	2,331	898				
0625-001-040	2700 STATE ST	BISMARCK PUBLIC SCHOOL DISTRI	535,946	19.430	3.00	613	1,217	818	817	957				
2001-001-100	500 ASH COULEE DR	LOWE'S HOME CENTERS, INC	609,110	22.083	10.00	2,042	1,383	2,726	2,723	1,020				
0600-004-061	600 S 5TH ST	EVANGEL ASSEMBLY OF GOD	943,225	34.196	3.00	613	2,142	818	817	1,270				
1224-001-002	2000 SHILOH DR	GATEWAY FASHION MALL LLC	1,114,736	40.414	10.00	2,042	2,531	2,726	2,723	1,380				
1570-002-100	2111 NE 52ND ST	BISMARCK PUBLIC SCHOOL DIST #	1,958,244	70.995	3.00	613	4,447	818	817	1,829				
		KIRKWOOD MALL ACQUISITION LLC	2,103,654	76.266	10.00	2,042	4,777	2,726	2,723	1,896				
		BISMARCK PARK DISTRICT	4,293,245	155.648	3.00	613	9,749	818	817	2,709				
		BISMARCK, CITY OF LANDFILL	20,124,544	729.600	3.00	613	45,697	818	817	5,865				
						Exempt Property Annual Revenue								
						No	9,371,860	4,711,626	9,232,715	8,103,491				
						Yes	2,628,140	7,288,374	2,767,285	3,896,509				
						Sum	12,000,000	12,000,000	12,000,000	12,000,000				
						Annual \$/SF Cost	\$	0.027	\$	0.059	\$	0.059	\$	15.688

Recommended by Special Assessment Task Force for Commission consideration

6/9/2022

Examples

Residential/Condo/BPRD No Buildings

PARCEL_ID	PROPERTY_ADDRESS	PROPERTY_TYPE_DESC	Adjusted Parcel SF	% of Median	Capped Factor	6 Tiers Monthly Revenue	4 Tiers Monthly Revenue	Uncapped SF Calculated Monthly Revenue	4K SF min/36K SF max Calculated Monthly Revenue	SQRT SF Monthly Revenue
0923-009-031	1526 CIMARRON DR	Townhouse	874	0.10	0.25	7.00	13.99	2.11	6.50	8.52
0330-001-019	1120 N 12TH ST 8	Condominium	823	0.09	0.25	7.00	13.99	1.99	6.50	8.27
0785-005-010	3129 WINNIPEG DR	Townhouse	1,536	0.17	0.50	13.99	13.99	3.72	6.50	11.30
0604-015-026	107 BOISE AVE	Condominium	2,560	0.28	0.75	20.99	20.99	6.19	7.39	14.59
2020-001-007	3415 HAMILTON ST 6	Condominium	3,435	0.38	0.75	20.99	20.99	8.31	9.92	16.90
1585-002-074	829 CANADA AVE 12	Condominium	2,488	0.28	0.75	20.99	20.99	6.02	7.19	14.38
1245-011-017	908 LAMBTON AVE 2	Condominium	3,803	0.42	0.75	20.99	20.99	9.20	10.98	17.78
0497-022-013	310 W RENO AVE	Condominium	4,381	0.49	0.75	20.99	20.99	10.60	12.65	19.08
1035-007-050	3800 RENEER DR	Single-Family / Owner Occupied	9,000	1.00	1.00	27.99	27.99	21.77	25.99	27.35
0981-001-050	3225 EASTSIDE PL	Single-Family / Owner Occupied	13,488	1.50	1.00	27.99	27.99	32.62	38.95	33.48
1319-010-001	3609 VALLEY DR	Single-Family / Owner Occupied	17,920	1.99	1.00	27.99	27.99	43.34	51.74	38.59
1510-010-001	5100 BOULDER RIDGE RD	Single-Family / Owner Occupied	17,923	1.99	1.00	27.99	27.99	43.35	51.75	38.59
1438-001-015	5300 CORNICE DR	Single-Family / Owner Occupied	25,557	2.84	1.50	41.98	46.00	61.82	73.80	46.08
0588-008-005	1610 N 26TH ST	Single-Family / Owner Occupied	34,122	3.79	2.00	55.97	46.00	82.53	98.53	53.25
1600-004-001	3559 AUGUSTA PL	Single-Family / Owner Occupied	37,750	4.19	2.00	55.97	46.00	91.31	103.95	56.01
1410-001-100	416 FRAINE BARRACKS RD	Single-Family / Owner Occupied	44,799	4.98	2.00	55.97	46.00	108.36	103.95	61.01
0985-002-100	620 N 35TH ST	Public Use	47,532	5.28	2.00	55.97	46.00	114.97	103.95	62.85
0930-003-090	1857 SANTA GERTRUDIS DR	Single-Family / Owner Occupied	58,700	6.52	2.00	55.97	46.00	141.98	103.95	69.84
0045-016-001	320 E CUSTER PARK ST	Public Use	69,963	7.77	2.00	55.97	46.00	169.23	103.95	76.25
1169-001-001	2800 S 12TH ST	Public Use	7,042,074	782.453	2.00	55.97	46.00	17,033.37	103.95	764.98

Bis Parks No Buildings Annual Revenue

64,564

1,122,496

112,881

163,600

Annual \$/SF Cost

\$ 0.029

\$ 0.035

\$ 3,4592

Recommended by Special Assessment Task Force for Commission consideration