

2011 HOUSE FINANCE AND TAXATION

HB 1220

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1220  
February 9, 2011  
#14255

☐ Conference Committee

Committee Clerk Signature

*Mary Bricker*

### Explanation or reason for introduction of bill/resolution:

A bill relating to property owners whose signatures will bar proceeding with a special assessment project.

### Minutes:

*See attached testimony #1, #2, #3, #4*

**Bill Shalhoob, Pinnacle Development II:** Support. Please refer to attached testimony #1.

**Representative Steven L. Zaiser:** It's my understanding that normally in special assessment the cost is prorated or assessed equivalent to how the people vote on it or the assessment. This seems like an anomaly to me and I don't understand if the cost being different from the percentage of protest. Is this common in Bismarck?

**Bill Shalhoob:** The procedure is to arrive at an estimated cost. That cost is assessed against the district based on area that you are covering. The work is then done and then whatever the final cost project cost is, under or over, based on those same percentages is then finally fixed after the costs are completed. When a special assessment is created I believe it's only an estimate and the final cost is not arrived at until the project is done.

**Representative Steven L. Zaiser:** I'm surprised that the voting is based on the square footage but the cost is assessed on front footage. It's been my understanding that they are one in the same usually.

**Bill Shalhoob:** According to the statute 42-22-18 on the bill line 10 subject to majority is over stricken area so they take the area and the special assessment district and that creates the ability to protest out or is a basis for the people to protest. In this case if you own 50 some percent of the area and getting only 10% of the cost you have the ability to stop the project. It should be based on cost whoever is paying the bill, not based on just the area you happen to own.

**Representative Lonny B. Winrich:** I can see some logic in this for street projects but I'm wondering about other kinds of projects that might be special assessed, say flood control or something like that. The benefit of the project may be more proportional to the area of the property than it is to frontage on the street.

**Bill Shalhoob:** Hence my comment on unintended consequences I may not be aware of and that would be one. I just considered city projects and if there is something in a county that is better done by area and this would hurt that, I do not intend to do that. I intend to solve my little problem and others like it. I didn't want a huge impact for rural areas.

**Connie Sprynczynatyk, ND League of Cities:** Opposition. Please refer to attached testimony #2. Connie also distributed written testimony from the City of Williston #3. The attachment is a step by step with century code sites so you know that although special assessments are a financing tool that are an option, they don't have to be used. If a city chooses to use or allow special assessments in the case of new developments, they are to be used as a financing tool to be used for local improvements. There are not so many options as you would think. If you look at the left hand column you will see both the century code sites and the person typically responsible and then it will tell you what the step is in the middle. There are a couple of options when you use special assessments; right now we use the ownership of the property as our guide for assessing the benefit. On step 12 on the front page you will see a 25% prepayment if necessary. The city of Bismarck, in the case of a new development, requires a 40% prepayment and Minot uses a 25%. Let's say Representative Hatlestad is a developer in Williston and there is suddenly a demand for new housing and he comes to the city with a plan to construct and the city approves it but they don't want the community to get stuck paying off the special assessments so they require you to upfront 100% of the costs of water, sewer, street, curb, gutter, lights, and sidewalks. Is that done? I don't know anybody who does that. There are cities that don't require the developer to upfront that cost but that is one of the options. There are a couple other options that cities can adopt. Most of the special assessment districts relate to street rehab; a crack seal, chip seal kind of a project and in that case those are done according to the steps attached, including the basis we use for sufficiency of protest. This is what state law says we do and the concerns the cities have for changing the basis for how we judge the protests is a major change.

**Allen Grasser, City Engineer with City of Grand Forks:** Opposition. Please refer to attached testimony #4.

**Representative Lonny B. Winrich:** I think I understand your objections to this because of the uncertainties. I also have to admit with respect to the kind of street project that Mr. Shalhoob was talking about it seems clear that the actual benefit of that project is more based on frontage than it is on area. Is there a way to deal with that sort of inconsistency or could we assess street projects differently?

**Allen Grasser:** I think there are but I think that fix is best left at the local level. There is a checks and balance in the system is that the city council owns how they set the district. They set the benefiting area. They own the issues regarding the contract. What they don't own and is totally removed from them is the assignment of benefits by the special assessment commission. I understand why they probably put it together in the form of frontage. We do that a lot in Grand Forks also particularly for paving projects. The assessment commission has the ability to assign that on other basis. If we get into large projects that we think benefit a pretty large area they have used the area basis for assigning benefits. When you're dealing with a local street that most of the benefits are

closely aligned to the adjacent property owners front footage is an attempting way for them to do it and a lot of them do it but they are required to do it that way. They can have other considerations. The local people have a way to make adjustments in the way they currently have.

**Chairman Wesley R. Belter:** No further testimony. Closed hearing on HB 1220.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1220  
February 14, 2011  
#14527

☐ Conference Committee

Committee Clerk Signature

*Mary Brucher*

## Explanation or reason for introduction of bill/resolution:

A bill relating to property owners whose signatures will bar proceeding with a special assessment project.

## Minutes:

*No attachments.*

**Chairman Wesley R. Belter:** This is the bill Representative DeKrey brought in and there was a problem with Bismarck versus Bill Shalhoob on special assessments. Any discussion on this bill?

**Representative Mark S. Owens:** The whole point of this was that the majority of the people didn't like what was going on in the area being assessed then they could stop it. I made myself a note where I had a question about flooding. If a group of people got together they could stop a flood protection project? As long as a majority of 51% said they didn't want it then they could stop it.

**Representative Steven L. Zaiser:** It seems to me there should be another way to fund this.

**Representative Wayne Trottier:** Wasn't the big concern over Gateway Mall in Bismarck where the procedure wasn't right for them?

**Representative Lonny B. Winrich:** The initial concern had to do with a street assessment project here in Bismarck. With street assessment it would change the basis for assessing the costs from the area of the lot affected to the street frontage. It would be relatively easy to do in that case but with other kinds of special assessments projects and so on the city engineers and others we've heard from either by mail or in person were saying it wasn't that easy to relate costs to the project. Representative Owens brought up flood control and that is a situation where the clear measure of the benefit would be the area of the property that is protected from flood. This just deals with special assessment. If you choose to fund your flood control project by some other means, which apparently Fargo is going to do at some point, this would have no affect on it.

**Chairman Wesley R. Belter:** I understand Bill's problem here but I am rather reluctant to try and solve individual problems here with this particular piece of legislation. We may create more problems than you're solving.

**Representative Bette Grande:** Motion for DO NOT PASS.

**Representative Lonny B. Winrich:** Seconded.

A roll call vote was taken: YES 12 NO 0 ABSENT 2  
MOTION CARRIED---DO NOT PASS.

**Representative Shirley Meyer** will carry HB 1220.

Date: 2-14-11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1220

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Grande Seconded By Rep. Winrich

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	✓		Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	AB				
Dwight Wrangham	AB				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Meyer

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1220: Finance and Taxation Committee (Rep. Belter, Chairman)** recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1220 was placed on the Eleventh order on the calendar.



2011 TESTIMONY

HB 1220

Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1220  
February 7, 2011

Mr. Chairman and members of the committee, My name is Bill Shalhoob and I am here today representing Pinnacle Development II, a North Dakota partnership that owns an office building at 2718 Gateway Ave. in Bismarck. For your reference the building is just west of the Sears store and Gateway Fashion Mall. I am here in support of HB 1216 and urge a do pass from the committee on this bill.

HB 1220 changes the basis for division of a special assessment district from majority of the area in a district to the proposed cost of the project to be assessed against the property.

Although the area does not appear to be low there is an extremely high water table in that neighborhood. The building itself is a three story with half of the first floor below grade. Even so the entire neighborhood experienced high water and seepage in 1997. We installed a small sump system that year to carry the ground water away from the building. In 2009 the table became so high it flooded the heating and cooling duct work under the floor of the lower level. We had to increase the capacity of the sump system and abandoned the duct work located below the lower level floor, installing new air supplies on the ceiling. So far, so good and our building problems are our problems. Expensive but fixable. However, the problem extended to the street and it began to break up badly in the spring of 2010. City engineers evaluated the problem and arrived at a fix that would solve the problem for us and what I understood were four other similarly problem areas in north Bismarck. On July 7 we received a letter the city engineer with a cost determination and a notation that the City would be assuming a good portion of the costs and notifying us what our share was estimated to be. The assessment to us was very fair and I informed my tenants, two of whom indicated they were considering moving because the street was closed to through traffic for months, that the street would be fixed by the end of the year.

Then came the problem. It seems the special assessment district created (shown on the attachment as SI 429 Unit 2) included Gateway Fashion Mall. Although the mall comprised about 10% of the frontage and therefore 10% of the total cost, they made up over 50% of the area and when they protested the special assessment the project was not able to be completed. The cost was assessed based on frontage, not area. I believe they were the only member of the district to protest the assessment and the work. I understand the need for taxpayers to protest and stop a special assessment project they do not want. However, it does seem inherently unfair that an owner with 10% of the cost can stop a project because he controls over 50% of the area. It seems to me the intent and ability to protest out a project should be based on cost, that is the property

owners who are actually paying the bill. Most times I imagine they would be the same thing. I will comment that I tried to consider any unintended consequences this change might cause and did not feel there were any. People on this committee and with more experience in this area may have other issues to consider and I am open to that discussion.

Thank you for the opportunity to appear before you today in support of HB 1220. I would be happy to answer any questions.



## Engineering Department

July 7, 2010

PINNACLE DEVELOPMENT II  
1505 INTERCHANGE AVE  
BISMARCK ND 58501

Re: Street Improvement District No. 2010-429  
Proposed Reconstruction of Street Pavement with Subbase Drainage System

Dear Property Owner:

The Board of City Commissioners has proposed the establishment of a special assessment district consisting of two units (see attached map) to reconstruct the streets in your neighborhood. A subbase drainage system will also be installed to address the condition of the soft, saturated soils below the pavement. While the Public Works Department has done some surface patching in this area, this was only a temporary, short-term fix to keep these streets usable until a more comprehensive solution could be implemented. If the district is approved, your property will be subject to an upcoming special assessment.

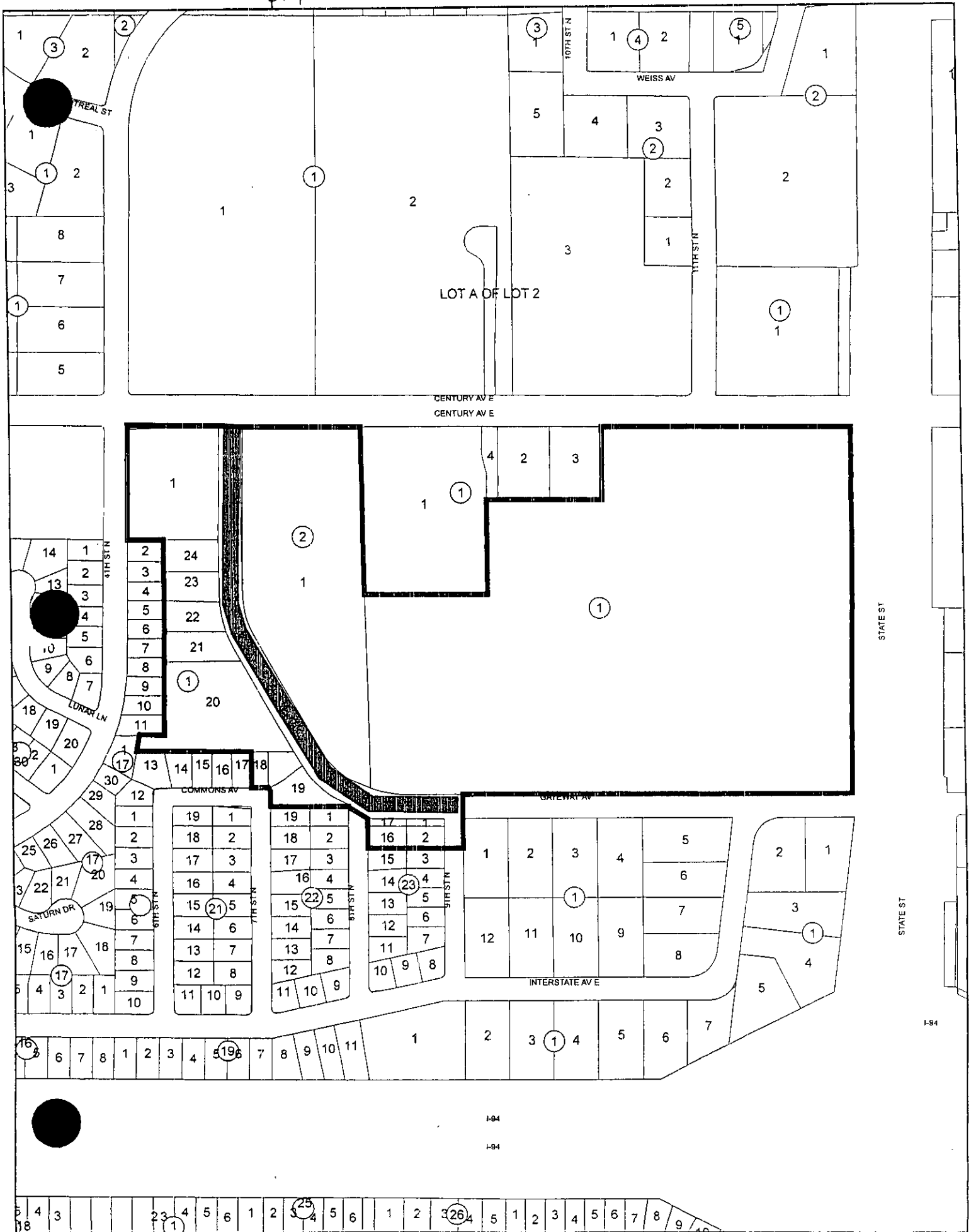
Address: 2718 GATEWAY AV

The total project is estimated to cost about \$1.4 million. The estimated cost of Unit 2, where your property is located, is \$970,000. The city will assume about \$660,000 of these costs. Without the city assumption, your special assessment cost would have been \$53,765 plus concrete repairs. **Since the city is assuming part of the costs, your special assessment cost, based on lot front footage, will be \$14,995.20 plus the cost of any required concrete repairs to your driveway and curb and gutter.** It is anticipated that the majority of the street reconstruction will occur during the 2010 construction season, but portions of the work, such as the chip seal, may extend into next year. Any pavement removed will be replaced during the same construction season.

**The assessment will be confirmed by the city of Bismarck Special Assessment Commission upon completion of the project.** The assessment will be over a period of 15 years, with the first installment expected to be due in February, 2012. There are no penalties for early or complete payment at any time during this period. Enclosed for your information is a list of Frequently Asked Questions (FAQ). Additional FAQs may be found by clicking on Property Information on the home page of the City of Bismarck's website, [www.bismarck.org](http://www.bismarck.org). Other questions regarding this project may be directed to the City Engineering Department at **701.355.1505** during normal business hours.

Melvin J. Bullinger, P.E., City Engineer

Phone: 701-222-6580 ★ TDD: 711 ★ FAX: 701-222-6593 ★ 221 N. Fifth Street ★ P.O. Box 5503 ★ Bismarck, ND 58506-5503



## SPECIAL ASSESSMENT PROCEDURES

<u>NDCC REF. RESPONSIBLE</u>	<u>STEP</u>	<u>WHO DOES IT</u>
40-22-01	1. Petition received, or Council orders improvement.	Engineering/Council
	2. Informal meeting with property owners, or letter sent-cost est.	Engineering
40-22-10 Engineer	3. Engineer's Report	Engineering
	4. 5% Prepayment, if necessary	Finance
40-22-11 Engineer	5. Design and Specifications	Engineering or Consultant
	6. Engineer's Report put on Finance Committee Agenda followed by Council Agenda	City Clerk
40-22-08	7. Appropriate Resolutions prepared for Mayor and City Clerk signatures	City Clerk
40-22-15	8. Publication of Resolution of Necessity (if necessary)	City Clerk
40-22-17	9. Public Hearing placed on Council Agenda (if necessary)	City Clerk
40-22-19	10. Approval of Plans & Specifications and Bid Advertisement (if separate from Engineer's Report) put on Finance Committee agenda	City Clerk
40-22-19	11. Appropriate resolution (required by item 9 above) prepared for Mayor and City Clerk signatures	City Clerk
	12. 25% Prepayment, if necessary	Finance
40-22-19	13. Preparation of Advertisement for Bids and Proposal	Engineering
Chapt. 48-01.2 Auditor	14. Bid Opening	City Clerk

<u>NDCC REF. RESPONSIBLE</u>	<u>STEP</u>	<u>WHO DOES IT</u>
40-22-29 Engineer	15. Report on bid results	City Engineer
40-22-29	16. Bid Award put on Finance Committee Agenda, followed by Council Agenda, Resolution awarding contract	City Clerk
40-22-35 Auditor	17. Preparation of Contract	City Clerk
Chapt. 48-01.2	18. Resolution approving contractor bond put on Finance Committee Agenda followed by Council Agenda	City Clerk
40-22-35 Auditor	19. Signed and approved contract distributed	City Clerk
40-24-19 to 40-24-23 Auditor	20. Abstracts and public hearing notice on bond sale	City Clerk
40-24-19 to 40-24-23 Auditor	21. Resolutions prepared and signed	City Clerk
40-24-19 to 40-24-23	22. Closing documents related to bond sale, plus Federal Tax Compliance	Finance
40-22-37 Engineer	23. Payment estimates prepared	Engineering
40-22-37 Auditor	24. Payment estimates processed, contractor paid monthly	Finance
40-22-37 Auditor	25. Final payment report, Acceptance notice	Engineering
40-22-37 Auditor	26. Final payment report put on Finance Committee Agenda, followed by Council agenda	City Clerk
40-22-37 Auditor	27. Final payment processed, contractor paid	Finance
	28. Memo to City Treasurer - recommendation in assessment formula (optional)	Engineering

<u>NDCC REF. RESPONSIBLE</u>	<u>STEP</u>	<u>WHO DOES IT</u>
40-23-09	29. Assessment list prepared	Finance
40-23-07	30. Informal meeting with Special Assessment Commission to review project and proposed assessments	Finance, Engineering
40-23-10	31. Publication of assessment list notice of hearing.	Finance
40-23-11	32. Public hearing with Special Assessment Commission	Finance
40-23-13 40-23-15 Auditor	33. Publication of notice of confirmation, hearing scheduled to confirm assessments by Council	Finance
40-23-16	34 Resolution confirming special assessments	City Clerk
40-24-11	35. Certification made to Co. Auditor	Finance

Miscellaneous:

1. 40-22-14 requires plans and specifications be on file with City Auditor
2. 40-22-40 - Auditor shall keep all records of improvement districts





P.O. Box 1306  
Williston ND 58802-1306  
PHONE: 701-577-8100  
FAX: 701-577-8880  
TDD State Relay: 711

## NORTH DAKOTA

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Bill No: HB1220

Hearing Committee: House Finance and Taxation Committee

Date: February 9, 2011

Honorable Chairman Belter and Committee Members,

The City of Williston is opposed to House Bill No. 1220, which would change the basis of protests which shall bar proceeding further with an improvement project. The present system of basing that bar on the majority of the area of the property is fair and has worked well in the past. Changing that bar to a majority of the proposed improvement costs merely complicates the process with additional calculations and would likely have ramifications elsewhere in the special assessment process with the possibility of unintended consequences.

The City of Williston urges a "DO NOT PASS" recommendation.

Sincerely,

E. Ward Koeser  
President  
Board of City Commissioners

**TESTIMONY ON HOUSE BILL 1220****House Finance and Taxation Committee**

**Allen Grasser, City Engineer  
City of Grand Forks**

**February 9, 2011**

Mr. Chairman and members of the House Finance and Taxation Committee, I am Grand Forks City Engineer Allen Grasser and I want to thank you for this opportunity to testify on House Bill 1220 on behalf of the City of Grand Forks and urge your recommendation of a DO NOT PASS.

Bill 1220 fundamentally changes the process for protesting special assessment projects that are subject to protest. Present law provides that the owners of a majority of the property located within a special assessment district (majority of the area) may protest certain projects. Because creation of the special assessment district occurs early on in the process, it is a relatively straight forward process to calculate square footage areas.

HB1220 would change the right of protest to those properties subjected to a majority of the proposed costs.

The fundamental flaw in this bill is the inability to precisely calculate project costs early in the assessment process. It is inconsistent and ultimately unworkable within the current special assessment process. As noted above, land area is straight forward to calculate and does not change during the assessment process. Costs on the other hand change throughout

the process and are not ultimately known until the project is complete. Project completion can be months or even years after the termination of the protest period. As an example, I have reviewed one of our recent paving projects. Significant dates are noted below:

Approve Engineers Report & Create Special Assessment District	5/4/09
Resolution of Necessity Published	5/12/09
Advertisement for Bids	5/16/09
Approve Plans & Specs	5/18/09
Bids Received	6/1/09
Expiration of Protest Period	6/11/09
Resolution as to protest & awarding contract	6/15/09
Construction	2009/early 2010
Staff Verify Final Project Costs	August 2010
Special Assessment Public Hearing	Sept. 2010
Special Assessment Commission certify Costs to City Council	Oct. 2010
City Council Certification of Special Assessments	Oct. 2010

In the example above, area can be precisely identified prior to the June 11 expiration of protests. Costs per property were not precisely identified until approximately 16 months after the expiration of protest.

It is for these reasons noted above that I would ask for a DO NOT PASS recommendation of House Bill 1220 and I thank you, once again, for your consideration.