

HB 1389 – Testimony by Dustin Gawrylow (Lobbyist #266) North Dakota Watchdog Network

Mr. Chairman and Members of the Committee, In my personal capacity I have been a member of the Bismarck Special Assessment Task Force for 5 years, until 2022 when we hit the roadblock this bill attempts to fix for the 2nd time.

I whole heartedly support passage of HB 1389 as it is removing the latest stumbling block in the way of our work toward the goal of reforming special assessments at the local level.

Thank you!

Attached is a report I made to the Bismarck City Commission in 2022 regarding the various concerns we've had internally. I submit this to preempt concerns this committee may have when city representatives are vague about where things might go, to prove that yes we are aware of the challenges involved with this reform process.

Bismarck Special Assessment Task Force Report from Dustin Gawrylow

Introduction

1. At the March 7th, 2022 task force meeting I was drafted to present our findings at this meeting.
2. I did not volunteer for this role today, but I accepted it when it was clear no one else really wanted to do it. I promised Commissioner Guy that I would avoid putting my personal opinion into this right off the bat. But I've gotten feedback from task force members that makes it nearly impossible for me to properly represent their views on this presentation as it sits now.
4. I asked staff to create a presentation for this meeting. The 1st draft of that presentation was not provided to me until 2pm Friday afternoon. And it is my understanding that the current draft was not provided to the full commission and the public until today.
4. While our Task Force meetings have been Open Meetings, they have not been Public Meetings – in that, we have not taken public input on a public notice basis – in fact, for the entire 5 year stretch, this has not happened.
5. Citizens observing the meetings have had to butt in and interrupt the order of the meeting to raise their concerns that they felt were not being raised at the table.
6. Task Force members themselves have stated they have not been granted the time to take what we agreed to back to their constituencies – a primary reason no one else wanted to be standing here right now.

Section 1: Task Force Dynamics

1. Everyone has operated in an honest, good faith approach.
2. It has been difficult to work in a linear step-by-step way
– because we are trying to create something new.
3. City staff has been great to work with, and I know they are as frustrated as anyone with all this.
4. Commissioner Guy has done her best to keep the group on track.
– despite the fact there have been times that we've lapsed into being a chaotic meeting at times.
- she has also tried to accelerate the timeline to create efficiency, but that really has not worked.
5. A certain dynamic manifested during this last round of the task force:
- members would tacitly agree, or simply not disagree in the meeting
-then have strong reservations after meetings in private.
6. I ended up becoming the hub of a couple of these situations and had to handle it without violating open meetings/records.
7. At different times, I have floated the idea of pulling the plug because there was so much private dissent that simply was not getting exposed in the open meetings.

Section 2: Camps and Factions

Because there has been this public vs. private dynamic in what people have talked about there are essentially two camps on the task force.

- A. Those who oppose the concept but have been willing to go along to make it work.
- B. Those who support the concept but want more specificity even if they cannot articulate what they want to be more specific.
- C. I have been in my own camp (which should not shock anyone), wanting this project to work and offering detailed specifics that have not been embraced – with the task force wanting to defer these details to the full commission – which I will get to later.

Section 3: Specific Concerns Task Force Members Have Relayed To Me

1. Subsequent to receiving the draft presentation on Friday, I sent it to a few of the members that I have kept close tabs on and they provided the following feedback:

Quote:

“1. I am not sure that I agree that this statement is correct and is stated on pages 9, 18 and 31 “Street Utility Fee policy similar to current Special Assessment Policy” Unless I am not fully understanding the current Special Assessment Policy, I think there is a major difference. Isn’t the current policy using curb footage and the suggested proposal is using total lot square footage?”

2. On page 26 there is going to be a question about the last non-residential parcel which currently is not assessed specials and will have a fee (if my memory is correct this is the Kirkwood Mall parcel.

3. I think the recommendation number 2 should be stronger “Multi-tier framework options will be developed by City staff prior to putting the Home Rule Charter question on the ballot”. In my opinion this information is going to be needed so that the citizens know what it will look like in order to secure the approval of the ballot question.”

Another member responded to this by saying quote:

“They have always denied that it’s linear feet because it gets “normalized” by the factors – most pay the same, significantly larger/smaller than the median get a factor. In that way the proposed is the same, but it is now based on square footage. The issue, as it has been, is that it’s unclear.”

2. I have asked both these members to attend this meeting and speak their minds, and speak for themselves.
3. But I bring this up whether they do or not as an example of how we at the table of the task force have disagreements and concerns about how this is already being presented.

Section 4: My Personal Concerns and Specific Proposals for “Guardrails”

At our last meeting, I finally was given the opportunity to present a document (See attachment A) that I created at the request of City Administrator I think in January. I distilled it down to a few questions to make it easier:

1. Do we need a declared requirement for a maintenance schedule to give the public an idea of the 3-5 years plans for maintenance?
 - If yes, should that be in the home rule charter or assigned to the city commission to develop?
2. Do we need to declare a “baseline rate” or range in the home rule charter or ordinance?
 - If home rule charter, how much leeway should we grant the commission if that range does not work in order to maintain honest communication with the public?
 - If ordinance, what process should we hold the commission to for changes (i.e. 4/5th majority or unanimous?)
3. How do we tackle inflation?
 - Should we have a floating cap (i.e. CPI+1%, CPI+2%, etc)?
 - At what point should we require the commission to come back to the voters for increases?
4. If there is an ending fund balance, should it be limited? Home rule or ordinance?
5. Do we need to prepare for a transition period financing challenge? How?
6. What itemized purposes should we strictly limit spending to? Put in Home rule charter or ordinance?

Section 5: Solution to Moving Forward

Because the presentation files were made available only today, and because there are many concerns among task force members still as to whether this is where we as task force member want it to be, I would recommend and request that you as commission create and appoint a “Working Group” sub-committee of 5 members of the committee that have voiced the most concern.

- Commissioner Splonkowski, Kevin Strege, Mike Schmitz, Kate Herzog, and myself – without an official chairman.
- Give us another month to hash out our internal concerns and work out our differences, then present that to the full city commission at the 1st meeting in May.

A. Bismarck Street Utility Fee Home Rule Charter Amendment Fill-In-The-Blank Template

Beginning in fiscal year 2023, the practice of special assessments for the purposes of local street maintenance shall cease.

Itemized Purposes: The Street Maintenance Utility Fee shall be operated as an Enterprise Fund, and utilized for the specific enumerated purposes listed here:

Maintenance Schedule Commitment: Each year, the Street Department and City Engineer shall issue a comprehensive Street Health Report to the city commission. This report shall itemize the projects that will be undertaken in each of the next 3 budget years, projects expected to be done no later than the next 5 budget years, and projects that will likely be done in the next 5-10 years. This report shall grade all street quality on an easy to understand scale. This report shall also document any engineering justifications taken to either move up or delay a project. The city commission shall create a process for rate payers to petition to have their street re-examined for accelerated maintenance, and any street given the equivalent of a failing grade may be moved up in the schedule prior to any street that does not have local rate payers asking for repairs to occur sooner, budget allowing.

Baseline Rate: For single family homes, a formula is created where as parcels between ____ (75)% and ____ (125)% of the median lot size of 9,000 square feet shall be assessed a monthly fee of between \$____ (35) and \$____ (40), to be determined by city administration based on market conditions. *(Other lot sizes and parcel types to be stratified here.)*

Natural Inflation Escalator: These rates shall escalate annually by the _____ (The greater of CPI+1% or PPI+1%).

Method for Exceeding Natural Inflation Escalator: This annual rate increase may only be exceeded with a unanimous vote of the city commission, and for no more than 18 months or until a regular city election can occur; at which time, the city commission may ask voters to re-set the baseline rate range. All rates must increase by the same percentage rate. The city commission may devise a reduced rate increase policy for property owners who already qualify for the state' Homestead Tax Credit program, contingent on approval by the state legislature to extend such benefit.

Ending Fund Balance: Subsequent to the repayment of existing street maintenance bonds, the fund shall seek to maintain an ending fund balance of at least ____ (20)% the actual costs accrued in the previous year, but shall not exceed ____ (40)% of the actual costs from the previous year. The city commission may use this fund to offset the natural inflation escalator in years that require rate increases exceeding 5% over the previous years. Excess revenue beyond a 40% ending fund balance must be applied to each rate payer's account proportional to their property's assigned rate.

Transition Period Financing Authority: The city commission shall be granted bonding or borrowing authority to allow for an initial transitional financing mechanism – to be secured by a surcharge added to the base rate not to exceed \$5/month extra for single family residential (add limits for other parcel classes). This surcharge may not be used for more than 5 years.

Rate Payer Protection: This financing formula shall be re-examined 5 and 10 years after implementation. If in any 10 year period, rates increase by more than ____ (100)% on a compounded basis, the city commission shall re-evaluate this system and determine whether it is working as intended.