

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511**

December 7, 1999

OPINION 99-12

TO: Susan J.M. Bauman, Mayor
Common Council

FROM: Eunice Gibson, City Attorney

SUBJECT: BUSINESS IMPROVEMENT DISTRICT SPECIAL ASSESSMENT METHOD

You have asked for an opinion as to the legality of the method of assessment in the Proposed Operating Plan for Calendar Year 2000 of the Business Improvement District No. 1 of the City of Madison (the "Proposed Plan").

Background

The authorization for creating a Business Improvement District ("BID") is found in Sec. 66.608, Wis. Stats. ("BID law"). A municipality may create a BID and adopt its proposed initial operating plan by vote of the Common Council. Section 66.608(2), Wis. Stats. In enacting the BID law, the Wisconsin state legislature declared that: "It is the purpose of this act to authorize cities, villages, and towns to create one or more business improvement districts to allow businesses within those districts to develop, to manage and promote the districts and to establish an assessment method to fund these activities." 1983 Act 184 Sec. 1(4). The operating plan must include the special assessment method applicable to the BID. Section 66.608(1)(f)1. No particular assessment method is mandated by the BID law, nor did the legislature establish any guidelines for BID assessment amounts. The Proposed Plan for BID No. 1 provides that assessments are to be based on frontage lineal footage, described as follows:

The annual assessment for District operating expenses will be in direct proportion to the frontage lineal footage of that property within the District, as defined below.

The individual assessment is derived by figuring the property's primary lineal frontage at 100%, and the secondary lineal frontage, if applicable, at 50%. The total assessment for each assessed parcel is formulated by multiplying that year's total assessment budget of

\$246,025 by a fraction, the numerator of which is that parcel's lineal frontage, calculated as provided in the last sentence, and the denominator of which fraction is the total lineal frontage calculation for all assessed parcels in the District. The frontage measurements of each parcel of real estate, as identified in the records of the Building Inspector of the City of Madison, shall be the official measurement for purposes of this calculation. (Article IV, Section A of the Proposed Plan)

Discussion

There is no Wisconsin or 7th Circuit case law which concerns the assessment method used under BID law. Other state courts, most recently the Supreme Courts of Washington and New Jersey, have analyzed the legality of BID assessment methods by comparing BID assessments to traditional special assessments, which fund conventional public improvements such as physical infrastructure. In Wisconsin, the traditional special assessment law is found at Sec. 66.60, Wis. Stats.

Wisconsin courts have ruled on the legality of the linear frontage method when used by a municipality exercising its police power under Sec. 66.60, Wis. Stats. When assessing pursuant to its police power under Sec. 66.60, Wis. Stats., a municipality is not required to show that the property is benefited to the full extent of the dollar amount collected; rather, it is only required that the property be benefited and that the assessment is made upon a reasonable basis. Gelhaus & Brost v. City of Medford, 144 Wis.2d 48, 51 (Ct. App. 1988). In Gelhaus, the court upheld a special assessment based on lineal footage when it was shown that the properties assessed were benefited and the assessments were uniformly based and fairly distributed among the property owners.

In Dittberner v. Windsor Sanitary District No. 1, 209 Wis.2d 478 (Ct. App. 1997), the District used a front-foot method, which property owners challenged as being unreasonable. In fashioning the test for determining whether a method of assessment is reasonable or not, the court stated,

While the front-foot method of assessment is commonly used, whether it is reasonable in a given case turns on the facts of the particular situation, and whether it is fair and equitable and such that it will bring about an assessment in proportion to the benefits accruing. Dittberner at 496.

Linear footage was chosen as the assessment method for proposed BID No. 1 "because of fairness and the fact that frontage is stable as opposed to total assessment and square footage." (Attachment to memorandum dated August 17, 1999 from the BID Committee Chair) The proposed activities of the BID, as outlined in the Proposed Plan, include five categories, four of which relate to and will benefit sidewalk and street frontage level activities. The lineal frontage assessment method,

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therefore, is a proper and reasonable method to fund expenditures which will, for the most part, benefit street level businesses.

Eunice Gibson
City Attorney

eg:AZ

cc: Mayor
City Clerk

SUMMARY: The lineal frontage method of assessment under a Business Improvement District Operating Plan is a valid method because it is apportioned on an equitable basis and can be reasonably expected to result in assessments in proportion to benefits conferred.