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It's Tricky!

Special Assessments & General Obligation Improvement Bonds

Today's Discussion

- Special Assessment Definition & Uses
- Advantages, Disadvantages & Pitfalls of Special Assessments
- Key Considerations for Special Assessment Planning
- Special Assessment Borrowing Options
- Special Assessment Appraisals & Appeal Processes

What Are Special Assessments?...

CHARGES THAT A CITY LEVIES AGAINST REAL PROPERTY FOR A LOCAL IMPROVEMENT THAT PROVIDES SPECIAL BENEFIT (*BECOMES A LIEN ON REAL PROPERTY*)

TOOL TO EASE PROBLEM OF FINANCING LOCAL IMPROVEMENTS WHILE MINIMIZING DEMAND ON CITY TAX LEVY & STATUTORY DEBT LIMITATIONS

APPLIES ONLY TO REAL ESTATE, NEVER PERSONAL OR MOVABLE PROPERTY

GOVERNED BY MN STATUTE, CHAPTER 429

Why Consider Using Them?

New improvements

- Infrastructure to converting new tracts of land to urban use (roads, utility, sidewalks/trails, streetscape)
- Dikes & flood control, parking facilities, parks/rec facilities, fire protection systems, broadband

Major maintenance programs

- Large-scale repairs
- Maintenance operations

Why Consider Using Them?

Redevelopment of existing neighborhoods

- Deteriorating infrastructure
- Making neighborhoods more desirable

Unpaid fees

- Service charges
- Abatements
- Penalties

Special Assessments: Advantages

- Dedicated project revenue source
  - ✓ Allows for cost sharing between local property and city
- Outside of debt, property tax and levy limits
- Allowable on tax-exempt property
- Spur & assist development
  - ✓ Spread financial risk and potentially lowering cost to the community
- Direct charges proportional to the benefits received
  - ✓ Lessens likelihood of winners & losers among general taxpayers

Special Assessments: Disadvantages

- Project cost & application may not align with special benefit
  - ✓ No guarantee against challenges
- Administration
  - ✓ Planning & process
  - ✓ Notifications to property owners and appeals

    *institute a policy to make it more objective
- May not be appropriate for certain projects or programs
  - ✓ Clear justification of local benefit versus city-wide

Special Assessments: Common Pitfalls

- Incurring too much debt
  - ✓ Spillover impacts to credit, debt tolerance & possibility of default
- Underwriting premature improvements
  - ✓ Watch out for unjustifiable programs
  - ✓ Over-building capacity
- Inducing tax delinquencies
  - ✓ Jeopardizes general tax collections & other funding

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Important Considerations

Apportioning improvement project costs

- General vs. property share
- How much does the general public benefit?

Determining which properties to assess

- Bordering/adjacent to project
- Non-abutting properties & area benefits
  - *Conduct market valuation studies to confirm special benefit

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Important Considerations, Continued…

Including tax-exempt properties

- Private cemeteries, churches, hospitals, schools and railroads
- Public cemeteries are exempt from special assessments

Implementing deferrals

- Senior citizen / disability hardships
- Unimproved land or annexations

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Recommendations

Long-term Capital Improvement & Financial Planning

- Offers big picture perspective
- Educates policymakers on future needs and alternative funding sources

Conduct Public Engagement

- Explains benefits of program and financial demands
- Dispels project rumors and channels feedback
- Lessens likelihood of taxpayer resistance

Adopt a Local Improvement Policy

- Establishes guidelines for improvement programs and criteria
- Allows for city-wide application and adaptable
  - ✓ A "Guide" less suitable via ordinance

Local Improvement Policy

- Provides technical direction on appropriate projects and terms
  - ✓ Project classifications, funding share, and assessment types
- Aimed at alleviating disadvantages and pitfalls
  - ✓ Establish fairness, consistency and justification
- Setup guidelines for administration
  - ✓ Criteria for deferrals, interest charges, length and prepayment
- Consider development of long-term Capital Improvement Plan to forecast funding needs

It’s Tricky! Special Assessments & G.O. Improvement Bonds

BORROWING FOR SPECIAL ASSESSMENT PROJECTS

Rules of Thumb

- **Always** hold a preliminary public hearing
  - ✓ Preserves your right to levy a tax for bond payments
- **Always** include the entire Project whether you are intending to assess that portion or not
  - ✓ Unless city cash contribution is assured; allows you to issue bonds under one statutory authority
- **Always** order the improvement by at least a 4/5th vote of Council membership
  - ✓ It's too late if you've already awarded the construction contract

Borrowing Options

Capital Programs Financed with Special Assessments	Not Current Services	Other Programs
• Local Improvements • Public infrastructure, parks, etc.	• Unpaid service charges • Maintenance costs • May issue bonds; 2-year maximum	• Storm Sewer in an Improvement District • Infrastructure Replacement Reserve Fund

Local Improvements Process (Chapter 429)

- Initiate by petition or Council
  - ✓ 100% petition streamlines initial process
- Conduct improvement public hearing/feasibility study
  - ✓ Resolution to order improvement
  - ✓ Bonds may be issued any time once this step is completed
- Prepare plans & specs, order advertisement for bids
- Receive bids & award contract for construction

Local Improvements Process (Chapter 429)

- Prepare assessment roll & hold public hearing on proposed assessments
  - ✓ Appeals
- Adopt assessment roll & administration
  - ✓ Certify with County Auditor

Improvement Bonds

Generally…

- Election required if assessments less than 20% of bonded costs
- Able to consolidate projects into one bond issue
- Reimbursement regulations may apply

Permanent Improvement Revolving (PIR) Fund

- Consolidate special assessment revenue
- Cycle projects and prepayments (helps avoid arbitrage & you can issue less frequently)

Temporary Improvement Bonds

- Temporarily fund one project to consolidate with other for permanent financing
- Delays long-term borrowing until all costs are certain

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SPECIAL BENEFIT APPRAISALS & APPEALS PROCESS

Role of the Appraiser

Provide insight prior to setting assessments

- Value the specific benefit amount to individual property
- Provide ranges of benefit to groups of properties

Consult with the City

- Determine the most appropriate assessment methodology
- Comment on the reasonableness of proposed assessments
- Explain potential litigation risk prior to adopting the assessment roll
- Explore potential for indirect benefit to properties that do not abut the project

Types of Appraisal Reports

Restricted Appraisal: Benefit Letter

- Considers a range of benefit to groups of properties based on property type
- This type of report is typically lowest cost & can be provided relatively quickly
- Commonly used as a test of reasonableness to see if proposed assessments are within the indicated range
- Because of the range provided, outlier properties can experience benefit amounts outside the range

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Types of Appraisal Reports

Restricted Appraisal: Specific Property

- Provides the market benefit to a specific property
- Cost effective & provides a summary of the findings in a shorter report format
- The benefit amount is specific to a property, but may not apply to properties in the overall project
  - ✓Very useful for unique properties that might not be typical of the neighborhood

Types of Appraisal Reports

Appraisal Report: Specific Property

- Provides the most detail & analysis
- Takes the longest to complete & is the most costly
- Typically, not used prior to setting assessments

Which Report to Consider?

- Most often, clients request the Restricted Appraisal – Benefit Letter to determine if the proposed assessments are in market range
  - ✓ Can be useful, as property owners in the project can be told an appraiser was consulted regarding benefit amounts
- When there are unique properties, clients order Restricted Appraisals to have a specific benefit amount
  - ✓ This can be helpful when proposed assessments are significant with unique properties
- Appraisal Reports are rarely ordered during the assessment setting process
  - ✓ Restricted Appraisals are typically sufficient to help indicate if the proposed assessments are reasonable

What is Special Benefit?

"...the cost of any improvement, or any part thereof, may be assessed upon property benefited by the improvement, based upon the benefits received, whether or not the property abuts on the improvement."

Minnesota Statute 429.051

What is Special Benefit?

How does an appraiser determine benefit?

$$

Value the property BEFORE the project

Considers old roads, watermain, sanitary sewer main, storm sewer, etc.

$$$

Value the property AFTER the project

Considers the impact of new improvements

The difference between the before and after values, if any, represents the special benefit.

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What is Special Benefit?

"Effective date" of value is critical

- Establishes a specific date for the benefit
- Some projects can take years
- Courts have held the adoption of the assessment roll by the City Council is appropriate for the date of value
- Project is assumed to be hypothetically completed on this date

Assessment Appeal Process

- Property owner typically alerts the mayor or clerk at the assessment hearing
  - ✓ Owner has 30 days to notify the mayor or clerk of the appeal
  - ✓ Within 10 days of notification to the City, owner must file with the district court
  - ✓ Failure to follow the timeline may result in the appeal being dismissed
- District court will schedule dates for the trial

Discovery	Appraisal Exchange	Briefing	Trial

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Appeal Response

Engage an appraiser ASAP

- Special assessment appraisal work is highly specialized & difficult
- Few appraisers doing this work & they are busy
- Court generally only listens to licensed real estate experts relative to property value

Document the road

- If the project has not been completed, take photos of the road to show the condition prior to the project
- Once the road is completed, take additional photos to show the condition after the project

Trial Day

- As the appealing party, the owner presents their case first
  - ✓ This can involve an appraiser the owner hires
- Upon completion of the owner's case, the city presents its case
  - ✓ Testimony can include the engineer, public works, and the appraiser
- The judge writes an opinion based on the evidence and testimony presented at trial

Trial Day

Presumption of Validity

- Means the assessment amount, with introduction of the assessment roll into evidence, is assumed to be correct
- Owner must provide competent evidence that the assessment is greater than the market benefit
- Many owners do not hire their own appraiser, and often can't overcome the presumption of validity and fail to prevail in their case

Final Thoughts on Appraisers

- Appraisers can be involved throughout the entire assessment process
- Consulting with an appraiser can help avoid over-assessing a property, which reduces risk to the City
- Appraisers are a key witness at trial and can help the court determine if the assessment amount is correct or not

Additional Resources

- Ehlers can assist with policies & procedures
- League of Minnesota Cities tookit


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Your Presenters

Nick Anhut
Senior Municipal Advisor
nanhut@ehlers-inc.com
(651) 697-8507

Todd Hagen
Senior Municipal Advisor
thagen@ehlers-inc.com
(651) 697-8508

Ethan Waytas
Nagell Appraisals
nanhut@ehlers-inc.com
(651) 697-8507

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