

A
**LEAGUE
MANUAL**

SPECIAL ASSESSMENTS IN WISCONSIN



**A
LEAGUE
MANUAL**

**SPECIAL ASSESSMENTS
IN
WISCONSIN**

*League of Wisconsin Municipalities
202 State Street, Suite 300
Madison, Wisconsin 53703
Prepared by Jean Setterholm
1996 Revised*

2001 Revised to reflect 1999 recodification of Ch. 66, Stats., and Reprinted

PREFACE

Special assessments are charges levied by local governments against real property to defray the costs of public work or improvements which benefit such property. For over a century, Wisconsin municipalities have used special assessments as a method to finance local public works and improvement projects. Special assessments are flexible. They can be used to pay for street construction, curb and gutter, storm and sanitary sewer improvements, water mains and facilities, tree removal, park land condemnation and many other public improvements. Because only those properties which specially benefit from the improvement bear the cost of the improvement, the general property tax is not burdened. Special assessments, therefore, are useful financial tools for municipalities. Indeed, their usefulness increases as demand grows for each municipal tax dollar.

This manual outlines the procedures prescribed by Wisconsin law for the levying of special assessments by municipalities. The first comprehensive statute governing special assessment procedures was adopted by the legislature during its 1945 session. By successive legislative enactments and by judicial interpretation and application, the procedure has been refined and modified. Since the League's last published revision of this manual in 1981, important changes and modifications in both statutory and case law have occurred. This present revision reflects these changes.

This manual is comprised of three distinct but interrelated parts: (1) a general discussion of special assessments; (2) a step-by-step outline of the process and (3) suggested forms for use in the special assessment process.

Revised 1996
Reprinted 2001

(with minor changes to reflect the renumbering of statutes in ch. 66.)
League of Wisconsin Municipalities

Table of Contents

Part One – Special Assessments: A General Discussion	1
An overview.....	1
Compliance with statutory procedures.....	1
The power to specially assess.....	2
Taxing powers.....	2
Police power.....	2
Property subject to assessment.....	3
Viewing the property to be assessed.....	4
Determining and allocating benefits.....	4
Alternative assessment formulas.....	6
Front foot assessments.....	6
Area assessments.....	6
Combined area-front foot assessments.....	6
Corner lots.....	7
Other formulas.....	7
Special uses for special assessments.....	7
Assessor’s plats.....	7
Business Improvement Districts.....	8
Condemnation and special assessments.....	8
Current services assessments.....	8
Parking systems.....	8
Sidewalks.....	9
Tree care.....	9
Utility laterals.....	9
Utility acquisition.....	9
Collection of special assessments.....	9
Appeal of special assessments.....	11
Special assessments and impact fees.....	12
Part Two – Special Assessments: The Procedure Process	13
An overview.....	13
Initiating the process: the preliminary resolution [Form 1].....	13
When street grades involved.....	14
When service pipes involved [Form 12].....	14
Sidewalk grades.....	15
The report [Form 2].....	15
Special assessments against state property.....	15
Notice of hearing [Form 3].....	16
Mailing of notice of hearing.....	16
Waivers of notice and hearing [Form 4].....	16
Hearing.....	17
Final resolution [Form 5].....	17
Publication of final resolution.....	18
Rejection of bids: municipal construction.....	18
Installment assessment notice [Form 6].....	18
Special charges for current services [Forms 7, 8 and 9].....	19
Sidewalk assessments [Forms 10 and 11].....	19
Condemnation assessments [Forms 13 and 14].....	20
Assessing property located outside municipal boundaries [Forms 15 and 16].....	20

Local special assessment ordinances [Form 17] 20
 Reopening special assessments..... 21

Part Three – Special Assessment: Forms 23

Forms for Public Improvement Assessments 24

Form 1. Preliminary Resolution Declaring Intent to Levy Special Assessments under
 Municipal (Police) (Taxing) Power pursuant to §66.0703, Stats..... 24
 Form 2. Report on Proposed Special Assessments for Public Improvements Against
 Properties Located In Wisconsin 26
 Form 3. Notice of Public Hearing on Special Assessments for Public
 Improvements in Wisconsin 28
 Form 4. Waiver of Special Assessment Notices and Hearings
 under §66.0703(7)(b), Stats. 28
 Form 5. Final Resolution Authorizing Public Improvements and Levying
 Special Assessments Against Benefited Property in Wisconsin 29
 Form 6. Installment Assessment Notice 30

Forms for Special Charges for Current Services under §66.0627, Stats. 31

Form 7. Preliminary Resolution Providing for Imposition of Special
 Charge for Sidewalk Repair 31
 Form 8. Notice of Hearing on Proposed Special Charge for Repair of Sidewalks 31
 Form 9. Final Resolution Authorizing Repair of Sidewalks to be Charged to
 Abutting Property..... 32

Forms for Cost Assessments under §§66.0907 and 66.0911, Stats. 33

Form 10. Resolution Ordering Laying of Sidewalks 33
 Form 11. Order of Board of Public Works for Sidewalk Repair under §66.0907, Stats... 34
 Form 12. Resolution Requiring Installation of Water and Sewer Laterals and
 Service Pipes and Providing for Assessment of Cost under §66.0911, Stats. .. 34

Forms for Condemnation Assessments 35

Form 13. Resolution Levying Special Assessments for Condemnation
 Benefits under §66.0725, Stats. 35
 Form 14. Resolution Confirming Assessment of Condemnation
 Benefits under §66.0725, Stats. 36

Forms for Assessments of Outside Property 37

Form 15. Request for Approval of Special Assessment Levy Against Property in
 (Town)(City)(Village) of _____, Wisconsin, Abutting on and
 Benefiting from Proposed Municipal (Work) (Improvement) by
 (City)(Village) of _____, Wisconsin..... 37
 Form 16. Certification of Final Levy of Special Assessments Against Benefited
 Property in Accordance with §66.0703 and §66.0707, Stats. 38

Local Special Assessment Ordinances 39

Form 17. An Ordinance Relating to Special Assessment Procedures in the
 (City)(Village) of _____, Wisconsin..... 39



SPECIAL ASSESSMENTS: A GENERAL DISCUSSION

AN OVERVIEW

The Wisconsin statutes prescribe the procedures which cities and villages must follow to specially assess property for local improvements.¹ Typical public improvement projects for which special assessments are levied include street construction and paving, curb and gutter installation, sidewalk construction, sanitary sewer installation, storm sewer installation, water main and facility installation and street lights. In recent years municipalities have also imposed special assessments for construction of new wastewater treatment facilities and area-wide drainage projects as well as major street projects.

COMPLIANCE WITH STATUTORY PROCEDURES

The Wisconsin supreme court, discussing special assessment procedures, has stated that “[t]he power of a municipality to levy an assessment against a private owner is one which exists by right of statute, and the restrictions of the statute must be met if the assessment is to be deemed valid.”² Elaborating on this point, the court has further declared that “[a] special assessment, to be valid, must be levied pursuant to and in strict compliance with the statutory powers of a municipality.”³ Municipal statutory powers to impose special assessments include both the complete procedure set forth in §66.0703 of the Wisconsin Statutes (hereafter “Stats.”) and the power to adopt an ordinance setting forth a local special assessment procedure under §66.0701, Stats. Chief among the requisite procedures are notice and hearing, discussed under Part Two. Failure to comply with mandated procedures may result in the voidance of the special assessment. Alternatives available to a municipality if a court voids the special assessment include reopening the special assessment process and starting over or recovering the cost of the project by general taxes or other means.⁴

1. See, e.g., §66.0703, Stats.

2. *Green Tree Estates, Inc. v. Furstenberg*, 21 Wis. 2d 193, 197, 124 N.W.2d 90 (1963).

3. *Dewey v. Demos*, 48 Wis.2d 161, 167, 179 N.W.2d 897 (1970).

4. See, e.g., §66.0731, Stats.

Local ordinances may contain different or added procedures from those established in 66.0703, Stats., but at a minimum must include provisions for notice to owners of property being assessed and a hearing on the proposed special assessment.⁵

THE POWER TO SPECIALLY ASSESS

Section 66.0703, Stats., provides that municipalities may proceed to specially assess property under either of two optional powers: the police power or the taxing power. The police power allows the local governing body to enact ordinances and take action “...for the health, safety, and welfare of the public.”⁶ The taxing power is the general power of any government to levy taxes to pay for improvements and services provided.

Under either the police power or the taxing power, some special benefit must accrue to property in order for it to be burdened with a special assessment. The difference between specially assessing under one or the other power lies in the criteria necessary to establish the amount to be assessed and the procedures to be followed. Under the police power, the governing body must determine the actual existence of benefits while, under the taxing power, it must calculate the actual value of the benefits conferred.⁷

Taxing Power

A special assessment made under the general taxing power must be based on the actual benefit accruing to the involved property. The maximum legal limit of an assessment based on the taxing power is the actual value of benefits conferred on the property by the public improvement.⁸ “The whole theory of special assessment [under the taxing power] is that the property owner is merely rendering an equivalent for the benefit which he has received.”⁹ “If the amount of the special assessment exceeds the amount of the benefits there is a taking of private property without due process of law.”¹⁰

Police Power

A municipality must satisfy two basic requirements to levy a special assessment under the police power.¹¹ First, under §66.0703(1), Stats., the property must in fact benefit from the improvement. Secondly, the amount of the assessment must be made on a “reasonable basis.”¹²

Benefits under police power assessments need not be precisely determined although they must exist and must be special as opposed to benefits conferred on an entire community.¹³ Even under the police power, therefore, a governmental unit cannot simply apportion the costs of the improvement among the benefited properties to ensure that the total cost is ultimately recouped. Existence of special benefits to each property assessed must always be the guiding principle.

5. See §66.0701(2), Stats.

6. §62.11(5), Stats. See also §61.34(1), Stats.

7. *In the Matter of North Port Washington Road (Berkvan v. City of Glendale)*, 79 Wis.2d 279, 255 N.W.2d 521 (1977).

8. §66.0703(1)(b), Stats.

9. *Lamasco Realty Co. v. City of Milwaukee*, 242 Wis. 357, 390, 8 N.W.2d 865 (1943).

10. *Bekkedal v. City of Viroqua*, 183 Wis. 176, 198, 196 N.W. 879 (1924).

11. *CIT Group v. Village of Germantown*, 163 Wis.2d 426, 471 N.W. 2d 610 (Ct. App. 1991).

12. *Id.*

13. *In the Matter of North Port Washington Road*, supra, footnote 7.

Regardless of the power invoked to support the levy, the total sum of special assessments levied and collected cannot exceed the total cost of the project. If the total special assessments levied exceed the cost, the governing body must reduce each special assessment proportionally.¹⁴

PROPERTY SUBJECT TO ASSESSMENT

General laws exempting property from property taxation do not exempt property from special assessments for local improvements.¹⁵ Practically all private, public, utility and corporate properties are subject to special assessments for local public improvements and works.¹⁶ Exceptions to this general rule are expressly enumerated under §§1.04 and 66.0705, Stats.

Under §66.0705, Stats. state property held for highway right-of-way purposes or acquired as abandoned railroad property and held for transportation, scenic or recreational purposes or for constructing a correctional institution is exempt from special assessments.¹⁷ A special assessment cannot be levied against “the right, easement or franchise to operate or maintain railroads, telegraph, telecommunications or electric light or power systems in streets, alleys, parks or highways.” Any other property held by a railroad or utility company is subject to special assessments as is any other privately held property. Different procedures apply to special assessments against railroads for improvements to streets at railroad crossings or upon which tracks are laid. The applicable procedures are specified under §§66.0727 to 66.0729, Stats., which will not be further discussed here.

Property of the United States is exempt from special assessments pursuant to §1.04, Stats.

Properties zoned for and in use as exclusive agricultural lands or for which a farmland preservation agreement under subchapter V of chapter 91, Stats., has been recorded, are exempt from special assessments for sanitary sewers, water, lights or nonfarm drainage unless the assessments were imposed prior to the recording of the agreement or prior to zoning of the land for exclusively agricultural use under subch. V. Land covered by this exemption must be denied use of an improvement created by the special assessment as long as the owner of the land has a recorded agreement under subch. V or the land is zoned for exclusively agricultural use under subch. V, unless the owner pays the amount that would have been paid had the land not been excluded.¹⁸

Property in an adjacent municipality which abuts and benefits from an improvement may be specially assessed if the governing body of the adjacent municipality adopts a resolution approving the levy.¹⁹ When such a resolution is adopted, the assessed property is entitled to use the improvement and the treasurer of the adjacent municipality must collect the assessment as a tax and pay it over to the treasurer of the assessing municipality.

14. See §66.0703 (11), Stats.

15. *Yates v. City of Milwaukee*, 92 Wis. 352, 66 N.W. 248 (1896).

16. A special charter provision may exempt a certain company, such as a cemetery association, from special assessment as the court ruled in *Union Cemetery v. City of Milwaukee*, 13 Wis.2d 64, 108 N.W.2d 180 (1961); but in the absence of such a special provision, property of religious, eleemosynary or similar tax-exempt property is subject to a special assessment. *Grace Episcopal Church v. Madison*, 129 Wis.2d 331, 385 N.W.2d 200 (Ct. App. 1986). County owned property, including land taken by tax deed, is subject to special assessment for local improvements. League Opinion Special Assessment 634.

17. See *the Municipality*, March 1993, p. 92 et seq.

18. §91.15, Stats.

19. §66.0707, Stats.

VIEWING THE PROPERTY TO BE ASSESSED

Viewing the premises to be assessed may help to support a challenged assessment on appeal. The need to actually view the premises when the assessment to be levied represents an exercise of the taxing power is crucial.²⁰ For example, the Wisconsin supreme court has concluded on one occasion that when the assessing authority views each parcel and determines the benefits and damages to each, the fact that the assessments are made uniformly on the front footage is not sufficient to overcome the presumption that the assessments were based on benefits received, absent evidence indicating a difference in the physical conditions of the questioned lots from other lots similarly assessed.²¹

DETERMINING AND ALLOCATING BENEFITS

The following principles have been enunciated by the courts regarding benefit which will support a special assessment.

1. The assessment is presumed to be based on actual benefits. A presumption arises that the assessment was made on the basis of benefits actually accrued, but the municipality should be prepared to show that a reasonable formula was used to allocate benefits.²²
2. The benefit supporting a special assessment must be unique and special, not general. To qualify as an assessable project under §66.0703, Stats., the improvement must confer an “uncommon advantage”, as distinguished from a general benefit.²³ Only public improvements which confer benefits on properties in a “limited and determinable area” may be specially assessed.²⁴ General benefit to an entire community will not support a special assessment. Charging only a limited number of properties for an improvement which benefits an entire municipality constitutes taking of private property for public use without the owner’s consent or just compensation to the owner in violation of state and federal constitutions.²⁵

However, an improvement may confer benefits across the entire community and, at the same time, confer a greater benefit on a specific portion of the community. For example, a water tower erected to improve and expand service to an entire municipality provides general benefits to properties already served and special benefits to properties which previously lacked water service. Consequently, even though those properties with no previous water service may not abut the water tower, they obviously are specially benefitted by the water tower.²⁶
3. Special benefit reasonably certain to be realized in the future will support an assessment. Benefit may be immediate or in the future.²⁷ Undeveloped properties benefit

20. *Molbreak v. Village of Shorewood Hills*, 66 Wis2d 687, 225 N.W.2d 894 (1975).

21. *Id.*

22. *Molbreak v. Village of Shorewood Hills*, supra, footnote 20.

23. *Matter of Goodger v. City of Delavan*, 134 Wis.2d 348, 396 N.W.2d 778 (Ct. App. 1986).

24. See §66.0703(1)(a), Stats.

25. Art. 1, §1 and Art. 11, §2, Wis.Const., and 5th and 14th Amendments, U.S.Const.

26. *Duncan Development Corp. v. Crestview Sanitary District*, 22 Wis.2d 258, 125 N.W.2d 617 (1964).

27. *Heinemann Creameries, Inc. v. Village of Kewaskum*, 275 Wis. 636, 82 N.W.2d 902 (1957).

from public improvements which make future development possible.²⁸ Even if current zoning prevents immediate use of the improvement, probability of rezoning permitting use may create special benefit.²⁹ In levying a special assessment for benefits to residential property from a public improvement, benefit to the property as commercial property may be considered where the assessing authority can prove there is a reasonable probability of rezoning the property in the near future.³⁰

The owner of land need not make immediate use of an improvement to benefit therefrom.³¹ Special assessments placed on vacant or unimproved properties for the excess capacity built into public sewerage systems, due at the time such properties are improved and connected to the sewerage system, have been upheld by the Wisconsin courts as reasonable special assessments.³²

4. Taxing power assessments may not exceed actual benefits over damages. For special assessments levied under the taxing power, benefits are generally determined by standard appraisal methods. The benefit is taken to be the difference between the estimated selling price of the property before and after installation of the improvement. Any expenses necessarily incurred to take advantage of the improvement must be deducted from after improvement selling price. For example, there cannot be a \$70,000 benefit to low-lying lots from a street improvement if it will cost \$125,000 to fill such lots to grade.³³
5. Police power assessments must confer some special benefit and not be arbitrary or allocated unequally or unfairly. Property specially assessed under police power must be benefitted to some extent, and method of assessment must be reasonable, not arbitrarily or capriciously burdening any group of property owners. A mere claim on the part of the governmental unit that the property is benefitted is insufficient to support a special assessment levy.³⁴ In one particular case, a residential homeowner appealed a special assessment for traffic improvements designed to provide safe and easy access to businesses located farther down the road. The court rejected the assessment because the city council, when authorizing the improvement, had provided no factual basis for its statement that the residential property would be benefitted.³⁵
6. Mere uniform treatment does not establish reasonableness of an assessment. Mere uniformity of treatment does not establish reasonableness, rather uniqueness of a property may be the cause for the assessment being unreasonable.³⁶ The degree, effect and consequences of the benefit must be examined to measure reasonableness.

28. *Duncan Dev. Corp. v. Crestview Sanitary Dist.*, supra, footnote 26; *CIT Group v. Village of Germantown*, supra, footnote 11.

29. *Molbreak v. Village of Shorewood Hills*, supra, footnote 20.

30. *Id.*

31. *Soo Line Railroad v. City of Neenah*, 64 Wis. 2d 665, 221 N.W.2d 907 (1974).

32. *Village of Egg Harbor v. Sarkis*, 166 Wis. 2d 5, 479 N.W.2d 536, 539 (Ct. App. 1991); *CIT Group v. Germantown*, supra, footnote 11; *Village of Egg Harbor v. Mariner Group*, 156 Wis. 2d 568, 573-74, 457 N.W.2d 519, 522 (Ct. App. 1990); *Davis v. City of Elkhorn*, 132 Wis. 2d 394, 393 N.W.2d 95 (Ct. App. 1986).

33. *Wolff v. Town of Weston*, 156 Wis.2d 588, 457 N.W.2d 510 (Ct. App. 1990).

34. *In the Matter of North Port Washington Road*, supra, footnote 7.

35. *Id.*

36. *Lac La Belle Golf Club v. Lac La Belle*, 187 Wis. 2d 273, 522 N.W.2d 277(Ct. App. 1994).

ALTERNATIVE ASSESSMENT FORMULAS

Front Foot Assessments

The front footage of a parcel of land abutting on an improvement often provides the most useful measure for determining the amount to be levied under police power special assessments for street, water and sewer projects. For example, when curb and gutter improvements on a straight street are installed, a governing body could reasonably determine that the abutting properties be assessed on a front foot basis. The total front footage of each abutting property times the average project cost per front foot could then be used to measure the special benefits conferred on that specific parcel. This method of measuring benefit is generally permissible under the police power but has been held improper when applied to non-abutting properties.³⁷

Area assessments

Where a front footage assessment formula results in inequitable treatment as when applied to lots fronting on a curving street or cul-du-sac, a fairer assessment may require consideration of lot area as well as front footage.³⁸ The term “area assessment” is used to describe a method of calculating the amount to be assessed against benefitted property by comparing the total area benefitted with the area of the property to be assessed.

Some improvements, such as sewer and water, sidewalks and street lights are generally perceived as benefiting only those properties abutting on the public improvement or work. With other improvements, the circle of benefits expands. A large interceptor or lift system, or a major street widening or storm sewer project generally confers a benefit on properties beyond those abutting the project. Such projects lend themselves to assessments based upon the area of a property to be assessed compared with the total area served by the improvement.

Acquisition and improvement of a neighborhood park or a downtown parking lot may be found to benefit an area beyond the actual boundaries of the project, with benefits increasing with increasing proximity to the development. An assessment formula for such projects might employ a sliding scale of assessment which reduces the amount levied as the distance from the improvement increases.

Special assessment B bonds or local-improvement bonds backed by special assessments may be used to finance project costs in tax incremental finance districts created under §66.1105, Stats.³⁹ In such instances the specially benefitted properties may be all properties within the area of the tax incremental finance district.

Combined area-front foot assessments

Area and front foot factors may be combined to arrive at a more equitable benefit formula for curved streets and cul de sacs which result in lots with varying frontage and area ratios or unequal frontage but equal lot size.

37. *Dist 4, Bd. of Ed. v. Town of Burke*, 151 Wis.2d 392, 444 N.W.2d 733 (Ct. App. 1989).

38. *See Peterson v. City of New Berlin*, 154 Wis.2d 365, 435 N.W.2d 177 (Ct. App. 1990) where court found unreasonable an assessment of trapezoid-shaped lots on a front foot basis.

39. *See* §66.1105(9)(a)5., Stats.

Corner lots

Corner lots require special consideration. If a corner property has been assessed previously for the installation cost of a sanitary sewer or water main in one street on which the parcel abuts, the property is entitled under §66.0703(3), Stats., to a “reasonable and just” exemption or deduction when a similar improvement is installed in the other abutting street; provided, the second improvement is useable by the corner lot. If the property cannot be connected to the main, it does not benefit and should not be assessed therefor.⁴⁰ The governing body determines the amount of the deduction. However, if no assessment was levied for the improvement installed in the first street, no deduction need be allowed when the municipality is levying assessments for the improvement installed in the second street.

At its discretion, the governing body may allow a similar deduction or exemption from special assessments for corner lots for other types of improvements but this deduction is not mandated by statute.

Other formulas

Some improvements, such as new or upgraded wastewater treatment plants, can be assessed on the basis of anticipated or actual usage. For example, a new and expanded sewerage or water system might be assessed on a lump sum basis to current users and a reserve capacity basis to future users, sometimes referred to as residential equivalency units or REUs which measure benefit by the estimated usage of the system based on type of improvement to the property to be assessed.⁴¹

Revenues generated by special assessments for new wastewater treatment plants can be used to secure general obligation-local improvement bonds or special assessment B bonds issued to repay financial assistance grants received from the clean water fund administered by the department of natural resources.⁴²

Transportation improvements such as class A intersections, traffic signals and major streets can be assessed by a method which estimates traffic trips generated by uses or proposed uses of property served by the street or road, regardless of whether or not such property fronts on the improvements.⁴³

As explained below, special assessments may be levied against benefiting properties, whether abutting or not, to defray costs of acquiring or expanding heat, light or power facilities.

SPECIAL USES FOR SPECIAL ASSESSMENTS

Assessor’s plats

The cost of an assessor’s plat may be levied against the property platted under §70.27(1), Stats., and collected as provided by §66.0703, Stats. Note that only the collection procedures of §66.0703, Stats., apply to special assessments to collect the cost of an assessor’s plat. The cost should be allocated to each parcel in the plat in proportion to that parcel’s last assessed valuation to the last total assessed valuation of all the lands included in the plat and the value of the platted land is determined without inclusion of improvements.

40. See *Goodger v. City of Delavan*, supra, footnote 23.

41. *CIT Group v. Village of Germantown*, supra, footnote 11.

42. See §281.59(13f), Stats.

43. See “Who Pays?”, *the Municipality*, October 1991, 334-335.

Business Improvement Districts

Cities and villages, upon petition of an owner of real property used for commercial purposes in the proposed district, may create business improvement districts. Special assessments may be levied on property within such districts to finance public improvements included in an operating plan. Such assessments are to be kept in a segregated fund and used only to pay for improvements in the district and annual audits thereof or refunded to owners in the district upon dissolution. Procedures for creating and dissolving business improvement districts are set forth in §66.1109, Stats.⁴⁴

Condemnation and special assessments

Because some parcels of land may specially benefit from the condemnation of property for a public purpose, the benefiting parcels can be assessed under §66.0725, Stats., to defray the cost of the condemnation as well as the cost of the improvement. For example, a municipality could condemn certain land for park purposes and levy an assessment against neighboring property which is specially benefitted by the existence of the park.

Where part of a parcel is taken or damaged, special benefits accruing to the remainder because of the improvement must be used to offset the damages when compensation for the condemnation is calculated.⁴⁵ For example, when a portion of a lot is taken to establish a street, a special benefit to the remainder may result which is to be considered when calculating the compensation to be paid for the portion taken to establish the street. Benefits derived from surfacing the new street or installing new curbs and gutters may be assessed separately under §66.0703, Stats., because those benefits are distinct from the condemnation benefits.

Current services assessments

State special assessment laws permit municipalities to impose special charges against property for current public services provided to the property §66.0627, Stats. Current services may include, among other things, street sprinkling, tarring and oiling, snow and ice removal, repair of sidewalks or curb and gutter, noxious weed cutting, tree trimming, storm water management, and garbage, refuse and recycling collection.⁴⁶

Parking systems

Under §66.0829(2), Stats., city or village parking lots or facilities may be financed by the levying of special assessments against the area benefitted by the parking facility. Assessments may be made for the purpose of defraying annual operational and maintenance costs as well as for original acquisition and construction costs. However, no assessment may be made against property used wholly for residential purposes as provided by §66.0829(2)(d), Stats.

When the assessment is made for the purpose of financing the acquisition and construction of the system or the cost of the land, the number of annual installments may not exceed 20. Operational and maintenance costs may not be assessed more than once a year. These costs may include a payment in lieu of taxes, operating, maintenance and replacement costs and interest on unpaid capital cost. Any portion of the revenues of the parking system may be credited against the cost to be assessed as provided by §66.0829(2)(c), Stats.

44. See *the Municipality*, August 1984, p. 208; League Opinion Special Assessments 624C.

45. *Petkus v. State Highway Commission*, 24 Wis.2d 643, 130 N.W.2d 253 (1964); see also §32.09, Stats.

46. *Laskaris v. City of Wisconsin Dells*, 131 Wis.2d 525, 389 N.W.2d 67 (Ct. App. 1986).

Sidewalks

As an alternative to §66.0703, Stats., §66.0907, Stats. allows municipalities to impose assessments for the costs of laying, removal, replacement, repair and maintenance of sidewalks. Charges for sidewalk work are levied under the police power and do not require a showing of benefit to property charged.⁴⁷

Tree care

Municipalities may specially assess, in full or in part, the cost of protecting, trimming, spraying, planting, renewing or removing trees or shrubs between the lot line and the curb in front of any parcel of land abutting a street under either §66.0703 or §27.09(5), Stats.⁴⁸ The governing body is required to give notice and hold a hearing on the proposed assessment. The exact cost of the tree and shrub care rendered must be reported to the comptroller in cities which have this statutory officer. Otherwise, the cost report must be submitted to the common council or village board by November 10 of each year.

Utility laterals

The cost of construction of water, heat, sewer and gas laterals or service pipes from the lot line to the building to be serviced may be undertaken by the municipality and charged to the lot or parcel served under §66.0911, Stats., without following the assessment procedures of §66.0703, Stats.⁴⁹

Utility acquisition

Special assessments may be levied to pay for the costs of acquiring or expanding an electric or gas distribution system or production or generating plant under §66.0723, Stats. Special assessments levied in accordance with §66.0703, Stats. may also be used by cities and villages to pay for construction, acquisition, lease, extension or improvement of a plant and equipment for the collection, transportation, storage, treatment and disposal of sewage, including laterals, mains and interceptor sewers necessary in connection therewith.⁵⁰ The exemption for lands zoned for agriculture or subject to an agreement under ch. 91, Stats. applies to assessments for sewer plants.

Collection of special assessments

Special assessments or installments thereof become liens against the property assessed from the time of final determination by the governing body to the same extent as liens for real property taxes.⁵¹ As soon as a contract for any part of the improvement project has been awarded, the special assessments levied by the final resolution may be collected.⁵² If not paid when due, special assessments or installments thereof are to be placed on the current or next tax roll for collection in the same manner as general property taxes.⁵³

Special assessments placed on the tax roll must be paid in full by January 31 unless the governing body (other than Milwaukee common council) adopts an ordinance authorizing installment payments. Such ordinance must specify that the assessments are due in 2 equal

47. *Lisbon Ave. v. Town of Lake*, 134 Wis. 470, 475, 113 N.W. 1099 (1908).

48. Section 27.13, Stats., extends ch. 27, Stats., provisions to villages and towns.

49. See League Opinion Special Assessments 631.

50. See §66.0821, Stats.

51. See §§66.0703(13) and 66.0717, Stats.

52. *Heineman Creameries v. Village of Kewaskum*, supra, footnote 27.

53. §66.0703(13), Stats.; League Opinion Special Assessments 626.

installments on or before January 31 and July 31 and only assessments of \$100 or more can be paid in installments.⁵⁴ Local ordinances authorizing payment of special assessments placed on the tax roll in 3 or more installments are also permitted in municipalities other than Milwaukee.⁵⁵ To be effective for a succeeding tax collection year, an installment assessment ordinance must be adopted by August 15 of the preceding calendar year.

Failure to pay by the due date a special assessment or installment thereof placed on the tax roll for collection results in acceleration of the due date of all charges on the tax roll.⁵⁶

When turned over to the county treasurer, special assessments generally are held in trust for collection. The county treasurer is not required to pay the municipality for outstanding special assessments or interest thereon until the assessments are paid or the property sold.⁵⁷ However, full settlement for taxes and special assessments on August 15 may be authorized by the county board.⁵⁸

After the tax roll is turned over to the county for collection, special assessments for which the county did not settle, plus any interest, shall be paid to the taxing jurisdiction which levied the special assessment or special charge within 15 days after the last day of the month in which the payments are received by the county treasurer. Penalties on special assessments and special charges for which the county did not settle are retained by the county.⁵⁹

If property is acquired by a county taking a tax deed, the county is not required to pay any special charges or special assessments until the property is sold by the county.⁶⁰ If the county did not settle for unpaid special assessments or special charges under §74.29, Stats., the county treasurer must notify all taxing jurisdictions that the county has acquired the property and each taxing jurisdiction must then certify to the county treasurer the unpaid special assessments and special charges to which the property is subject.⁶¹

Prior to selling special assessment delinquent lands, the county must give notice to the municipality in which the lands lie.⁶² If special assessments levied on the tax-deeded land have not been settled in full under an agreement or otherwise paid, the taxing jurisdiction that levied the assessments may purchase the tax-deeded land by notifying the county of its intent to do so at any time within one year after the period of redemption has expired but prior to the date upon which the tax-deeded land is sold to another person by the county.⁶³

The amount for which the tax-deeded land may be purchased by the municipality which imposed an unpaid special assessment is the sum of all expenses incurred by the county to obtain marketable title to the property, except the time of county employes and officers; all amounts of unpaid general property taxes, special assessments, special charges and special taxes levied against the property sold, including interest and penalties imposed previously paid to taxing jurisdictions by the county; any withdrawal tax due under §77.84 (3) (b), Stats.; and any unpaid special assessments or special charges that were not levied by the taxing jurisdiction purchasing the tax-deeded land.⁶⁴ No appraisal is required, but any subsequent sale by the municipality must be at no less than the appraised value.⁶⁵

Upon sale of tax delinquent land, the county shall pay any amounts received to the taxing jurisdiction which levied the special assessment or special charge. Under §75.365, Stats.,

54. §74.11, Stats.

55. §74.12, Stats.

56. §74.11 (10), Stats.

57. See §§66.54 (9)(c), 74-12 (12)(a) and 75.36, Stats.

58. See §74.29, Stats.

59. See §75.05, Stats.

60. §75.36, Wis. Stats.

61. §75.36 (2)(b), Stats.

62. See §75.05(5), Stats.

63. See §75.35, Stats.

64. §75.35 (2)(f), Stats.

65. §75.69(2), Stats.; League opinion Special Assessments 628.

counties may enter written agreements with any municipality for the benefit of which any taxes may be levied, therein, upon prior authorization and approval thereof by the governing bodies, providing for the disposition of liabilities of the county to such municipality upon or arising out of the return to the county of delinquent taxes; the taking of tax deeds by the county and the liabilities arising therefrom; provided, the title conveyed by the county upon a tax sale shall be in fee simple and free and clear from all tax liens or claims arising out of delinquent special assessments, delinquent general taxes, or both, except delinquent special assessments, delinquent or unpaid general taxes, or both, returned to the county after such sale. The county or the local municipality in which the land is situated may purchase tax delinquent land when sold by the county pursuant to such an agreement.

Deferred special assessments, although not placed on the tax roll, retain their lien on the property assessed from the date of the levy and are not merged in the county's title on a tax deed or certificate unless so provided in an agreement under §75.365, Stats.

Before ch. 66 was recodified by 1999 Wis. Act 150, §66.645, Stats., authorized the governing body of the municipality to direct the municipal or county treasurer to commence an action in the circuit court against the responsible municipality, corporation, company or individual operating a business mentioned in what is currently §66.0705 to collect a delinquent special assessment at the cost of the municipality. 1999 Wis. Act 150 repealed §66.645 as unnecessary since provisions for collecting and enforcing special assessments are found elsewhere in the statutes. Before an action to collect a delinquent special assessment may be commenced against a municipality, county or school district, a claim must be filed with the proper officers thereof and the time allowed by law for response expired.

APPEAL OF SPECIAL ASSESSMENTS

Any person having an interest in property affected by a special assessment levied under §66.0703, Stats., and feeling aggrieved thereby, may appeal to the circuit court under §66.0703(12), Stats. To perfect an appeal, the property owner must serve a notice of appeal on the clerk of the municipality imposing the assessment and post a \$150 surety bond secured by two sureties or a bonding company approved by the municipal clerk to insure "faithful prosecution of the appeal and the payment of all costs that may be adjudged" against the objector to the assessment.⁶⁶

The appeal must be taken within 90 days after the date of the notice or the publication of the final resolution or within 40 days of the final determination of the governing body of a municipality following a local special assessment ordinance procedure. In order to invoke the shorter appeal period the city or village should clearly indicate to the property owner which procedure is being followed.⁶⁷ Fraud or latent defects in the improvement, discovered after completion of the project, are exempt from the 90-day limitation period. The one-year statute of limitations established by §893.72, Stats., does not apply to special assessments levied pursuant to the procedures in §66.0703, Stats.⁶⁸

66. See §§66.0703(12) and 66.0701(2), Stats.

67. *Bialk v. City of Oak Creek*, 98 Wis.2d 469, 297 N.W.2d 43 (Ct. App. 1980).

68. *Bomemann v. City of New Berlin*, 27 Wis.2d 102, 133 N.W.2d 328 (1965).

An appeal raises any question involving the amount or validity of the assessment, including:

- a) Did the municipality follow the correct procedure?
- b) Does the public improvement confer a special benefit on the specially assessed property?
- c) Was the assessment equitably and reasonably apportioned among the benefitted properties?

On appeal under §66.0703, the court may affirm, annul or modify and affirm the assessment. However, the court may only modify the assessment if there is adequate evidence in the record to support a modified assessment.⁶⁹ In condemnation assessment appeals or actions challenging assessment of benefits and damages, other than appeals under §66.0703 (12), Stats., the court may stay proceedings and determine the amount of a just assessment.⁷⁰

Just as the assessing municipality must strictly comply with the special assessment procedure in §66.0703, Stats., or its own local ordinance, so must the property owner who wishes to appeal or challenge a special assessment. The property owner must pay the special assessment in full or any installment permitted when due or the court will dismiss the appeal.⁷¹ The property owner must file an appeal bond and satisfy the applicable time limits to preserve his or her right of appeal to the courts. However, a property owner need not have contested the assessment initially at the requisite public hearing to preserve his or her right of appeal to the courts.⁷² Failure of the objecting property owner to strictly follow the terms of §66.0703(12)(a) and (f), Stats. deprives the court of subject matter jurisdiction.⁷³ A property owner who has been timely and properly notified of a special assessment but fails to timely appeal the assessment is not deprived of due process or equal protection so as to maintain a civil rights action against the assessing municipality.⁷⁴

Only statutory court costs are recoverable by the winning party on an appeal of a special assessment. Each party must pay its own attorney fees.⁷⁵

SPECIAL ASSESSMENTS AND IMPACT FEES.

The 1993 legislature enacted §66.0617, Stats., authorizing municipalities and counties to impose impact fees on land developers to pay for the capital costs that are necessary to accommodate land development. Section 66.0617, Stats., does not prohibit or limit the authority of a political subdivision to finance public facilities by special assessment, except that the amount of an impact fee imposed must be reduced to compensate for other capital costs imposed by the political subdivision with respect to land development to provide or pay for public facilities, including special assessments and special charges authorized by §66.0703.⁷⁶

69. *Dist. 4, Bd. of Ed. v. Town of Burke*, supra, footnote 37.

70. See §66.0731(1), Stats.

71. *Singer Brothers, Inc. v. City of Glendale*, 33 Wis.2d 579, 148 N.W.2d 100 (1967).

72. *Central Urban Co. v. City of Milwaukee*, 245 Wis. 525, 15 N.W.2d 855 (1944); *Lamasco Realty Co. v. City of Milwaukee*, supra, footnote 9; League Opinion Special Assessments #386.

73. *Bialk v. City of Oak Creek*, supra, footnote 67.

74. *Kasper v. Larsen*, 372 F. Supp 881 (1974).

75. League Opinion Special Assessments #622.

76. See §66.0617(2)(b) and (6)(d), Stats.