

N.D.A.G. Letter to Tebelius (March 31, 1987)

March 31, 1987

Mr. Mark A. Tebelius
Harvey City Attorney
1012 Lincoln Avenue
Harvey, ND 58341-1595

Dear Mr. Tebelius:

Thank you for your letter of March 20, 1987, concerning a city of Harvey street improvement project. Your inquiry is whether the city council may change assessments to property located within the street improvement district after those assessments have been finalized and certified to the county auditor.

We have reviewed the statutes found in N.D.C.C. Ch. 40-23 concerning the assessments of benefits in improvement districts and are unable to find any provision as to further appeals following action by the city governing body in confirming the assessments and certifying the same to the city auditor. Thus, I concur in your conclusion that state law provides no procedure whereby the city governing body may make after-the-fact changes to those assessments determined by the special assessment commission and affirmed by the city governing body;

Your letter indicates that all necessary resolutions and procedures have been followed and that all appeal procedures have been made available. The absence of a statutory provision as to further appeals does not allow the city governing body to take further action with respect to the assessments at this time.

You have also inquired whether the property owners who now wish to have the assessments changed may appeal to the district court despite the fact that they have failed to appeal to the city council from the special assessment commission hearing. Clearly, this is a question that only the district court can answer. We can only observe that, again, there is no provision within N.D.C.C. Ch. 40-23 providing for such an appeal. However, the North Dakota Supreme Court has previously determined that the ability to appeal from the determinations of the special assessment commission is not based or conditioned upon the appearances or lack of appearances before the commission. Soo Line Railway Co. v. City of Wilton, 172 N.W.2d 74

Sincerely,

Nicholas J. Spaeth

dfm