



# **City of Grand Island**

**Tuesday, March 7, 2017**

**Study Session**

## **Item -3**

### **Unpaid Delinquent Special Assessments**

**Staff Contact: Jerry Janulewicz, City Attorney**

# **Council Agenda Memo**

**From:** Jerry Janulewicz, City Attorney

**Meeting:** March 7, 2017

**Subject:** Unpaid Delinquent Special Assessments

**Presenter(s):** Jerry Janulewicz and Renae Griffiths

## **Background:**

Since 2006, 22 special assessment districts were created by the City of Grand Island for water, sidewalk, sewer, and street paving projects, not including connection districts. Creation of the districts resulted in assessments of \$6,672,917.43 levied upon 923 parcels included within the districts. Of the properties assessed, 91% have paid in full, resulting in a collection rate of 96%.

In the fall of 2016, the legal department was contacted regarding delinquent assessment installments. Following the initial contact and a review of account data and city ordinances, the legal department contacted property owners informing them of the past due amounts and instructing the owners to contact the city finance department to make arrangement to bring the assessment accounts current. Few owners contacted the city regarding the assessment. Of those who made contact, a small number offered to pay, but the amounts offered were insufficient to pay interest as it accrued. An even smaller number were able to bring their accounts current or to pay the account in full. Currently, 12 assessed parcels have 1 to 5 delinquent installments, for a total of \$64,692.81 plus interest due. Fifty-one assessed parcels, 24 of which are assessed for both paving and sewer, have six or more delinquent installments, for a total of \$211,433.16 plus interest due.

Nebraska statutes provide a statutory framework for special assessments. Whether for paving, sanitary sewer, or water districts, the payment and collection process is as follows:

1. Special assessments are levied following completion of the assessment district projects and are payable in installments. The first installments are delinquent 50 days following the assessment and levy, and the remaining installments are delinquent on the anniversary date of the assessment levy. The number of annual installments is set by the city council, although the maximum number of annual installments permitted varies by statute depending upon the type of improvement project and district.
2. Interest accrues on unpaid installments at the rate as set by the city council. Typically, the rate is 7% from the date of levy to the date paid.
3. Interest accrues on delinquent installments at the rate of 14%. §45-104.01

4. If three or more installments are delinquent, the city council may adopt a resolution declaring all future installments on the property to be due on a future fixed date. After the date fixed, all future installments are deemed delinquent and may be collected.
5. Special assessments are liens upon the property assessed, second only to the lien for general real estate taxes levied by the County Board. §77-209.
6. Special assessments are not a personal liability of the property owner.
7. A city of the first class may collect special assessments through judicial foreclosure. §77-1917.0.
8. Special assessments, including all interest, penalties and costs, levied upon real property, and any liens created thereby, are released and extinguished forever upon the expiration of fifteen years after the date upon which the special assessment became or becomes delinquent. §77-1862.
9. A city's lien for special assessments is secondary to a general real estate tax lien. A city's special assessment lien is extinguished by foreclosure of the tax lien regardless of whether the proceeds of the sale were sufficient to pay the special assessments. INA Group, LLC v. Young, 271 Neb. 956 (2006). A treasurer's tax deed passes title free and clear of all liens and encumbrances. Knosp v. Shafer Properties, LLC, 820 N.W.2d 68, 69 (Neb. App. 2012).
10. When foreclosing upon a lien for delinquent special assessments, final confirmation of the sale and issuance of a sheriff's deed cannot take place until two years after the date of the Sheriff's sale. During this period, the property may be redeemed from the foreclosure by payment of the assessments, accrued interest, and costs. §77-1917.01.

Administration is recommending that the city proceed with collection of delinquent assessments through foreclosure of the special assessment liens. To that end, at a future council meeting council will be asked to consider and approve two resolutions:

- a. With respect to properties for which the final installment is not yet due but have three or more delinquent installments, a resolution fixing a date upon which all future installments are accelerated and deemed delinquent. The resolution will authorize collection of assessments by judicial foreclosure if the assessments are not paid on or before the date fixed by council.
- b. For all properties where the final installment and any prior installments are delinquent, a resolution will be submitted authorizing collection of assessments by judicial foreclosure of the liens.

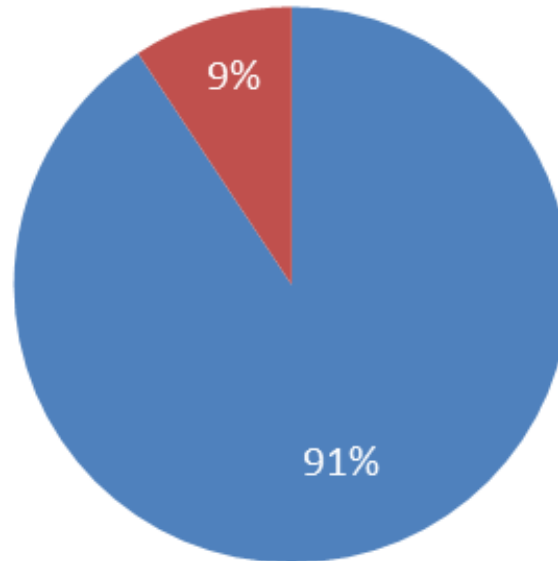
UNPAID DELINQUENT SPECIAL  
ASSESSMENTS  
MARCH 7, 2017

## Background

- Since 2006, 22 special assessment districts were created by the City of Grand Island for water, sidewalk, sewer, and street paving projects, not including connection districts. Creation of the districts resulted in assessments of \$6,672,917.43 levied upon 923 parcels included within the districts. Of the properties assessed, 91% have paid in full, resulting in a collection rate of 96%.

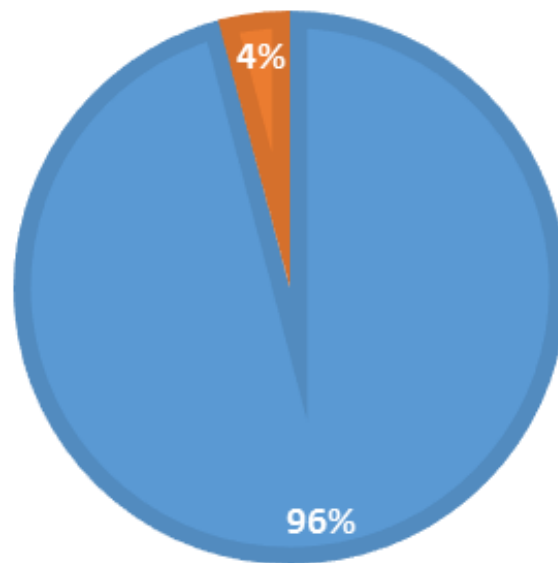
## TOTAL PROPERTIES ASSESSED SINCE 2006 - 923 PROPERTIES

■ Properties Assessed & Collected     ■ Number of Properties Outstanding



## TOTAL DOLLARS ASSESSED SINCE 2006 \$6,672,917

■ Assessed and Collected    ■ Principal Past Due



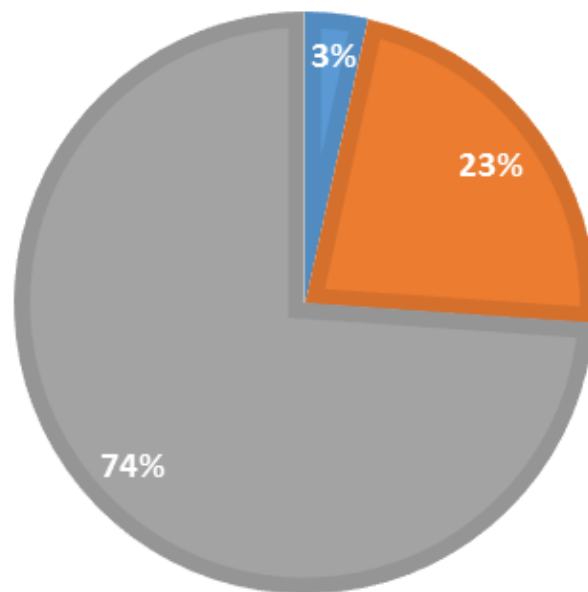
## **II. Current Delinquent Assessments.**

- Currently, 12 assessed parcels have 1 to 5 delinquent installments, for a total of \$64,692.81 plus interest. Fifty-one assessed parcels, 24 of which were assessed for both paving and sewer, have six or more delinquent installments, for a total of \$211,433.16 plus interest.






## TOTAL PRINCIPAL PAST DUE \$286,063.70

■ \$\$ Past Due <1 yr   ■ \$\$ Past Due 1 - 5 yr   ■ \$\$ Past Due 6-15 Yrs



# III. Collection



-  1. Special assessments are levied following completion of the assessment district projects and are payable in installments. The first installments are delinquent 50 days following the assessment and levy, and the remaining installments are due on the anniversary date of the levy. The number of annual installments is set by the city council, although the maximum number of annual installments permitted varies by statute depending upon the type of improvement project and district.
-  2. Interest accrues on unpaid installments from the date of levy to the date due at the rate as set by the city council.
-  3. Interest accrues on delinquent installments at the rate of 14 percent per annum. 45-104.01

4. If three or more installments are delinquent, the city council may adopt a resolution declaring all future installments on the property to be due on a future fixed date. After the date fixed, all future installments are deemed delinquent and may be collected.
5. Special assessments are liens upon the property assessed, second only to the lien for general real estate taxes levied by the County Board. 77-209.
6. Special assessments are not a personal liability of the property owner.
7. A city of the first class may collect special assessments through judicial foreclosure. 77-1917.01.
8. Special assessments, including all interest, penalties and costs, levied upon real property, and any lien created thereby, are released and extinguished forever upon the expiration of fifteen years after the date upon which the special assessment became or becomes delinquent. 77-1862.

9. A city's lien for special assessments is secondary to a general real estate tax lien. A city's special assessment lien is extinguished by foreclosure of the tax lien regardless of whether the proceeds of the sale were sufficient to pay the special assessments. *INA Group, LLC v. Young*, 271 Neb. 956 (2006). A treasurer's tax deed passes title free and clear of all liens and encumbrances. *Knosp v. Shafer Properties, LLC*, 820 N.W.2d 68, 69 (Neb. App. 2012).

10. When foreclosing upon a lien for delinquent special assessments, final confirmation of the sale and issuance of a sheriff's deed cannot take place until two years after the date of the Sheriff's sale. During this period, the property may be redeemed from the foreclosure by payment of the assessments, accrued interest, and costs. 77-1917.01.

## IV. Resolutions to be Brought Forward

-  a. With respect to properties for which the final installment is not yet due but have three or more delinquent installments, City administration will bring forth for Council's consideration a resolution fixing a date upon which all future installments are accelerated and deemed delinquent. The resolution will authorize collection of assessments by judicial foreclosure if the assessments are not paid on or before the date fixed by council.
-  b. For all properties where the final installment and any prior installments are delinquent, a resolution will be submitted authorizing collection of assessment liens by judicial foreclosure.