



City of Grand Island

Tuesday, May 26, 2009

Council Session

Item F3

**#9216 - Consideration of Disestablishment of Business
Improvement District No. 8 Second Reading**

Staff Contact: Jeff Pederson

Council Agenda Memo

Memo Update: The Public Hearing on this matter was completed on May 12, and the Ordinance was passed on first reading. The Ordinance is now before the City Council for consideration for second reading.

From: Jeff Pederson, City Administrator

Meeting: May 12, 2009

Subject: Disestablishment of Business Improvement District No. 8

Item #'s: E-4 & F-3

Presenter(s): Jeff Pederson, City Administrator

Background

On April 14, 2009, the City Council passed Resolution No. 2009-90 which set May 12, 2009 as the date for a Public Hearing on the issue of disestablishment of Business Improvement District No. 8. Some written evidence (documents) has been received, and will be brought forward at the Hearing.

Discussion

The City Council is now at the stage in the process where evidence is received at a public hearing regarding whether or not to disestablish Business Improvement District No. 8. State law requires that the Council hear all protests and receive evidence for or against disestablishment. Prior to closing the hearing, Council must rule upon all written protests. This merely means that Council should determine if the protests are validly signed by

someone who owns property within the boundaries of the District. If the owners of more than 50% of the assessable units communicate in writing that they do not want the district to be disestablished, you will not even consider the ordinance to disestablish and the district will continue.

Under every other scenario, the outcome is at the discretion of the governing body. You may disestablish the district or not depending on what you feel is in the best interests of those involved based on the evidence presented during the hearing. Although the hearing was set by a resolution of intent to disestablish the district, neither state law nor city code explicitly states that there is any presumption that you will act one way or another. If there are not enough protests to automatically stop the process, you may decide to introduce the ordinance to disestablish so that you may have a discussion about whether or not to disestablish. A vote for the ordinance would end the district. A vote against the ordinance would allow the district to continue. You also have the option of not introducing the ordinance at all and taking no further action. In that case, the district would continue.

Alternatives

If there are not enough protests to automatically stop the process, the Council has the following alternatives concerning the issue at hand. The Council may:

1. Continue the public hearing if more time is needed to adduce evidence or verify protests.
2. Take no action on the issue.
3. Waive the rule requiring three readings, introduce the ordinance, and vote for or against passage.
4. Introduce the ordinance on first reading.

Recommendation

This issue involves the owners of property within a Business Improvement District and not the day-to-day operations of the City. Since the action of the Council should be based on evidence presented at a hearing, City Administration has no recommendation.

Sample Motion

Motion to be taken depends on the course of action the council chooses.

City Attorney's Office

Dale M. Shotkoski, City Attorney
 Wesley D. Nespor, Assistant City Attorney

CITY OF GRAND ISLAND INTEROFFICE MEMORANDUM

*Working Together for a
 Better Tomorrow, Today.*

DATE: May 14, 2009

TO: Jeff Pederson, Dale Shotkoski

FROM: Wesley D. Nespor

RE: Business Improvement District assessment of residential properties

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Business Improvement District No. 8 is funded through a special assessment upon the property within the district. The ordinance creating BID 8 proposes to assess owner occupied residential properties at 70% of assessed valuation based on their primary benefit from the downtown beautification and maintenance programs. Residential rental property is assessed at 100%. State law regarding business improvement districts provides that "the amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable" (Section 19-4030 R.R.S.).

In addition, the Council sitting as a board of equalization can review each individual property and make a determination as to the benefit conferred. The basis and justification for a special assessment are benefits to the property affected. An assessment may not be arbitrary, capricious, or unreasonable but the law does not require that a special assessment correspond exactly to the benefits received. Precise accuracy is not required. Benefits capable of easy demonstration and mathematical exactness are not necessary to support an assessment. The most any board of equalization can do is to estimate the benefits to each tract of real estate through a plan that is as uniform as possible based upon available information. *Bitter v. City of Lincoln*, 165 Neb. at 208-09, 85 N.W.2d at 307-08. However, the Supreme Court has also said that the amount of a special assessment cannot exceed the amount of benefits conferred on the property assessed. *Brown v. City of York*, 227 Neb. 183, 416 N.W.2d 574 (1987).

CONCLUSION

Based upon evidence adduced at a Board of Equalization hearing such as the proposed budget expenditures, location, and use of the property affected, Council could:

1. Determine that the method set forth in the ordinance is not a fair and equitable method and devise another method under which to assess the property. For instance, Council (sitting as a BOE) could determine that assessing owner-occupied residences at 70% is not fair and equitable and change the percentage.
2. Review each property individually if the owner presents evidence that the assessment exceeds the benefits to the property affected. For instance, Council could determine that the owner of a home on the edge of the district might receive less benefit than one in the heart of the district.

These options are not mutually exclusive. Every property owner in the district has the right to ask the Board of Equalization to consider both the first and the second option. If the first option is exercised, it applies to everyone. The second option is a case-by-case method that the Board may grant independent of the first option. This means that the Board could change the percentage for a specific class of property from 100% to some other figure and, in addition, change individual properties even further. It may be wise if Council contemplates revising how residential properties are assessed, to have the board of equalization hearing early to sort out that issue. In fact, the method of assessment could probably be the topic of a meeting all by itself. Once the method is finalized, the calculations of the amount of assessment could be made. The proposed budget of the BID for the next year would be a critical piece of information for such a hearing.

ORDINANCE NO. 9216

An ordinance disestablishing Business Improvement District No. 8; repealing Chapter 13 Sections 13-91 through 13-96; and providing for publication and the effective date of this ordinance.

WHEREAS, the City Council adopted Resolution 2009-90 on April 14, 2009, indicating an intent to disestablish Business Improvement District No. 8; and

WHEREAS, pursuant to said resolution, a notice of hearing was published and mailed as required by law, and public hearing duly held at 7:00 p.m. on May 12, 2009, in the Council Chambers at City Hall, 100 East First Street, Grand Island, Nebraska, concerning the disestablishment of such district; and

WHEREAS, the owners of more than 50% of the assessable units within the District did not file written protests against disestablishment; and

WHEREAS, the City Council now finds and determines that Business Improvement District No. 8 should be disestablished based upon the evidence adduced at the public hearing showing that disestablishment is in the collective best interests of the property owners in the District.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Article XII and Chapter 13 Sections 91 through 96 of the Grand Island City Code are hereby repealed

SECTION 2. Business Improvement District No. 8 is disestablished and the proceeds of any special assessments and assets acquired with such proceeds shall be subject to disposition as the City Council may hereafter determine.

ORDINANCE NO. 9216 (Cont.)

SECTION 3. If any section, subsection, sentence, phrase, or clause, of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. This ordinance shall be in force and take effect from and after its passage, approval and publication, within fifteen days in one issue of the *Grand Island Independent* as provided by law.

Enacted: 2009.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk