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SPECIAL ASSESSMENT
PRACTICE AND PROCEDURE

Prepared For
The Mount Pleasant City Commission

September 7, 1976

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Presented herein for your consideration is a review of methods for the determination of special benefits and the translation of such benefits to equitable, proportionate payment for the improvement provided.

Included as a supplement to this report is the Michigan Municipal League publication "Special Assessment Procedures for Cities and Villages...A Comparison of Ordinances and Charter Provisions". Because it is a comprehensive summary of Michigan statutes, charter provisions, court interpretations, model ordinances, and limitations and restrictions on the levy of special assessments, this report relates primarily to the technical and practical aspects of special assessment.

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General reference to the City Charter is to the Mount Pleasant City Charter becoming effective January 1, 1977.

The provision of the "Home Rule Cities Act" (Act 279, P. A. 1909 as amended /Section 5.2077 M.S.A./) relative to special assessment is "...Each city may in its charter provide...For assessing and re-assessing the costs of any portion thereof, of any public improvement to a special district.../and/...For assessing the cost or any portion thereof, of installing a boulevard lighting system on any street upon the lands abutting thereupon...'Cost' as used in this section includes necessary condemnation cost and necessary expenses incurred for engineering, financial, legal, administrative, and other services involved in the making and financing of the improvement and the levying and collecting of the special assessments therefor. Where any such service is rendered by city employees, the city may include the fair and reasonable cost of rendering the service. The inclusion of any cost specified in this paragraph as part of the cost of an improvement for which special assessments have heretofore been levied is validated."

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Although the enabling provision contained in the "Home Rule Cities Act" is broad and lacks specifics with regard to implementation, special assessment sections of the "Fourth Class Cities Act" (Act 215, P. A. 1895 as amended) are quite specific and act as a general guide for special assessment policy in Michigan.

All reasonable determination of benefit methods have been summarized, although no recommendation for the adoption of any individual policy or procedure has been made.

Respectfully submitted,



William J. Parsons
City Assessor

ARTICLE IX.
"Special Assessments"

Section 1.

The Commission shall have the power to determine the necessity of any local or public improvement, including public parking facilities and boulevard lighting systems, and to determine that the whole or any part of the costs thereof shall be defrayed by special assessment upon the property especially benefited, and shall so declare by resolution, provided that all special assessments levied shall be based upon or be in proportion to the benefits derived or to be derived. Such resolution shall state the estimated cost of the improvement, what proportion of the cost shall be paid by special assessment, what part, if any, shall be a general obligation of the City, the number of installments in which assessments may be paid, the interest rate on any unpaid assessment, if any, the date on which any such interest shall commence, and shall designate the districts or land and property on which special assessments shall be levied.

Section 2.

The commission shall prescribe by general ordinance the complete special assessment procedure concerning the initiation of projects, plans and specifications, estimates of cost, notice of hearings, making and confirming assessment rolls in advance of starting the improvement, the correction of errors in the assessment rolls, collection of special assessments, the assessment of single lots or parcels, and any other matters concerning the making of improvements by the special assessment method, subject to the provisions of this Charter and the laws of the State. The ordinance shall authorize additional assessments, if the prior assessment proves insufficient to pay for the improvement or is determined to be invalid, in whole or in part.

Section 3.

If, before final confirmation of any special assessment, more than fifty percent (50 percent) of the owners to be assessed in a special assessment district or the owner or owners who will bear more than fifty percent (50 percent) of the total cost of the proposed improvement, including that portion of the project to be borne by the City, shall object in writing to the proposed improvement, the proposed improvement shall not be made by the proceedings authorized in this Charter without an affirmative vote of five (5) of the Commissioners, provided that this section shall not apply to sidewalk improvement.

Section 4.

The excess by which any special assessment proves larger than the actual cost of the improvement and expenses incidental thereto shall be refunded on a pro-rata basis to the owners of the property assessed. This refund shall be made by credit against future unpaid installments to the extent that installments are still owing, and the balance of the refund shall be in cash. No refunds may be made which contravene the provisions of any outstanding evidence of indebtedness secured in whole or in part by the special assessment.

Section 5.

From the date of confirmation of any roll levying any special assessment, the full amount of any special assessment and any interest thereon shall be a lien upon the property subject thereto and shall be a debt of the person to whom assessed until paid. This lien shall be of the same character and effect as the lien created by this Charter for City taxes. The assessment shall be levied upon the respective lots and premises to which they are specially assessed, and against the persons chargeable therewith, as a tax in the next City tax roll in a column for special assessments. The amount so levied shall be enforced and collected in same manner as other taxes and when collected shall be paid into the City Treasury.

Section 6.

In any case where the provisions of this Charter, either expressed or incorporated herein, may prove to be insufficient to carry into full effect the making of any special assessment, the Commission shall provide by general ordinance any additional steps or procedures required to effect the improvement by special assessment.

ARTICLE IX - SPECIAL ASSESSMENTS

MOUNT PLEASANT CITY CHARTER

JANUARY 1, 1977

DEFINITION AND DETERMINATION OF BENEFIT

The theory of special assessment is that special benefit has been conferred over and above that conferred upon the community itself.

Article IX, Section 1 of the Mount Pleasant City Charter requires "...that all special assessments levied shall be based upon or be in proportion to the benefits derived or to be derived".

The requirement that special assessments be based solely on benefit received is further stressed in Act 188 of 1954, an act relating to public improvements by townships, but the principles of which are equally applicable to Home Rule Cities. "The township board...shall direct the supervisor to make a special assessment roll in which shall be entered and described all the parcels of land to be assessed...and the total amount to be assessed against each parcel of land, which amount shall be the relative portion of the whole sum to be levied against all parcels of land in the special assessment district as the benefit to the parcel of land bears to the total benefit to all parcels of land in the special assessment district."

The existence of benefit need not be directly related to current use and may be based on what a reasonable future possible use capability may be.

One judicial body has defined benefit as "...an increase in value, relief from a burden, or creation of a special adaptability on the land", *Soncoff -vs- City of Inkster*, 22 Mich. App. 358. This has the appearance of being a broad interpretation and is further broadened with street paving as an example to include relief from burden such as "...less dirt, noise, mud, etc., in front of an owners property", *Carmichael -vs- Village of Beverly Hills*, 30 Mich. App. 176.

An interesting interpretation of possible benefit that may be considered for application, particularly in the instance of sidewalk and arterial street construction is found in *Johnson -vs- City of Inkster*, 56 Mich. App. 581; "Municipality which has power to levy special assessments need not confine its special assessments to abutting property owners but may assess any land within its borders which derives special benefit from improvements, including that of non-abutting owners when a street is widened or paved.../and/...City's 'unit of benefit' method of determining dollar value of each unit of interior, non-abutting residential properties subjected to special assessment for widening of street was established by testimony of city's witnesses to be proper and equitable formula for assessments in compliance with city charter that they be in proportion to benefits derived, objecting property owners failing to meet their burden of proving contrary."

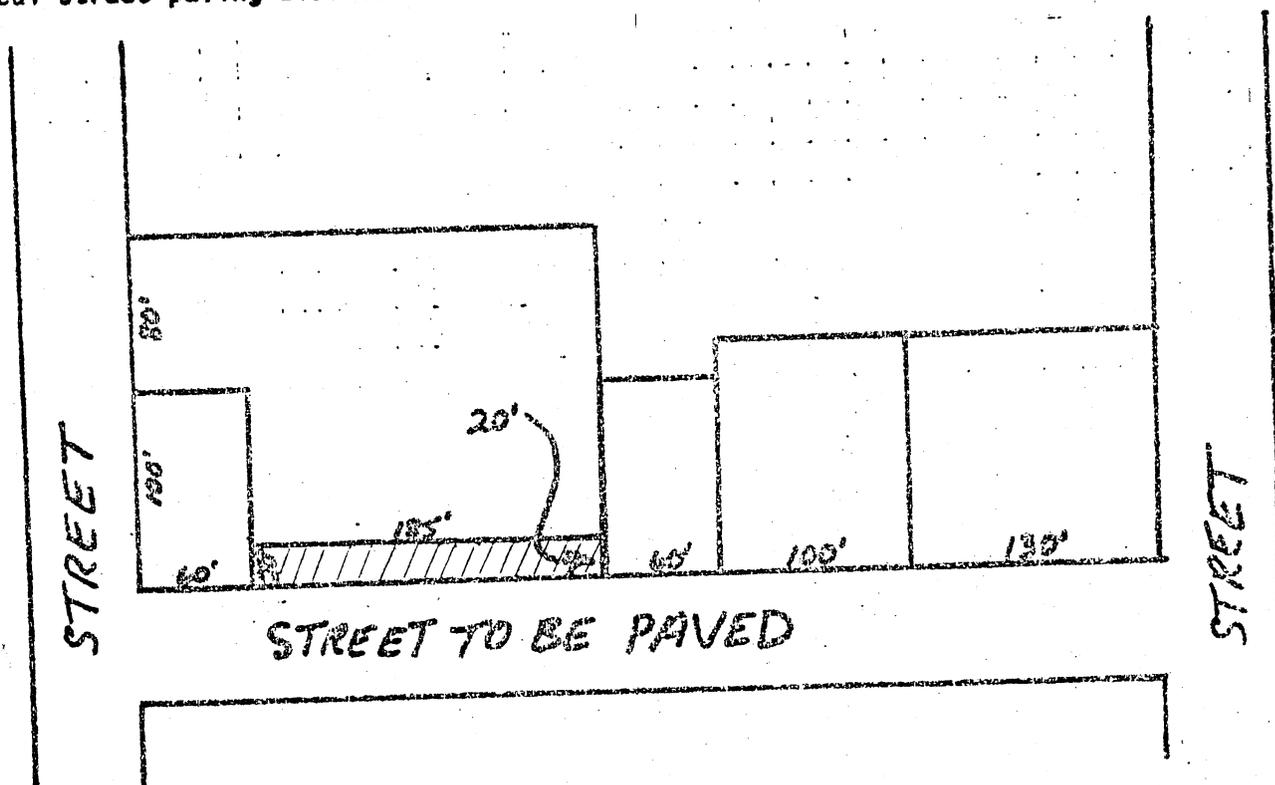
The City of Inkster's "unit of benefit" method attempts to distribute benefit to properties not abutting the special benefit improvement. The instant case involves the widening of a road from two to five lanes. Concentrated traffic studies tended to show that traffic patterns changed to a definite flow to this arterial street.

The major shift was from properties that were found to be within a $\frac{1}{4}$ mile radius of the road improvement. The traffic study was used to determine the extent of benefit to interior properties. This benefit was calculated to equal approximately 3.6 front feet, or "units of benefit", per each lot in the interior.

Upon confirmation of the assessment roll, suit was filed by interior property owners in Wayne County Circuit Court contending that the improvement was

not of benefit to them, but was to the abutting properties and more particularly to the community at large. The Circuit Court did not agree and confirmed the City of Inkster's action and the principles utilized. An appeal was taken to the Court of Appeals which affirmed the decision of the trial court. A further appeal has been taken to the Supreme Court and a decision is expected during its fall term. If the Supreme Court concurs in the validity of the "unit of benefit" method, it will be a landmark in the field of special assessment and will mandate a radical change in the philosophy of special benefit. Any consideration of special assessment policy should include discussion on the ramifications of this pending suit.

It is particularly important that this policy be considered when the collectibility of special assessments is in question. This type of circumstance is possible when the special assessment substantially exceeds the value of the property on which it is imposed. Below is an example of how this may occur, creating additional expense for the City and the community as a whole. A hypothetical street paving district is used for illustration.



Assuming, in this instance, that the parcel with 185 feet of street frontage has a nominal value of \$250.00 and that the special assessment levy has been computed to be \$15.00 per front foot, or \$2,775.00, the risk of property tax delinquency and accompanying special assessment delinquency is immediately apparent. Should such a default occur, the likely result is that title will eventually revert to the State of Michigan. At that time, all delinquent property taxes and special assessments are cancelled and a subsequent purchaser will not be liable for their payment or for future payments due during the life of the special assessment district. In this type of situation, perhaps the non-abutting property does in fact receive some benefit from the improvement. If it does not, it would be possible to split a strip of land from the front of any property leaving only a section for ingress and egress, thereby, avoiding the larger portion of the special assessment levy by allowing the strip that had been split to become tax and special assessment delinquent, anticipating the reversion of ownership to the State.

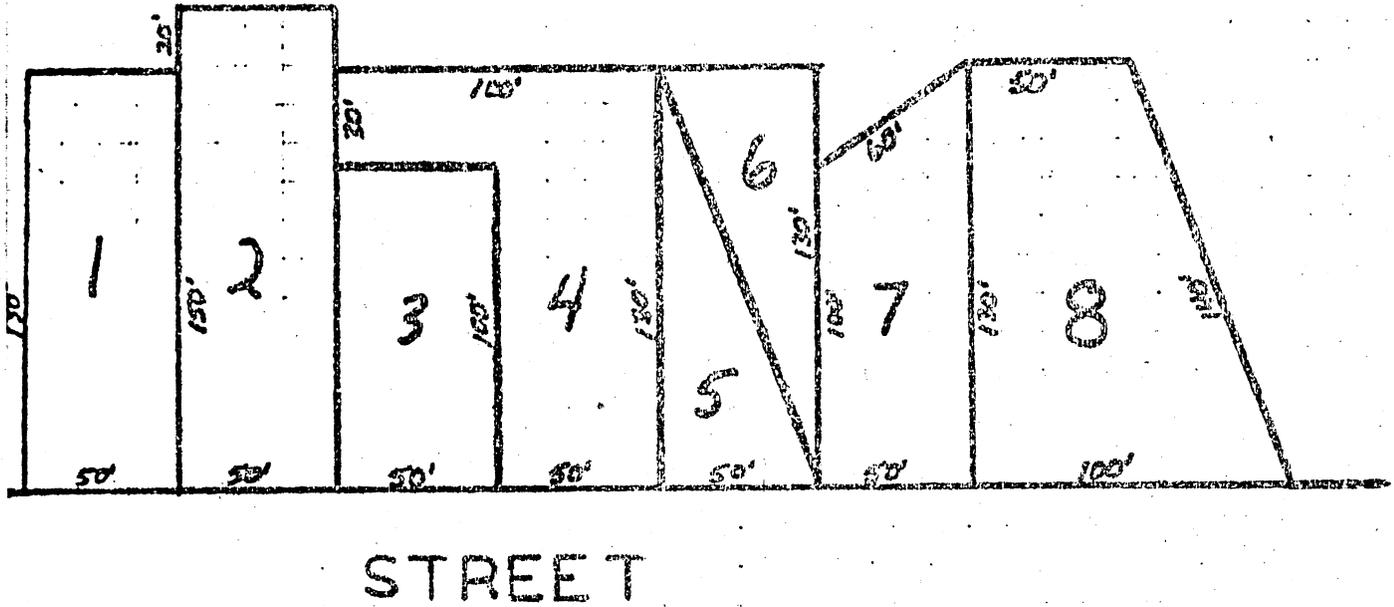
Another important element in determining benefit received or lack of same is whether or not an improvement may be in fact detrimental to the property special assessed. A case of apparent detriment rather than benefit is found in *Wood -vs- Village of Middleville*, 11 Mich. App. 104, 160 NW 2nd 585 (1968). "In non-jury class action by abutting property owners who sought to have voided special assessments for widening and curbing of village road, evidence supported trial court's voiding of assessment on ground that widening project was detrimental to abutting owners who, as a result thereof, were subject to increased traffic at higher speeds 24 hours a day, together with vibrations and noise, and whose property lost valuable frontage and was subjected to snow, ice, gravel, and salt during highway department's snow removal operations.../and/...Whether special benefit had been conferred on abutting owners so as to justify special assessment for widening and curbing of village road would be determinable by comparing situation before widening and curbing to that after project had been completed." A judicial decision similar to the above appears in *Cusumano -vs- Detroit*, 30 Mich. App. 603. "That paving and widening of road conferred no benefit on abutting residential property owners so as to justify special assessment therefore was established by evidence that before paving road was adequate for access by abutting owners and area was quiet, pleasant and semi-rural in effect, whereas after paving road became gathering area for drag racers and motorcyclists, with consequent heavy traffic, noise,.../etc./"

These two cases appear to indicate that extensive study of a proposed improvement must be made to determine what the future consequences of the improvement may be, or risk the validity of a special assessment roll at some date subsequent to the completion of the project.

DETERMINATION OF BENEFIT - UNADJUSTED FRONTAGE

This method of determining the assessable frontage within a special district considers only the actual abutting frontage. It does not consider what, if any, additional benefit or detriment to benefit can be attributed to depth, shape or size that, in an individual property, varies from a calculated norm.

HYPOTHETICAL SPECIAL ASSESSMENT - UNADJUSTED FRONTAGE



Lot #1	50' Frontage	x	\$12.50 P/FF	=	\$ 625.00
Lot #2	50' Frontage	x	12.50 P/FF	=	625.00
Lot #3	50' Frontage	x	12.50 P/FF	=	625.00
Lot #4	50' Frontage	x	12.50 P/FF	=	625.00
Lot #5	50' Frontage	x	12.50 P/FF	=	625.00
Lot #6	0' Frontage	x	12.50 P/FF	=	0.00
Lot #7	50' Frontage	x	12.50 P/FF	=	625.00
Lot #8	100' Frontage	x	12.50 P/FF	=	1250.00
TOTAL	400' Frontage				

\$5,000 Total Special Assessment Project Cost ÷ 400' Frontage = \$12.50 Per Front Foot

DETERMINATION OF BENEFIT-ADJUSTED EQUIVALENT FRONTAGE

Adjustment of assessable frontage for depth, shape, and/or size is based on the theory that in urban areas the per square foot value of a lot decreases as the lot depth increases. Conversely, the total value of the lot increases as depth increases. A table may be created that will permit the measure of depth and other influences on the actual lot frontages and their proportionate relation to benefit. The standard depth adjustment formula is the square roots of the quotients of actual lot depths divided by the standard lot depths or

$$\sqrt{\frac{A}{S}}$$

A being actual depth and S being standard depth for the particular benefit district.

EXAMPLE

Standard depth of lots	150'
Actual depth of lot	100'

$$100' \div 150' = .6667$$

$\sqrt{.667}$ = depth factor of .82 to be applied to the actual frontage of the 100' deep lot.

It is also possible, by use of this method, to determine the equivalent frontages of parcels with curved lot lines and those abutting cul-de-sacs. While lots abutting cul-de-sacs could be considered as having equal benefit to one another, variance from this method in that circumstance will result in an unequal allocation of benefits received in relation to properties not abutting the cul-de-sac.

DEPTH FACTOR TABLE

Actual Depth of Lot	Standard Depth of Lot					
	100	110	120	130	140	150
5	97	97	97	97	97	97
10	102	102	102	102	102	102
15	107	107	107	107	107	107
20	112	112	112	112	112	112
25	117	117	117	117	117	117
30	122	122	122	122	122	122
35	127	127	127	127	127	127
40	132	132	132	132	132	132
45	137	137	137	137	137	137
50	142	142	142	142	142	142
55	147	147	147	147	147	147
60	152	152	152	152	152	152
65	157	157	157	157	157	157
70	162	162	162	162	162	162
75	167	167	167	167	167	167
80	172	172	172	172	172	172
85	177	177	177	177	177	177
90	182	182	182	182	182	182
95	187	187	187	187	187	187
100	192	192	192	192	192	192
105	197	197	197	197	197	197
110	202	202	202	202	202	202
115	207	207	207	207	207	207
120	212	212	212	212	212	212
125	217	217	217	217	217	217
130	222	222	222	222	222	222
135	227	227	227	227	227	227
140	232	232	232	232	232	232
145	237	237	237	237	237	237
150	242	242	242	242	242	242
155	247	247	247	247	247	247
160	252	252	252	252	252	252
165	257	257	257	257	257	257
170	262	262	262	262	262	262
175	267	267	267	267	267	267
180	272	272	272	272	272	272
185	277	277	277	277	277	277
190	282	282	282	282	282	282
195	287	287	287	287	287	287
200	292	292	292	292	292	292

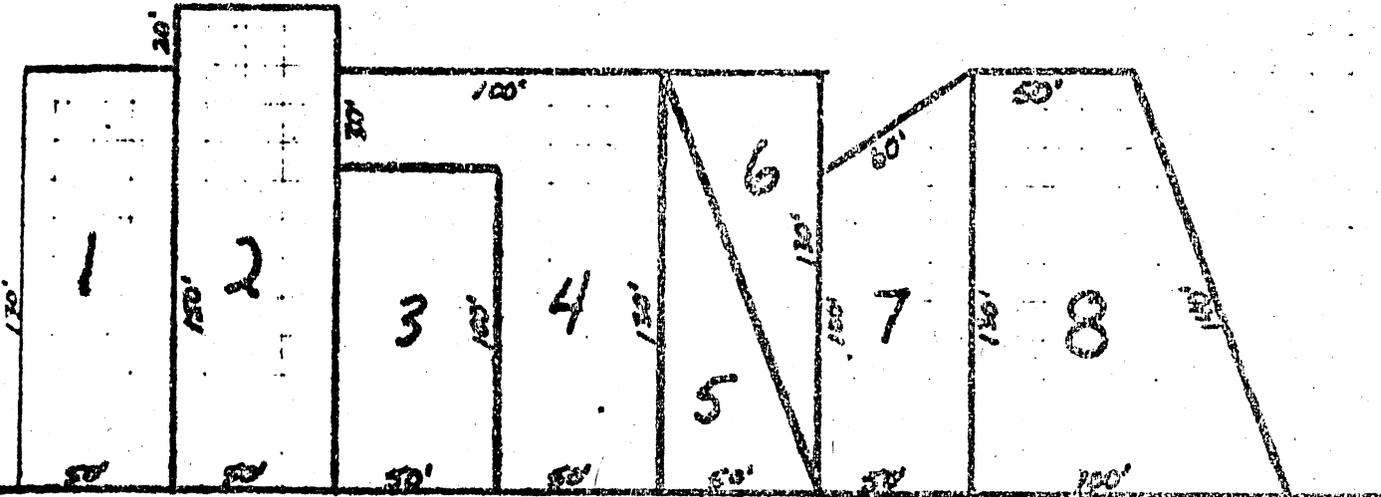
STANDARD DEPTH FACTOR TABLE COMPUTED BY FORMULA



A = Actual Depth

S = Standard Depth

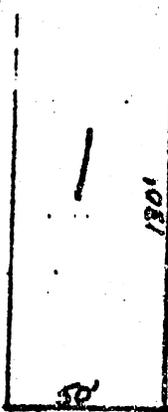
HYPOTHETICAL SPECIAL ASSESSMENT - FRONTAGE ADJUSTED FOR DEPTH AND SHAPE
 130' Standard Depth



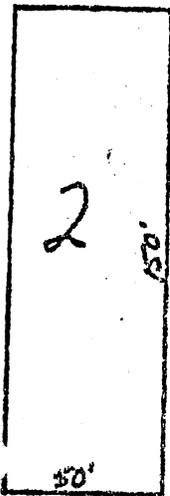
STREET

Lot #1	50'	Equivalent Frontage	x	\$13.01	=	\$ 650.50
Lot #2	54'	"	x	13.01	=	702.54
Lot #3	44'	"	x	13.01	=	572.44
Lot #4	56'	"	x	13.01	=	728.56
Lot #5	33 1/3'	"	x	13.01	=	433.67
Lot #6	16 2/3'	"	x	13.01	=	216.83
Lot #7	42'	"	x	13.01	=	546.42
Lot #8	83 1/3'	"	x	13.01	=	1084.17
TOTAL	384 1/3'	Equivalent Frontage				

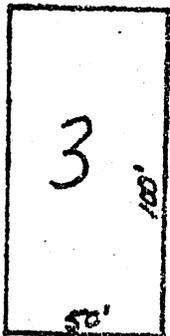
\$5000 Total Special Assessment Project Cost ÷ 384 1/3' Equivalent Frontage = \$13.01 P/Eq. F.F.



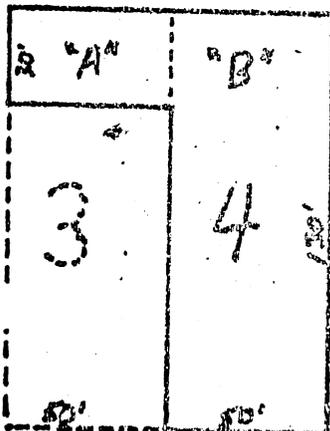
50' wide
 130' Deep
 Depth Factor 100%
 $50' \times 1.00 = 50'$ Equivalent Frontage



50' wide
 130' Deep
 Depth Factor 108%
 $50' \times 1.08 = 54'$ Equivalent Frontage



50' Wide
 100' Deep
 Depth Factor 88%
 $50' \times .88 = 44'$ Equivalent Frontage



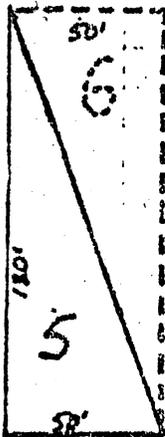
SECTION "A"

50' Wide
 130' and 100' Deep
 Depth Factor (130') 100%
 Depth factor (100') = 88%
 Depth Factor "A" = .72
 $50' \times .72 = 36'$ Equivalent Frontage

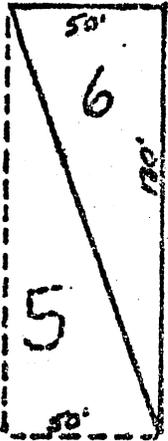
SECTION "B"

50' Wide
 130' Deep
 Depth Factor 100%
 $50' \times 1.00 = 50'$ Equivalent Frontage

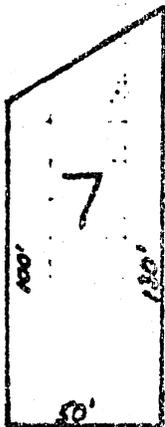
Section "A" 36' Equivalent Frontage
 + Section "B" 50' Equivalent Frontage
 Lot 4 86' Equivalent Frontage



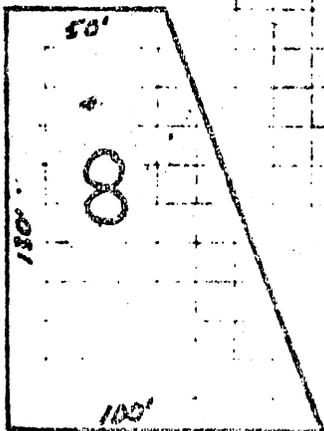
50' Front
 0' Back
 130' Deep
 $(2 \times 50') + (1 \times 0') = 100'$
 $100' \div 3 = 33 \frac{1}{3}'$
 Depth Factor 100%
 $33 \frac{1}{3}' \times 1.00 = 33 \frac{1}{3}'$ Equivalent Frontage



0' Front
 50' Back
 130' Deep
 $(2 \times 0') + (1 \times 50') = 50'$
 $50' \div 3 = 16 \frac{2}{3}'$
 Depth Factor 100%
 $16 \frac{2}{3}' \times 1.00 = 16 \frac{2}{3}'$ Equivalent Frontage



50' Front
 50' Back (Parallel to Front)
 Depth $(130' + 100') \div 2 = 115'$
 Depth Factor 94%
 $50' \times .94 = 47'$ Equivalent Frontage



100' Front
 50' Rear
 130' Deep
 $(2 \times 100') + (1 \times 50') = 250'$
 $250' \div 3 = 83 \frac{1}{3}'$
 Depth Factor 100%
 $83 \frac{1}{3}' \times 1.00 = 83 \frac{1}{3}'$ Equivalent Frontage

CORNER LOTS

The equivalent frontage of corner lots and the subsequent benefit attributable to the added frontage may also be computed by use of the standard depth factor table. The only decision to then be made is which side (short or long) is to be consistently used as the primary frontage.

STREET

130'

50'

STREET

EXAMPLE

Project Cost Determined to be \$12.50 P/Eq. F. F.

130' Standard Depth

OAK

50' Frontage on Elm St.
130' Deep
Depth Factor 100%
 $50' \times 1.00 = 50'$ Equivalent Frontage $\times \$12.50 = \625.00

130' Frontage on Oak St.
50' Deep
Depth Factor 62%
 $130' \times .62 = 80.60$ Equivalent Frontage $\times \$12.50 = \1007.50

TOTAL AMOUNT SPECIAL ASSESSED \$1632.50

SANITARY SEWERS AND WATER MAINS

The two methods that bear consideration for special assessments for sanitary sewer and water installation are the frontage method (actual or equivalent frontage) and the lot or connection method.

The frontage method has been consistently sustained in the courts and use of this method generally produces special assessments that are representative of benefits received. This is particularly the case when the equivalent frontage method is used.

The lot or connection method can be used on the assumption that connections to sewer or water are of equal benefit regardless of the size or shape of the lot. While this may often be the case at the time the special assessment is made, future use must be considered. A much larger or smaller building may one day occupy the site. Additionally, a larger lot increases and a smaller lot decreases the cost of the entire project by requiring longer or shorter mains relative to each parcel of property included in the district.

If larger or longer mains are to be installed than are necessary to serve the immediate special assessment district, sound policy would be to declare the excess cost to be a public benefit to be reimbursed at an identical cost as service extends.

STORM SEWERS

Clearly, the sole method of determining the benefit attributable to storm sewer drainage on other than a City-wide general benefit district is to base costs on the currently used method of area drained.

This type of special assessment may be spread on either an acreage or per square foot basis.

SIDEWALKS

The special assessment of sidewalk construction may be based on the frontage (actual) or frontage (equivalent) method.

Consideration should be given to the inclusion of non-abutting properties in the special assessment district, as discussed in the section of this report dealing with the definition and determination of benefits.

ASSESSOR'S PLATS

Assessor's Plats may be ordered by the City Commission if, after a report by the assessing officer, they determine that the descriptions of parcels within the proposed plat cannot be made sufficiently certain and accurate for the purposes of assessment and taxation without a survey or re-survey.

The special assessment must be spread by half the total cost that each parcel bears to the total area of the plat and half charged equally to each parcel.

The municipality may not share in payment for this type of special assessment district.

All procedures for development and special assessment of this type of district are governed by the Subdivision Control Act of 1967.

PUBLIC FINANCIAL PARTICIPATION
IN SPECIAL BENEFIT PROJECTS

There is little argument against municipal contribution to all types of special benefit districts. Determination of the contribution as a percentage of the total project cost is by its nature a legislative decision, and again by its nature will to some degree be arbitrary.

William O. Winter, in an invitational paper delivered before an annual meeting of the International Association of Assessing Officers, summarized the reasons for public participation.

1. Special Assessment improvements are investments of capital in a publicly owned plant.
2. Improvements in the public plant - anywhere - are of benefit to the urban community at large.
3. By cash or non-cash contributions, the city firmly establishes its financial interest in the project.
4. By such contributions, the city encourages increased expenditures upon the public plant.
5. The special assessment may raise assessed values and thus increase tax returns from the general property tax.
6. Neighborhood resistance to the project probably varies inversely to the amount of public benefit allocated to it. Public benefit represents a means of purchasing consent to the project.