

ORDINANCE #07-02
SPECIAL ASSESSMENT PROCEDURES
VILLAGE OF LAKEVIEW
MONTCALM COUNTY, MICHIGAN

AN ORDINANCE PRESCRIBING THE COMPLETE ASSESSMENT PROCEDURES CONCERNING THE INITIATION OF PROJECTS, PLANS AND SPECIFICATIONS, ESTIMATES OF COSTS, NOTICE AND HEARING. THE MAKING AND CONFIRMING OF THE ASSESSMENT ROLL AND CORRECTIONS OF ERRORS. THE COLLECTION OF SPECIAL ASSESSMENTS, AND ANY OTHER MATTERS CONCERNING THE MAKING OF IMPROVEMENTS BY SPECIAL ASSESSMENT.

THE VILLAGE OF LAKEVIEW ORDAINS:

SECTION 1. Definitions.

The following works and terms and phrases, when used in this ordinance, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

A. *Cost.* The term "cost" as used in this ordinance when referring to the cost of any public improvement shall include the cost of services, plans, condemnations, spreading of rolls, notices, advertising, financing, construction, engineering, legal and other professional fees and all other costs incident to the making of such improvement, the special assessments thereof and the financing thereof.

B. *Public Improvement(s).* The term "public improvement(s)" as used in this ordinance shall mean any public improvement which is of such a nature as to benefit especially any real property or properties within a district in the vicinity of such improvement and which the village council shall by resolution determine that the whole or any part of the expense of any such public improvement shall be defrayed by special assessment upon the property within such district, in proportion to the benefits derived or to be derived.

SECTION 2. Authority to assess.

The village council, by resolution, shall have the power to make public improvements within the village and, as to improvements which are of a nature as to benefit especially any property within a district, the village council shall have the power to determine by resolution that the whole or any part of the cost of such improvement shall be defrayed by special assessment upon the property, in proportion to the benefits derived or to be derived. The village council shall have the power to place a special assessment against any single lot or parcel of land pursuant to the powers granted under any ordinance or code of ordinances now or hereafter adopted and the laws of the state.

SECTION 3. Initiation of improvement.

Any improvement shall be initiated in the following manner:

A. *Village council* : Any improvement or combination of improvements shall be commenced by resolution of the village council requiring the preliminary proceedings as provided in Section 4.

B. *Petition for improvement/Advisory petition* : The village council, in order to ascertain the number of property owners to be assessed within any district that desire any particular improvement or combination of improvements to be made, may request and receive petition therefore, or may receive such a petition voluntarily presented by such property owners; but in any event, such petition shall be advisory only and shall not be jurisdictional. Upon receiving any petition the village council shall consider the same and consider whether or not to proceed with the making of the improvement described in the petition or as the village council shall determine with respect thereto.

1. Petitions for specific improvements may be submitted may be submitted to the council from fifty-one percent (51%) of the owners of property to be assessed or owners of fifty-one percent of the frontage to be assessed if the improvement is in a public street.

2. After receiving a petition, the village council shall proceed in the same manner as provided herein for public improvements initiated by the village council as provided in Section 4.

SECTION 4. Preliminary proceedings.

Investigation and report by Village Manager:

Survey and Report: Proceedings for making public improvements and defraying the entire cost or any part thereof by special assessment may be initiated by resolution of the council. Whenever the council shall propose to make any public improvement and defray the entire cost and expense thereof or any part thereof by special assessment, the council shall be resolution, direct the village manager to make a survey and report of each proposed improvement. The survey and report shall include an analysis of the following:

1. The estimated cost of the proposed public improvement; and
2. Plans and specifications for the public improvement.

There shall also be included recommendations as to the following:

3. The portion of the cost to be borne by the special assessment district and the portion, if any, to be borne by the village at large;
4. The extent of the improvement and boundaries of the district;
5. The number of installments in which assessments may be paid; and
6. Any other facts or recommendations which will aid the council in determining whether the improvement shall be made and how the same shall be financed.

No further action shall be taken until the preliminary survey and report required herein shall have been completed and considered by the village council. If the village manager shall have made the survey and report herein prior to the adoption of the resolution by council, the survey and report required herein may be returned to and considered by the village council at the same meeting as the adoption of the resolution, the survey and report required herein may be returned to and considered by the village council at the same meeting as the adoption of the resolution. Upon consideration of the survey and report by the village council the same shall be filed with the village clerk for public examination and the council shall by resolution call the first public hearing.

SECTION 5. First public hearing

A. After completion of the preliminary proceedings a public hearing shall be held by the village council on the making of the improvement(s) at a time and place to be fixed by council at which time and place all persons within the proposed special assessment district or who own property therein may be heard. Such notice shall also state that a survey and report is on file with the village clerk and available for public examination. The village clerk shall cause notice of the hearing to be published at least once in a newspaper of general circulation in the village not less than ten (10) days prior to the date of the hearing. The village clerk shall cause a like notice of the hearing to be mailed by first class mail to all property owners in the proposed special assessment district as shown by the current assessment roll of the village not less than ten (10) days prior to the date of the hearing, but a failure to send notice to any owner shall not invalidate the proceedings or assessments as to the entire assessment roll but only the assessments on the property affected by the lack of notice.

B. The notice of hearing shall include a statement that appearance and protest at the hearing is required in order to appeal the amount of the special assessment to the state tax tribunal.

SECTION 6. Council determination, content of resolution.

Upon closing the first public hearing the village council may by resolution determine the necessity thereof and set forth the nature thereof, to proceed with the proposed improvement and to defray the whole or any part of the cost of the improvement by special assessment upon the property especially benefited in the properties to the benefits thereto. By such resolution the village council shall approve the plans and specifications for the improvements; determine the estimated cost thereof; determine what proportion of such cost shall be paid by special assessment upon the property to be especially benefited and what part, if any, shall be a general obligation of the village at large; finally fix the special assessment district; make a preliminary determination of the number of installments; determine the rate of interest to be paid, not to exceed the legal rate, to be charged if any payment of any balance is to be deferred, and by the terms of the resolution shall direct the village manager to make a special assessment roll of the part or portion of the cost to be borne by the lands especially benefited according to the benefits received and to report the same to the council.

SECTION 7. Objections to improvement.

If, prior to the public hearing on the advisability of proceedings with the making of the improvement, written objections to the proposed improvement(s) have been filed by owners of the property in the district who will be required to bear more than fifty (50) percent of the amount of such special assessment, or by a majority of the property owners of property to be assessed, the resolution determination to proceed with the improvement shall be adopted only by the affirmative vote of five (5) or more members of the council.

SECTION 8. Preparation of roll

The Village of Lakeview manager shall thereupon prepare a special assessment roll, including all lots and parcels of land within the special assessment district adopted by council, and shall assess to each such lot or parcel of land such relative proportion of the sum to be levied against all lands in the special assessment district as the benefit to such lot or parcel of land bears to the total benefits to all lands in the district. There shall also be entered upon such roll the amount, if any, which has been assessed to the village at large.

SECTION 9. Preparation and filing of roll.

When the village manager shall have completed such assessment roll, he/she shall attach thereto, or endorse thereon, his/her certificate to the effect that the roll has been made by him/her pursuant to a resolution of the council (giving date of adoption of same) and that in making the assessment therein, he/she has, as near as may be, according to his/her best judgement, conformed in all respects to the directions contained in such resolution and the provisions of this ordinance. Thereupon, he/she shall file the special assessment roll with the village clerk who shall present the same to the council.

SECTION 10. Second public hearing, notice of hearing, confirmation of roll.

A) *Notice of Hearing.* Upon receipt of a special assessment roll the village council shall order it filed in the office of the village clerk for public examination; shall fix the time and place when the village council shall meet and review such roll and shall direct the village clerk to give notice of the hearing. Such notice shall specify the time and place of such hearing, shall describe the proposed improvement(s), shall set forth the property to be included within the special assessment district, shall notify and advise that the special assessment roll is on file in the office of the village clerk for public examination and shall specify the time and place of hearing for review of the roll. The village clerk shall cause notice of the hearing to be published at least once in a newspaper of general circulation in the village not less than ten (10) days prior to the date of the hearing and the village clerk shall cause a like notice of the hearing to be mailed by first class mail to all property owners in the special assessment district as finally fixed by the village council as shown on the current assessment roll of the village not less than ten (10) days prior to the date of the hearing, but a failure to send such notice to any owner of property or a failure to receive such notice by any owner shall not invalidate the proceedings or assessment as to the entire assessment roll.

B) *Confirmation of Roll. The council may revise, correct or amend the plans, estimates of cost, special assessment district and special assessment roll. If any changes shall be made which result in additions to the special assessment district or increases in the special assessment roll, then an additional hearing shall be held with respect to said changes and notice of such hearing shall be given in the same manner as required for the first hearing. Any changes made in the special assessment roll shall be noted in the council minutes. After the hearing(s), council may by resolution, determine to proceed with the public improvement, determine the necessity and set forth the nature thereof, designate the limited of the special assessment district to be affected and describe the lands to be assessed, finally determine the part or proportion of the cost of the public improvement to be paid the lands especially benefited thereby and the part or portion, if any, to be paid by the village at large for benefit to the village at large. The council may also confirm the special assessment roll with such corrections as it may have made, if any, or may refer it back to the village manager for revision, or may annul it or any proceedings in connection therewith. The village clerk shall endorse the date of confirmation upon each special assessment roll. (Example endorsement: I hereby certify that on _____ the Village Council of the Village of Lakeview did confirm the attached special assessment roll. Village Clerk _____)*

SECTION 11. Voluntary Special Assessment Agreement

If all persons or property owners to be affected by any proposed improvement agree that such proposed improvement be made and that a special assessment be levied in connection therewith, the Village of Lakeview may, in lieu of or in addition to the procedures provided for in this ordinance, enter into an agreement with all of the persons or property owners affected thereby, which agreement shall operate as a complete special assessment procedure and the assessment shall be made in accordance with the agreement.

SECTION 12. Transmission of assessment roll for collection.

Any special assessment roll together with the installment schedule, if any, shall be transmitted by the village clerk to the village treasurer for collection immediately after confirmation of such roll by council. The treasurer shall date and mail statements of the several assessments to the respective property owners, as indicated by the tax rolls as prepared by the assessor, of the several lots and parcels of land assessed, stating the amount of the assessment and the manner in which the same may be paid, provided, however, that the failure to mail or to receive any such statement shall not invalidate the assessment or entitle the owner to an extension of time within which to pay the assessment.

SECTION 13. Collection.

Following approval of the special assessment roll, the treasurer shall collect the same. Special assessments shall be payable in installments as the council may determine. The first installment of a special assessment shall be due on or before such time after confirmation as council shall determine, and subsequent installments shall be due at intervals of twelve (12) months from the due date of the first installment or from such other date as council shall determine. All unpaid installments prior to their transfer to the village tax roll shall bear interest payable annually on each installment due date, at a rate

to be set by council not to exceed eight (8) percent per annum, or if bonds are issued in anticipation thereof, at a rate allowed by law, such interest to commence as determined by council. Future installments of an assessment may be paid to the treasurer at any time in full, with interest accrued to the due date of the next installment. If an installment of a special assessment is not paid when due, then the same shall be deemed delinquent and there shall be collected thereon, in addition to interest provided above, a penalty at the rate of 2% for each month, or fraction thereof, that the same remains unpaid before being reported to the village council for reassessment upon the village tax rolls. Statements of the several assessments to the respective owners of the several lots and parcels of land assessed, as indicated by the records by the tax assessor, stating the amount of the assessment and the manner in which it may be paid shall be mailed by the village treasurer provided, however, that the failure to mail any such statement shall not invalidate the assessment or entitle the owner to an extension of time which to pay the assessment.

SECTION 14. Due date, collection fee.

Each special assessment, or each installment of any assessment when installment payments are provided for, shall be collected by the treasurer without collection fee for a period ending thirty (30) days after the date of the statement. If payment is made on or after the thirty first (31) days after the date of the statement, the treasurer shall add to such assessment or installment together with accrued interest thereon a collection fee as prescribed by the council from time to time.

SECTION 15. Creation of lien, installments, interest.

A. Lien. *All special assessments contained in any special assessment roll, including any part thereof to be paid in installments shall, from the date of confirmation of such roll, constitute a lien upon the respective lots or parcels of land assessed and until paid shall be a charge against the respective owners of the several lots and parcels of land and a debt to the village from the persons to whom they are assessed. No judgement or decree nor act of the village council vacating a special assessment shall destroy or impair the lien of the village upon the premises assessed for such amount of the assessment as may be equitably charged against the same or as by a regular mode of proceeding might be lawfully assessed thereon.*

B. Installments, interest. *All special assessments shall become due upon confirmation of the special assessment roll or in annual installments, not to exceed twenty (20) in number, as the council may determine at the time of confirmation, and, if in annual installments, the council may determine the first installments to be due upon confirmation or upon any other date the council may prescribe, and the subsequent installments annually thereafter. After each installment has been billed, the same shall be collected by the village treasurer with the same rights and remedies as provided by law for the collection of taxes. Deferred installments shall bear interest at such rate as the council may prescribe, not to exceed eight (8) percent annum. Where bonds are issued in anticipation of unpaid installments of special assessments, the council shall, if necessary, increase the rate of interest on unpaid installments to such rate as may be necessary to pay principle and interest upon the bonds as the same shall become due.*

SECTION 16. Payment in full without interest.

The whole or any part of any such assessment roll until such time as the council shall prescribe without interest of penalty.

SECTION 17. Payment in full, additional provisions.

After the expiration of a period which may be provided for in the special assessment for payment without interest or fees, any installments may be discharged by paying the face amount thereof together with fees and interest thereon from the date of confirmation to the date of payment, except that if the public improvement has been financed by the sale of non-callable bonds or other evidences of indebtedness which are not pre-payable, then the interest shall be computed from the date of confirmation to the date upon which such installment would have fallen due had it not been paid.

SECTION 18. Deferred payment.

The council, at a date no later than confirmation of the roll, may provide for the deferred payment of special assessments from persons who, in the opinion of the council and assessor, by reason of poverty or age or otherwise, are unable to contribute toward the cost thereof. In all such cases as a condition to the granting of such deferred payments, the council shall require a mortgage security on the real property of the beneficiary, payable upon his/her death.

SECTION 19. Completion of improvement.

Upon completion of the improvement and the payment of the cost thereof, the treasurer shall certify to the village manager a report of the total cost of the improvement. The manager shall forward this report to the council, together with the amount of the costs contained in the original roll for such improvement.

SECTION 20. Additional assessments.

Should the assessments in any special assessment roll, including the amount that may be contributed by the village at large, or should the proceeds of the sale of special assessment bonds issued in anticipation thereof, prove insufficient for any reason to pay the cost of the improvement for which is was levied and the expenses incidental thereto, or to pay the principle and interest on bonds or other evidence or obligations issued therefore, then the village may make an additional contribution and the council may make additional assessments against the several lots and parcels of land, in the same ratio as the original assessment, to supply the deficiency; but the total amount assessed against any lot or parcel of land shall not exceed the value of the benefits received from the improvement. Any such additional assessments shall not exceed fifteen (15) percent of the assessment as originally confirmed, unless a meeting of the council shall be held to review such additional assessment, for which meeting notices shall be published and mailed as provided assessment, for which meeting notices shall be

published and mailed as provided for in this chapter in the case of the review of the original assessment roll.

SECTION 21. Reassessment in event of irregularity.

A. *Waiver. Whenever the council shall determine that a special assessment levied upon a single lot or parcel of land is illegal or results in no benefit to the owner or was levied in error, or in the event that such assessment violates the policy of the council not to assess twice the same property for the same type of improvement, then the council shall have the power and authority to waive collection of a part or all of such assessment, and the village treasurer, upon receiving notice from the council of such waiver, shall thereafter make collection on such assessment only in accordance with the notice.*

B. *Irregularity. Whenever any special assessment shall, in the opinion of the council be invalid by reason of irregularity or informality in the proceedings, or in any court of competent jurisdiction shall adjudge such assessment to be illegal, the council shall, whether the improvement has been made or not, or whether any part of the assessment has been paid or not, have power to cause a new assessment to be made for the same purpose for which the former assessment was made.*

C. *Reassessment. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for in the original assessment, and whenever the assessment, or any part thereof, levied upon any premise has been so set aside, if the same has been paid and not refunded, the payment so made shall be applied upon the reassessment and the reassessment shall to that extent be deemed satisfied. If the payments exceed the amount of the reassessment, refund shall be made.*

SECTION 22. Division of lot or property after assessment.

Should any lots or land be divided after confirmation of the special assessment roll, the village clerk shall apportion the uncollected amounts upon the several lots and lands so divided, and shall enter the several amounts as amendments upon the special assessment roll. The village treasurer shall, within ten (10) days after such apportionment, send notice of such action to the persons concerned at address shown on the last general tax assessment roll by first-class mail. Said apportionment shall be final and conclusive on all parties, unless protest in writing is received by the treasurer within twenty (20) days of the mailing of the aforesaid notice.

SECTION 23. Accounts.

Except as otherwise provided for in the village code, monies raised by special assessment for any improvement shall be credited to a special account and shall be used to pay for the costs of the improvement for which the assessment was levied and expenses incidental thereto and to repay any money borrowed thereof.

SECTION 24. Refunds.

The excess by which the special assessment proves larger than the actual cost of the improvement may be transferred by the council to such funds as it shall determine if such excess is five (5) percent or less of the assessment. If the amount received is in excess of five (5) percent of the cost of the improvement, the entire excess shall be refunded in a pro rata basis to the owners of the property assessed as shown by the current assessment roll of the village or proportionally to the village and such property owners. Such refund may be made by credit against future unpaid installments to the extent such installments then exist. No refund may be made which contravenes the provisions of any outstanding evidence of indebtedness secured in whole or part by such special assessment.

SECTION 25. Collection by court action.

In addition to any other remedies that the village may have from any source whatsoever and without impairing the lien therefore, any delinquent special assessment, together with interest and penalties, may be collected in an action in the name of the village against the person assessed, in court of competent jurisdiction. If in any action it shall appear that by reason of any irregularities or otherwise the assessment has not been properly made against the defendant, or the premises sought to be charged, the court may, nevertheless, on satisfactory proof that expense has been incurred by the village which is a proper charge against the defendant or the premises in question, render judgement for the amount chargeable against such defendant or such premises.

SECTION 26. Single lot procedures.

A. *Report by Village Manager.* When any expense shall have been incurred by the village upon or in respect to any single lot or parcel of land, which expense is chargeable against such lot or parcel of land and the owner thereof, by any village provision, or ordinance or the laws of the state, and is not of that class required to be prorated among several lots or parcels of land in a special assessment district, the amount of labor and material or any expense or service for which such expense was incurred, and the name of the owner, if known, shall be reported by the village manager to the council.

B. *Determination by council.* After reviewing the report of the village manager, the council may, if it so desires, determine by resolution what amount or part of each expense shall be charged, and the person, if known, against whom and the premises upon which the same shall be levied as a special assessment. By resolution the council shall determine the number of installments in which the assessment may be paid, determine the rate of interest to be charged on installments, not to exceed six (6) percent per annum, designate the land and premises upon which the special assessment shall be levied, direct the village manager to prepare a special assessment roll in accordance with the council's determination, and designate the name by which the assessment roll shall be known and referred to, and as often as the council shall deem expedient, require notice of several amounts so required and determined to be given by the village clerk, to each owner of, or party in interest in the property to be assessed, whose name appears upon the last local tax assessment records, by mailing by first class mail addressed to such owner or party at the address shown on the tax records.

C. *Preparation of roll.* The village manager shall thereupon prepare a special assessment roll, including all lots and parcels of land within the special assessment district designated by the council, and shall assess to each such lot or parcel of land such sums as may have been directed by the council.

D. *Certificate of manager.* When the village manager shall have completed such assessment roll, he shall attach thereto and endorse thereon, his certificate to the effect that the roll has been made by him pursuant to a resolution of the council (giving the date of adoption of same) and that in making the assessment therein, he has, as near as may be, according to his best judgement, conformed in all respects to the directions contained in such resolution and the provisions of this chapter. Thereupon, he shall file the special assessment roll with the village clerk who shall present the same to the council.

E. *Resolution; notice of hearing.* Upon receipt of such special assessment roll the council shall order it filed in the office of the village clerk for public examination, and shall, by resolution, fix the time and place when the council shall meet and review such roll, which meeting shall not be less than ten (10) days after notice thereof, specifying the purpose, time and place, has been given to each owner of or party in interest in the property to be assessed whose name appears upon the last local tax assessment records, by mailing such notice by first class mail addressed to such owner or party at the address shown on such tax records at least ten (10) days prior to the date of the hearing.

F. *Objections to roll.* Any person deeming themselves aggrieved by the special assessment roll may file objections thereto in writing with the village clerk prior to the close of the hearing, which written objection shall specify in what respect they deem themselves aggrieved.

G. *Review of roll.* The council shall meet and review the special assessment roll at the time and place appointed or at an adjourned date therefor and shall consider any written objections thereto.

H. *Changes in roll.* The council may correct such roll as to assessment or description of any lot or parcel of land or other errors appearing therein. Any changes made in such roll shall be noted in the council minutes.

I. *Confirmation of roll.* After such hearing the council shall confirm such special assessment roll with such corrections as may have been made and the village clerk shall endorse the date of confirmation there, and upon confirmation such roll shall be final and conclusive.

SECTION 27. Conflicting ordinances.

All resolutions, ordinances and parts thereof of the Village of Lakeview, insofar as they conflict with the provisions of this Ordinance, be and they hereby are rescinded.

SECTION 28. Severability.

If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

SECTION 29. Effective Date.

This ordinance shall become effective 20 days after its adoption or upon its publication, whichever occurs first.

The above Ordinance was offered for adoption by Village Council Member Lobert, and was seconded by Village Council Member Schottle, the vote being as followed

YEAS: Winter, Earhart, Farrell, Schottle, Lund, and Schottle

NAYS: None

ABSENT: None

ORDINANCE NO. 07-02 ADOPTED

Ed Winter, Village President

Wally J. Delamater, Village Clerk

I, Wally J. Delamater, hereby certify that the foregoing Ordinance was adopted at a regular meeting of Village Council for the Village of Lakeview held on April 9, 2007.

Wally J. Delamater, Village Clerk

Adopted Date: April 9, 2007

Publication Date: April 12, 2007

Effective Date: May 2, 2007

06950 (004) 330322.01