

RESOLUTION NO. 16-631A RESOLUTION TO ESTABLISH A SPECIAL ASSESSMENT POLICY  
FOR THE TOWN OF DELAFIELD

WHEREAS, from time to time the Town of Delafield historically has determined that it is necessary and appropriate to assess benefitted property owners for all or a portion of the costs of completing infrastructure improvements; and

WHEREAS, one example of a situation where the Town imposed special assessments for the cost of completing Town road and stormwater improvements was for the Glen Cove Road reconstruction project, for which benefitted properties were assessed by a Resolution dated on or about October 31, 1995, due in part to the fact that Glen Cove Road was a dead end right-of-way, so the benefitted parties all resided on the right-of-way and the work did not benefit the residents of the Town generally; and

WHEREAS, the Town Board has adopted a preliminary Special Assessment Resolution regarding reconstruction work for Alleys 2 and 3 of the Johnson Park Subdivision, to authorize the Town Engineer to study the issue, but before the Town proceeds to impose any such assessments, the Town Board hereby wishes to pause and consider the circumstances under which it is appropriate to impose special assessments for public works within the Town, to ensure that all residents of the Town of Delafield are treated fairly and equitably with regard to imposition of special assessments, and to ensure that no final Special Assessment Resolution is adopted unless and until such fair and equitable policy is clearly articulated and adopted to apply henceforth and then only if the policy allows the assessment; and

WHEREAS, the Town has within its borders many public roads, private roads, alleys, and access rights-of-way to the various lots and residences throughout the Town (hereinafter "rights-of-way"), and for historical reasons the ownership of many of these rights-of-way is not well documented or understood, and construction standards in some cases are not consistent; and

WHEREAS, in considering this variation in rights-of-way within the Town, two distinct and relevant categories emerge, namely there is a significant difference between rights-of-ways that function as a route of travel for the public generally, on the one hand, and rights-of-ways that merely function as shared driveways, on the other hand; and

WHEREAS, in many cases, such shared driveways are entirely private, which means there are many private roads in the Town which serve only the abutting private residences, which are not necessarily constructed to Town road standards, are not used by the general public except by the residents themselves and their guests and invitees, are "dead ends" with no outlet, and the residents themselves pay all of the costs associated with the roads, not only for reconstruction, but also for plowing and maintenance; and these residents bear these costs despite the fact that they also pay taxes at the same rate as town residents who live on public roads; and

WHEREAS, in situations where there is no functional substantial difference between a Town right-of-way that functions as a private driveway, and a private road that actually is a private driveway, the Town Board finds that fairness and equity require comparable treatment, by making the abutting owners responsible for the road reconstruction and improvement costs; and

WHEREAS, the Town Board for the Town of Delafield has carefully considered the distinctions that separate one class of public road improvements from other classes of public road improvements, and the circumstances in which this difference reasonably suggests that the public good requires different treatment, not only with regard to any pending issues, but in light of past practices, and with a focus on such future issues as may arise from time to time throughout the Town of Delafield, and upon consideration of the health, safety, welfare and public good, the Town Board hereby intends to establish a special assessment policy.


NOW, THEREFORE, BE IT HEREBY RESOLVED by the Town of Delafield Town Board, located in the County of Waukesha, State of Wisconsin, AS FOLLOWS:

It shall henceforth be the policy of the Town of Delafield that the costs of public improvements shall be assessed to the full extent that the Town Board finds such costs can be recovered pursuant to Wisconsin Statutes Section 66.0703 and other applicable laws, under the following circumstances:

1. The public works project includes the reconstruction of the surface and subsurface of a right-of-way and related stormwater improvements; and
2. The Town Board finds the right-of-way serves the function of a shared driveway, in light of the following considerations:
  - a. The right-of-way has dimensions or other circumstances that are inferior to Town Road standards, such as in the case of a dedicated alley;
  - b. The development patterns along the right-of-way are more consistent with a driveway than a public road, due to the location of structures and other improvements;
  - c. The existing construction is inferior to Town road standards, and is more akin to a private driveway;
  - d. The existing uses are more akin to a private driveway than to a public road, with no reason for the general public to travel the right-of-way other than to access the residences;
  - e. The right-of-way has no outlet, or is a "dead end";
  - f. The existing intersection of the right-of-way with the abutting Town Road is constructed to a driveway access standard, rather than as a road intersection, in consideration of such issues as signage or lack thereof, dimensions, or other factors;
  - g. The Town has not listed the road within its roads inventory that is reported to the State of Wisconsin Department of Transportation, and therefore no road aids have been received; and/or
  - h. Other facts and circumstances give rise to the Town Board finding that the road right-of-way functionally serves as a driveway, or shared driveway, for the abutting resident(s) more than it serves as a public road.
3. In circumstances where this policy applies, the Town Board reserves the right to further consider all details of the assessment that is imposed, on a case-by-case basis, as required by law.

Dated this 22<sup>nd</sup> day of August, 2016.

TOWN OF DELAFIELD

  
Lawrence G. Krause, Town Chairman

ATTEST:

  
Mary Elsner, Town Clerk-Treasurer

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