

361 SUMMIT AVE

Ⓢ

549 GRAND HILL

4/11/2019  
LEGISLATIVE  
HEARING

## After Stillwater Country Club spared tab, residents win street assessment fight

By MARY DIVINE Pioneer Press  
PUBLISHED: April 6, 2019 at 4:57 am  
UPDATED: April 7, 2019 at 9:39 am

After almost two years of blowback regarding street assessments, Stillwater officials this week announced that they have reached a settlement with residents who live on the south side of West Moore Street.

The residents in 2017 had questioned why their neighbor to the north — the Stillwater Country Club — wasn't being assessed for the street's reconstruction. Carol Gapen and her neighbor, Gwynne Fransen, also claimed that the "benefit" received from the street project did not outweigh the \$7,200 they were assessed.

State law requires that the assessment cannot exceed the benefit to the property owner from a project.

Under the settlement announced Thursday, 23 residents who appealed the assessments will pay half the original amount, said Gapen, an attorney who is retired from practicing in Wisconsin. The city also will pay for depositions, expert reports and mediation costs, she said.

"Nevertheless, they persisted," Gapen said Friday. "You can fight city hall. People shouldn't be afraid to speak up. What the city did was wrong. They never made an actual benefit analysis, but made the assessments based on the cost of the project."

As of 2014, property owners in Stillwater pay 70 percent of the cost of street reconstruction, and the city pays 30 percent. Previously, property owners and the city split the cost.

"Case law is clear," said Alan Kantrud, an attorney who represented the residents in their case against the city. "If you don't test for benefit prior to assessment, you are acting in an arbitrary and capricious manner, and your assessment will not survive judicial scrutiny."

Stillwater's street-assessment policy "arbitrarily levies 70 percent of the cost of public improvements on its citizens without regard for actual benefit," Kantrud

said. "It's not defensible. And a blanket policy of not assessing private golf courses is ludicrous."

Gapen, Fransen and other neighbors were prepared to take the matter to the Minnesota Supreme Court, he said.

"Ours was a case of good government from the get-go," Kantrud said. "While the citizens were upset about their own lack of benefit from the assessments made, they were also upset about the exclusion of the Stillwater Country Club from any assessment."

City officials told the Pioneer Press in 2017 that they had determined that the Stillwater Country Club would receive no benefit from the roadwork. Because the golf course was not assessed, the city planned to pay 100 percent of the country club's cost.

But, Kantrud said, city officials "felt perfectly comfortable" levying assessments against the First Methodist Church of Stillwater and an elder-care center.

Mayor Ted Kozlowski said the city's street-assessment policy is fair.

"The city didn't do anything wrong," he said.

"Ultimately, it was in the best interest of the city not to go to trial from a cost standpoint. I felt very confident that we would prevail at trial. What's unfortunate is the costs of going through that were so high, it wasn't worth proving that we were right."

In the future, appraisals will be done before a project is started to prove a benefit to property owners, he said.

Kantrud said he was happy to hear the city will be changing its ways.

"Cities need to inform their decisions to assess," he said. "This case proves that if you don't do your homework and test for benefit, then your assessments are not sustainable. I hope that the city of Stillwater learned that their past practices were not sufficient to meet that burden or that standard."

The Moore Street project was part of a \$2.2 million package that included mill and overlay in the southeast part of the city, the eastern half of the Benson neighborhood and Myrtlewood Court.

<https://www.twincities.com/2019/04/06/after-stillwater-country-club-spared-tab-residents-win-street-assessment-fight/>