

**384.54 Confirmation by decree.**

1. At any time after final adoption of the resolution of necessity, but before awarding the contract, the council may direct the city attorney to file, in the district court of the county in which the property proposed to be assessed is located, a petition praying that the acts done by the council relative to the proposed public improvement be confirmed by decree.

2. The following must be filed with the petition in the office of the clerk of the court:

a. A copy of the resolution of necessity as adopted by the council.

b. A copy of the proposed schedule of assessments as adopted by the council under sections 384.48 and 384.51, which schedule shows the maximum amount that the council proposes to assess against any lot.

c. Preliminary plans and specifications, or, if available, detailed plans and specifications as prepared by the engineer.

d. A copy of the proposed contract if prepared.

3. Notice of the filing of the petition must be given in the same manner as is provided for service of original notice by publication by the rules of civil procedure, except as follows:

a. No affidavit of inability to obtain personal service within the state of Iowa is required.

b. The original notice must name as defendants those property owners who, on the date of filing the petition, have an interest in the real property to be assessed as a part of the public improvement, and the original notice must state that a plat and schedule is on file in the office of the clerk of the district court where the action is pending. No property owner is an indispensable party to the action. Publication of plat and schedule as part of the original notice is not required, nor shall reference in the original notice to specific descriptions of affected real property or the amounts of proposed assessments be necessary.

4. The petition must be given precedence over any other business of the court, except criminal cases. The court shall set the petition for hearing within thirty days from the date of final publication of notice. As a part of its order, the court may provide for a pretrial conference to be held not earlier than twenty days from the date of final publication of notice and require the appearance at the pretrial conference of all interested parties. Failure to appear at the pretrial conference may be grounds for dismissing any objection.

5. If no person having an interest in property proposed to be assessed has entered an appearance or filed an answer within the time set for hearing on the petition, the court shall confirm the assessment, and order the clerk of court to certify its decree to the city clerk.

6. If any person having an interest in property proposed to be assessed has entered an appearance or filed an answer to the petition, the court shall hear the cause as an action triable in equity.

7. Upon the hearing the court may correct any irregularities or inequalities in valuations or in the schedule of assessments, and shall consider any objections because of alleged illegal procedure or fraud.

8. The court shall render a decision upon the hearing as soon as practical after the final submission of the cause.

9. The clerk of the court shall certify to the city clerk the final action of the court, within three days from the date of the final decree upon the petition, showing assessments as confirmed in the schedule of assessments.

10. An appeal from the decree of the district court must be taken as in other equity cases.

11. A contract may or may not be let, in the discretion of the council, until appeals are finally determined, but the appeals need not delay the letting and execution of a contract for the work, if the council concludes the appeals were not taken in good faith.

12. An appeal does not, in the discretion of the council, delay the certification of an assessment or progress of an improvement, but upon decision of the appeal the assessment appealed from must be corrected and collected in the same manner as provided in section 384.74.

13. Corrections of assessments or valuations made by order of the district court are conclusive and not subject to review on appeal, or otherwise, except as provided in subsections 10 to 12 of this section. When court confirmation is obtained there is no right of appeal under the provisions of section 384.66.

14. If no contract is entered into within ninety days from the date of confirmation by the

district court or within a further time allowed by the court on subsequent application, and if no appeal is pending, the court shall cancel the assessment, upon application of the city attorney.

15. *a.* The cost of all court proceedings are a legitimate item of expense in connection with a public improvement, and may be included within the final assessment against any property specially benefited in the assessment district.

*b.* Whenever on a hearing by the court, the amount of any assessment is reduced or canceled so that there is a deficiency in the total amount remaining assessed in the proceeding, the court may assess the deficiency to the city or distribute the deficiency upon the other property abutting upon or adjacent to the improvement or in the district assessed, in a manner the court finds to be just and equitable, not exceeding, however, the amount the property would be specially benefited by the improvement, and not exceeding twenty-five percent of the value of the lot as shown by the plat and schedule of assessments or as reduced by the court.

[C31, 35, §6610-c28, -c31, -c32, -c34 – c40, -c42 – c44, -c56; C39, §**6610.31 – 6610.33, 6610.36 – 6610.41, 6610.43, 6610.44, 6610.46, 6610.65, 6610.67**; C46, 50, §417.28, 417.31, 417.32, 417.34 – 417.40, 417.42 – 417.44, 417.60; C54, 58, 62, 66, 71, 73, §391A.18, 417.28, 417.31, 417.32, 417.34 – 417.40, 417.42 – 417.44, 417.60; C75, 77, 79, 81, §384.54]

2010 Acts, ch 1069, §128 – 130

[P] Unnumbered paragraph 1 amended and numbered as subsection 1