

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4961

AN ORDINANCE approving and confirming the final reassessments and reassessment roll of Local Improvement District No. 277, which has been created and established for the purpose of roadway improvements to N.E. 4th Street between 100th Ave. N.E. and 112th Ave. N.E.; making findings and conclusions in support thereof; and establishing an effective date.

WHEREAS, in 1987, the City Council ordered improvements to N.E. Fourth Street between 100th Ave. N.E. and 112th Ave. N.E. (the "improvements") and created Local Improvement District No. 277 ("LID 277") in order that the properties specially benefiting from such street improvements pay their fair share of the costs of such improvements; and

WHEREAS, the City completed the N.E. Fourth Street improvements in November, 1988; and

WHEREAS, on October 2, 1989, the City Council adopted Ordinance No. 4023 confirming the final assessment roll for LID 277; and

WHEREAS, owners of thirty-five parcels in LID 277 sought judicial review of the assessments against their parcels; and

WHEREAS, on May 13, 1993, the Supreme Court for the state of Washington issued its decision nullifying the assessments subject to the appeal and remanded the case to the King County Superior Court with direction that the Superior Court remand to the City Council for assessment proceedings consistent with the Court's decision and applicable state statutes; and

WHEREAS, on remand, the City reassessed the thirty-five parcels that were the subject of the judicial appeals and issued a preliminary reassessment roll that included only those parcels; and

WHEREAS, five property owners owning a total of thirty-three of the thirty-five parcels reassessed filed objections to the reassessments on their properties; and

WHEREAS, pursuant to proper notice to all persons, a hearing was held by the Hearing Examiner commencing on October 24, 1995 and continued to May 1, 2 and 3, 1996 on the objections to the reassessments; and

WHEREAS, opportunity for oral and written testimony and argument was afforded to all objecting property owners at the hearing before the Hearing Examiner; and

WHEREAS, on September 4, 1996, the Hearing Examiner issued his Findings, Conclusions and Recommendation with regard to the reassessments; and

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WHEREAS, thereafter timely appeals of the Hearing Examiner's Findings, Conclusions and Recommendation were filed with the City by Bates Oil Company and Vander Hoek Partnership/Vander Hoek Corporation with respect to the reassessments on their respective properties; and

WHEREAS, a limited public appeal hearing was held by the City Council on November 18, 1996 pursuant to its rules of procedure with regard to the appeals filed by Bates Oil Company and Vander Hoek Partnership/Vander Hoek Corporation and opportunity was provided to such appellants to submit written argument and to make oral presentation to the City Council with regard to their respective appeals; and

WHEREAS, after considering the record before the Hearing Examiner and considering the written and oral arguments made by the appellants, the City Council adopted Resolution No. 6058 on December 2, 1996, denying the appeals of Bates Oil Company and Vander Hoek Partnership/Vander Hoek Corporation; and

WHEREAS, the reassessment roll levying the special assessments against the reassessed properties located in Local Improvement District No. 277 in the City of Bellevue, Washington, created under Ordinance No. 3754 has been filed with the City Clerk of Bellevue as provided by law; and

WHEREAS, the City Council considered the reassessments at its regular Council meeting on November 18, 1996 and amended its procedures to provide Bellevue Plaza and the Tochterman Investment Company an opportunity to make oral and written presentation to the City Council at its Council meeting on January 6, 1997; and

WHEREAS, special notice was provided to all objecting parties to provide written materials to the City Council no later than the date on which the Council adopts an ordinance confirming the reassessments; and

WHEREAS, the Council has considered the written record prepared by the Hearing Examiner, consisting of four volumes -- the Hearing Examiner's Report (Report), Exhibits-Book B (Exhibits), and two volumes of transcripts (Transcript) and all other matters coming before the Hearing Examiner, and has considered the oral presentations made at the Council's November 18, 1996 and January 6, 1997 meetings as well as all written argument and materials submitted to the Council and, after deliberating on the matter, the City Council desires to adopt an ordinance confirming the reassessments of the reassessed properties in LID 277 and to adopt findings and conclusions in support thereof as hereinafter set forth; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The reassessments and reassessment roll of Local Improvement District No. 277, which has been created and established for the purpose of roadway improvements to N.E. 4th Street between 100th Ave. N.E. and 112th Ave. N.E., all as provided by and in accordance with Ordinance No. 3754, are hereby in all things and respects approved and confirmed.

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Section 2. The City Council makes the following findings and conclusions:

A. The City Council adopts in full the findings, conclusions, and recommendations of the Hearing Examiner (Findings) as set forth in the following sections of "Findings, Conclusions and Recommendations of the Hearing Examiner for the City of Bellevue, Washington, RE: Protests of various property owners of reassessments for improvements made by the City of Bellevue, Washington to NE 4th Street; File No. LID 277" issued on September 4, 1996:

1. Section I (Introduction)
2. Section II (General information), with the exception of Section II H
3. Section III (Meyers/Benveniste)
4. Section IV (Bates Oil Company)
5. Section V (Vander Hoek properties)
6. With respect to the Tocherman property considered in Section VI of the Findings, the City Council adopts subsections A through J of Section VI of the Findings. The City Council does not adopt subsections K and L of Section VI of the Findings. Instead the Council finds and concludes as follows:

- (a) N.E. 8th Street congestion was to be relieved by construction of N.E. 4th Street.
- (b) Traffic volumes on N.E. 8th Street would change to a greater percentage of local traffic and a smaller percentage of through traffic.
- (c) There was substantial evidence that buyers of property in the Bellevue CBD attributed value to the N.E. 4th Street improvements. Price testified that purchasers felt that there was sufficient benefit for them to pay the assessment. Macaulay testified that his notes of discussions with real estate brokers indicated that the buyers did pay more for the properties because of the LID. While Price believes that because the relative amounts of the assessments compared with the purchase price are so small no conclusion can be drawn, Macaulay differs in his opinion. The Council concludes that the actions of market participants who have indicated that the LID did add value to properties in the CBD and who have been willing to pay for these assessments in the purchase price deserve the most weight.
- (d) Both Price and Macaulay analyzed comparable sales and arrived at the same value for the property in the "before" condition. This indicates that Macaulay's analysis of the comparable sales is consistent with the data he used.

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- (e) An assessment is presumed to be valid unless the objecting party provides appraisal testimony of the before and after value of the property. Price did not analyze the value of the property in the after condition, while Macaulay did.
- (f) The Council finds that Macaulay's analysis of the after value for the property is justified based on the sales data. The Council concludes that the reassessments for the Tochterman properties should be as recommended by the Transportation Division, namely \$118,287.87.

7. With respect to the Bellevue Plaza property considered in Section VII of the Findings, the City Council adopts subsections A through J of Section VII of the Findings. The City Council does not adopt subsection K and L of Section VII of the Findings. Instead the Council finds and concludes as follows:

- (a) The N.E. 4th Street improvements were designed to and did open up the central business district to traffic that was otherwise limited to access from either N.E. 8th Street or S.E. 8th Street.
- (b) James Price, an MAI appraiser testified that the properties just across the street from Bellevue Plaza were some of the most benefitted properties in the LID. The Council concludes from this testimony that the same benefits would accrue to the Bellevue Plaza property.
- (c) While there was testimony that traffic volumes did not increase at the site during the noon hour, the issue for property owners is not so much one of volume as it is of convenience. If people find it easier to get to properties such as Bellevue Plaza, they will do so.
- (d) While there was testimony from the property owner that there was no apparent increase in business at Bellevue Plaza, the Council finds that this information is inconclusive one way or another.
- (e) Macaulay offered the only analysis of comparable sales to support his conclusions of before and after value. The Council finds that Macaulay's analysis of the sales do support his conclusions of value.
- (f) While Arscott did offer an opinion that Bellevue Plaza did not receive benefit, he did not perform a before and after valuation, and could offer no opinion as to value of the property. In order for the burden of proof to shift from the objecting party to the City, the objecting party must present appraisal testimony of the before and after value of the property. Therefore, Bellevue Plaza failed to carry

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its burden of proof. Regardless of the foregoing, the Council places extremely little weight on Arscott's opinion.

- (g) The Council concludes that the reassessment for the Bellevue Plaza property should be established at the level recommended by the Transportation Department, namely \$64,096.87.

In summary, the Council determines to reassess the properties subject to the Hearing Examiner's recommendation in the amounts recommended by the Transportation Department and, except to the extent hereinbefore provided with regard to the Bellevue Plaza and Tochterman properties, to accept the Hearing Examiner's findings, conclusions and recommendation.

Section 3. Each of the lots, tracts, parcels of land and other property shown upon said reassessment roll is hereby determined and declared to be specially benefited by said improvements in at least the amount charged against the same, and the assessment appearing against the same is in proportion to the several assessments appearing upon said roll. There is hereby levied and assessed against each lot, tract, parcel of land and other property appearing upon said reassessment roll the amount finally charged against the same thereon.

Section 4. The reassessment roll as approved and confirmed shall be filed with the City Treasurer of the City of Bellevue, Washington, for collection and said Treasurer is hereby authorized and directed to publish notice as required by law stating that said roll is in his hands for collection, and payment of any assessment thereon or any portion of any assessment can be made at any time within 30 days from the date of first publication of said notice without penalty, interest or costs and thereafter the sum remaining unpaid may be paid in 20 equal annual installments with interest thereon at 1/4% above the bond (or installment note) rate of interest. The first installment of assessments on said assessment roll shall become due and payable within the 30-day period succeeding the date one year after the date of first publication by the City Treasurer of notice that the assessment roll is in his hands for collection and annually thereafter each succeeding installment shall become due and payable in like manner. If the whole or any portion of the assessment remains unpaid after the first 30-day period, interest upon the whole unpaid sum shall be charged at 1/4% above the bond (or installment note) rate of interest, and each year thereafter one of said installments, together with interest due on the whole of the unpaid balance shall be collected. Any installment not paid prior to the expiration of said 30-day period during which such installment is due and payable shall thereupon become delinquent. All delinquent installments shall be subject to a charge for interest at 1/4% above the bond (or installment note) rate of interest, and for an additional 5% penalty charge levied upon both principal and interest due upon such installment or installments. The collection of such delinquent installments will be enforced in the manner provided by law. Foreclosure shall be accomplished in the manner provided by law and the ordinances of the City of Bellevue.

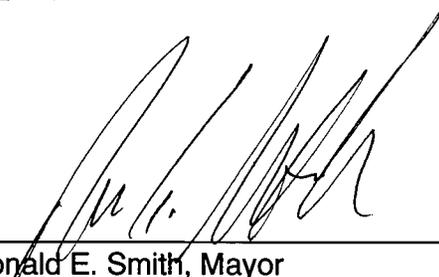
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Section 5. This ordinance shall take effect and be in force five days after its passage and legal publication.

PASSED by the City Council this 6th day of January, 1997, and signed in authentication of its passage this 6th day of January, 1997.

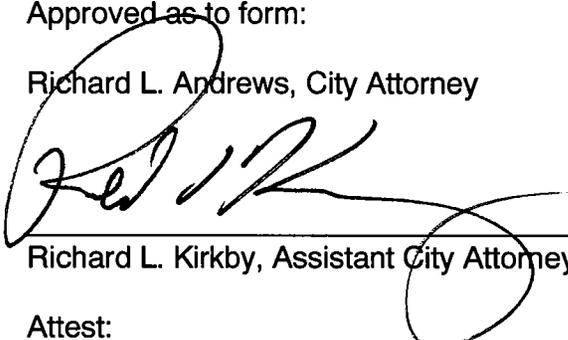
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Ronald E. Smith, Mayor

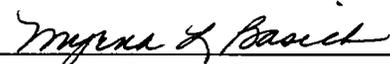
Approved as to form:

Richard L. Andrews, City Attorney



Richard L. Kirkby, Assistant City Attorney

Attest:



Myrrra L. Basich, City Clerk

Published January 10, 1997