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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5473

AN ORDINANCE granting in part and denying in part the appeals of Rodney Bonebright, et al., of the proposed assessment area and assessments on the Application of Gold Creek Homes, Inc., under Bellevue City Code Chapter 14.62 for an Assessment Reimbursement Contract for reimbursement of certain costs of constructing and installing street improvements along portions of 166th Way S.E. and S.E. Nels Berglund Road (Application No. AAD 02-234); modifying the Findings of Fact, Conclusions of Law, and Recommendation of the Hearing Examiner on the appeals, and adopting the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation as so modified; approving the Assessment Reimbursement Contract in accordance therewith; establishing the assessment area and the assessments to properties within the assessment area; and directing the Transportation Department to file the contract with the King County Department of Records and Elections within thirty (30) days of its final execution.

WHEREAS, on July 8, 2002, the City Council directed staff to proceed to process the Application of Gold Creeks Homes, Inc., pursuant to Bellevue City Code ("BCC") Chapter 14.62 and RCW Chapter 35.72, for an Assessment Reimbursement Contract for street improvements installed and constructed by the Applicant along portions of 166th Way S.E. and S.E. Nels Berglund Road, in the City (Application No. AAD 02-234); and

WHEREAS, the Transportation Department prepared and submitted a proposed Reimbursement Contract, setting out the proposed assessment area and proposed assessments to allocate the costs of such improvements, which proposal was appealed by the Appellants as provided in BCC Chapter 14.62 and RCW Chapter 35.72; and

WHEREAS, the appeals were heard before the Bellevue Hearing Examiner, who on November 6, 2002, entered his Order on Motions for Summary Judgment, ruling that the assessment methodology proposed by the Transportation Department to assess the adjacent property owners under BCC Chapter 14.62 was incorrect, and recommending to the City Council that the Application be remanded to the Transportation Department for revision of the assessments to adjacent property owners based on a special benefit study; and

WHEREAS, on November 22, 2002, the Hearing Examiner issued his Order on Motions for Reconsideration, clarifying and modifying his November 6, 2002 Recommendation, and entering additional Conclusions of Law; and

WHEREAS, the Hearing Examiner's preliminary recommendation on the assessment methodology and on other matters raised by the cross-motions for summary judgment were appealed to the City Council, and on March 3, 2003 the Council, after conducting a limited public appeal hearing on the Examiner's recommendation, denied the appeal in part and granted the appeal as to the assessment methodology, and remanded the matter to the

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Transportation Department to consider alternative assessment methodologies and determine the most appropriate methodology; and

WHEREAS, the Transportation Department concluded that the front footage methodology originally proposed was the most appropriate under the circumstances, and thereafter on April 16, April 22 and May 7, 2003, the Hearing Examiner conducted a hearing on the merits of the Application; and

WHEREAS, on May 19, 2003, the Hearing Examiner issued his Findings of Fact, Conclusions of Law, and Recommendation, recommending approval of the Assessment Reimbursement Contract, with modifications; and

WHEREAS, the City Council conducted a hearing on the appeals and Recommendation on June 16, 2003, and thereafter on September 22, 2003, found that there was not substantial evidence to support certain of the Hearing Examiner's Findings of Fact, and that there were errors of law with respect to certain of the Hearing Examiner's Conclusions of Law, and that the Examiner's Recommendation therefore should be modified, and based thereon, the City Council denied the appeals in part and granted the appeals in part, entered its own Findings of Fact, Conclusions of Law and Decision modifying the Examiner's Findings of Fact, Conclusions of Law, and Recommendation, adopted the Examiner's Findings of Fact, Conclusions of Law, and Recommendation as so modified, and approved the Assessment Reimbursement Contract; and

WHEREAS, the City has complied with the State Environmental Policy Act and the City Environmental Procedures Code, now, therefore,

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

Section 1. The City Council finds the Hearing Examiner's Finding of Fact No. 14 is not supported by material and substantial evidence in view of the entire record taken as a whole. The Council therefore adopts the Findings of Fact of the Hearing Examiner as set forth in his "Findings of Fact, Conclusions of Law, and Recommendation" on Application No. AAD 02-234, issued on May 19, 2003, except the Examiner's Finding of Fact No. 14 is not adopted, and the Council adopts in place thereof the following Finding of Fact No. 14:

14. The road adjacent to the Bonebright property was elevated to accommodate a storm water vault in the street. Such detention makes it impossible for Bonebright to access his property from the northeast corner so that access must be at the southeast corner. If Bonebright were to develop his property through a plat application, he would be required to install roadway improvements along his entire frontage of Nels Berglund Road. Bonebright would have been required to install some storm drainage detention as part of those street frontage improvements.

Section 2. The City Council concludes there were substantial errors of law in the Hearing Examiner's Conclusions of Law No. 4 through 8 and 10. The Council therefore adopts the Conclusions of Law of the Hearing Examiner as set forth in his "Findings of Fact, Conclusions of Law, and Recommendation" on Application No. AAD 02-234, issued on May 19, 2003, except the Examiner's Conclusions of Law No. 6 through 8 are not adopted, and

the Examiner's Conclusions of Law No. 4, 5 and 10 are modified to read as follows, and adopted as so modified:

4. The City Council rejected the Examiner's recommendation that the assessments be established by a special benefit study. Of the alternative methods of spreading the cost of a road improvement remaining, the front foot method is the most logical method, as it represents the improvement that each property would be required to construct upon multifamily development.
5. The assessments made to the parties adjacent to 166th Way S.E. and S.E. Nels Berglund Road in Attachment A should be approved.
10. Paragraph 1.2 and Recital 7 of the Proposed Agreement should be amended to make it clear that those provisions apply to all property owners assessed under the Proposed Agreement. When the assessed property owners apply for development of their own parcels, it should be determined at that time whether the improvements installed by Gold Creek Homes, Inc., would have been required for the assessed properties' development approval.

Section 3. The City Council further concludes that Recommendation No. 2, that the assessment of the Bonebright property be reduced to an amount equal to or less than the benefit received by the property, is not supported by material and substantial evidence in view of the entire record taken as a whole, and is based upon a substantial error of law, and Recommendation No. 2 therefore is rejected.

Section 4. The City Council concludes that except as set forth in the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation as modified hereinabove and as adopted as so modified hereby, the Hearing Examiner's Recommendation is supported by material and substantial evidence in view of the entire record taken as a whole, and contains no substantial error of law. The Council also concludes that the assessments proposed by the Applicant and allocated in the manner proposed by the Transportation Department, as modified hereinabove, are supported by material and substantial evidence in view of the entire record taken as a whole. The Council also concludes that there has been no irregularity in the proceedings and the Examiner's Recommendation is not in conflict with the City's applicable decision criteria. Therefore, except as set forth hereinabove, the appeals are denied, the Reimbursement Contract containing the Assessments set forth in the Recommendation of the Hearing Examiner, as modified hereinabove, is approved, and the assessment area and the individual assessments to properties within the assessment area, as set forth therein, are hereby established and approved.

Section 5. The Transportation Department is directed to file the Reimbursement Contract as hereinabove approved with the King County Department of Records and Elections within thirty (30) days of its final execution, and thereupon it shall be binding on all property owners of record within the assessment area who are not parties to the contract and their successors in interest as if they were parties to the contract.

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Section 6. 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 October, 2003,
and signed in authentication of its passage this 6th day of October,
2003.

(SEAL)

Connie Marshall
Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Lori M. Riordan
Lori M. Riordan, Assistant City Attorney

Attest:

Myrna L. Basich
Myrna L. Basich, City Clerk

Published October 10, 2003