

RESOLUTION NO. 1917

A RESOLUTION OF THE CITY OF WILSONVILLE DECLARING THE CITY'S INTENT TO FORM LOCAL IMPROVEMENT DISTRICT NO. 13-05-ST, THE VILLEBOIS LOCAL IMPROVEMENT DISTRICT, TO PAY FOR THE SUPPLEMENTAL STREET SYSTEM DEVELOPMENT CHARGES FOR A PORTION OF THE STREET IMPROVEMENTS AT WILSONVILLE ROAD INTERCHANGE WITH I-5 THAT BENEFIT THE VILLEBOIS URBAN VILLAGE PROPERTIES AND TO DIRECT THE CITY ENGINEER AND FINANCE DIRECTOR TO PREPARE WRITTEN REPORTS.

WHEREAS, in 2003, the available street capacity in the Wilsonville Road/I-5 Interchange area from Town Center Loop West to Boones Ferry Road had been fully allocated to existing traffic and projects with Stage II approval; and

WHEREAS, the City Council included a \$3.5 million initial phase (Phase 1) of the improvements at the Wilsonville Road Interchange to provide added capacity; and

WHEREAS, the available capacity from the \$3.5 million Interchange improvements was 702 PM peak hour trips; and

WHEREAS, the Villebois Urban Village has 35 PM peak hour trips through the Wilsonville Road/I-5 Interchange area from approval of the Preliminary Development Plan I Project and Specific Area Plan-South; and

WHEREAS, the Villebois Urban Village has an additional 410 PM peak hour trips vested through the Wilsonville Road/I-5 Interchange area; and

WHEREAS, the Villebois Urban Village will have a total of 569 PM peak hour trips through the Wilsonville Road Interchange area; and

WHEREAS, it is anticipated that the Villebois Urban Village would be able to vest additional capacity through the Wilsonville Road Interchange area as that capacity is available; and

WHEREAS, in accordance with the City Ordinance No. 386, as amended, regarding System Development Charges, the City Council adopted Resolution No. 1886 establishing a Supplemental Street System Development Charge (SSSDCs) in the amount of \$3,096 per PM

peak hour trip for a portion of the \$3.5 million improvement to the Wilsonville Road Interchange with I-5 that benefits developing properties; and

WHEREAS, the Development Agreement between the City of Wilsonville, the Wilsonville Urban Renewal Agency, Villebois LLC and the State of Oregon Department of Administrative Services includes an agreement that unless otherwise prepaid by the owner, developer or both, the developer and owner agree to participate in an LID for an amount equal up to \$1.602 million in SSSDCs imposed under statutory and City authority; and

WHEREAS, the Development Agreement between the City of Wilsonville, the Wilsonville Urban Renewal Agency, Matrix Development Corporation and property owners Donald E. Bishop/Sharon L. Lund, Arthur C. and D.W. Picculet, the D'Armond Family LLC and Lewis J. and Margaret P. Fasano and Valerie and Mathew Kirkendal states that unless otherwise prepaid by owners, developer or both, the developer and the owners agree the benefited properties will participate in an LID to finance payment in installments of the \$1.602 million SSSDCs imposed under statutory and City authority; and

WHEREAS, ORS 223.208(a) authorizes financing and assessments under ORS 223.205 to 223.775 for financing local improvements to apply to a system development charge designed to finance the purchase or development of a street system as defined in ORS 199.464 imposed by a local government as a condition to issuance of any occupancy permit or imposed by a local government at such other time as, by ordinance, it may determine; and

WHEREAS, the aforementioned SSSDC qualifies under ORS 223.208(a) for local improvement financing; and

WHEREAS, in accordance with ORS 223.205 to 223.775, the City has provided for local improvement district financing and assessments and regarding the formation of Local Improvement Districts, Wilsonville Code, Section 3.212(1) provides as follows:

“Whenever the Council shall deem it necessary to make any street, sewer, water line, traffic signal, sidewalk, parking, curbing, drain, or other local improvement defined in ORS 310.140 be paid for in whole or in part by special assessment according to benefits conferred, the Council shall declare by resolution that it intends to make the improvement and direct the City engineer or an engineer retained by the City to make a survey of the improvement and file a written report with the City recorder and in accordance with section 3.218 direct the finance director to prepare a financial investigation report; and

WHEREAS, the City is having the Phase 1 of the Wilsonville Road/I-5 Interchange improvements designed by MacKay and Sposito; and

WHEREAS, it is anticipated that the project will be advertised for bids in March 2005; and

WHEREAS, the FY 2004/05 budget includes payment for the Phase 1, \$3.5 million improvement, through financing by the Year 2000 Urban Renewal District; and

WHEREAS, the \$1.602 million SSSDCs imposed and collected in this matter will be repaid to The Year 2000 Urban Renewal District; and

WHEREAS, it is in the best interest of the City to proceed with formation of the Villebois Local Improvement District for the assessment of the SSSDCs for the Phase 1 improvements for Wilsonville Road Interchange with I-5 at this time.

NOW, THEREFORE IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILSONVILLE THAT:

1. The Council declares that the improvements known as Phase 1 of the Wilsonville Road/I-5 Interchange Improvements are necessary and that the Council intends to make said improvement.

2. The Council declares that the formation of a Villebois Local Improvement District, No. 13-05-ST, to pay for \$1.602 million in SSSDCs for the portion of the \$3.5 million capacity improvements to the Wilsonville Road Interchange with I-5 that would be used by the Villebois Urban Village properties is agreed to by over 2/3's of the affected property owners and, therefore, the Council intends to form the Villebois Local Improvement District 13-05-ST.

3. The City engineer shall prepare a report as outlined in the Wilsonville Code, Section 3.214 and shall include in the assessable cost the cost of administration, survey, preliminary engineering, mapping and any other action necessary and reasonable to form the Villebois Local Improvement District and provide for assessments.

4. The finance director shall prepare a financial investigation report as outlined in Wilsonville Code, Section 3.218 and the cost of the preparation of this financial report shall be included in the assessable cost for the Villebois Local Improvement District.

5. The reimbursable cost for the engineer report and the financial investigation report will initially be paid from City general funds with reimbursement from the Villebois Local Improvement District in amount estimated not to exceed \$60,000.

6. In accordance with the above recited Development Agreements, property owners that are paying the assessments, in whole or in part, for Villebois Local Improvement District No. 13-05-ST prior to the property's subdivision and development shall be eligible for credits

against the SSSDCs imposed in the form of reimbursement from developer/builders collected at time of applying for building permits and for reimbursement from development of other property within the District if, at the time of applying for building permits, the original property owners have paid the SSSDCs on behalf of the other property owners prior to the other property being developed.

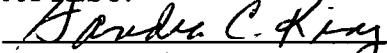
7. Assessments shall be designed for large parcel ownership and assessment installment contracts entered into and fully paid in a manner that avoids the City having to reapportion and administer the assessments individually to the anticipated 2400 to 2600 unit buildout.

8. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a special meeting thereof this 18th day of January, 2005, and filed with the City Recorder this date.


CHARLOTTE LEHAN, MAYOR

ATTEST:


Sandra C. King, CMC, City Recorder

SUMMARY of votes:

Mayor Lehan Yes
Councilor Kirk Yes
Councilor Scott-Tabb Yes
Councilor Barton Yes
Councilor Holt Yes

COMMUNITY DEVELOPMENT
STAFF REPORT

Date: January 13, 2005
To: Mayor and City Council
From: Eldon R. Johansen, Special Projects
Subject: **A Resolution of the City of Wilsonville Declaring the City's Intent to Form Local Improvement District No. 13-05-ST, the Villebois Local Improvement District, to Pay for the Supplemental Street System Development Charges for a Portion of the Street Improvements at Wilsonville Road Interchange With I-5 That Benefit the Villebois Urban Village Properties and to Direct the City Engineer and Finance Director to Prepare Written Reports.**

Attached is a memorandum and a primer on local improvement districts dated October 22, 2004, from Michael Kohlhoff, city attorney. These documents provide the background concerning formation of LID No. 13-05-ST.

MacKay and Sposito are completing the design for the \$3.5 million project. The project will be reviewed by the City engineer and ODOT with tentative plans to advertise for bids in March 2005.

One question that has previously been unanswered is whether the grade changes that are necessary for the \$20 million improvement project should be accomplished as part of the \$3.5 million project or deferred until the \$20 million project. The concrete and asphalt changes on Wilsonville Road that are required to complete the \$3.5 million are relatively minor with the principal change being the narrowing of the medium to provide greater stacking room for left-turn vehicles. The cost of subsequently changing and removing this improvement as part of the \$20 million project will be minimal. On the other hand, if we make the grade change at this time without doing the project widening we will have very substantial initial costs to remove and reinstall the curb, gutter and sidewalk and then future costs to again remove the curb, gutter and sidewalk improvements on each side of the road to widen for the \$20 million project. For this reason, staff is intending to only make the minimal changes on Wilsonville Road that are needed for the changes in lane use. If time is available at the Council Retreat, the City engineer will be prepared to provide additional information that will further clarify the subject.

ERJ:bgs

Cc: Arlene Loble, City Manager
Dave Waffle, Community Development Director
Mike Stone, City Engineer
Gary Wallis, Finance Director
Staff Report File
IOC-CD File
Villebois File

MEMORANDUM

To: Mayor and City Council

Cc: Arlene Loble, Eldon Johansen, Gary Wallis, Michael Stone

From: Michael Kohlhoff, City Attorney

Date: October 22, 2004

Re: Villebois LID for Wilsonville Road/I-5 intersection improvements.

In accordance with the Vesting Agreement with the Villebois property owners and the Development Agreements with the Westside and eastside Villebois property owners, City staff will be proceeding to present the City Council with the LID contemplated by the aforementioned agreements. In anticipation of presenting the first resolution in this regard, I have prepared the attached local improvement primer to aid the Council as we go forward. As the Council is aware, the Wilsonville Road/I-5 intersection capital improvements will provide both a special benefit to the Villebois property owners as well as a general public benefit.

Initially, the total cost was estimated in the neighborhood of \$3.5 million and the Villebois share estimated at approximately \$1.602 million. The general methodology is based upon total trip capacity and the proportional amount of trips generated by Villebois upon that capacity. Because of the direct relationship of impacts to benefit, this has been viewed as reasonably and rationally qualifying for a special street SDC. Thus, the total cost of the approximate \$3.5 million to finance the improvements was divided by the total trip capacity to obtain a cost of \$3,000 per trip street SDC, which due to the passage of time has been subject to inflation by our adopted construction cost index for SDC's. By statute, SDC's are subject to financing and assessments of property owners in the same manner as assessments for local improvements.

To ensure, the trips would be available for over 80% of project build out over a several year time frame, the Vesting Agreement was devised. To ensure, the necessary infrastructure for the Villebois development could be timely financed, the Financial Plan was developed, including that for the Wilsonville Road/I-5 intersection improvements. The Development Agreements among the City and the Westside and the Eastside property owners ensure the respective duties and responsibilities for infrastructure construction are properly assigned including cost responsibility as guided by the Finance Plan. The assessment financing of the special street SDC's for the Wilsonville Road/I-5 intersection improvements was also included in the Development Agreements.

Hopefully, this background memo and the attached primer will be of aid to you as the City proceeds in this matter.

PRIMER ON LOCAL IMPROVEMENT DISTRICTS

What are local improvements?

ORS Chapter 223 is the general statutory body of legislation for local improvements. Under ORS 223.001 (9) local improvement has the meaning given the term under ORS 310.140. ORS 310.140 (9) provides:

“(a) *Local improvement* means a capital construction project, or part thereof, undertaken by a local government, pursuant to ORS 223.387 to 223.399, or pursuant to local ordinance or procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefited by all or a part of the improvement:

- (A) That provides a special benefit only to specific properties or rectifies a problem caused by specific properties;
- (B) The costs of which are assessed against those properties in a single assessment upon the completion of the project; and
- (C) For which the property owner may elect to make payment of the assessment plus appropriate interest over a period of at least 10 years.

(b) For purposes of paragraph (a) of this subsection, the status of a capital construction project as a local improvement is not affected by the accrual of a general benefit to the property other than the property receiving the special benefit.”

Why was it necessary to link the definitions within Chapter 310 to Chapter 223?

ORS 310.140 is the statutory embodiment of the 1990 Measure 5 limits on the amount of taxes (Section 11b, Article XI of the Oregon Constitution). This constitutional limitation on taxes on property exempts from the limitation incurred charges or assessments for local improvements. This exemption is codified at ORS 310.140 (18). Thus, a local improvement assessment as contemplated under Chapter 223 is exempt from being included in the taxes limited by local government if such assessment meets the definition within ORS 310.140.

Does the City of Wilsonville have a local ordinance procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefited?

Yes. WC 3.210 – 3.274 provides for the City’s local improvement procedure. The City has followed its procedure both before and after the adoption of Measure 5. The City has instituted twelve (12) Local Improvement Districts (LID’s) and one special assessment land area (Village at Main Street). Note, the City amended its procedure to specifically adopt the definition of local improvement in ORS 310.140. WC 3.212(1). At the end of this calendar year, only the landowners within one district and the special assessment area will be still paying their installment payments. The landowners in the other local improvement districts have paid their assessments and the bonded indebtedness for each of the respective capital improvements have been retired. The City has had only one of its district and assessment challenged in the courts by a landowner and the City successfully defended the formation of the district and the assessment involved.

What is the basic procedure that the City will follow in initiating the improvements for the intersections of Wilsonville Road/I-5 which have been previously agreed to benefit the Villebois property ownerships and to which Waiver of Remonstrations has been filed?

The City Council declares by resolution that it intends to make the improvement and directs the City Engineer and the City Finance Director to file their respective reports. WC 3.212 (1). The Engineer's report includes a map of the proposed improvement and the land to be assessed, the estimated costs of the improvement, the unit cost to the benefited properties, a method of assessment to fairly apportion the costs to the properties, and a description of the affected lots (tax accounts or tax lot numbers are sufficient). WC 3.214. The Finance Director's report covers a number of items, but of chief interest is that the market value of the tax lot to be assessed is two (2) times the pro rata share of the lot's assessment, the status of the municipal debt (LID debt has a Constitutional limitation, but the City does not appear to be close to the limitation), the project conforms to the City's Comprehensive Plan (implements Transportation Systems Plan), and the cost of financing. WC 3.218. Additionally, WC3.226 provides the application for installment payments shall be part of the presented report by the Finance Director. The code provision references ORS 223.220 as governing the application contents. However, ORS 223.220 has been repealed and ORS 223.215 now governs the contents of the City's application form.

The next step is to set and notice a public hearing to adopt a resolution approving the reports (can modify or abandon) and declaring the Council's intent to proceed with the improvement. WC 3.222 and WC 3.230. This step could be separated, but here is no reason not to combine the actions given the circumstances of the LID being provided for in the Development Agreement and the Vesting Agreement with the Villebois Property owners. The Waiver of Remonstrations entered upon on behalf of the property owners waives objection to the formation of the District, but preserves the right to object to the assessments as a result of the methodology adopted. The methodology based on trips was generally approved through the Development and Vesting agreements and it is not anticipated to be a problem area. The right preserved most probable effect is to act as a fail safe for minor errors in assumptions or calculations. However, in the unlikely scenario of a remonstrations by 2/3's of the property owners, the assessment project could be abandoned. This, in turn, would terminate the Vesting Agreement and open up the vested trips to third parties putting Villebois concurrency at risk.

Under the above resolution, the Council can also direct how the work is to be done (by the City, by competitive contracting, other governmental agency, or combination thereof) and to direct the City engineer to prepare plans, specification and call for bids. WC 3.234 and 3.242.

After the construction is completed, the Finance Director prepares an assessment role of the assessments for each of the lots, notice is provided to the property owners stating the amount of the proposed assessment and the date of the hearing to adopt the assessments by City ordinance. WC 3.250. The owner has the option of paying the assessment in full (generally with a prepayment penalty in order that collected funds account for the pro rata share of the interest on the bond financing) or entering into an installment assessment contract generally with semi annual payments. The assessments become a lien on the property and are recorded on the City lien records. WC 3.258. Liens may be foreclosed upon for failure to make payment when due. WC 3.258.

Are there any special challenges provided by the LID for the Villebois properties?

The central challenge is the administration of lot assessment. Currently, there are few owners and large lots, but they are in the process of being subdivided into Special Area Plans (SAP) with individual lots to be purchased. Apportionment is the term for dividing the assessment among partitioned or subdivided properties. The administration of 2600 individual homeowner assessments is not in the interest of good public policy for the City. It may make sense to apportion to the SAP level, or even to the PDP stage, with prepayment at that stage. Staff has had preliminary negotiations with the Master Planner, Costa Pacific and Matrix in this regard. They also do not want to be in a position to administer installment payments for reapportionment for individual lots. This will need to be addressed in both the Engineer's report and the Financial Director's report.