



CITY OF SALEM

Written Testimony

City Council

555 Liberty St SE
Salem, OR 97301

Monday, March 26, 2018

6:00 PM

Council Chambers

4. a. [18-132](#) Reconsideration of the Lone Oak Reimbursement District

Ward(s): 4

Councilor(s): McCoid

Neighborhood(s): South Gateway

Recommendation:

Affirm Lone Oak Road Reimbursement District to collect funds for reimbursement of the developer's costs associated with constructing Lone Oak Road SE between Muirfield Avenue SE and Rees Hill Road SE.

Attachments:

[File 18-32 - Staff Report from 1-22-18 Council Meeting](#)

[Written Testimony - Jerry Bennett on behalf of South Gateway Neighborhood Assoc.](#)

[3-26-18 Council Written Testimony 2](#)

Add - Written Testimony

Page
Break

To: Mayor Bennett & Council Members

From: E.M. Easterly

Re: 18-132 Proposed Reconsideration of Reimbursement District Date: March 26, 2018

I invite the Council to consider the irony that the below proposed subdivision is NOT included in the pending Reimbursement District.

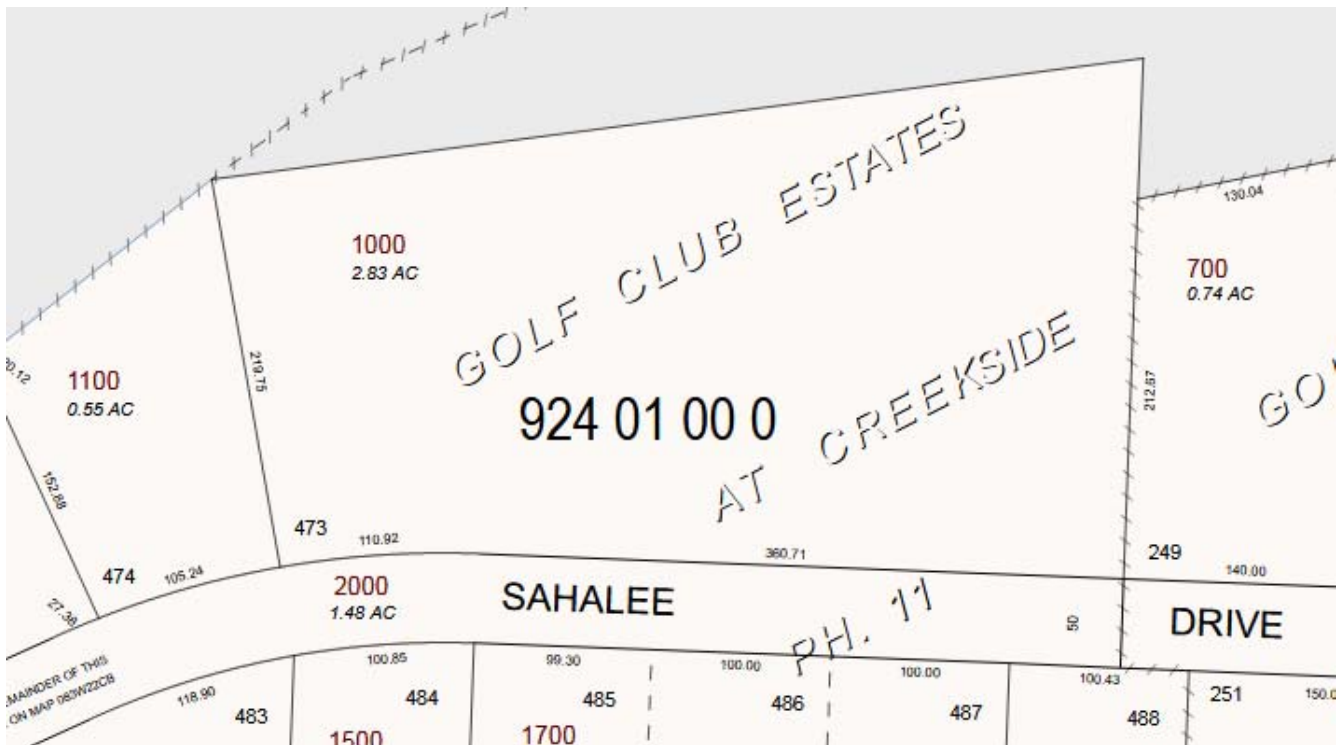
Account No.: R339474

Map Tax Lot: 083W22BD01000

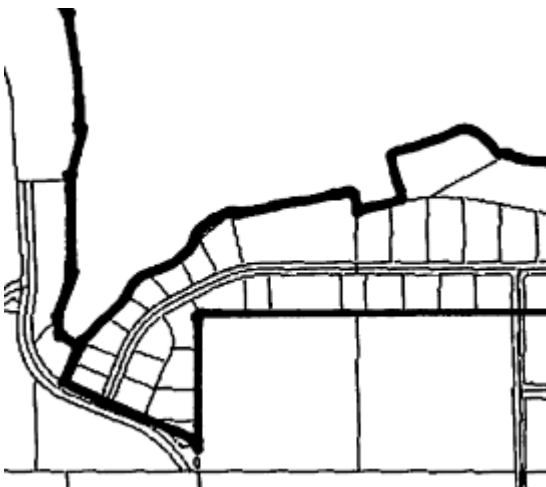
Situs Address: 659 SAHALEE DR SE

SALEM, OR 97306

Owner: LAWRENCE E TOKARSKI RLT & TOKARSKI, LAWRENCE E TRE
201 FERRY ST SE #400 SALEM, OR 97301



Proposed File # 18-32 Subdivision proposal pg 131/147 not included in the Lone Oak Improvement District.



Amy Johnson

From: E Easterly <emeasterly@comcast.net>
Sent: Sunday, March 25, 2018 10:22 AM
To: Chuck Bennett
Cc: citycouncil
Subject: Re: Contact City Council - Lone Oak Reimbursement District testimony

Thank you, Mayor Bennett, for responding to my submitted testimony.

I would be pleased if your belief is correct.

I invite, you, your council colleagues, and staff to explain how a proposed, but un-platted 5 lot subdivision, which is not identified in the description of the proposed reimbursement district has paid "the proposed fee", that is, the proposed reimbursement district fee.

Please explain **when** the not-yet-adopted reimbursement fee was paid by the property owner/developer for the proposed five lots I identified in my original written testimony.

Other areas of the original phased Creekside development are included in and slated to pay the proposed reimbursement district fee; so why was this part of the Creekside development excluded from the proposed reimbursement district?

I further request that this email exchange be included as part of the council deliberations regarding the March 26th Lone Oak Reimbursement District Council agenda item.

E.M.

Re: Contact City Council

[Chuck Bennett](#)

3/24/2018 8:03 PM

To emeasterly@comcast.net Copy [citycouncil](#)

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I believe your information is incorrect. My understanding is that this property has already paid the proposed fee.

Chuck Bennett
Sent from my iPad

On Mar 24, 2018, at 4:07 PM, "emeasterly@comcast.net" <emeasterly@comcast.net> wrote:

Your Name E.M. Easterly Your Email emeasterly@comcast.net Street 775 Fir Gardens Street NW N/A City Salem State OR Zip 97304 Message Please submit the attached testimony regarding the reimbursement district being reviewed by Council. This email was generated by the dynamic web forms contact us form ...

<Lone Oak Reimbursement District testimony.doc>

Amy Johnson

From: Lisa Anderson-Ogilvie
Sent: Monday, March 26, 2018 1:49 PM
To: E Easterly; Chuck Bennett
Cc: citycouncil
Subject: RE: Contact City Council - Lone Oak Reimbursement District testimony
Attachments: SUB15-04 Land Use Decision.pdf

Categories: Follow-up

E.M.,

The Mayor is referring to the approved subdivision for this lot which has a condition of approval requiring them to pay \$9,212 per lot at the time of building permit. (See condition 7 of the attached decision). This is the same fee that is proposed for the rest of the 'Creekside' lots in the reimbursement district. They are required to pay this fee with or without the reimbursement district, as their share of the Lone Oak improvement.

Lisa | 503-540-2381

From: E Easterly [mailto:emeasterly@comcast.net]
Sent: Sunday, March 25, 2018 10:22 AM
To: Chuck Bennett <CBennett@cityofsalem.net>
Cc: citycouncil <citycouncil@cityofsalem.net>
Subject: Re: Contact City Council - Lone Oak Reimbursement District testimony

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<Lone Oak Reimbursement District testimony.doc>



COMMUNITY DEVELOPMENT DEPARTMENT

555 Liberty St. SE / Room 305 • Salem, OR 97301-3503 • (503) 588-6173 • (503) TTY 588-6353 • (503) Fax 588-6005

April 7, 2017

Si necesita ayuda para comprender esta información, por favor llame 503-588-6173.

NOTICE OF FINAL LAND USE DECISION Appeal of Subdivision Case No. SUB15-04 (formerly PUD-SUB03-01A3) for Property located at 659 Sahalee Dr SE

YOU ARE HEREBY NOTIFIED that the Salem Planning Commission, at their April 4, 2017 meeting, adopted findings affirming the Planning Administrator's decision. A copy of the Order is attached.

Any person with standing may appeal the City Council's decision by filing a "Notice of Intent to Appeal" with the Land Use Board of Appeals, 775 Summer St NE, Suite 330, Salem OR 97301-1283, **not later than 21 days after April 7, 2017**. Anyone with questions regarding filing an appeal with the Oregon Land Use Board of Appeals should contact an attorney.

The complete case file, including findings, conclusions, modifications, and conditions of approval, if any is available for review at the Community Development Department, 555 Liberty St SE, Room 305, Salem OR 97301. If you have any further questions, you may contact the City of Salem Planning Division at 503-588-6173.

Lisa Anderson-Ogilvie, AICP
Interim Community Development Director

Attachment: Order No. SUB15-04

BEFORE THE PLANNING COMMISSION OF THE CITY OF SALEM

IN THE MATTER OF APPROVING) ORDER NO. SUB15-04
THE APPLICATION FOR A)
TENTATIVE SUBDIVISION PLAN,)
CASE NO. SUB15-04 FOR) SUBDIVISION CASE NO. 15-04
PROPERTY LOCATED AT 659)
SAHALEE DRIVE SE)

This matter having come regularly for hearing before the Planning Commission at its April 4, 2017 meeting, and the Planning Commission, having received evidence and heard testimony, makes the following findings and adopts the following order affirming the decision of the Planning Administrator and approving the application for a Tentative Subdivision Plan in Case No. SUB15-04.

(I) PROCEDURAL FINDINGS:

- (a)** On June 19, 2015, Mark Grenz, on behalf of applicant Lawrence E. Tokarski Revocable Living Trust, filed a PUD modification and subdivision application to divide approximately 2.83 acres of land within PUD03-01 located at 659 Sahalee Drive SE. The applicant submitted additional requested information and staff subsequently deemed the application complete for processing on August 17, 2015.
- (b)** On October 20, 2015, the Planning Administrator issued a decision approving the application for PUD Modification with Subdivision (Case No. PUD-SUB03-01A3), subject to nine conditions of approval.
- (c)** On October 26, 2015, the applicant filed a timely appeal of the decision. The applicant's appeal objected to certain conditions of approval, in particular Condition 3, which related to construction of Lone Oak Road SE and a bridge over Jory Creek. PUD 03-1 includes a condition of approval (Condition 4.d) requiring Lone Oak Road SE to be constructed through the PUD to provide circulation of traffic in, through, and out of each phase of the development. The improvements described in Condition 4.d of PUD03-01 had not been completed in full.
- (d)** On November 17, 2015, a public hearing before the Planning Commission took place. At the applicant's request, the Planning Commission continued this hearing until February 9, 2016. On February 26, 2016, the Planning Commission issued a decision affirming the Planning Administrator's decision.
- (e)** The applicant appealed the Planning Commission's decision to the Oregon Land Use Board of Appeals (LUBA). On August 1, 2016, LUBA remanded the case to the City to be reviewed solely as a tentative subdivision plan, without a modification to PUD03-01.

- (f) The applicant appealed LUBA's decision to the Oregon Court of Appeals, which affirmed the decision without opinion on December 20, 2016. LUBA in turn remanded the case back to the City on December 21, 2016.
- (g) On remand, the Planning Administrator reviewed the proposal as a tentative subdivision plan only, and issued a decision on February 24, 2017 approving the proposed tentative subdivision plan, subject to 7 conditions of approval.
- (h) On March 12, 2017, Creekside Homeowners Association filed a timely appeal of the remand decision.
- (i) On April 4, 2017, upon proper notice being provided by the City, the Salem Planning Commission conducted a hearing on appeal of the application, and received testimony and evidence regarding the application. At the conclusion of the hearing, the Planning Commission then conducted deliberations and voted on the application.
- (j) On April 4, 2017 the Planning Commission voted to affirm the Planning Administrator's decision to approve the application, subject to conditions of approval.
- (k) The Facts and Findings attached hereto as "Exhibit 1," are incorporated herein by this reference.

(II) SUBSTANTIVE FINDINGS:

- (a) The applicable criteria for approval of a tentative subdivision plan are SRC 205.010(d).
- (b) The March 12, 2017 Notice of Appeal filed by Creekside Homeowners Association raises the following issues:
 - a. Lack of secondary access to emergency services;
 - b. Precedent for development of future subdivisions in vicinity; and
 - c. Topography of the surrounding area.
- (c) Testimony and evidence was received by the Planning Commission that the impact of the four proposed lots represent a relatively small proportionate share of overall traffic generated in the surrounding area, and that future development on surrounding properties would be subject to linking street requirements through existing conditions of approval and/or application of Urban Growth Management standards. The Planning Commission finds that the application, as proposed and conditioned, has addressed the issues raised by the appeal filing. Complete findings are included in Exhibit 1.

(d) The Planning Commission finds that the proposed size and arrangement of lots along a relatively steep hillside minimizes potential impacts related to the topography and vegetation of the site. Proposed lots within the subdivision meet applicable minimum standards for width, depth, size, street frontage. Sahalee Drive SE, a local street, provides safe and convenient access for future development as allowed in the RS (Single Family Residential) zone.

(e) The Planning Commission finds that the subdivision will comply with City infrastructure standards, subject to the following conditions:

Condition 1: Provide an engineered tentative stormwater design to accommodate future impervious surface on all proposed lots. Construct any stormwater facilities that are not located within the lot being served by the facility.

Condition 2: Construct sewer services to the property line of each lot.

Condition 3: Obtain water meter permits to serve each lot.

(f) The Planning Commission finds that the subdivision will comply with special development standards, including the City's landslide hazard ordinance, subject to the following condition:

Condition 4: Provide a final report from a qualified geotechnical engineer that addresses the geotechnical considerations for each individual building lot.

(g) The Planning Commission finds that the subdivision will not impede the future use or development of the property or adjacent land, subject to the following condition:

Condition 5: Dedicate a 10-foot public utility easement (PUE) along the street frontage of all internal streets.

(h) The Planning Commission finds that the street system in and adjacent to the tentative subdivision plan is designed so as to provide for the safe, orderly, and efficient circulation of traffic into, through, and out of the subdivision, subject to the following conditions:

Condition 6: Any dwelling units constructed on Lots 1-4 prior to the provision of an approved secondary fire department access road be equipped with an approved sprinkler system.

Condition 7: Enter into a fee-in-lieu agreement toward Lone Oak Road improvements, pursuant to SRC 200.405, requiring that a fee-in-lieu payment of \$9,212.00 be made to the City prior to building permit issuance for each lot in the subdivision.

The Planning Commission finds that the application, as conditioned, meets the applicable criteria for approval of a Tentative Subdivision Plan.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE PLANNING COMMISSION OF THE CITY OF SALEM, OREGON:

Section 1. The Salem Planning Commission affirms the decision of the Planning Administrator, and approves Tentative Subdivision Plan Case No. SUB15-04, subject to the following conditions of approval:

- Condition 1:** Provide an engineered tentative stormwater design to accommodate future impervious surface on all proposed lots. Construct any stormwater facilities that are not located within the lot being served by the facility.
- Condition 2:** Construct sewer services to the property line of each lot.
- Condition 3:** Obtain water meter permits to serve each lot.
- Condition 4:** Provide a final report from a qualified geotechnical engineer that addresses the geotechnical considerations for each individual building lot.
- Condition 5:** Dedicate a 10-foot public utility easement (PUE) along the street frontage of all internal streets.
- Condition 6:** Any dwelling units constructed on Lots 1-4 prior to the provision of an approved secondary fire department access road shall be equipped with an approved sprinkler system.
- Condition 7:** Enter into a fee-in-lieu agreement toward Lone Oak Road improvements, pursuant to SRC 200.405, requiring that a fee-in-lieu payment of \$9,212.00 be made to the City prior to building permit issuance for each lot in the subdivision.

Section 2. This order constitutes the final land use decision and any appeal must be filed with the Oregon Land Use Board of Appeals within 21 days of the date that notice of this decision is mailed to persons with standing to appeal.

ADOPTED by the Salem Planning Commission this 4th day of April, 2017.



Sheronne Blasi, Vice-President
Salem Planning Commission

Amy Johnson

From: E Easterly <emeasterly@comcast.net>
Sent: Monday, March 26, 2018 2:12 PM
To: Chuck Bennett; Lisa Anderson-Ogilvie
Cc: citycouncil
Subject: RE: Contact City Council - Lone Oak Reimbursement District testimony

Thank you, Lisa.

I was led astray by the staff report that included proposed district boundaries at pdf pages 139 & 140. I subsequently accessed subdivision 15-04 which contained the in lieu language and later the map on staff report pdf page 146.

My initial concerns have been answered.

E.M.

On March 26, 2018 at 1:48 PM Lisa Anderson-Ogilvie <LMAnderson@cityofsalem.net> wrote:

E.M.,

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<Lone Oak Reimbursement District testimony.doc>

Amy Johnson

From: Brian Hines <brianhines1@gmail.com>
Sent: Friday, March 23, 2018 9:30 PM
To: citycouncil
Cc: CityRecorder
Subject: Advance testimony for 3/26 City Council hearing

Members of the City Council and other City of Salem officials, I'm submitting a blog post that I wrote as advance testimony for the March 26 hearing on the reconsideration of a Lone Oak Road Reimbursement District.

Here's a link to the blog post for anyone who wants to be able to access the live links.

<http://hinessight.blogs.com/salempoliticalsnark/2018/03/city-staff-ignore-neighborhood-association-questions-about-creekside-development.html>

Brian Hines
10371 Lake Drive SE
Salem, OR 97306

City staff ignore neighborhood association questions about Creekside development

Stonewalling. Obfuscating. Ignoring.

There's numerous ways to describe how City of Salem staff are failing to respond to questions from the South Gateway Neighborhood Association (SGNA) about why the Creekside developer hasn't been required to build an extension of Lone Oak Road, the cost of which would be borne by the public if a Lone Oak Road Reimbursement District gets a go-ahead from the City Council next Monday.

The neighborhood association is justifiably irritated at how they've been treated by City staff. Here's an excerpt from a letter submitted by SGNA as advance testimony for the March 26 hearing on the Reimbursement District.

[Download SGNA Testimony & Attachments - March 26 City Council Meeting](#)

I've circled in red the unanswered question that I'm most interested in.

- City staff met SGNA leadership to discuss the Reimbursement District. City staff requested SGNA's questions prior to the meeting, but failed to answer a number of questions regarding the Reimbursement District, including the total amount of public financing and the legal enforceability of certain Creekside Estates improvement agreements. Of specific note, City staff have been unwilling to answer SGNA leader questions whether the 350 building permit trigger in the 1992 improvement agreement requiring the construction of Lone Oak Road by the developer is legally binding; when the 351 building permit was issued; why the obligation under the 2006 improvement agreement that required the construction of Lone Oak Road over Jory Creek by the developer was not completed within three years yet building permits were issued; and how the City accounted for the liquidated damage provisions in the 2006 agreement.

When "public servants" willfully ignore questions that, if answered, likely would put them in a bad light, this strikes at the heart of the trust that should exist between government employees and the citizens whom they ostensibly serve.

Look, everybody makes mistakes. These can be forgiven when a mistake is honestly acknowledged, and sincere efforts are made to prevent the error from happening again.

But City of Salem staff are choosing a different approach: ignore tough questions about how the development of the Creekside neighborhood was handled in an apparent hope that throwing up a smokescreen of verbiage will make concerned citizens forget that their queries were ignored.

I hope the Mayor and other members of the City Council will keep asking the following two simple questions of City staff until they get believable answers.

What we know is that in 2007 [the Creekside developer](#) built a box culvert over Jory Creek and started construction of the northern extension of Lone Oak Road. There are photos of this work in a City of Salem staff report.

[Download CITY OF SALEM - File #: 17-341](#)

Here's an excerpt from the report.

"In 2007, the Creekside developer initiated construction of the missing segment of Lone Oak Road. Construction plans were prepared by a private engineering consultant and permits were issued by the City. A box culvert was installed over Jory Creek and some preliminary earth grading along the alignment of Lone Oak Road was completed. Work on the project was halted by the developer and no additional work has occurred since 2007. At present, there is no timetable for constructing the bridge and remaining sections of Lone Oak Road SE."

Question 1: Why did the developer halt work on the Lone Oak Road improvements? Permits to construct the missing segment of Lone Oak Road were issued by the City of Salem. So there wasn't any disagreement about the work to be done, given the permits. The work just was stopped by the developer.

Question 2: Why did City officials allow the developer to walk away from completing the Lone Oak Road improvements? Again, the Creekside developer obviously believed they were required to build a bridge and road, or the 2007 work wouldn't have been started. There should be some documentation of an agreement to allow the developer to stop work on the Lone Oak Road improvements, unless the agreement was verbal, which would be bothersome. Yet City staff haven't been able or willing to provide those documents.

Bottom line: there seems to be some sort of cover-up regarding the Creekside developer's failure to complete the Lone Oak Road improvements that were started in 2007. I'm usually loathe to use that word, cover-up, but it seems fitting in this case.

The spin being put forward by City of Salem staff just doesn't hold up under scrutiny. [The staff report](#) for the reconsideration of a Lone Oak Road Reimbursement District on the March 26 City Council meeting agenda is in a question and answer format, with the questions having been posed by the South Gateway Neighborhood Association. One Q & A says:

"Q5: Why did the estimated cost of the bridge crossing Jory Creek increase so greatly?

A5: The difference of estimated cost is based on a difference of opinion between City staff and the developer's engineer as to what will be required by the state and federal permitting agencies for the crossing of Jory Creek. The developer's engineer proposed a long culvert with deep fills, which is less expensive but has greater environmental impact. City staff proposes a bridge structure, which is more expensive but has a lower environmental impact."

But this answer doesn't make sense, since as noted above, permits were issued by the City of Salem for the bridge and road work initiated by the Creekside developer in 2007. So at that time there wasn't any "difference of opinion" between City staff and the developer's engineer, since City staff approved the developer's plan for the Lone Oak Road improvements.

And it's incorrect for City staff to say in the answer to Question 5 that the developer's engineer "proposed" a long culvert with deep fills, because this is what was *actually built* by the developer after getting permits from the City of Salem. Here's the proof:



Box culvert over Jory Creek at southern terminus of Lone Oak Road, near Muirfield Avenue

I realize that Salem's city councilors are unpaid and don't have staff of their own, which makes them dependent on City of Salem employees. However, they still can ask tough questions of City staff and not put up with refusals to answer cogent questions.

If City staff can't answer the two questions I posed, which reflect questions asked by the South Gateway Neighborhood Association, there shouldn't be a vote on the Lone Oak Road Reimbursement District proposal.

Salem citizens shouldn't be asked to foot the bill for completing the unbuilt northern section of Lone Oak Road until it is clear why the Creekside developer was allowed to stop construction of the bridge and road after beginning this work in 2007. Again, the questions are:

**Why did the developer halt work on the Lone Oak Road improvements?
Why did City officials allow the developer to walk away from completing the Lone Oak Road improvements?**

Brian Hines

Salem, Oregon USA

brianhines1@gmail.com

<https://www.facebook.com/OregonBrian>

<https://www.facebook.com/StrangeUpSalem>

<https://www.facebook.com/SalemPoliticalSnark/>

<http://twitter.com/oregonbrian>

www.hinesblog.com (blog)

www.churchofthechurchless.com (other blog)

www.salempoliticalsnark.com (other other blog)

Amy Johnson

From: Brian Hines <brianhines1@gmail.com>
Sent: Sunday, March 25, 2018 5:12 PM
To: citycouncil
Cc: CityRecorder
Subject: Advance testimony for March 26 City Council hearing

Dear Mayor Bennett, City Councilors, and City of Salem staff:

Here is some additional advance testimony I'm submitting for the March 26 reconsideration hearing on a Lone Oak Road Reimbursement District.

As you will read below, my basic point is that there is no need for the Reimbursement District, since the Creekside developer is responsible for the northern unbuilt section of Lone Oak Road, and the two developers who are constructing subdivisions to the south should be responsible for the southern unbuilt section of Lone Oak Road.

Regarding the north portion of Lone Oak Road, the staff report for the March 26 hearing states that the Creekside developer is required to construct this:

The Creekside developer is required to construct Lone Oak Road between Muirfield Avenue and Augusta Drive as a condition of the next sub-phase of Creekside's Phase 14 development. However, the timing of construction is at the developer's discretion, not the City's. Therefore, this condition to construct Lone Oak Road is also being imposed on other developments in the area since the street is needed to serve these other properties.

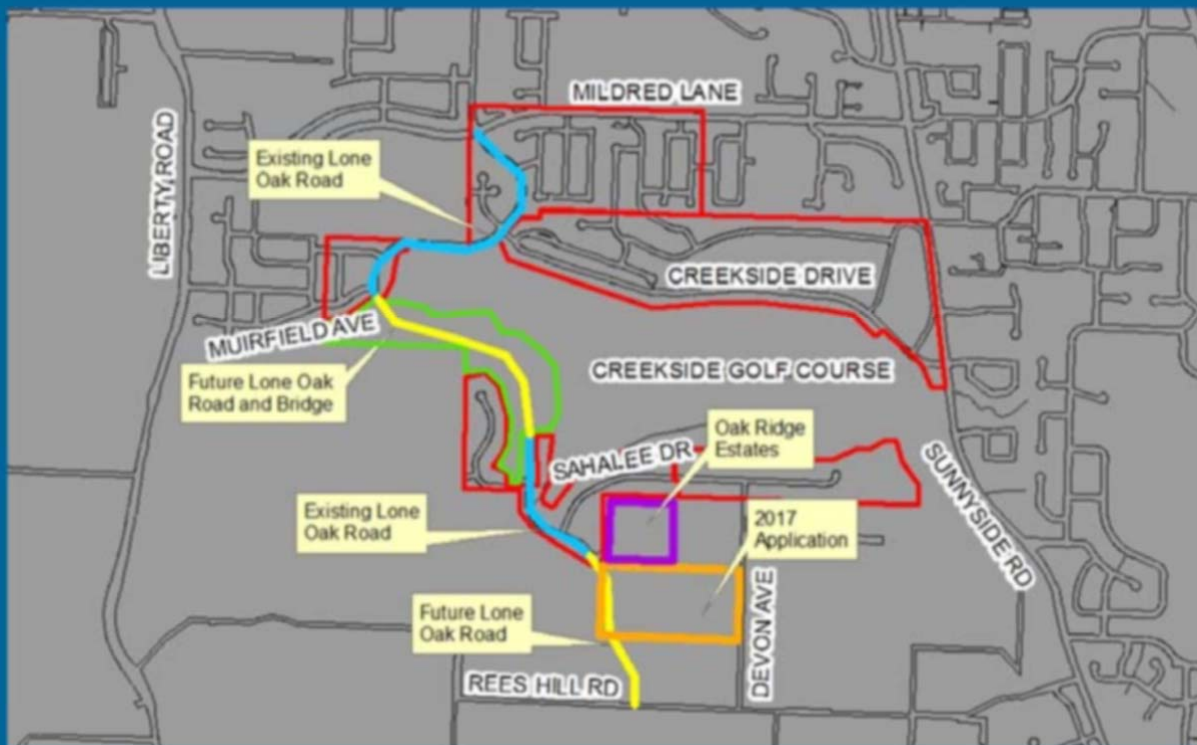
So it appears that either current requirements say that the Creekside developer can be made to pay for the northern section of Lone Oak Road, or building the road can be made a condition for developing a subdivision on the golf course property, should the Creekside developer be allowed to do this. Either way, the public doesn't have to pay the bill.

The unbuilt southern portion of Lone Oak Road is easier to figure out: the developers of the two subdivisions planned for this area should pay for it.

At the February 12 City Council meeting, Mark Shipman, an attorney representing the 10 acre, 38-lot subdivision just south of Sahalee Drive, Oak Ridge Estates, explained that his clients wanted the City of Salem to help them find a way to pay for the cost of building the south portion of Lone Oak Road. The reimbursement district was what came out of this.

However, there's no discernible reason why the developers of the two subdivisions south of Sahalee shouldn't be paying for the extension of Lone Oak Road south to Rees Hill Road. If the 20 acre development is built to the same density as the 10 acre development, 114 lots will be developed (38 + 76).

20-Acre proposed subdivision



This sure seems like enough lots to justify making the two developers pay for the southern extension of Lone Oak Road, since the map above shows the road going immediately adjacent to the 10-acre development and through the west side of the 20-acre development.

I've seen no explanation why a reimbursement district was justified to pay back the developer(s) for the cost of building the southern Lone Oak Road extension to Rees Hill Road. Seemingly it just was assumed that if a developer complains about the cost of constructing needed roads, the public should foot the bill instead.

Attorney Shipman said that his clients are ready to build the south portion of Lone Oak Road. Great. They should build it, and also pay for it on their own. Then they can be partially reimbursed by the developer of the 20 acre property outlined in orange above, whose subdivision application is more recent.

City officials have been bending over backwards to please developers who don't want to pay for roads needed to serve their developments. This needs to change. Our "public servants" should start living up to their name and begin putting the interests of the general public above the wants of developers.

Sincerely,

Brian Hines
10371 Lake Drive SE

Salem, OR 97306

Brian Hines

Salem, Oregon USA

brianhines1@gmail.com

<https://www.facebook.com/OregonBrian>

<https://www.facebook.com/StrangeUpSalem>

<https://www.facebook.com/SalemPoliticalSnark/>

<http://twitter.com/oregonbrian>

www.hinesblog.com (blog)

www.churchofthechurchless.com (other blog)

www.salempoliticalsnark.com (other other blog)



2075 Madrona Ave. SE
Suite 100
Salem, Oregon 97302

T 503-399-1500
F 503-399-0651

HomeBuildersAssociation.org

March 21, 2018

Mayor Chuck Bennett
Salem City Council
555 Liberty St SE
Salem, OR 97301

RE: Public Hearing 18-32 – Lone Oak Reimbursement District

Dear Mayor Bennett and City Council members:

The Home Builders Association of Marion & Polk Counties is very supportive of the proposed Lone Oak Reimbursement District designed to fund road improvements on Lone Oak Rd between Rees Hill Rd and Jory Creek.

Like you, we wish the road improvements had been funded and constructed well before now. However, without the creation of this reimbursement district, a very significant amount of land between Rees Hill Rd and Creekside Golf Course is essentially undevelopable. This is because the area is generally comprised of smaller parcels of land that -- in and of themselves -- aren't big enough to fund the necessary road improvements. The creation of the reimbursement district allows Lone Oak to be funded by future development activity throughout the entire benefitted area. Given that it's impossible to go back in time and require a previous developer to build out Lone Oak, the reimbursement district appears to be the best and most equitable option remaining.

It's incumbent on the city that a viable funding solution be developed for this stretch of Lone Oak Rd. The land between Rees Hill and Creekside Golf Course is inside of Salem's Urban Growth Boundary and intended for future development. The inventory of new homes available for sale in the community is at an all-time low, and residential land development activity is not keeping up with housing demand. Preventing this land from being developed through a lack of needed road infrastructure will only contribute to our housing affordability problems, further limiting supply and putting upward pressure on prices throughout the community.

For these reasons, we urge you to support the creation of the Lone Oak Reimbursement District.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Erdmann". The signature is fluid and cursive, with the first name "Mike" and last name "Erdmann" clearly distinguishable.

Mike Erdmann
Chief Executive Officer

Amy Johnson

From: Lora Meisner <lmgb@earthlink.net>
Sent: Monday, March 26, 2018 11:43 AM
To: Chuck Bennett; citycouncil
Subject: re: Reimbursement District

In case I run over 3 minutes here is my testimony for tonight's meeting on the Reimbursement District—Lone Oak Road

I urge a "no" vote on the City Manager's proposal.

I am addressing the City Manager's staff report questions and answers Numbers 3 and 6.

Question #3 states flat out that the Creekside developer is NOW required to construct Lone Oak Road over Jory Creek. So why are we even talking about a Reimbursement District to have future residents pay for what the developer is legally obligated to construct? Think about that before you vote.

Here is a direct quote from the staff report:

The Creekside developer is required to construct Lone Oak Road between Muirfield Avenue and Augusta Drive as a condition of the next sub-phase of Creekside's Phase 14 development. However, the timing of construction is at the developer's discretion, not the City's.

City Council has voted on this issue twice already and this is the first time the City Manager's staff have put in writing that the Creekside developer is required to construct Lone Oak Road. The newest report also mentions that the same obligation to build Lone Oak applies to other developers who want the City to approve subdivisions south of Jory Creek. The first developer who needs building permits is the one to build it and then other developers can share the costs by asking the City for a reimbursement district -- AFTER the bridge is

built. Why? Well let me quote from the Marion County Commissions' 1990 letter to the City of Salem with regard to improvement of Lone Oak Road south of the City:

it seems inappropriate to require the taxpayers of the county or the city to pay for improvements that obviously and directly benefit the developer.

The developer of Creekside and the other developers who want to build more homes south of Jory Creek need to pay to construct Lone Oak BEFORE even ONE more land use action or building permit is issued.

Question #6 addresses the escalating costs of the structure over Jory Creek.

Why did the City allow the developer to start and build the culvert over the creek when regulations prescribe for lower environmental impact of an actual bridge structure? The developer's engineers did not just "propose" a long culvert as noted in the staff report -- the developer actually built the culvert and then abandoned the culvert.

The developer and city staff are trying to stick future home owners and Salem's taxpayers with the bill to both demolish the culvert and build a full-fledged bridge that spans the deep Jory Creek canyon. Do you really want to vote for the Manager's funding plan again and stick the taxpayers with the bill? Since when are developers allowed to renege on their obligations and make taxpayers foot their bill?

Please Vote NO

Thank you.

Lora Meisner
1347 Spyglass Court SE
Salem, OR 97306

March 19, 2018

RECEIVED
MAR 22 2018
CITY OF SALEM
PUBLIC WORKS

Public Works Development Services Section
555 Liberty Street SE
Room 325
Salem, OR 97301

RE: Lone Oak Road Reimbursement District, Hearing Date of March 26, 2018 (Our written comment)

Dear Mayor, Council, interested parties:

We are owners now defined to be in the new Lone Oak Road Reimbursement District. We submitted written comment and personal appearance at the January 22, 2018 Public Hearing.

We urge the Council to totally **reject** the formation of this new Lone Oak Road Reimbursement District. We simply believe it is reasonable to expect orderly development can be achieved in this "District" or area without the formation of this Lone Oak Road Reimbursement District.

We agree with points made in the letter from Glenn Baly dated February 8, 2018 representing the South Gateway Neighborhood Association: That the Lone Oak Reimbursement District is flawed.

We believe more items of fact were needed. And some research for alternatives, to properly develop a bit of equity and fairness on this matter. The city council, we believe, might have voted different with a more complete airing of the issues. Perhaps a modification or rejection. Its not a simple matter.

We hope the council will truly reconsider. The Council has shown its open to additional facts by voting for this reconsideration. We do say **thank you** to the City Council and Mayor for their service. We have come to appreciate what heavy schedules and work they perform.

We are owners with two properties in the East Area. We have a house on each property needing additions. We have 3 outbuildings needing work. We are not City residents. We cannot vote for City candidates or other issues. We believe we can't vote if a vote were held regarding annexation of our property into the City. We are residents of the County inside the UGB. We have lived under very strict zoning for decades because we are of the UGB. For example, if one was lucky & got approval for a new house, the placement of the house must allow for future city streets! We're required to standby for development.

Now, after all those decades on standby: Here come the Reimbursement Districts!

It sounds funny, but, we may need to get a reimbursement district to pay for all the reimbursement districts our property will be assigned (may have by the time we choose to sell to a developer).

For any given property, could a limit be placed on the number of reimbursement districts?

We believe they lower our real market value! Like taxes. And our taxes will rise as the last parcels in our part of the UGB move into the City Limits.

Reimbursement districts effect the value that we could sell our property, for, say, in 2030. It seems a professional appraisal would show (via the Cost Method) that if owner simply sells their property to speculators or developers, offers will be less for our property. They would need to adjust for more cost like they do for higher than normal SDC's; Developers will simply adjust for these added reimbursement fees and buy our properties for less. They will use reimbursement fees to justify lower offers. We believe reimbursement districts are a threat to our highest and best use real market value when marketed as a developable property (with potentially many lots or apartments sites).

Marion County did not comment on Jan 22 as far as we know. We think they did comment on the original approved Berndt 2008 application. That being back in 2008; The County noted Rees Hill, where city traffic is dumped, the road was being damaged. We believe that comment still is true today. We continue to urge both entities, City and County, to invest in bringing Rees Hill road to a quality level. The Director seems to have a good working relationship with the County. That helps, we think!

At the Jan 22 hearing, the facts presented turned out not too simple: The history of the "bridge" and who should have paid for it. It was before the current staff's time. They tried to reconstruct history. The new adopted reimbursement district will help pay for it? No, not really. City Director said that even with the new reimbursement district, **a bond would be needed**. And the City Attorney advised a bit at the Jan 22 meeting on the golf course's legal challenge. And the bond amount will have to evolve? Depends maybe on the golf course. But really it doesn't? But let's include it anyway? But still the **estimated cost of it all** was used to calculate our reimbursement district fees! Both number of lots and estimated costs had issues unresolved (see video or other of public hearing). Both number of lots and costs figures are very uncertain. That's due to these complicated circumstances. That seemed evident to everyone in the room!

The estimates used to create the Lone Oak Reimbursement District are not reliable estimates.

Cost divided by lots = reimbursement fee. Neither of these components appear to have reliable estimates to proceed to a sturdy creation of a Lone Oak Reimbursement District.

Creating the reimbursement district for water was successful. Some speculation surely was involved in creating that one. But this Lone Oak Reimbursement District involves building city roads, a very costly bridge and dismantling a partially constructed bridge, as well as a golf course appeal, wetlands in the golf course, and judging who will benefit from using the new city road, and a future Bond to voters to cover for its short comings; possible realignment of roads; this is not a comparable to a simple pipe water district. We believe the Lone Oak Road Reimbursement District as currently defined is a much more speculative endeavor.

During the City Council and Mayor deliberations Jan 22, 2018, with the Director, they seemed to question what they would do, it seemed to hang in the balance; there seemed genuine interest in modifying the area or at least removing the East portion. At least two East owners had objected to be included because of the logic used to create the East area. We are in the East area. We agree with them and their statements at appearance testimony on Jan 22.

More on the East area: The parcels north of ours access their property via Sunnyside Road and probably represent 25% of the entire East area of the Lone Oak Reimbursement District. See East area (1.79 ac and 13.46 ac lots or 83W22DA00700 and 800). We did not think of that for the Jan 22 meeting. We urge those parcels be removed and/or the entire East area excised. If not, how about enlarging it; include two vacant lots. (See 6919 Osprey Ct SE and 6929 Osprey Ct SE) Are they a qualified "pimple"? Could be included with similar judgement & logic? And South, to the undeveloped parcel in the UGB next to the Osprey Ct subdivision; Then, North of that parcel, across Sunnyside Rd, to Sabre Ridge with numerous vacant lots. This is all contiguous. And maybe large dividable but currently exempt (churches) properties across Sunnyside on east side, if they sold out and were developed.

The Mayor had asked for a clear airing of what had happened on the bridge and all. That didn't seem to be achieved at that Jan 22 public meeting. New facts seem to be coming available since that meeting! And some sorry ones.

A legal appeal by Creekside's home owner association is evidently pending. The developer has approval to convert a golf course to city lots but it's being appealed. Hundreds of thousands of dollars in legal

fees appear to hang in the balance for both sides. We think we heard the Creekside HOA board members are being singled out by the golf course owners. We feel sorry if that is the case.

We favor of waiting for the outcome of the appeal on golf course, as Southgate Neighborhood recommends. Makes sense. Might clear stuff out. If the Council finds modification is in order, exclude the east district or enlarge it. More interesting facts or rebuttal comments from others, non-applicants, wanting consideration of their situation could prove important. The Director indicated that another adjacent property to Berndt has been presented to his office. We think that means another application to develop may soon follow. Perhaps regular rate of progress on the South link could occur without the bridge. We favor a wait for bond to win the vote to pay for the bridge. Development could go on without sourcing bridge funds now. And it seems to be planned that way in any event. We hope we are not viewed as easy down payment on problems not of our making.

Below are additional areas of concern we do have on the Lone Oak Road Reimbursement District adoption:

1. Interest Rate & Construction Index: Interest rate on reimbursement fees collect within the Reimbursement District will occur per a construction index. After 20 years, the fees may grow with the index rising thru 2038. Was noted in Staff Report as item 7, properties are subject to? We missed that until recently and perhaps other parties are unaware. Administration of costs are a burden and cost in themselves as well, and a legacy of "bureaucracy" for the future. The City will have an Office of Reimbursement District Administration? Under Engineering? One percent administrative cost too, a cost that grows!
2. In the future, the entire area will be annexed to the City at some point. Tax rates will climb significantly for our area. The City Director indicated a bond will be needed in any event, mostly **due to the bridge**. Bonds increase taxes and the real market value is likely affected negatively again. Many in our reimbursement district will likely pay for the bridge that way too, again, via City Bond and its tax. Kind of a double taxation?
3. The Staff Report for Jan22 under Facts and Findings states that "The Improvements have not been constructed..." and within the RESOLUTION 2018-08 included with the Notice of Adoption states "Whereas, the application for a reimbursement district was submitted prior to the start of construction"; But construction was started. Those statements appear not accurate. The costliest item in the estimates by far, **the bridge**, appears to have been started. Also, the North link approx. 2,000 linear feet appears grubbed out looks like preliminary grading accomplished. It could have been "roaded" enough to aid in the bridge construction that has been done. Start of construction has been started ahead of adoption. Recent March 8 Southgate meeting, the City indicated cost of the bridge (\$5.6 million) includes demolition of the **existing first try bridge structure** (started some years ago). Do second opinions and audits occur? What kind of work and effort is done to check the cost estimates? We assume this is all o.k. but just wonder. Should we call a good logger to build a bridge with whole Douglas Fir logs? Works for loaded logging trucks.
4. In Jan 22 Staff Report, Page 6 Public Interest states "No other funding sources are available for the construction of these facilities." Must mean currently or what? Just went thru a long hard recession. **Surely, additional opportunities for funding sources will arise in the future and by using other funding methods.**
5. See Sec. 200.355 – Obligation to pay reimbursement fee. With a building permit for any building; permit for any additions, modifications, repairs or alterations of a building which exceed 25 per cent of value of the building per Assessor Office. Sounds like significant bureaucracy and its costs. And any new building Sec 200.355 (a)(1) fees will apply.
6. See Sec 200.370 – Hardship: Golf course could have wetlands....persons may apply for a reduction in the reimbursement fee by filing an application with the Director...The developer of the golf course

converts to lots will get to apply for a reduction in reimbursement fees due to unforeseen hardships! How big if any wetlands exist. Are there unforeseen hazards near and around the old rock pit? Geologic hazards there? Wetlands were identified there years ago, we think.

On Jan 22, participation for owners in the defined area was only as one time commenters. The public hearing seemed to be a "modified" public hearing custom made via Sec 200.320, and probably sufficient for simpler cases. No chance for us or other owners or parties to rebuttal was given at the last meeting, Jan 22, once a personal appearance was done and a written comment delivered. We are grateful for this second opportunity.

We understand that by looking at the totality of the circumstances, there is to be expected different views and what is in the public interest.

With the golf course, the unusual bridge cost, and absence of accountability of who abandoned it and why? That seems significant facts enough to be resolved before moving to form a reimbursement district that brings in owners never involved!

Judgement to use one tool in 2008 has been vacated. Are we covering mistakes and laying them on to people never involved in the first place? We hope not. That's simply unfair.

We in the UGB appear to be the path of least resistance in this complicated situation. Is that fair and equitable? We think not. Will the golf course appeal win? Who knows? But keep us out of it.

We are excited by recent creative ideas to **realign Lone Oak**. Reasonable options seem to be appearing. This would be great to reduce those bridge costs with alternate sites. That is in the public interest.

We like The Creekside Golf course nearby. We think it adds to the entire neighborhoods real market value. It's enjoyed by thousands of people. Like to just to walk near it is a pleasure and seems to fit perfectly in the area for decades to come. We respect its exclusiveness if it aids its existence.

We urge the City Council to reject the Lone Oak Reimbursement District on March 26, 2018.

Separately, we urge the City Council to find a way to accommodate the Berndt development without use of a reimbursement district. But we hope they receive approval via an equitable, fair, workable, practical and rewarding option for owners stuck inside a UGB.

Thank you for the opportunity to submit a written comment.

Steve and Debbie Quady

083W22DA01100

Enclosure: Copy of "Notice of Adoption – Lone Oak Road Reimbursement District" for Steve Quady

Request: Please post Enclosure with this, our comment.



Public Works Department

555 Liberty Street SE / Room 325 • Salem OR 97301-3513 • Phone 503-588-6211 • Fax 503-588-6025

January 24, 2018

Steve Quady
1137 Newport Drive SE
Salem OR 97306

SUBJECT: Notice of Adoption - Lone Oak Road Reimbursement District

Dear Property Owner:

As required in *Salem Revised Code* 200.330, the City is notifying property owners affected by the formation of the Lone Oak Road Reimbursement District. On January 22, 2018, City Council adopted a resolution to form the Lone Oak Road Reimbursement District. According to Marion County records, you are the owner of property included in the East Area of the District.

The reimbursement district application was submitted by Alice and Garrett Berndt, the owners of property at 6617 Devon Avenue SE, to provide a fair and proportional reimbursement for street improvements to the remaining portions of Lone Oak Road SE between Muirfield Avenue SE and Rees Hill Road SE that benefit neighboring properties. Prior to adopting the resolution, the Public Works Director evaluated the application, City staff notified affected property owners by mail, and City Council conducted a public hearing.

The reimbursement district fee for this property is currently \$2,464 per single-family lot, which the property owner is required to pay upon development of the owner's property, as defined in *Salem Revised Code* 200.355. The fee will be adjusted for inflation annually, and is not eligible for system development charge credits. If no development occurs on the property, then no fee is due, nor will a lien or assessment be placed on the property.

If you have any questions, please feel free to contact me at 503-588-6211. Thank you for your consideration.

Sincerely,

Glenn J. Davis, PE, CFM
Chief Development Engineer

C:\M\VR\F:\Common\PAC\Agreements-Licenses\ReimbursementDistricts\LoneOakRd\NoticeOfDecision\Notice of Adoption of Resolution for Lone Oak.doc

Enclosures:

1. Resolution2018-08
2. Exhibit 2

cc: File

**Transportation and Utility
Operations**

1410 20th Street SE / Building 2
Salem OR 97302-1209
Phone 503-588-6063
Fax 503-588-6480

Parks Operations

1460 20th Street SE / Building 14
Salem OR 97302-1209
Phone 503-588-6336
Fax 503-588-6305

**Willow Lake Water Pollution
Control Facility**

5915 Windsor Island Road N
Keizer OR 97303-6179
Phone 503-588-6380
Fax 503-588-6387

RESOLUTION 2018-08

A RESOLUTION FORMING THE LONE OAK ROAD REIMBURSEMENT DISTRICT AND MAKING PROVISION THEREFOR

Whereas, reimbursement districts under SRC 200.310-200.385 may be formed if a public improvement required to be constructed as a condition of development approval benefits property other than property being developed; and

Whereas, reimbursement districts may be used to provide a fair and proportional reimbursement to the developer for the cost of improvements that will be used to serve such benefitted properties; and

Whereas, on June 13, 2007, the Planning Administrator's conditional approval of the Preliminary Declaration for Urban Growth Area Development Permit No. 07-5 required Alice and Garrett Berndt ("Developer") to construct street improvements along Lone Oak Road between Muirfield Avenue and Rees Hill Road ("Lone Oak Improvements"); and

Whereas, on September 15, 2008, the Planning Administrator's conditional approval of Subdivision 08-4 ("Oak Ridge Estates") required the Developer to construct the Lone Oak Improvements; and

Whereas, on August 11, 2017, the Developer submitted an application to form a reimbursement district for construction of the Lone Oak Improvements (Exhibit 1), which the Public Works Director has estimated to cost a total of \$9,300,000; and

Whereas, the application for a reimbursement district was submitted prior to the start of construction; and

Whereas, Lone Oak Road is designated as a collector street in the Salem Transportation System Plan, and the Lone Oak Improvements benefit neighboring properties because of improved street connectivity and accessibility; and

Whereas, under SRC 41.100(h), the Lone Oak Improvements are qualified public improvements eligible for \$1,953,000 in Systems Development Charge credits based on an eligibility ratio of 21 percent from the Transportation Systems Development Charge Eligible Projects List; and

Whereas, the Developer has requested the formation of a reimbursement district to collect \$7,347,000 of unreimbursed costs through reimbursement fees; and

Whereas, the Public Works Director has evaluated whether the proposed reimbursement district should be formed and prepared a report ("Director's Report") recommending a reimbursement fee methodology, which is submitted with this resolution as the staff report and incorporated herein by reference; and

Whereas, not less than ten days prior to the hearing, Developer and all persons owning property within the proposed district were notified by first class mail of the public hearing and the purpose thereof; and

Whereas, the public hearing was held on January 22, 2018, at which time any person was given the opportunity to comment on the formation of the proposed reimbursement district; "Exhibit 3" is a list of tax lots affected by the reimbursement district which is attached hereto and incorporated herein by reference. and

Whereas, the City Council hereby approves the district based on the Director's Report;

NOW, THEREFORE, THE CITY OF SALEM RESOLVES AS FOLLOWS:

Section 1. Reimbursement District Formed. To provide reimbursement for the Lone Oak Improvements, the Lone Oak Road Reimbursement District (Reimbursement District) is hereby formed with subareas titled Creekside, West, Central, and East, the boundaries of which are shown on "Exhibit 2," which is attached hereto and incorporated herein by reference.

Section 2. Reimbursement Fee Methodology. The reimbursement fee per single family dwelling lot assigned to each subarea are as follows: Creekside - \$9,212; West - \$9,854; Central - \$4,927; East - \$2,464. The Director's Report describes that these reimbursement fee amounts are a reasonable and fair apportionment of the Lone Oak Improvements and anticipates that the reimbursement fees will collect the \$7,347,000 in unreimbursed costs within the twenty-year time frame of the district. Other forms of development other than single family dwellings will be based on the reimbursement fee described above divided by 9.57 average daily trips per single family dwelling multiplied by the average daily trips of the development being proposed.

Section 3. Interest Rate. Interest on reimbursement fees collected within the Reimbursement District shall be based on Engineering News Record, three West Coast City average of construction cost index per annum, simple interest.

Section 4. Administration Cost. The reasonable costs to adequately reimburse the City for administration of the Reimbursement District are one (1) percent of the total reimbursement fee. One (1) percent of each reimbursement fee payment shall be collected by the City for an administration fee. The remaining balance of the district fee (ninety-nine (99) percent of what is collected) will be reimbursed to the Developer.

Section 5. Payment of Reimbursement Fee. Payment of the reimbursement fee, as designated for all real property located in the Reimbursement District, is a precondition of receiving any City permits applicable to development on such real property. The reimbursement fee is not eligible for reimbursement from Systems Development Charges.

Section 6. Eligibility for Reimbursement of Construction Costs. The Developer or any third party that constructs a portion of the Lone Oak Improvements shall be eligible for reimbursement from Reimbursement Fees collected within the reimbursement district.

Section 7. Recording the Resolution. The City Recorder shall record this resolution with the Clerk of Marion County.

Section 8. Appeal of Formation of Reimbursement District. No legal action intended to contest the formation of the Reimbursement District or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed after sixty (60) days following the

adoption of this resolution. Any challenge or appeal to the formation of the Reimbursement District shall be solely by writ of review pursuant to ORS 34.010-ORS 34.102, and not otherwise.

Section 9. Reimbursement Fee Not a Tax or Lien. Formation of the Reimbursement District shall not result in an assessment upon or lien against real property and reimbursement fees collected by the City on behalf of a Developer are not taxes subject to the property tax limitations of Article XI, section 11(B) of the Oregon Constitution.

Section 10. Effective Date. This Resolution is effective upon adoption, and the date of formation of the Reimbursement District shall be the effective date of this Resolution.

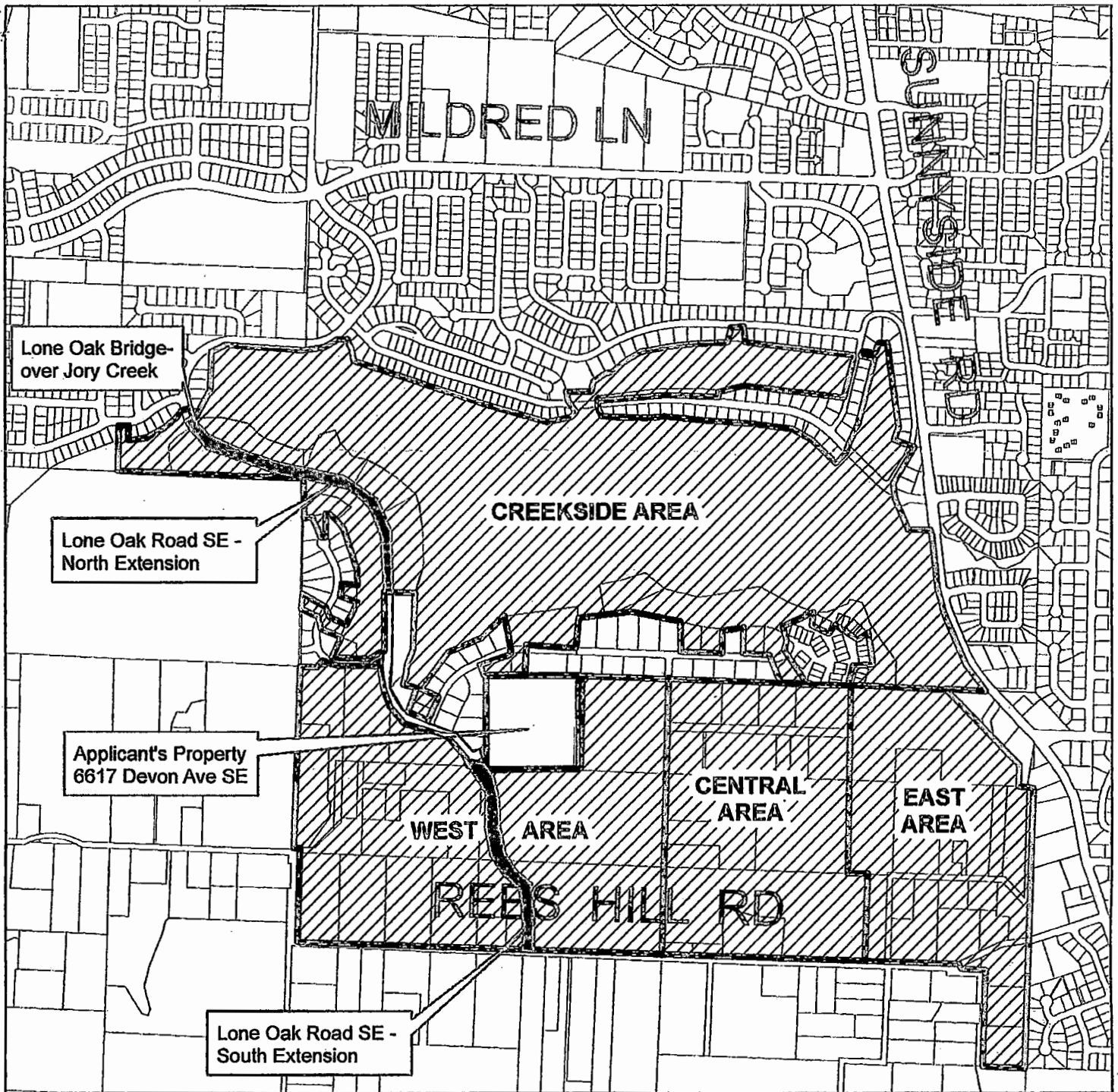
ADOPTED by the City Council this 22nd day of January, 2018

ATTEST:

City Recorder

Approved by City Attorney:

Checked by:



6617 DEVON AVENUE SE



Reimbursement District Boundary

2,000 1,000 0 2,000 Feet

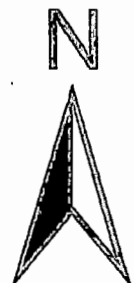


EXHIBIT 2



March 26, 2018

Mayor Chuck Bennett
Salem City Council
555 Liberty St SE RM 220
Salem OR 97301

Dear Mayor and City Councilors,

Thank you for allowing us to fulfill our statutory duty to advise you on the Lone Oak Reimbursement District. The South Gateway Neighborhood Association (SGNA) discussed the Lone Oak Reimbursement District at the February 8, 2018 Board meeting and unanimously approved a motion requesting City Councilor McCoid and the Salem City Council to reconsider approval of the Lone Oak Reimbursement District and to not approve the district or related land use actions until the pending Creekside court case is decided.

Following the February 12, 2018 unanimous City Council decision to reconsider the decision, SGNA leadership further researched the Lone Oak Reimbursement District and met with City Planning staff to discuss our concerns regarding the District and the planning process. SGNA is still opposed to the Lone Oak Reimbursement District and maintains the following concerns:

1. Citizen Involvement/Transparency

- The City of Salem classified the Reimbursement District as a funding decision. Public Hearing testimony by staff identified limited public notification to property owners within the proposed district. Staff failed to notify other residents potentially affected by the decision and SGNA, which represents the area as per Salem's Citizen Involvement Program. SGNA disagrees with the use of City code classification as a funding item and not associated with Land Use Planning. This line of thought is contrary to Oregon State Land use Goals. Goal 1 specifies that "Citizen Involvement is required when addressing land use planning to community agencies involved in "implementation" of land use decisions.¹ The Reimbursement District decision is tied to the land use decisions in

¹ Oregon Goal 1: D. TECHNICAL INFORMATION. Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, and water construction, transportation, subdivision studies, and zone changes) should provide assistance to the citizen involvement program.

Creekside Estates and property inside the UGB south. This is evident in a March 12 decision by the Salem Plan Administrator by his use of the "UNDECIDED REIMBURSEMENT DISTRICT" as a condition of approval for a UGA application. Citizen involvement in "...all phases of the [land use] planning process" is Goal #1 of the Oregon Land Use Law. SGNA feels that the City's limited notification is counter to this legal requirement.

- The Reimbursement District plan depends on land use actions partitioning the Creekside Golf Course into about 355 parcels that have not been completed. Since the District plan presupposes the outcome of a yet to be completed land use action, all property owners within 250 feet of the golf course must be notified before the Reimbursement District is considered by City Council. Property owners within 250 feet of the golf course have not been notified and so the March 26, 2018 public hearing should not be held.
- City staff met SGNA leadership to discuss the Reimbursement District. City staff requested SGNA's questions prior to the meeting, but failed to answer a number of the questions regarding the Reimbursement District, including the total amount of public financing and the legal enforceability of certain Creekside Estates improvement agreements. Of specific note, City staff have been unwilling to answer SGNA leadership questions whether the 350 building permit trigger in the 1992 improvement agreement requiring the construction of Lone Oak Road by the developer is legally binding; when the 351 building permit was issued; why the obligation under the 2006 improvement agreement that required the construction of Lone Oak Road over Jory Creek by the developer was not completed within three years yet building permits were issued; and how the City accounted for the liquidated damage provisions in the 2006 agreement.
- Contrary to the directions in Goal 1 that the Community Land Use Authority (City of Salem) to provide technical information to SGNA, the City required SGNA to obtain historical Creekside Estates improvement agreements through the public records request process and initially requested payment counter to City code. This served to create a delay in the availability of this information, thus reducing the time available to review the complicated, necessary information and formulate Citizen recommendations.

2. City Enforcement/Monitoring of Creekside Estates Development

The Golf Club at Creekside Estates (Creekside Estates) is a 25 plus year development that was created by the City of Salem with conditions and improvement requirements, including the building of Lone Oak Road. The City subsequently allowed this development to be constructed in over a dozen phases with further subdivisions. Multiple agreements approving the development required the developer to construct Lone Oak Road over Jory Creek, including:

Urban Growth Permit 90-9 and Planned Unit Development Permit 03-1. Related Improvement Agreements with triggers for construction of Lone Oak Road and liquidated damages were signed by the developer in 1992 and 2006.

Throughout this process the City not only failed to enforce the infrastructure requirements cited above, but entered into a Memorandum of Understanding in 2015 that partially shifted Jory Creek bridge building costs to Salem citizens through placement of funding in the Salem Capital Improvement Plan. In addition, the City's multi-phased approval was granted without corresponding development code language or effective monitoring/enforcement of overall infrastructure developments and led to homes built on Augusta Road and Sahalee Drive without fire suppression systems or safe access to emergency services.

3. Reimbursement District Proposal

At the June 26, 2017 and January 22, 2018 City Council meetings, City staff recommended that the City Council approve the request from Alice and Garrett Berndt to recoup costs for building Lone Oak Road from Rees Hill Road up to the Augusta Road and a portion Murfield Road as part of UGA Permit 07-5. The remaining portion of Lone Oak Rd. to Murfield Road would be paid through a transportation bond financed through an increase in citizens' property taxes. SGNA has serious concerns regarding this option, including:

- The District which is based on fees imposed on undeveloped land, including the Creekside Golf Club, seems to provide "tacit" approval of land use actions dividing the property, which have not yet been granted by the City of Salem. The establishment of the District also presupposes the outcome of a major court case, which has not been rendered.
- The development of Creekside Golf Club and surrounding undeveloped land poses multiple Natural Hazard risks to proper stormwater management. Salem's recent code changes (Chapter 71 Salem Revised Code) help to address such risks, but these code provisions may not apply to the properties considered included in the proposed Reimbursement District². Based on development to the west of Creekside (not covered by Salem's new code), recent observed storm water flows, increased flooding in the

² Sec. 71.080. - Requirements for land divisions.

- (a) Except as provided in SRC 71.080(c), all land divisions shall be provided with stormwater facilities that are sized to serve the entire land division under fully developed conditions.
- (b) Construction of stormwater facilities that serve only one lot or parcel may be delayed until the time of building construction on that lot or parcel.
- (c) A lot or parcel created through an approved tentative plan submitted to the City prior to January 1, 2014 may comply with the requirements of this chapter or with the regulations in effect at the time of the tentative plan application.

Battle Creek Basin areas, downstream businesses and residents such as Turner and downtown Salem are at increased risk.

- The City cites a 2015 LUBA decision and a subsequent Memorandum of Understanding as the basis for the City's partial obligation to construct Lone Oak Road over Jory Creek. However, no indication is made regarding the legal viability of earlier improvement agreements regarding segments of Lone Oak Road or potential legal actions that could be taken to enforce the provisions of earlier agreements.
- The Reimbursement District relies on public financing through a transportation bond to construct a portion of Lone Oak Road between Augusta Road and Murfield Road requiring that all Salem owners pay higher property taxes.
- The use of the reimbursement district is establishing financing requirements on lands not in consideration for land use development puts the finance cart before the land use application horse. It raises the question about impartiality for the Council should a land use application for development be submitted within the proposed district after the district is established.

4. SGNA Recommendations to City Council

- a) Decline the application to create the Lone Oak Reimbursement District to finance construction costs incurred by the Oak Ridge Estates developer for extending Lone Oak Road (from Augusta Road SE to Rees Hill Road and from Augusta Road to Murfield Avenue).
- b) Reevaluate all development south of Jory creek until legal options have been pursued to enforce existing Creekside Estates Improvement Agreements in 1992 and 2006 that require the building of Lone Oak Road between Murfield Avenue and August Road and a decision has been rendered in the Creekside Golf Club development court case
- c) Conduct an audit/comprehensive review of the City of Salem development/planning policies, programs and management to identify weaknesses and provide recommendations for improving the management, especially infrastructure requirements and phased development, including:
 - Comprehensive Plan and Development Code changes
 - Planning program policies and processes
 - Negotiation, monitoring and enforcement of agreements
 - Alignment with Oregon Land Use Laws and Principles and Salem Strategic Plan

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Baly".

Glenn Baly
SGNA Chair

LONE OAK ROAD IMPROVEMENT AGREEMENT

THIS AGREEMENT, made between the CITY OF SALEM, an Oregon municipal corporation ("City"); and HAWAII NORTHWEST VENTURES LIMITED PARTNERSHIP, ("Developer"),

WITNESSETH:

WHEREAS, developer owns approximately 305 acres of property located in the 6200 block of Sunnyside Road, S.E., the 700 block of Mildred Lane, S.E., and 6200 block of Lone Oak Road, S.E. in Marion County, Oregon. Said property is hereinafter called the "Development"; and,

WHEREAS, on April 8, 1991, the City approved Urban Growth Area (UGA) Development Permit No. 90-9UG. This permit, attached as exhibit A and incorporated herein, details the major public facilities required of the Developer under the Urban Growth Management Program (Salem Revised Code Chapter 66); and,

WHEREAS, UGA Development Permit No. 90-9UG requires, among other things, the improvement of Lone Oak Road as a "linking street," from the development property line north to the Currently Developed Area line; and,

WHEREAS, subsequent to issuance of UGA Development Permit No. 90-9UG, Salem Revised Code Chapter 66 was modified to eliminate linking street requirements for certain properties that abutted the Currently Developed Area, and application of the revised code would relieve Developer of the obligation to improve portions of Lone Oak Road; and,

WHEREAS, improvement of Lone Oak Road was nevertheless made a condition of the annexation of that part of the Development outside the city limit line; and,

WHEREAS, Developer desires to construct the linking street portion of Lone Oak Road as set forth in UGA Permit 90-9UG;

NOW THEREFORE, in consideration of the covenants herein contained, the parties agree as follows:

For the consideration of one dollar paid by the City, receipt of which is hereby acknowledged, Developer agrees to improve Lone Oak Road from its intersection with Mildred Lane north to the Currently Developed Area line as shown on the City zoning map. Improvement shall be as provided in SRC 66.090 and 66.100 and shall consist of a 34 foot paved surface with no curbs or sidewalks, in a 60 foot wide right-of-way and constructed to City of Salem design standards.

Developer may defer construction of Lone Oak Road until a maximum of three hundred fifty (350) dwelling unit building permits are issued by the City for the Development. No further building permits, and no access to the existing right-of-way of Lone Oak



Road shall be allowed until the road is improved and accepted by the City.

This Agreement shall be recorded, shall run with the land and shall be binding upon Developer's transferees or successors.

IN WITNESS WHEREOF Developer has signed this Agreement and City has accepted the same through its duly authorized representatives as of the dates set forth below.

HAWAII NORTHWEST VENTURES LIMITED PARTNERSHIP

By:

Title:

Sam Hoon, Jr. GLOBAL PROPERTY INC
Managing General Partner

STATE OF OREGON

County of Molai

ss.

Personally appeared before me on the 28th day of July, 1992, the above-named Sam Hoon, Jr. Global Property Inc, who, being sworn, stated that he/she he is the Managing General Partner of HAWAIIAN NORTHWEST VENTURES LIMITED PARTNERSHIP, and acknowledged the foregoing instrument to be his/her voluntary act.

[Signature]
Notary Public for Oregon
My Commission Expires: 10/8/92

CITY OF SALEM

By:

Gary A. Eide
City Manager

8/6/92

ATTEST:

[Signature]
City Recorder

APPROVED AS TO FORM

[Signature]
Assistant City Attorney



*Copy sent to DM on Aug 1
8-17-92*

MICROFILMED

IMPROVEMENT AGREEMENT

Agreement between the City of Salem, Oregon, an Oregon municipal corporation ("City"), and Hawaii Northwest Ventures, an Oregon Limited Partnership ("Developer"):

RECITALS:

1. Developer wishes to plat and develop Golf Club Estates at Creekside, the boundary of which is shown on Attachment "A" location map and described as follows:

Beginning at the Southwest Corner of Lot 481 Golf Club Estates at Creekside Phase 11, P.U.D. as recorded in the Marion County Book of Town Plats in Volume 45, Page 182; thence S22°08'06"W, along the west line of said subdivision, a distance of 60.38 feet to a point; thence Northwesterly, along the arc of a 330.00 feet radius curve right (the chord of which bears N25°14'58"W 395.03 feet), an arc distance of 423.50 feet to a point; thence N89°32'53"W a distance of 250.21 feet to a point; thence N89°40'11"W a distance of 330.03 feet to a point; thence N00°43'01"W a distance of 1323.01 feet to a point; thence N89°16'42"W a distance of 1330.54 feet to a point; thence N00°21'04"W a distance of 190.10 feet to a point at the southwest corner of Lot 472 Golf Club Estates at Creekside Phase 10, P.U.D. as recorded in the Marion County Book of Town Plats in Volume 45, Page 102; thence, along the southerly boundary of said subdivision, Northeasterly, along the arc of a 539.81 feet radius curve right (the chord of which bears N71°27'13"E 180.00 feet), an arc distance of 180.84 feet to a point; thence Northeasterly, along the arc of a 187.03 feet radius curve right (the chord of which bears N74°58'49"E 39.56 feet), an arc distance of 39.63 feet to a point; thence N68°54'36"E a distance of 12.87 feet to a point; thence N54°13'45"E a distance of 67.48 feet to a point; thence N58°33'31"E a distance of 60.58 feet to a point; thence N44°31'23"E a distance of 60.00 feet to a point; thence N53°26'18"E a distance of 66.29 feet to a point; thence N27°04'16"E a distance of 31.44 feet to a point; thence N76°08'38"E a distance of 60.00 feet to a point; thence N88°30'33"E a distance of 81.65 feet to a point at the southeast corner of Lot 465 of said Phase 10; thence leaving the southerly line of said subdivision, S25°28'29"W a distance of 79.46 feet to a point; thence N78°22'18"E a distance of 45.25 feet to a point; thence N87°20'37"E a distance of 138.78 feet to a point; thence S78°37'07"E a distance of 195.11 feet to a point; thence S49°07'37"E a distance of 114.75 feet to a point; thence S57°51'03"E a distance of 61.23 feet to a point; thence S74°07'38"E a distance of 83.13 feet to a point; thence S71°59'11"E a distance of 148.19 feet to a point; thence N84°18'54"E a distance of 108.74 feet to a point; thence N25°30'27"E a distance of 112.64 feet to a point; thence N72°11'01"E a distance of 116.16 feet to a point; thence S23°44'39"E a distance of 98.81 feet to a point; thence S42°16'39"E a distance of 124.82 feet to a point; S77°39'09"E a distance of 120.25 feet to a point; S65°40'23"E a distance of 93.55 feet to a point; S56°53'19"E a distance of 157.11 feet to a point; S50°37'57"E a distance of 170.85 feet to a point; thence S19°38'21"E a distance of 87.00 feet to a point; thence S08°23'02"E a distance of 191.71 feet to a point; thence S03°31'03"E a distance of 223.91 feet to a point; thence S15°17'09"W a distance of 153.96 feet to a point; thence S17°10'43"W a distance of 215.41 feet to a point; thence S00°17'02"E a distance of 140.27 feet to a point; thence S02°55'54"W a distance of 160.58 feet to a point; thence S04°00'03"W a distance of 190.39 feet to a point; thence S74°10'57"E a distance of 113.33 feet to a point at the Most Northerly corner of Lot 480 of said Phase 11;

thence S22°08'06"W, along the west line of said Phase 11, a distance of 183.39 feet to the point of beginning.

The above-described tract contains 38.71 acres of land located in the Northeast Quarter of Section 21, and the West Half of Section 22, Township 8 South, Range 3 West, Willamette Meridian, City of Salem, Marion County, Oregon.

2. The Planning Administrator issued Preliminary Declarations for Urban Grown Area (UGA) Development Permit Nos. 90-9, 92-4, 96-6, 99-1, and 00-3, which set forth certain Required Public Improvements, which must be constructed in order for development of the Property to occur.
3. The 16-inch water main in the proposed Lone Oak Road SE street extension is a Qualified Public Improvement as defined in SRC 41.100(h) because it is required as a condition of development approval under the UGA Preliminary Declarations; is identified in the Water System Master Plan; and is required to be built with greater capacity than the minimum to serve this particular development. In accordance with SRC 41.160, the oversize portion of the construction cost for this water main is eligible for repayment from the SDC improvement fees paid within this development.
4. On May 27, 2003, the Planning Administrator granted conditional approval to Planned Unit Development Plat File No. PUD 03-1, Golf Club Estates at Creekside.
5. Developer has not completed construction of the Required Public Improvements.
6. Developer is required pursuant to Salem Revised Code 77.090 to obtain permit(s) from the City for the improvements.
7. Developer is required pursuant to Salem Revised Code 63.052 to obtain Final Plat approval, by either constructing all Required Public Improvements, or by entering into an Improvement Agreement to provide for the construction therefor.

NOW THEREFORE, as consideration for final plat approval prior to the completion of construction of all Required Public Improvements required as a condition of development, Developer agrees to the following:

1. Developer shall cause Developer's engineer(s) to provide construction plans for the Required Public Improvements acceptable to the City.
2. Developer shall complete or cause to be completed the Required Public Improvements as detailed on the approved construction plans and according to the specifications and standards on file in the office of the City of Salem Public Works Director.
3. Developer shall cause Developer's engineer(s) to provide all surveying services necessary for the Required Public Improvements prior to and during construction and to prepare and furnish acceptable as-built drawings to the City when the Required Public Improvements are complete, all in conformance with City Standards.
4. Developer shall complete those Required Public Improvements in Golf Club Estates at Creekside within 18 months of the date of final plat approval. Upon written request of Developer, however, this Agreement may be extended for an additional period of time, not to exceed an additional 18 months, by mutual written agreement of Developer and City.

5. Should it be determined, during preparation of plans or during construction, that additional easements are necessary to construct any of the Required Public Improvements, Developer shall cause the City to be furnished said easements, at Developer's expense, within the time covered under this Agreement.
6. Pursuant to City of Salem Design Standards, the final lift of asphalt paving on internal streets within new subdivisions shall be constructed between July 1st and September 30th of the calendar year following that calendar year during which the initial street construction paving was completed, provided, however, that this final lift requirement shall not extend the time for completion as provided in paragraph 4.
7. Developer has provided the following performance guarantee to assure performance of these conditions:

It is agreed between City and Developer that no building permits for any structures within the development will be issued until all required improvements have been constructed, a maintenance bond is provided, and all conditions of approval have been met by Developer and accepted by the City.

It is further agreed that the final plat will not be approved until the Champion Hill reservoir water system is operational.

8. Developer shall submit a maintenance bond or other written evidence in a form approved by the City Attorney and Public Works Director guaranteeing the completed project construction for a period of one year after the date of final acceptance. The bond or other written evidence shall be valued at a minimum amount of 40 percent of the estimated construction cost.
9. Developer agrees to comply with all other conditions of development.
10. Upon **substantial completion**, as hereinafter defined, of the Required Public Improvements, Developer may deposit with the City either a Cashier Check or a Construction Performance surety bond in the amount \$5 per square yard of pavement in which the final lift is delayed in accordance with City Design Standards, plus a cash deposit equal to 200% of the City-approved estimated cost of incomplete work as security for the remaining required improvements. Upon receipt of this deposit and the acceptance of the security and maintenance bond, the City will allow building permits and water and sewer connections to be processed. Except for the delayed final lift of asphalt paving (if applicable), Developer shall complete all remaining items of work in accordance with the following table:

If Substantially Complete & Security Accepted In:	Complete All Remaining Items by:
January through March	July 31 (same year)
April through June	August 31 (same year)
July through August	October 31 (same year)
September through December	July 31 (following year)

Substantial completion, as used herein is defined as completion, testing, and acceptance of all water, sewer, and storm water systems and that these utilities are fully functioning; completion of all public improvements fronting existing houses within the subdivision and properties outside the subdivision; completion of all conditions of an Urban Growth Area Development Permit (if applicable); final paving of all required street improvements except as required to be delayed by City Design Standards; clean-up around adjacent properties; placement of street name signs; provision of a maintenance bond; City approval of preliminary as-built drawings showing the length, depth, and station of all service connections; satisfactory completion of any other items that would, in the opinion of the City Engineer, represent unacceptable safety or inconvenience to the public; and City approval of all required easements or warranty deeds.

Should any condition of this Agreement not be completed within the time frame specified, the City shall estimate the cost of completing the condition, call upon the performance guarantee for funds necessary to cover the cost, and complete the condition with funds collected under the performance guarantee. If the funds collected under the performance guarantee are insufficient to complete the condition, the City may either hold the collected funds until additional funds are authorized to complete the condition or expend the collected funds to complete revised condition or on a portion of the condition as determined reasonable by the Public Works Director.

11. In the event Developer includes more than one person or entity, all such persons or entities shall be jointly and severally liable for all conditions herein.
12. Developer's obligations as set forth herein shall be binding upon Developers and the Developer's heirs, successors, and assigns.

Hawaii Northwest Ventures, an Oregon
Limited Partnership

By: L. Tokarski
Larry Tokarski, President of Mountain West Investment
Corporation, Managing Partner

STATE OF OREGON)
) ss.
County of Marion)

This instrument was acknowledged before me on October 18, 2006,
by Larry Tokarski as President of Mountain West Investment Corporation, Managing Partner
of Hawaii Northwest Ventures, an Oregon Limited Partnership.



Bonnie Washburn
Notary Public—State of Oregon
My commission expires: 1/28/09

CITY OF SALEM

Robert Wells
Assistant City Manager

STATE OF OREGON)

County of Washington)

SS.

This instrument was acknowledged before me on November 1, 2006,
by ~~Linda Norris~~ as Assistant City Manager of the City of Salem, Oregon.

Robert Wells



Margaret Blaine

Notary Public—State of Oregon

My commission expires: 9-27-08

DEPARTMENT APPROVAL:

T. H. Felling
Public Works Director

Amy Johnson

From: Jerry Bennett <jbestg@outlook.com>
Sent: Monday, March 26, 2018 3:16 PM
To: citycouncil; Chuck Bennett; Steve McCoid
Subject: Tonight's hearing on Reimbursement District . . .
Attachments: City council testimony II March 26 jb.docx

For the official record for tonight's hearing, please find attached a copy of my summary inputs for the Council members' review. As shared earlier, our chairman, Glenn Baly, will not be able to attend tonight as he is required to be at a work-related meeting in the Bend area. But, his thoughtful written testimony presents the essence of overall presentation. For follow-up purposes, the SGNA board has appointed me as the board's representative. I'd appreciate receiving the five minute privilege for NA officers. (I promise to stay within the timeline!) Others may sign up, but to my knowledge other than myself, John Shepard is the only other SGNA member that intends to sign up, although Lora Meisner may choose to make comments.

Thanks for your time and civic contributions. Jerry Bennett

(Jerry Bennett, South Gate Neighborhood Association rep; 804 Creekside Dr. SE, Salem, Oregon, 97306)

I'm here as SGNA's representative to back up the RE-CONSIDERATION vote you approved 7-0 on Feb. 15, 2018. You received Chairman Glenn Baly's written testimony in advance – it represents the essence of our continuing concerns on the REIMBURSEMENT DISTRICT and specifies remedies.

It is obvious that someone still wants to build on the hills south of Creekside. When the City annexed and approved urbanizing the 300-plus acre Creekside farm land valley, the developer signed agreements to build all the roads through the subdivision. However, the most difficult and expensive road remains unfinished – that's the Lone Oak Road over Jory Creek and south up the hill. The City has approved a reimbursement district to help push the project forward. SGNA opposes this plan. The following anecdotes overcome objections:

1. SGNA was not consulted on this multi-faceted "LAND DEVELOPMENT" proposal. Zero input!
2. Going back to 1992, the developmental plans appear to have progressive flaws in supervision and performance – with the City making concession after concession. The development is now in the 14th phase.
3. The District is messy. It would not meet the criteria for a bonafide ballot measure – there are too many peripheral issues to be addressed. Too, the proposed 20-year District is designed for the City to transfer funding responsibilities from developers to homeowners and taxpayers.
4. The District does not have a defensible business plan as it is open ended with no plausible funding guarantees. The City will, however, recover expenses and increase property tax revenues.
5. A large part of the proposed funding depends on the failure of Creekside HOA's appeal in the appellate court to determine if its covenants are valid or if the owners have the right to close the golf course for development purposes. However, there's a "Catch 22": The owners have repeatedly committed to the "Member Strong Group" to keeping the course open, if it's profitable. Do we need a LUBA ruling on impartiality?
6. The District's 210 mythical lots on Creekside Golf Course will not resolve the District's funding needs. It takes 800+ new homes at a \$10,000 tax or fee assessment per unit to raise the \$9m cost projection – it's not possible! But, the City could retrieve \$1m of taxpayer money that it invested early on to help move the project to completion so that available SW farm lands can be annexed and developed.
7. The land use plan for the project included Jory Creek Bridge's three acres in a regulated wet land that SRC: 140.090(b) required extensive protections by the developer – who aborted the project in 2007. Please note: the 210 building sites on the 155 acre valley known as Creekside Golf Course has wet lands, water shed, and environmental areas from Lone Oak Road to the Sunnyside Road; its three creeks are the main source of downstream flooding from Creekside to Turner and down town Salem. This land also represents the major recreational site for SE Salem and it is Salem's only golf course – it has championship status.
8. The Public Works Dept.'s SUMMARY RECOMMENDATIONS specify: "These improvements benefit neighboring properties because of improved connectivity and accessibility." But, it doesn't explain the benefits and ignores obvious traffic, safety, water shed, aquifer challenges. It explains in A4: "... that it, Creekside Golf Course – would benefit from the Lone Oak improvements." But, again, it doesn't explain the benefits!"

The bottom line? There is no valid reason for the Reimbursement District. The Creekside developer(s) and two other developers on the hill need the un-built southern section of Lone Oak Road. I'm a big fan of "**pay as you go**" When the developers are actually required to have an approved road in place in order to secure City approvals and building permits, they will figure out how to pay for it and build it without public subsidy.

WE AGAIN ASK THAT YOU RESCIND THE PROPOSAL Given time, the DEVELOPERS WILL COME!