

September 9, 2019

Mayor Bennett and Salem City Councilors
555 Liberty St SE RM 220
Salem OR 97301

Received At Council Meeting
Meeting Date: 9/9/19
Agenda Item: 4.b
Received by: KL
From: Scott Bassett

Dear Mayor Bennett and City Councilors,

Re: Public Comment on Agenda Item 4.b. -- Aspen Grove Reimbursement District

The proposed Reimbursement District should be denied again because it was not submitted as a complete application within the 180 day code requirements and would reimburse the developer for construction costs without clear documentation.

Reasonable Standard for 180 Day Deadline and Responsiveness of Developer

Although the Developer submitted the initial application in July 9, 2014, he did not provide "a more complete" application until August 22, 2018. This is over four years or 1,500 days later than the 180 day deadline.

The August 22, 2018 amended application letter (Attachment A) from Hans Thygeson states:

"This is a more complete list than the previous one I provided. Once we located a binder with project invoices, I was able to better account for our total costs for the sanitary sewer line extension."

"Haven't Come Close" to Meeting 180 Day Requirement

The City Construction Engineer with 20 years of experience who did the Aspen Grove cost review wrote (Attachment B) on July 26, 2018:

"It seems to me they haven't come close to meeting the requirements for the application within the 180 days from project acceptance."

Costs Not Clearly Documented

Although the Developer submitted more detailed information four years late, it was still insufficient according to the Certification of Costs dated June 18, 2019. The report noted it was difficult to evaluate the revised application "in substantial part due to undocumented costs." It also noted that "design engineering costs for the subject sewer can't be discerned from the documents provided" and that "there was a lack of actual cost data". The City Council should follow SRC 200.350 (c) which states: "No reimbursement shall be allowed for... any costs which cannot be clearly documented."

In the vote tonight, the City Council will decide if it is reasonable for the developer to wait four years beyond the 180 day deadline to find a binder with the project invoices and still not provide sufficient documentation for staff to complete a timely review.

Sincerely,



Scott and Janet Bassett



CREATIONS NORTHWEST, LLC

CCB 181981

14020 SE Johnson Road, Suite 102
Milwaukie, OR 97267
503.908.0563

August 22, 2018

Mr. Lyle Misbach, PE
City of Salem/Public Works Dept.
555 Liberty St SE, Suite 325
Salem, OR 97301

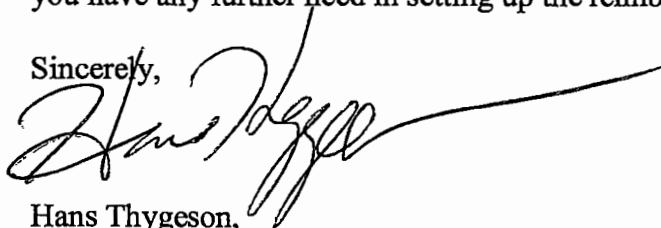
RE: Sanitary Sewer reimbursement district on Wallace Road
Aspen Grove Apartments and surrounding parcels

Dear Mr. Misbach,

Enclosed please find attached the backup documentation of our costs for construction of the sanitary sewer line, both on-site and off-site, for our Aspen Grove Apartments and the adjacent benefitting parcels. This is a more complete list than the previous one I provided. Once we located a binder with project invoices, I was able to better account for our total costs for the sanitary sewer line extension.

Please send me your proposed district boundary map, proposed mythology of the cost distribution, and the reimbursement district initiation and structure documents. Let me know if you have any further need in setting up the reimbursement district.

Sincerely,



Hans Thygeson,
Owner, Manager
Aspen Grove Apartments

Suzanne Studer

From: Don Whitehurst
Sent: Friday, September 6, 2019 11:22 AM
To: Suzanne Studer
Subject: FW: 14-111926-DO_AspenGroveReimbDist_EST1.pdf

Suzanne,

Here is the e-mail you requested I find.

-Don

From: Don Whitehurst
Sent: Thursday, July 26, 2018 4:40 PM
To: Lyle Misbach <LMisbach@cityofsalem.net>
Subject: RE: 14-111926-DO_AspenGroveReimbDist_EST1.pdf

Lyle,

This cost summary is really not of any value without having all the backup documents to support the line item costs.

I would also need to see the other items required by SRC 200.310 in order to provide any real analysis and recommendation. Seeing a map of the proposed benefitted area is really critical in order to do an analysis of how the costs can be fairly spread over the benefitted area.

It seems to me they haven't come close to meeting the requirements of the application within the 180 days from project acceptance. That's a legal issue though so if Tom is OK with proceeding then I'll review cost documentation when submitted.

-Don | 503-588-6211 ext. 7313

From: Lyle Misbach
Sent: Monday, July 09, 2018 10:19 AM
To: Don Whitehurst <DWHITEHURST@cityofsalem.net>
Subject: 14-111926-DO_AspenGroveReimbDist_EST1.pdf

Don-

Could you please review the attached estimate, submitted Friday to complete the application for the Aspen Grove Sanitary Sewer Reimbursement District?

If you have any questions, please contact me.

Thanks,

Lyle

Received At Council Meeting

Meeting Date: 9/9/19

Agenda Item: 4. B

Received by: LC

From: Bob Sanders

Bob Sanders

From:

To:

Cc:

Subject:

Bob Sanders

Monday, July 22, 2019 5:42 PM

Glenn Davis

Hans Thygeson; Peter Fernandez; Don Whitehurst

RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Just before the Public Hearing which we received no notice, email or phone notice

Glen,

I'm checking back in on progress. I called Don shortly after getting your email below. He was working on the reimbursement district, but wanted to finalize some of the eligible costs with Peter. I have not heard back from Don. Could you let me know where this is in your queue? Thanks.

Bob Sanders, P.E.
Senior Development Manager
Creations Northwest LLC
HT Industrial Properties LLC & Affiliates
14020 SE Johnson Rd Suite 102
Milwaukie, OR 97267
Bob@htipllc.com
503-319-5946 Cell
503-908-0563 Office

From: Glenn Davis <GDAVIS@cityofsalem.net>

Sent: Wednesday, May 15, 2019 3:30 PM

To: Bob Sanders <Bob@htipllc.com>

Cc: Hans Thygeson <hans@htipllc.com>; Peter Fernandez <PFERNANDEZ@cityofsalem.net>; Don Whitehurst <DWHITEHURST@cityofsalem.net>

Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Bob,

As we discussed on the phone, Don Whitehurst in our office is reviewing the application materials and expects to have a recommendation ready by the end of next week. He may reach out to you if he has any questions. Because this application involves multiple engineers, multiple sewer designs, and easement acquisition far exceeding market value, this cost certification process is complex and time consuming.

Once the cost is certified, then my role will be to forward the reimbursement district application to Council for approval. Thank you for your patience.

-Glenn | 503-588-6211 | ext. 7377

From: Bob Sanders [<mailto:Bob@htipllc.com>]

Sent: Monday, May 13, 2019 10:23 AM

To: Glenn Davis <GDAVIS@cityofsalem.net>

Cc: Hans Thygeson <hans@htipllc.com>; Peter Fernandez <PFERNANDEZ@cityofsalem.net>

Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Glen,

Can you give me an update on the reimbursement district and the estimated completion date?

Bob Sanders, P.E.
Senior Development Manager
Creations Northwest LLC
HT Industrial Properties LLC & Affiliates
14020 SE Johnson Rd Suite 102
Milwaukie, OR 97267
Bob@htipllc.com
503-319-5946 Cell
503-908-0563 Office

From: Peter Fernandez <PFERNANDEZ@cityofsalem.net>
Sent: Friday, May 3, 2019 11:17 AM
To: Bob Sanders <Bob@htipllc.com>
Cc: Hans Thygeson <hans@htipllc.com>; Glenn Davis <GDAVIS@cityofsalem.net>
Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Bob, thank you for your email. I am concerned to learn that we have not been responsive to you on your issue. We indeed have had some staff changes, but that is not an excuse for lack of communication on our part. Please accept my apology.

I understand that your cost estimates are in the queue for review and certification. I have been assured that the delays will in no way affect eligibility for reimbursement. Glenn Davis will be in contact with you next week with an update and estimated completion date.

Please let me know if you have any other questions or concerns,

Peter Fernandez, P.E.
Public Works Director
City of Salem | Public Works Department
555 Liberty St SE, Suite 325, Salem OR 97301-3515
pfernandez@cityofsalem.net | 503-588-6008
[Facebook](#) | [Twitter](#) | [YouTube](#) | CityofSalem.net

From: Bob Sanders [<mailto:Bob@htipllc.com>]
Sent: Friday, May 03, 2019 9:12 AM
To: Peter Fernandez <PFERNANDEZ@cityofsalem.net>
Cc: Hans Thygeson <hans@htipllc.com>
Subject: FW: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Peter,

I had your name in the email below spelled wrong so it bounced back. I am just not getting anyone to respond to my emails. I have been working with Lyle Misbach since the first of July, 2018 on the sanitary sewer reimbursement district, but not getting him to be responsive. I learned that he is no longer with the City of Salem, so I have been sending emails to Glen Davis. Is he the right person to work with? He has not responded to my previous email either. I am concerned that the lack of activity on the City's part will put us in a position of missing collection of some of the potential reimbursement from adjacent development. Could you please have someone contact me so we can get this moving. I

provided Lyle all the costs and documentation he requested, but he did nothing with it to my knowledge. Thanks for your help

 Sanders, P.E.
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HT Industrial Properties LLC & Affiliates
14020 SE Johnson Rd Suite 102
Milwaukie, OR 97267
Bob@htipllc.com
503-319-5946 Cell
[503-908-0563](tel:503-908-0563) Office

From: Bob Sanders
Sent: Friday, May 3, 2019 8:39 AM
To: gdavis@cityofsalem.net
Cc: Hans Thygeson <hans@htipllc.com>; John Lewis <john@htipllc.com>; pfernandes@cityofsalem.net
Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Glen,

Can you confirm that you received my email and that someone is working on the sanitary sewer reimbursement district for our Aspen Grove Apartment project? Thanks.

 Bob Sanders, P.E.
Senior Development Manager
Creations Northwest LLC
HT Industrial Properties LLC & Affiliates
14020 SE Johnson Rd Suite 102
Milwaukie, OR 97267
Bob@htipllc.com
503-319-5946 Cell
[503-908-0563](tel:503-908-0563) Office

From: Bob Sanders
Sent: Monday, April 22, 2019 9:01 AM
To: 'gdavis@cityofsalem.net' <gdavis@cityofsalem.net>
Cc: Hans Thygeson <hans@htipllc.com>; John Lewis <john@htipllc.com>; 'pfernandes@cityofsalem.net' <pfernandes@cityofsalem.net>
Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

I have not been able to get Lyle Misbach to respond to my emails since last July. Can you let me know who I should be talking to about the sewer reimbursement district for this project that Lyle committed to set up? Please have someone contact me who can follow through with setting up this district. Thank you.

Bob Sanders, P.E.
Senior Development Manager
Creations Northwest LLC
HT Industrial Properties LLC & Affiliates
14020 SE Johnson Rd Suite 102
Milwaukie, OR 97267
Bob@htipllc.com
503-319-5946 Cell

From: Bob Sanders

Sent: Friday, March 29, 2019 4:12 PM

To: 'Lyle Misbach' <LMisbach@cityofsalem.net>

Cc: Hans Thygeson <hans@htipllc.com>; John Lewis <john@htipllc.com>; 'pfernandes@cityofsalem.net' <pfernandes@cityofsalem.net>

Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Lyle,

We are still waiting to hear back from you on the formation and reimbursement methodology for the sanitary sewer reimbursement district for our Aspen Grove project. I provided all the documentation you required last October and the attached documentation on the cost of the easement in mid-December, however, I have not heard anything back from you. We responded to all your requested documentation in a timely manner and there has been sufficient time pass for you to initiate and get this reimbursement district formed. We do not want to miss out on any surrounding development that would be required to contribute to our reimbursement. Please advise me next week of your progress in setting up and getting the reimbursement district approved. Thank you.

Bob Sanders, P.E.
Senior Development Manager
Creations Northwest LLC
HT Industrial Properties LLC & Affiliates
14020 SE Johnson Rd Suite 102
Milwaukie, OR 97267
<john@htipllc.com>
503-908-0563 Cell
503-908-0563 Office

From: Bob Sanders

Sent: Wednesday, December 12, 2018 5:20 PM

To: 'Lyle Misbach' <LMisbach@cityofsalem.net>

Cc: Hans Thygeson <hans@htipllc.com>; John Lewis <john@htipllc.com>

Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Lyle,

It would certainly be nice to get small right of way dedications and public utility line easements for a realistic market appraised value from willing property owners, however, that is a very unrealistic expectation. And that was far from realistic with this property owner. We would have been ecstatic to have gotten the temporary construction easement and the permanent easement for \$180 with no attorneys or right of way agents help.

City of Salem Resolution No. 2012-46 was taken to City Council on June 11, 2012 by John Wales, Director of the Urban Development Department. Please refer to the yellow highlighted paragraph on the second page of the attached copy of Mr. Wales' City Council' memorandum. The resolution also acknowledges (see yellow highlighting) that the developer has made a good faith effort as of June 11, 2012 to acquire the needed easements and therefore, the resolution authorized City staff and the City Attorney to acquire the easements under the authorization of eminent domain, if necessary. The City did not acquire the needed easements and we, the developer, continued to negotiate with the unwilling property owner for another 16 months, finally settling the easement acquisition in October, 2013. If the City

Attorney thinks he/she could have acquired the easements for \$180, he/she should have done that when authorized by Resolution No. 2012-46 in June of 2012, also saving us a lot of attorney bills.

From the invoices I sent you it took a Universal Field Services right of way agent and multiple attorneys over several years to get the easements we needed from this property owner. We tried several routes and ended up with the smallest footprint for the temporary construction easement and the permanent easement on this property owner's property, however, he would not settle for anything less than \$42,000. It was basically pay what he wanted or stay off his land.

Since the above resolution validated the need for these easements and the City Attorney did not acquire them in a timely manner, we had to proceed with the acquisition them under a negotiated settlement agreement, which is allowed in the Uniform Act as another method of settlement when a market appraised value is disputed by the property owner. Please review the above with the City Attorney and accept our justification for including the actual compensation paid for the easements in the reimbursement district costs. If you need additional information or want to discuss this further, please call me.

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From: Lyle Misbach <LMisbach@cityofsalem.net>
Sent: Wednesday, December 12, 2018 10:46 AM
To: Bob Sanders <Bob@htipllc.com>
Cc: Hans Thygeson <hans@htipllc.com>
Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Bob-

PW Engineering is still working on the review of the certified costs related to construction and engineering – I just touched base with them last week.

There is one item that you could be working on that has raised a red flag on our end – your list of costs to be certified includes \$42,000 for the purchase of the easement of the property. Our official appraisal of the property, which we did as part of the condemnation process, was closer to \$180. Salem Revised Code allows reimbursement of “reasonable market value of land or easements purchased by the developer,” and to date our Legal team is leaning toward the \$180, but said that they would consider your appraisal information if you could provide that for review.

Thanks,

-Lyle | 503-588-6211 ext. 7226

From: Bob Sanders [<mailto:Bob@htipllc.com>]
Sent: Tuesday, December 11, 2018 12:40 PM
To: Lyle Misbach <LMisbach@cityofsalem.net>

Cc: Hans Thygeson <hans@htipllc.com>

Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

We have not heard from you since I delivered all the cost backup you requested on the SS reimbursement district. Can you update me on the progress and when you can get us the details of the makeup of the reimbursement district structure? Thanks.

Bob Sanders, P.E.
Senior Development Manager
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14020 SE Johnson Rd Suite 102
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Bob@htipllc.com
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503-908-0563 Office

From: Bob Sanders

Sent: Monday, July 9, 2018 11:37 AM

To: 'Lyle Misbach' <LMisbach@cityofsalem.net>

Cc: Hans Thygeson <hans@htipllc.com>

Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Thanks for getting back to me on the reimbursement district. I didn't know your availability on Friday was limited till noon. With traffic I arrived right at noon. Thanks for your help in putting this together for us.

Bob Sanders, P.E.
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Bob@htipllc.com
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503-908-0563 Office

From: Lyle Misbach <LMisbach@cityofsalem.net>

Sent: Monday, July 9, 2018 10:04 AM

To: Bob Sanders <Bob@htipllc.com>

Cc: Hans Thygeson <hans@htipllc.com>

Subject: RE: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Bob-

Sorry about that – my only availability on Friday was between 10 and noon, so I apologize that I missed you.

We have received your revised application materials and will move forward with the Reimbursement District. If I have any questions or need any additional information, I will contact you.

Sincerely,

Lyle J. Misbach, PE

Assistant Chief Development Engineer

City of Salem | Public Works Department

555 Liberty St SE, Suite 325, Salem, OR 97301-3513

lmisbach@cityofsalem.net | 503-588-6211

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From: Bob Sanders [<mailto:Bob@htipllc.com>]

Sent: Monday, July 09, 2018 9:25 AM

To: Lyle Misbach <LMisbach@cityofsalem.net>

Cc: Hans Thygeson <hans@htipllc.com>

Subject: Sanitary sewer reimbursement district for Aspen Grove Apartment project on Wallace Road

Lyle,

I was hoping to see you on Friday when I brought the sanitary sewer reimbursement information to you, but was told you were preparing for a meeting. I left the information you requested with the lady at the front desk. Can you verify that you received the packet I left on Friday? Also can you verify that you will be able to prepare our application and set up the reimbursement district before the deadline? I wanted to discuss with you on Friday the method you are proposing to distribute the costs within the district. You had benefiting parcel areas and I added benefiting parcel intages. I didn't have access to the actual frontage measurements on Friday, but we could work on providing those to you. Please let me know how you are proposing to distribute the costs within the district. You are welcome to call me on my cell phone to discuss the district structure and any additional information you need from us.

Bob Sanders, P.E.

Senior Development Manager

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