

Shall Council re-open the public hearing on the formation of the Aspen Grove Reimbursement District and reconsider the decision to deny the district?

RECOMMENDATION:

Re-open the public hearing on the formation of the Aspen Grove Reimbursement District and reconsider the decision to deny the district.

SUMMARY:

After conducting a public hearing on July 22, 2019, Council denied an application for a reimbursement district related to a sewer main constructed to serve Aspen Grove Apartments located at 1950 Wallace Road NW. The applicant for the Aspen Grove Reimbursement District did not appear at the hearing and later told staff he had been out of town and unaware of the hearing. After reviewing the hearing testimony, the applicant has requested an opportunity to appear before Council to provide additional testimony and address questions asked by Council during the July 22 hearing. Council may, as provided by Council Rule 11, reconsider the decision to deny the reimbursement district and reopen the hearing to take additional testimony.

FACTS AND FINDINGS:

As a condition of development for the Aspen Grove Apartments, the City required construction of 850 feet of public sewer main ("Improvement"). This Improvement benefits the development project and will benefit neighboring properties should any of those neighboring properties connect to it. The developer applied for a reimbursement district, which requires a public hearing.

Pursuant to SRC 200.320, the applicant and all persons owning property within the proposed district, were notified by first class mail of the public hearing and the purpose thereof. Notices were mailed on July 10, 2019.

A public notice was published on July 10, 2019.

Council conducted the public hearing on July 22, 2019 and three affected parties testified in opposition to the district formation. The applicant did not appear.

By a vote of 6 to 1, Council denied the application. Councilors voting against forming the reimbursement district stated during deliberation that one of the factors influencing their decision was that the applicant failed to appear at the hearing.

At 5:41 p.m. on the day of the public hearing, the applicant's agent sent an email to staff asking about status of the application; staff were not aware of this email until the following day, July 23, 2019. Based on the content of the email, staff inferred that the applicant may not have been aware of the public hearing.

Staff informed the applicant's agent by email of Council's decision to deny the application. The applicant then informed staff by voice mail and email that he was unaware of the hearing because he had been out of town and had not received mail since the notice had been mailed.

The applicant requested that the public hearing be reopened so he could appear before Council to provide testimony and answer questions.

Council Rule 11 provides that a motion to reconsider any action taken by the Council may be made no later than the close of the next following regular meeting of the Council. Further, that a motion to reconsider must be made by a member of council who voted on the prevailing side of the action to be reconsidered.

Staff recommends that Council reopen the hearing to allow the applicant to provide testimony in favor of the application, and reconsider the decision to deny the application. If Council votes to reopen the hearing, staff will provide notice of the re-opened hearing to all affected parties for a future Council meeting.

BACKGROUND:

When a developer is required to construct public improvements that benefit neighboring properties, but the improvements are not otherwise eligible for full reimbursement from Systems Development Charge funds, the Salem Revised Code allows creation of a reimbursement district. The July 22, 2019, staff report 19-336 recommending formation of the Aspen Grove Reimbursement District provides additional information and is attached.

A property in the reimbursement district will only pay a reimbursement fee if that property develops and connects to the Improvement.

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Attachment:

1. Formation of Aspen Grove Reimbursement District, Council Staff Report 19-336 of July 22, 2019, with attachments.