



**CITY OF PHILOMATH
CITY COUNCIL
WORK SESSION AGENDA
October 19, 2020
7:00 P.M.**

Mission: To promote ethical and responsive municipal government which provides its citizenry with high quality municipal services in an efficient and cost effective manner.

A. ROLL CALL

B. WORK SESSION

1. Reimbursement District for The Boulevard Apts.

C. ADJOURNMENT

Meeting Access Information

This meeting is being held electronically via Zoom. Prior to the meeting, participants will be provided with the Zoom meeting link. Citizens may watch the live feed of the meeting on the City's Facebook page at <https://www.facebook.com/cityofphilomath>. This is a public page and does not require a Facebook account to access. Contact City Hall to make viewing arrangements if you do not have access to the internet.

Opportunities to Comment

The following options are available for the public to provide comment during the work session:

- 1) Contact the City Recorder at ruth.post@philomathoregon.gov or by calling 541-929-6148 to receive the Zoom link for the meeting.
- 2) Submit written comments by email to the City Recorder at ruth.post@philomathoregon.gov no later than 12:00 p.m. the day of the meeting.
- 3) Submit written comments in the City Hall parking lot drop box no later than 12:00 p.m. the day of the meeting.
- 4) Mail written comments to PO Box 400, Philomath, OR 97370 3-4 days prior to the day of the meeting.

CITY MEETING/EVENTS SCHEDULE

(As of 10/15/2020)

OCTOBER 2020

October 15 at 7:00 PM	Comprehensive Plan Advisory Committee meeting
October 19 at 7:00 PM	City Council Work Session
October 20 at 7:00 PM	Siletz Tribal History & Customs Facebook live-stream presentation
October 26 at 7:00 PM	City Council meeting (if needed)
October 27 at 6:00 PM	Inclusivity Ad Hoc Committee meeting Cancelled

NOVEMBER 2020

November 5 at 3:00 PM	Public Works Committee meeting (if needed)
November 9 at 5:30 PM	City Council Work Session (Strategic Plan Update)
November 9 at 7:00 PM	City Council meeting
November 10 at 3:00 PM	Police Committee meeting
November 10 at 7:00 PM	Comprehensive Plan Advisory Committee meeting
November 11	City Offices Closed in Observance of Veterans' Day
November 12 at 5:00 PM	Park Advisory Board meeting
November 16 at 6:00 PM	Planning Commission (if needed)
November 23 at 7:00 PM	City Council meeting (if needed)
November 24 at 6:00 PM	Inclusivity Ad Hoc Committee meeting
November 26 & 27	City Offices Closed in Observance of Thanksgiving Holiday

All meetings are currently being held via Zoom video & audio conferencing. Tentative meetings may be cancelled if there is no business to be conducted. Refer to the City Meetings & Events calendar on the City's website for confirmation of meetings and access information.

City Website: www.ci.philomath.or.us

WiFi: COPCH-guest; Password: coguest

NOTICE: Given 2 business days' notice, an interpreter will be made available for the hearing impaired or those with limited English proficiency. Contact person: Ruth Post (541) 929-6148.



Philomath
OREGON

TECHNICAL MEMORANDUM

Revised City Planning Official's Report

Reimbursement Districts
for the
Boulevard Apartments

Chris Workman

October 15, 2020

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- C. Water Map Area and Submitted Costs
- D. Easement for Road Right of Way

Introduction (taken from Philomath Municipal Code Chapter 14.25)

The city of Philomath requires developers to construct and install water, sanitary sewer, storm sewer, and street improvements necessary to serve proposed developments. These improvements are constructed in accordance with city design and construction standards and later dedicated to the city as “public improvements.” Often these street, water, sewer, and storm sewer improvements, particularly those constructed off-site, can and will benefit other property owners when they develop their property. Therefore, these improvements represent a benefit to those property owners.

The purpose of establishing a reimbursement district is to provide a mechanism where owners of property which benefits from the construction of public improvements by another property owner will share in the cost of those improvements through payment of a reimbursement charge at the time the benefited property is developed and/or the improvements are utilized.

Owners of property which would be subject to a reimbursement charge will be provided an opportunity to review and comment on pertinent information prior to the city establishing a reimbursement district. The city will collect the reimbursement charges and, upon receipt, will forward the funds to the property owner who constructed the improvements. The reimbursement charges established would become due and payable upon development of the benefited property. The reimbursement charges established will be in addition to, and not in lieu of, other charges which may be required for developer. The reimbursement districts will expire 15 years after the date of adoption.

Application

The request for formation of a reimbursement district must be filed in writing no later than three months after completion and acceptance of the street, water or sewer improvements by the City (PMC 14.25.030.C). Acceptance of the water and sewer improvements was completed on October 25, 2019. Multi/Tech Engineering Services, on behalf of their client, Boulevard Apartments, notified the City of Philomath of their request for the formation of a reimbursement District for the project on November 12, 2019, and street improvements, under the jurisdiction of ODOT, were accepted shortly thereafter. On January 20, 2020 they submitted a more formal package of information for water, sewer and street reimbursement districts to support the original request. As such, they met the timeline set out for the request to have been made.

Because the similarities between the three reimbursement districts, this report will serve as the official City Planning Official’s Report for all three requests. Common aspects, such as the introduction and information about the application already provided have been combined; however, this report will evaluate each of the three public improvements individually where appropriate.

The following map shows the general location of each of the three improvements. Appendixes A, B, C and D contain detailed plans for the street, sewer and water projects, respectively.

Street Reimbursement District

Street Improvements were required by the City through the land use approval for the Boulevard Apartment project.

Description of Improvements

The approval required the construction of a right-turn pocket and a left-turn pocket to service the joint access to the benefit of the apartment project as well as three adjoining properties that are required to use the common access point. The costs for the improvements add up to \$1,308,595.

Construction Costs	\$1,178,914.68
Engineering, Inspection, Surveying, etc.	\$117,891.47
Permit Costs	\$11,789.15
Total Project Costs	\$1,308,595.29
Reimbursement District eligible Costs	\$1,308,595.29

Method of Assessment

Four properties benefit from the street improvements as all four are required to take access from the common apartment driveway upon further development under an existing ODOT access agreement/ easement along this joint driveway). As all four properties are within the city or its urban growth boundary UGB). See Appendix A for a map of the area.

Proposed Assessment

The street improvement cost assessments have been distributed to the benefited properties. The assessments are based on the current zoning and developable area of each of the parcels as shown in the following table.

Proposed Street Reimbursement District					
Tax Lot	Address or Name	Parcel Size (Acres)	Current Zoning or Designation	Allocation %	Street Assessment
12507A-01600	Boulevard Apartments	14.33 (258 units)	R-3, Inside City Limits	86.43%	\$1,131,011
12507A-01700	3065 Main St.	1.0	(I), Outside City Limits	6.03%	\$78,926
12507A-01800	3105 Main St.	0.69	IP, Inside City Limits	4.16%	\$54,459
12507A-01900	3157 Main St.	0.56	(I), Outside City Limits	3.38%	\$44,199
Total Reimbursement Available					\$1,308,595

Unclear Eligibility

Four properties benefit from the street improvements, including lot 12507A001700 on which the Boulevard Apartments stand; however, each of the other three benefiting properties were granted a right-of-way easement in 2011 for the area covering the improvements. Term three of the easement is interpreted to imply that the Boulevard Apartments are not eligible for reimbursement for maintenance performed within the right-of-way area unless there was a written agreement with the easement grantees prior to the maintenance work being done.

At this point, the City does not have proof of a written agreement or clarity as to whether or not the improvements would be classified as maintenance per the recorded easement for right of way and thereby not eligible for reimbursement. See Appendix A for a map of the area and Appendix D. for the easement for right of way.

Sanitary Sewer Reimbursement District

Sanitary Sewer Improvements were required by the City through the land use approval for the Boulevard Apartment project.

Description of Improvements

The approval required the construction of a 15-inch sanitary sewer trunk line from its current ending point to Clemens Mill Rd and then a 10-inch sanitary sewer trunk line from Landmark Dr. to the project's entry. The costs for the qualifying improvements are \$807,019.

This cost excludes the portion of the sewer improvements that were given for reimbursement from SDC fees. The costs have been distributed to the benefited properties based on the developable area of each of the parcels.

Sewer System Improvement Costs

Construction Costs	\$880,320.00
Engineering, Inspection, Surveying, etc.	\$88,032.00
Permit Costs	\$9,306.00
Total Project Costs	\$977,658.00
Less Oversize Costs	(\$170,639.00)
Reimbursement District Eligible Costs	\$807,019.00

PMC 14.25.020(G) states that "Sewer improvement" means a sewer or sewer line improvement conforming with standards adopted by the city through ordinance or policy, or required through approval of an application for a land use decision, and including, but not limited to, extending a sewer line to property, other than property owned by the applicant, so that sewer service can be provided for such other property without further extension of the line." As this provision allows the inclusion of properties set back from the line and does not prohibit their inclusion in a reimbursement district, it is reasonable that all properties are benefiting from the installation of the sewer line and should pay for that benefit at the time of development.

Method of Assessment

Nineteen properties benefit from the sewer improvements. All properties are within the city or its urban growth boundary (UGB). See Appendix B for a map of the area.

The sewer improvement cost assessments have been distributed to the benefited properties. The reimbursement is limited to the cost of extending an 8" sewer line to and through each property, which is the minimum sewer size allowed by the Public Works Design Standards. It is not reasonable to make assumptions as to which parcels will use more or less of the sewer line, and regardless of how each parcel may actually develop during the time the reimbursement district exists, each property would have to install its share of the 8" sewer line.

Proposed Assessment

All properties are zoned Industrial Park, so assessments are based on the current zoning and developable area of each of the parcels as shown in the following table.

Lot Number	Address	Developable Area	Portion of District	Lot Assessment
125074-01600	BLVD APTS	14.33	18.66%	\$ 150,620
12507A-01900	3157 Main St.	0.56	0.73%	\$ 5,886
12507A-01800	3105 Main St.	0.69	0.90%	\$ 7,252
12507A-01700	3065 Main St	1.00	1.30%	\$ 10,511
12507B-02400	2951 Main St.	10.09	13.14%	\$ 106,054
12507B-02300		14.07	18.33%	\$ 147,887
12507B-01600		12.25	15.95%	\$ 128,757
12507B-02100		10.38	13.52%	\$ 109,102
12507B-02000	432 Landmark Dr.	1.72	2.24%	\$ 18,079
12507B-01900	428 Landmark Dr.	1.12	1.46%	\$ 11,772
12507B-01301		1.78	2.32%	\$ 18,709
12507B-01400	421 Landmark Dr.	3.51	4.57%	\$ 36,893
12507BC-12800	2811 Main St.	0.31	0.40%	\$ 3,258
12507BC-12900	405 Landmark Dr.	0.90	1.17%	\$ 9,460
12507BC-13000		0.47	0.61%	\$ 4,940
125078C-13100		0.75	0.98%	\$ 7,883
12507BC-13200		1.00	1.30%	\$ 10,511
12507BC-13300		1.19	1.55%	\$ 12,508
12507BC-13400		0.66	0.86%	\$ 6,937
Totals		76.78	100%	\$ 807,019

Water Reimbursement District

Domestic Water System Improvements were required by the City through the land use approval for the Boulevard Apartment project.

Description of Improvements

The approval required the construction of a 12-inch water main from its current ending point along the south side of Main Street along with a 12-inch main from the existing 16-inch to the project's entry. The costs for the qualifying improvements are \$516,186.95.

Water System Improvement Costs

Construction Costs	\$542,084.50
Engineering, Inspection, Surveying, etc.	\$54,208.45
Permit Costs	\$4,791.00
Total Project Costs	\$601,083.95
Less Oversize Costs	(\$84,897.00)
Reimbursement District Eligible Costs	\$516,186.95

Method of Assessment

Seven properties benefit from the water improvements. All properties are within the city or its urban growth boundary (UGB). This cost excludes the portion of the water improvements that were given as a reimbursement from SDC fees, so only the pipe required by the Water Master Plan is included in the assessment. See Appendix C for a map of the area.

The water improvement cost assessments have been distributed to the benefited properties. The reimbursement is limited to the cost of extending a 12" sewer line to and through each property, which is the pipe size required in the Water Master Plan that any property would have been required to install if it had been developed prior to the Boulevard Apartments. It is not reasonable to make assumptions as to which parcels will use more or less of the water line, and regardless of how each parcel may actually be developed during the time the reimbursement district exists, each property would have had to install its share of the 12" water line across its property frontage.

Proposed Assessment

All properties are zoned Industrial Park, so assessments are based on the current zoning and developable area of each of the parcels as shown in the table below.

Lot Number	Address	Developable Frontage	Percentage of Frontage	Lot Assessment
125074-01600	BLVD APTS.	661.92	40.23%	\$ 207,642
12507A-01900	3175 Main St.	110.00	6.68%	\$ 34,507
12507A-01800	3105 Main St.	115.00	6.99%	\$ 36,075
12507A-01700	3065 Main St.	190.00	11.55%	\$ 59,602
12507B-02400	2951 Main St.	408.00	24.79%	\$ 127,988
12507B-02300		60.00	3.65%	\$ 18,822
12507BC-12800	2811 Main St.	100.58	6.11%	\$ 31,552
Totals		1645.50	100%	\$ 516,187

Conclusion

This City Planning Official Report has identified the three reimbursement districts requested by Boulevard Apartments. The street, sewer and water improvements installed off-site will benefit property owners that may develop their parcels. As such, The Boulevard Apartments is entitled under the Philomath Municipal Code to reimbursement at the time the other parcels are developed. The chart below shows the cumulative effect of the proposed reimbursement districts on each assessed property. The proposed reimbursement fees should be adjusted annually beginning on the first anniversary of the date of the reimbursement agreement as a return on the investment for the Boulevard Apartments. The annual fee adjustment should be fixed to the Engineering News-Record (ENR) Construction Cost Index and computed against the reimbursement fee as simple interest and will not compound.

Tax Lot	Address	Street	Sewer	Water	Total
125074-01600	BLVD APTS		\$ 150,620	\$ 207,642	\$ 358,261
12507A-01900	3157 Main St.	-	\$ 5,886	\$ 34,507	\$ 40,393
12507A-01800	3105 Main St.	-	\$ 7,252	\$ 36,075	\$ 43,328
12507A-01700	3065 Main St.	-	\$ 10,511	\$ 59,602	\$ 70,113
12507B-02400	2951 Main St.		\$ 106,054	\$ 127,988	\$ 234,042
12507B-02300			\$ 147,887	\$ 18,822	\$ 166,709
12507B-01600			\$ 128,757		\$ 128,757
12507B-02100			\$ 109,102		\$ 109,102

12507B-02000	432 Landmark Dr.	\$ 18,079		\$ 18,079
12507B-01900	428 Landmark Dr.	\$ 11,772		\$ 11,772
12507B-01301		\$ 18,709		\$ 18,709
12507B-01400	421 Landmark Dr.	\$ 36,893		\$ 36,893
12507BC-12800	2811 Main St.	\$ 3,258	\$ 31,552	\$ 34,810
12507BC-12900	405 Landmark Dr.	\$ 9,460		\$ 9,460
12507BC-13000		\$ 4,940		\$ 4,940
125078C-13100		\$ 7,883		\$ 7,883
12507BC-13200		\$ 10,511		\$ 10,511
12507BC-13300		\$ 12,508		\$ 12,508
12507BC-13400		\$ 6,937		\$ 6,937
Totals		\$ 807,019	\$ 516,187	\$1,323,206

The city may charge a fee for administration of the agreement. If an administration fee is to be fixed by the council, it must be included in the resolution approving and forming the reimbursement district. The administration fee is due and payable to the city at the time the agreement is signed. An administration fee of \$1200 is recommended. The period of time that the right to reimbursement exists for each district is recommended to be fifteen (15) years. After this time period, the reimbursement districts will no longer be in existence and no reimbursement fee for the Boulevard Apartments will be required of assessed properties upon development or connection into the public utilities.

Appendix D. Engineer Expenses

6389	Boulevard Apartments	Tuesday, October 13, 2020	
Project	Description	Dollars	
		Contract	Billed
6389	Boulevard Apartments	796,324	754,705
	DD Efforts	10,525	10,525
	Site Inspection <u>Detail</u>	975	975
	Pre App Meetings <u>Detail</u>	1,850	1,850
	Zoning Review <u>Detail</u>	375	375
	Utility Review <u>Detail</u>	675	675
	Team Meetings <u>Detail</u>	975	975
	Conceptual Developments Budgets <u>Detail</u>	1,475	1,475
	Development Costs for Alternative Site Plans <u>Detail</u>	4,200	4,200
	Lot Line Adjustment	3,000	3,000
	Planning work, application <u>Detail</u>	1,500	1,500
	Survey work <u>Detail</u>	1,500	1,500
	Zone Change	15,920	15,920
	Planning Work <u>Detail</u>	12,250	12,250
	Team Meetings <u>Detail</u>	1,975	1,975
	Hearings <u>Detail</u>	1,695	1,695
	Special Requests (out of contract) <u>Detail</u>	0	0
	Site Designs	18,140	18,140
	Conceptual <u>Detail</u>	3,750	3,750
	Alternate <u>Detail</u>	11,725	11,725
	Final <u>Detail</u>	2,665	2,665
	SITE DEVELOPMENT	29,080	25,750
	Site Design Application Materials and Dwgs <u>Detail</u>	15,025	15,025
	Prelim Landscape <u>Detail</u>	4,200	4,200
	Meetings and assistance on Phasing <u>Detail</u>	600	0
	Contract) <u>Detail</u>	2,730	0
	Geotech Preview Report <u>Detail</u>	575	575
	Boundary Survey <u>Detail</u>	5,950	5,950
	Topographic Survey	8,430	8,430
	On-site <u>Detail</u>	5,275	5,275
	Off-site <u>Detail</u>	2,405	2,405
	Exceptions Map <u>Detail</u>	750	750
	Flood Study Assistance	9,877	7,056
	Cross Section Survey/Team Mtg/ Rew Report <u>Detail</u>	7,000	7,000
	Assist in LOMA <u>Detail</u>	2,877	56
	Wetlands Assistance	40,827	40,827
	Exhibits / Plans / Assistance <u>Detail</u>	7,008	7,008
	Storm Water Management Report <u>Detail</u>	6,275	6,275
	Alternative Site Plans/Wetlands issues <u>Detail</u>	8,788	8,788
	Economic Impact Analysis of Alternatives <u>Detail</u>	2,125	2,125
	Wetland Revisions, Plan & Report Revisions, Mtgs <u>Detail</u>	16,631	16,631
	Off-site Sanitary Sewer Improvements	26,595	26,045
	Erosion Control Permit <u>Detail</u>	550	0
	Preliminary Design <u>Detail</u>	2,250	2,250
	Final Design <u>Detail</u>	10,150	10,150

Plan Approval	<u>Detail</u>	650	650
Additional Topographic Survey	<u>Detail</u>	3,850	3,850
ODOT In Right of Way Permit	<u>Detail</u>	945	945
Construction Staking	<u>Detail</u>	2,850	2,850
Construction Monitoring	<u>Detail</u>	3,600	3,600
As-Builts	<u>Detail</u>	1,750	1,750
Off-site Water Improvements		20,995	20,995
Preliminary Design	<u>Detail</u>	1,750	1,750
Final Design	<u>Detail</u>	12,750	12,750
Plan Approval	<u>Detail</u>	50	50
ODOT in Right of Way Permit	<u>Detail</u>	25	25
Additional Topographic Survey	<u>Detail</u>	3,875	3,875
Construction Staking	<u>Detail</u>	975	975
Construction Monitoring	<u>Detail</u>	1,570	1,570
Off-Site Pedestrian Walkway West		85,424	84,174
Prelim Design	<u>Detail</u>	3,225	3,225
Additional Topographic Survey	<u>Detail</u>	1,869	1,869
Re-locate Crossing	<u>Detail</u>	281	281
Highway 34 Turn Pocket	<u>Detail</u>	4,225	4,225
ODOT Access Permit	<u>Detail</u>	3,135	3,135
Extra Topographic Work	<u>Detail</u>	2,550	2,550
Ped Crossing Improvement Final Design	<u>Detail</u>	50,000	48,750
Construction Monitoring	<u>Detail</u>	9,819	9,819
Highway Construction Staking	<u>Detail</u>	10,320	10,320
APARTMENT PROJECT		3,875	3,875
Erosion Control Plan	<u>Detail</u>	3,875	3,875
Site Engineering		66,700	66,700
Final Site Plan	<u>Detail</u>	4,995	4,995
Grading	<u>Detail</u>	11,250	11,250
Drainage	<u>Detail</u>	8,975	8,975
Utility	<u>Detail</u>	9,500	9,500
Fire Main	<u>Detail</u>	2,550	2,550
Franchise Utility Coordination	<u>Detail</u>	4,235	4,235
Site Lighting	<u>Detail</u>	1,970	1,970
Retaining Walls	<u>Detail</u>	2,475	2,475
Final Landscape Plans	<u>Detail</u>	16,750	16,750
Wetlands Enhancement Plan	<u>Detail</u>	4,000	4,000
Entry Way Median Analysis and Design	<u>Detail</u>	0	0
Buildings		262,443	262,443
Building Designs	<u>Detail</u>	164,750	164,750
Structural Analysis	<u>Detail</u>	28,475	28,475
Excellerated Plans and Calcs (30% Additional)	<u>Detail</u>	57,968	57,968
Permit Assistance	<u>Detail</u>	8,750	8,750
Carports / Permit Assistance	<u>Detail</u>	2,500	2,500
Construction		123,562	115,623
Construction Staking	<u>Detail</u>	70,000	65,407
Geotechnical Site Review	<u>Detail</u>	17,586	17,586
Construction Monitoring	<u>Detail</u>	16,500	14,500
OAC Meeting	<u>Detail</u>	9,500	8,155
Reimbursement Cost Analysis	<u>Detail</u>	9,976	9,976
On-site As-built Drawings	<u>Detail</u>	0	0
Surveys		24,671	18,033
Foundation Survey	<u>Detail</u>	7,500	7,500

ALTA Survey	Detail	16,500	9,862
Verify / Reset Monuments	Detail	671	671
MISC		24,673	5,582
Contractor Bid Assistance	Detail	1,834	1,834
Lot Line Adjustment Plan and Application	Detail	1,070	1,070
Revise / Resubmit Rec Bldg Plans	Detail	792	792
Unit Mix / Misc Requests	Detail	1,173	1,173
Simp.L assistance,	Detail	713	713
Dog Park / Boardwalk Design	Detail	3,550	3,550
Axis Pointe Forensic Review and Response	Detail	7,460	7,460
SDC Cost Analysis	Detail	1,365	1,365
Reimbursement District	Detail	6,716	0
Reimbursable Expenses Apts		21,587	21,587
Printing & Expenses	Detail	14,541	14,541
Other Expenses	Detail	7,046	7,046

Appendix E. Right of Way Easement

BENTON COUNTY, OREGON 2011-478207
DE-EAS
Cnt=1 Stn=41 COUNTER1 05/02/2011 12:20:11 PM
\$15.00 \$11.00 \$17.00 \$10.00 \$20.00 \$73.00



I, James V. Morales, County Clerk for Benton County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

James V. Morales - County Clerk



✓ AFTER RECORDING, RETURN TO:
Michael D. Moore
6421 NW Oak Creek Drive
Corvallis, OR 97330

EASEMENT

THIS EASEMENT, made the day and year written below, is hereby granted by Michael D. Moore (hereinafter "Grantor") to the current and future property owners (Grantee) of the four parcels represented by the following Map/Tax Lot numbers in Benton County in the State of Oregon:

1. 12507A001700
2. 12507A001800
3. 12507A001900
4. 12507A002000

RECITALS

Grantor has agreed to grant Grantee an easement for a road right of way over the property described in attached Exhibit "A." Grantor wishes to specify and confirm the terms of the easement.

TERMS

1. Grantor, and his heirs, successors and assigns hereby grant and convey to Grantee a perpetual, non-exclusive easement and right of way more particularly described below over the property of Grantor described in attached Exhibit "A."
2. Grantee shall be permitted to use the easement for ingress and egress and access to and from its properties, which adjoin Grantor's property described as Map/Tax Lot 12507A001600 for any lawful purpose.
3. It is understood and agreed that the easement shall be for the joint use and maintenance of Grantor and Grantee. It is agreed that maintenance shall be in proportion to the amount of use; provided, however, that Grantor and Grantee shall, prior to causing any maintenance work to be done, agree that maintenance is necessary, agree on the extent of the respective use, and agree on the cost of the maintenance work to be done. If maintenance work is done by either party to this Easement without having prior written agreement from the other party, the party causing work to be done shall be solely responsible for paying the costs of such maintenance.

4. Grantee shall defend, indemnify, reimburse, and hold Grantor harmless and, at Grantor's election, defend Grantor from any and all claims, costs, expenses (including attorney fees), losses, damages, fines, charges, actions, liens or other liabilities of any description arising out of or in way connected with the Easement including, but not limited to, (1) Grantee's possession or use of the Easement, (2) Grantee's conduct with respect to the Easement of (3) any condition of the Easement.

5. The granting of this Easement does not obligate the Grantee to use the Easement; however, Grantee's use of the Easement demonstrates agreement with these terms upon exercising its right to use said Easement.

6. Grantee shall not place any gate, fence or obstruction across the easement without the express written consent of the Grantor.

7. The rule that ambiguities, if any, in an agreement are to be resolved against the drafter shall not apply to the terms of this Easement.

8. The exhibit referenced above is part of this Easement as if fully set forth in this Easement.

9. If any suit, action or other proceeding or an appeal from a decision therein is instituted to establish, obtain or enforce any right resulting from this Easement, the prevailing party shall be entitled to recover from the adverse party, in addition to costs and disbursements, an award of reasonable attorney fees to be set by the trial court or appellate court in any such action, suit or appeal.

10. This Easement has been prepared by Michael D. Moore, Grantor.

Michael D. Moore

Michael D. Moore, Grantor

STATE OF OREGON)
)
County of Benton)

This instrument was acknowledged before me this 29th day of April, 2011, by Michael D. Moore.

Susan M. Varga

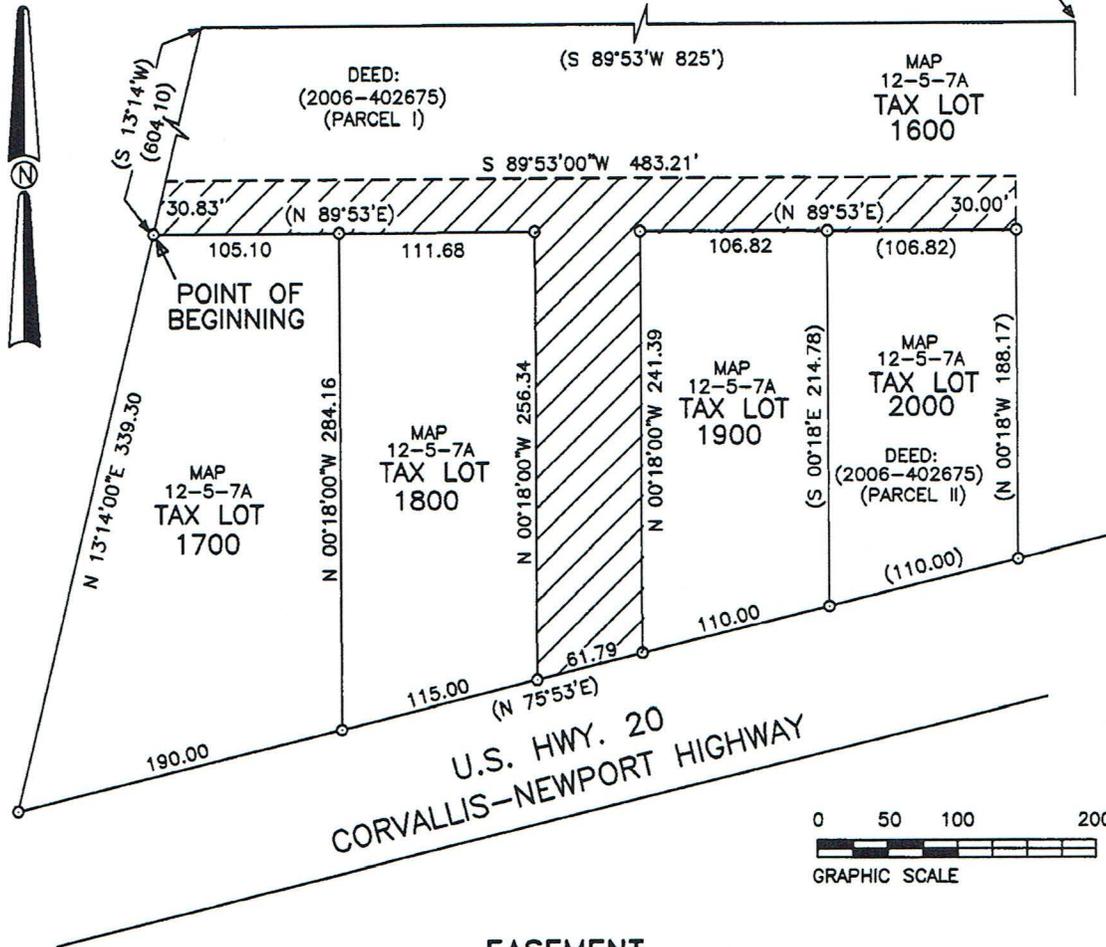
Notary Public for Oregon

My Commission Expires: 05-16-14



EXHIBIT

N.E. CORNER
NORRICE P. NEWTON
D.L.C. No. 72
T.12 S., R.5 W.



EASEMENT LEGAL DESCRIPTION

Beginning at the most Westerly Southwest corner of Parcel I conveyed to Michael D. Moore and Laurie C. Moore by deed recorded on Microfilm No. 2006-402675, Microfilm Deed Records of Benton County, Oregon, said Westerly Southwest corner is of record per said deed as being South 89°53'West, along the North claim line, 825 feet (12.50 chains) and South 13°14'West 604.10 feet from the Northeast corner of the Norris P. Newton Donation Land Claim No. 72, Township 12 South, Range 5 West, Willamette Meridian, Benton County, Oregon; thence North 89°53'East 216.78 feet; thence South 00°18'East 256.34 feet to the Northerly line of U.S. Highway 20 (Corvallis-Newport Highway); thence North 75°53'East, on said Northerly line, 61.79 feet; thence North 00°18'West 241.39 feet; thence North 89°53'East 213.64 feet; thence North 00°18'West 30.00 feet; thence South 89°53'West 483.21 feet to the Westerly line of said Moore Parcel I; thence South 13°14'West 30.83 feet to the point of beginning.

Chapter 14.25**REIMBURSEMENT DISTRICTS**

Sections:

- 14.25.010 Purpose.
- 14.25.020 Definitions.
- 14.25.030 Application for a reimbursement district.
- 14.25.040 City planning official's report.
- 14.25.050 Amount to be reimbursed.
- 14.25.060 Public hearing.
- 14.25.070 Notice of public hearing.
- 14.25.080 City council action.
- 14.25.090 Notice of adoption of resolution.
- 14.25.100 Recording the resolution.
- 14.25.110 Administration.
- 14.25.120 Prohibited conduct.

14.25.010 Purpose.

A. The city of Philomath requires developers to construct and install water, sanitary sewer, storm sewer, and street improvements necessary to serve proposed developments. These improvements are constructed in accordance with city design and construction standards and later dedicated to the city as "public improvements." Often these street, water, sewer, and storm sewer improvements, particularly those constructed off-site, can and will benefit other property owners when they develop their property. Therefore, these improvements represent a benefit to those property owners.

B. The purpose of this chapter is to provide a mechanism where owners of property which benefits from the construction of public improvements by another property owner will share in the cost of those improvements through payment of a reimbursement charge at the time the benefited property is developed and/or the improvements are utilized.

C. Owners of property which would be subject to a reimbursement charge will be provided an opportunity to review and comment on pertinent information prior to the city establishing a reimbursement district pursuant to this chapter. The city will collect the reimbursement charges and, upon receipt, will forward the funds to the person who constructed the improvements.

D. The reimbursement charges established under this chapter are intended to become due and payable upon development of benefited property.

Such charges are fees for service because they contemplate a development's receipt of essential municipal services based upon the nature of that development. The timing and extent of any development are within the control and discretion of the developer. The reimbursement charges imposed under this chapter are not intended to be a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Article XI, Section 11b, of the Oregon Constitution or the legislation implementing that section.

E. The reimbursement charges established in this chapter are in addition to, and not in lieu of, other charges which may be required for developers. [Ord. 639 § 1, 1995.]

14.25.020 Definitions.

As used in this chapter:

A. "City public works director" or "director" means the person holding the position of city public works director or any officer or employee designated by that person to perform duties stated within this section.

B. "City" means the city of Philomath.

C. "Person" means a natural person, the person's heirs, executors, administrators, or assigns; a firm, partnership, corporation, association or legal entity, its or their successors or assigns; and any agent, employee or any representative thereof.

D. "Applicant" means a person, as defined in subsection (C) of this section, who is required or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, and who applies to the city for reimbursement for the expense of the improvement. The "applicant" may be the city.

E. "Street improvement" means a street or street improvement conforming with standards adopted by the city through ordinance or policy, or required through approval of an application for a land use decision, and including, but not limited to, streets, storm drains, curbs, gutters, sidewalks, bike-paths, traffic control devices, street trees, lights and signs and public right-of-way.

F. "Water improvement" means a water or water line improvement conforming with standards adopted by the city through ordinance or policy, or required through approval of an application

for a land use decision, and including, but not limited to, extending a water line to property, other than property owned by the applicant, so that water service can be provided for such other property without further extension of the line.

G. "Sewer improvement" means a sewer or sewer line improvement conforming with standards adopted by the city through ordinance or policy, or required through approval of an application for a land use decision, and including, but not limited to, extending a sewer line to property, other than property owned by the applicant, so that sewer service can be provided for such other property without further extension of the line.

H. "Reimbursement district" means the area which is determined by the city council to derive a benefit from the construction of street, water or sewer improvements, financed in whole or in part by the applicant and includes property which has the opportunity to utilize such an improvement.

I. "Reimbursement fee" means the fee required to be paid by a resolution of the city council and the reimbursement agreement. The city council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee which considers the cost of reimbursing the applicant for financing the construction of a street, water or sewer improvement within the reimbursement district. [Ord. 639 § 2, 1995.]

14.25.030 Application for a reimbursement district.

A. Any person who is required to or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, may, by written application filed with the city planning official, request that the city establish a reimbursement district. The street, water and sewer improvements must include improvements in addition to or in a size greater than those which would otherwise ordinarily be required in connection with an application for permit approval or must be available to provide service to property other than property owned by the applicant. Examples include, but shall not be limited to, full street improvements instead of half street improvements, off-site sidewalks, connection of street sections for continuity, extension of

water lines and extension of sewer lines. The city may also initiate formation of a reimbursement district. The application shall be accompanied by a fee, as established by resolution, sufficient to cover the cost of administrative review and notice pursuant to this section.

B. The application shall include the following:

1. A description of the location, type, size and cost of the public improvement to be eligible for reimbursement.

2. A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage or square footage of said properties, or similar data necessary for calculating the apportionment of the cost; and the property or properties owned by the applicant.

3. Postconstruction: the actual cost of the improvements as evidenced by receipts, invoices or other similar documents, not to exceed the prevailing market rates for a similar project as determined by the city public works director. Preconstruction: the estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other evidence satisfactory to the city planning official.

4. Postconstruction: the date the city accepted the public improvements. Preconstruction: the estimated date of completion of the public improvements.

C. Application for formation of a reimbursement district may be made at any time but shall be made no later than three months after completion and acceptance of the street, water or sewer improvements. However, the city planning official may waive this requirement upon the showing by the applicant of good cause for the delay, that the delay was not created by the applicant, and that the delay was unavoidable due to unanticipated or unforeseen circumstances [Ord. 639 § 3, 1995.]

14.25.040 City planning official's report.

The city planning official shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The planning official may request the submittal of other relevant information from the applicant in order to assist in the evaluation. The planning official shall prepare a written report for

the city council, considering and making recommendations concerning the following factors:

A. Whether the applicant will finance or has financed some or all of the cost of a street, water or sewer improvement, thereby making service available to property, other than property owned by the applicant;

B. The area to be included in the reimbursement district;

C. The actual or estimated cost of the street, water or sewer improvements within the area of the proposed reimbursement district and the portion of the cost for which the applicant should be reimbursed;

D. A methodology for spreading the cost among the parcels within the reimbursement district and, where appropriate, defining a "unit" for applying the reimbursement fee to property which may, with city approval, be partitioned, altered, modified, or subdivided at some future date. The methodology should include consideration of the cost of the improvements, prior contributions by property owners, the value of the unused capacity, rate-making principles employed to finance public improvements, and other factors deemed relevant by the city planning official. Prior contributions by property owners will only be considered if the contribution was for the same type of improvement and at the same location (example: a sewer-related contribution in the same location as a sewer improvement would be considered, a water-related contribution in the same location as a sewer improvement would not be considered);

E. The reimbursement fee shall be adjusted annually beginning on the first anniversary of the date of the reimbursement agreement as a return on the investment for the person or the city. The annual fee adjustment shall be fixed and determined by the council and computed against the reimbursement fee as simple interest and will not compound. The city planning official may take into account the documented cost of any financing, including prepayment points, prepayment penalties, loan fees, and the actual percentage rate of interest being paid by the applicant, when recommending the annual fee adjustment to the city council;

F. The city may charge a fee for administration of the agreement. The administration fee shall be fixed by the council and will be included in the res-

olution approving and forming the reimbursement district. The administration fee is due and payable to the city at the time the agreement in PMC 14.25.080(B) is signed.

G. The period of time that the right to reimbursement exists if the period is less than 15 years. [Ord. 639 § 4, 1995.]

14.25.050 Amount to be reimbursed.

A. The cost to be reimbursed to the applicant shall be limited to the cost of construction, including the acquisition and condemnation costs of acquiring additional right-of-way, the cost of permits, engineering and legal expenses, and the annual fee adjustment fixed and determined by the council.

B. A reimbursement fee shall be computed by the city for all properties which have the opportunity to utilize the improvements, including the property of the applicant, for formation of a reimbursement district. The applicant for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for the property of the applicant. [Ord. 639 § 5, 1995.]

14.25.060 Public hearing.

A. Within a reasonable time after the city planning official has completed the report required in PMC 14.25.040, the city council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement district. Because formation of the reimbursement district does not result in an assessment against property or lien against property, the public hearing is for informational purposes only and is not subject to mandatory termination because of remonstrances. The city council has the sole discretion after the public hearing to decide whether a resolution approving and forming the reimbursement district shall be adopted.

B. If a reimbursement district is formed prior to construction of the improvement(s), a second public hearing shall be held after the improvement has been accepted by the city. At that time, the city council may modify the resolution to reflect the actual cost of the improvement(s). [Ord. 639 § 6, 1995.]

14.25.070 Notice of public hearing.

Not less than 10 nor more than 30 days prior to any public hearing held pursuant to this chapter, the applicant and all owners of property within the proposed district shall be notified of such hearing and the purpose thereof. Such notification shall be accomplished by either regular mail or personal service. If notification is accomplished by mail, notice shall be mailed not less than 13 days prior to the hearing. Notice shall be deemed effective on the date that the letter of notification is mailed. Failure of the applicant or any affected property owner to be so notified shall not invalidate or otherwise affect any reimbursement district resolution or the city council's action to approve the same. [Ord. 639 § 7, 1995.]

14.25.080 City council action.

A. After the public hearing held pursuant to PMC 14.25.060, the city council shall approve, reject or modify the recommendations contained in the city planning official's report. The city council's decision shall be embodied in a resolution. If a reimbursement district is established, the resolution shall include the city planning official's report as approved or modified, and specify that payment of the reimbursement fee, as designated for each parcel, is a precondition of receiving city permits applicable to development of that parcel as provided for in PMC 14.25.100(C).

B. When the applicant is other than the city, the resolution shall instruct the city manager to enter into an agreement with the applicant pertaining to the reimbursement district improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the city. The agreement, at a minimum, shall contain the following provisions:

1. The public improvement(s) shall meet all applicable city standards or comply with specific requirements imposed by the planning official, planning commission, or city council.

2. The total amount of potential reimbursement to the applicant.

3. The annual fee adjustment set by the city council.

4. The applicant shall guarantee the public improvement(s) for a period of 12 months after the date of installation.

5. The applicant shall defend, indemnify and hold harmless the city from any and all losses, claims, damage, judgments or other costs or expense arising as a result of or related to the city's establishment of the district.

6. The applicant shall acknowledge that the city is not obligated to collect the reimbursement fee from affected property owners.

7. Other provisions as the city council determines necessary and proper to carry out the provisions of this chapter.

C. If a reimbursement district is established by the city council, the date of the formation of the district shall be the date that the city council adopts the resolution forming the district [Ord. 639 § 8, 1995.]

14.25.090 Notice of adoption of resolution.

The city shall notify all property owners within the district and the applicant of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation of when the property owner is obligated to pay the reimbursement fee and the amount of the fee. [Ord. 639 § 9, 1995.]

14.25.100 Recording the resolution.

A. The city recorder shall cause notice of the formation and nature of the reimbursement district to be filed in the office of county records so as to provide notice to potential purchasers of property within the district. The recording shall not create a lien. Failure to make such a recording shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.

B. Contesting the Reimbursement District. No legal action intended to contest the formation of the district or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed after 60 days following adoption of a resolution establishing a reimbursement district.

C. Obligation to Pay Reimbursement Fee. The applicant for a permit related to property within any reimbursement district shall pay to the city, in addition to any other applicable fees and charges, the reimbursement fee established by the council, together with the annual fee adjustment, if within the time specified in the resolution establishing the district the person applies for and receives approval from the city for any of the following activities:

1. A building permit for a new building;
 2. Building permit(s) for any addition(s), modification(s), repair(s) or alteration(s) of a building, which exceed 25 percent of the value of the building within any 12-month period. The value of the building shall be the amount shown on the most current records of the county department of assessment and taxation for the building's real market value. This subsection shall not apply to repairs made necessary due to accidental damage to the structure beyond the owner's control or damage or destruction by fire or other natural disaster;
 3. Any alteration, modification or change in the use of real property which increases the number of parking spaces required under the Philomath zoning ordinance in effect at the time of permit application;
 4. Connection to or use of a water improvement, if the reimbursement district is based on the water improvement;
 5. Connection to or use of a sewer improvement, if the reimbursement district is based on the sewer improvement; or
 6. Connection to or use of a street improvement, if the reimbursement district is based on the street improvement.
- D. The city's determination of who shall pay the reimbursement fee is final. Neither the city nor any officer or employee of the city shall be liable for payment of any reimbursement fee, annual fee adjustment, or portion thereof as a result of this determination.
- E. A permit applicant whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvements, regardless of whether access is taken or provided directly onto such street at any time. Nothing in this chapter is intended to modify or limit the authority of the city to provide or require access management.
- F. No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless such payment was for a different type of improvement. No permit shall be issued for any of the activities listed in subsection (C) of this section unless the reimbursement fee, together with the annual fee adjustment, has been paid in full. Where approval is given as specified in subsection (C) of this section, but no permit is requested or

issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

G. The date when the right of reimbursement ends shall not extend beyond 15 years from the district formation date. [Ord. 639 § 10, 1995.]

14.25.110 Administration.

A. The right of reimbursement is assignable and transferable after written notice is delivered to the city advising the city to whom future payments are to be made.

B. The city shall establish separate accounts for each reimbursement district. Upon receipt of a reimbursement fee, the city shall cause a record to be made of that property's payment and remit the fee to the person who requested establishment of the reimbursement district or their assignee.

C. The reimbursement fee is not intended to replace or limit, and is in addition to, any other existing fees or charges collected by the city. [Ord. 639 § 11, 1995.]

14.25.120 Prohibited conduct.

A. No person may cause, maintain or use a connection to a utility improvement for which a reimbursement district has been established and for which a reimbursement charge is due and payable, unless such charge has first been paid or financed with installment payments.

B. Violation of this section is a civil infraction, punishable by a fine not to exceed \$500.00. Each day that a prohibited connection or use exists constitutes a separate violation.

C. The remedies provided under this section are cumulative to any other remedies provided by law. [Ord. 639 § 12, 1995.]



CITY OF PHILOMATH

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NOTICE OF CITY COUNCIL WORK SESSION

The Philomath City Council will hold a work session on **Monday, October 19, 2020, at 7:00 p.m.** via Zoom video-conference. The purpose of this work session is to continue review and public input regarding the request to form a Reimbursement District filed by Mountain West Investment Corporation (MWIC: The Boulevard Apartments). The original Planning Official's Report is available via a link on the City's web site at <https://tinyurl.com/PhilomathMWICRD>. An updated report will be posted by Thursday, October 15. The full report including appendices will also be on file and available for review in the office of the City Recorder by calling (541) 929-6148 or emailing ruth.post@philomathoregon.gov.

The city of Philomath requires developers to construct and install water, sanitary sewer, storm sewer, and street improvements necessary to serve proposed developments. Often these street, water, sewer and storm sewer improvements, particularly those constructed off-site, can and will benefit other property owners when they develop their property. Therefore, these improvements represent a benefit to those property owners.

The purpose of establishing a reimbursement district is to provide a mechanism where owners of property which benefits from the construction of public improvements by another property owner will share in the cost of those improvements by payment of a reimbursement charge at the time the benefited property is developed and/or the improvements are utilized.

A public hearing on the application was held on October 5, 2020. That public hearing has been closed; however, owners of property which would be subject to a reimbursement charge may review the updated report and provide additional comments during the work session.

The public may watch the live-stream of the meeting on the City's Facebook page at <https://www.facebook.com/cityofphilomath>. This is a public page and does not require a Facebook account to access. Contact City Hall to make viewing arrangements if you do not have access to the internet.

Opportunities to Comment:

The following options are available for the public to provide comment during the work session:

- 1) Sign up to speak by contacting the City Recorder at ruth.post@philomathoregon.gov or by calling 541-929-6148 no later than 4:00 p.m. on the day of the meeting.
- 2) Submit written comments by email to the City Recorder at ruth.post@philomathoregon.gov no later than 12:00 p.m. the day of the meeting.
- 3) Submit written comments in the City Hall parking lot drop box no later than 12:00 p.m. the day of the meeting.
- 4) Mail written comments to PO Box 400, Philomath, OR 97370 3-4 days prior to the day of the meeting.

Prior to the work session, participants will be provided with the Zoom meeting link.

Any questions regarding this work session may be directed to City Manager Chris Workman at chris.workman@philomathoregon.gov or by calling 541-929-6148.

MAILED: October 6, 2020