

FILING

ENT 14773 BK 2600 PG 777
NINA B REID UTAH CO RECORDER BY JS
1989 MAY 25 2:53 PM FEE .00
RECORDED FOR AMERICAN FORK CITY

ORDINANCE NO. 89-05-03

AN ORDINANCE confirming the assessment rolls and levying an assessment against certain properties in American Fork City, Utah Special Improvement District No. 88-1, Utah County, Utah for the purpose of defraying the costs of constructing improvements on certain streets, a culinary water supply and fire protection system, a sanitary sewer system, facilities for the disposal of excess groundwater, irrigation water and surface water, and power, gas, telephone and similar utility facilities and systems, and completing any miscellaneous work necessary to complete the improvements in a proper and workman-like manner; reaffirming the establishment of a special improvement guaranty fund; establishing the effective date of this ordinance; and related matters.

BE IT ORDAINED BY THE CITY COUNCIL OF AMERICAN FORK CITY, UTAH COUNTY, UTAH:

Section 1. Determination of Costs. All costs and expenses for the making of the hereinafter described improvements within the American Fork City, Utah Special Improvement District No. 88-1 (the "District") have been determined, the property price for all property to be acquired to make the improvements has been finally determined and the reasonable cost of any work to be done has been determined.

Section 2. Approval of Assessment List; Findings. Having been informed that all owners of property within the District have waived:

(i) the right to have the City Council (the "Council") of American Fork City, Utah County, Utah

(the "Issuer") appoint a Board of Equalization with respect to the District;

(ii) the right to a hearing before a Board of Equalization;

(iii) the right to appeal from any determination of a Board of Equalization;

(iv) the right to appeal, protest or object to the Assessment or any other assessments levied upon any of the other properties within the District contemporaneously with the Assessment; and

(v) the right to pay cash for the Assessment during a cash payment period which would otherwise extend for fifteen (15) days after the adoption and publication of the assessment ordinance levying the assessments on all of the properties within the District,

the Council hereby confirms that the proposed list of assessments, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference (the "Assessment List") is just and equitable and is on file and available for public inspection at the office of the Issuer's City Recorder; that each piece of property to be assessed within the District will be benefited in an amount not less than the assessment to be levied against said property; and that no piece of property listed in the

assessment list will bear more than its proportionate share of the cost of such improvements.

Section 3. Levy of Assessments. The Council does hereby levy an assessment to be assessed upon the real property identified in the Assessment List. The assessments levied upon each parcel of property therein described shall be in the amount set forth in the Assessment List.

The assessments hereby levied are for the purpose of constructing improvements on certain streets, a culinary water supply and fire protection system, a sanitary sewer system, facilities for the disposal of excess groundwater, irrigation water and surface water, and power, gas, telephone and similar utility facilities and systems and the completion of any miscellaneous work necessary to install the improvements in a proper and workmanlike manner. Said improvements are more particularly described in the Assessment List.

The assessments are hereby levied and assessed upon each of the parcels of real property described in the Assessment List according to the extent that they are specially benefited by the improvements acquired or constructed within the District. The assessments are levied upon the parcels of land in the District at equal and uniform rates.

Section 4. Cost of Improvements; Amount of Total Assessments. The total cost of the improvements in the

District is estimated at \$1,032,479, of which total cost the Issuer's portion is \$15,479. The Issuer's portion for the District includes that part of the overhead costs for which an assessment cannot be levied, if any, and the cost of making improvements for the benefit of property against which an assessment may not be levied, if any. The amount to be assessed against property affected or benefited by the improvements in the District is \$1,017,000, which amount does not exceed in the aggregate the sum of: (a) the total contract price or prices for the improvements under contract duly let to the lowest and best responsible bidders therefor; (b) the reasonable cost of utility services, maintenance, labor, materials or equipment supplied by the Issuer, if any; (c) the property price, if any; (d) connection fees, if any; (e) the interest on any interim warrants issued against the District; (f) overhead costs not to exceed fifteen percent (15%) of the sum of (a), (b), (c) and (d); and (g) where the assessment is levied prior to the time all of the improvements in the District are entirely completed and accepted, an amount for contingencies of not to exceed 10% of the sum of (a) and (b).

Section 5. Method and Rate. The total assessment for the District is levied according to area at the rate of approximately \$11,200 per acre.

Section 6. Payment of Assessments. The Council has found and determined that the proposed improvements have a

reasonable useful life of at least twenty years and has further determined it to be in the best interest of the Issuer and the property owners to be assessed to provide for payment of the assessments over a period in excess of 10 years. Therefore, the 15-day prepayment period having been waived by the owners of all property within the District, the assessments shall be payable over a period of twenty (20) years from the effective date of this Ordinance in twenty (20) substantially equal annual installments of principal and interest on the unpaid balance of the assessment at the same rate as the net effective interest rate of the special assessment bonds anticipated to be issued by the Issuer. The assessment payment dates shall be the first anniversary date of the effective date of this Ordinance and each subsequent anniversary date thereafter. Interest shall accrue from the effective date of this Ordinance until paid.

All unpaid installments of an assessment levied against any piece of property may be paid prior to the dates on which they become due, but any such prepayment must include an additional amount equal to the interest which would accrue on the assessment to the next succeeding date on which interest is payable on any special assessment bonds issued in anticipation of the collection of the assessments plus such additional amount as, in the opinion of the City Treasurer, is necessary to assure the availability of money

to pay interest on the special assessment bonds as interest becomes due and payable plus any premiums which may be charged and become payable on redeemable bonds which may be called in order to utilize the assessments paid in advance.

Section 7. Default in Payment. If a default occurs in the payment of any installment of principal or interest, when due, the Issuer may declare the unpaid amount to be immediately due and payable and subject to collection as provided herein. In addition, it may accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and interest then due to be immediately due and payable. Interest shall accrue and be paid on all amounts declared to be delinquent or accelerated and immediately due and payable at the rate of 15% per annum until the next succeeding date after payment or collection on which interest is payable on any special assessment bonds issued. Costs of collection as provided by the Issuer or required by law shall be charged and paid on all amounts declared to be delinquent or accelerated and immediately due and payable.

Upon any default, the City Treasurer shall give notice, in writing, of the default to the owner of the property in default, as shown by the last available equalized assessment rolls. Notice shall be effective upon deposit of the notice in the U.S. Mail, postage prepaid, and addressed to the owner as shown on the last equalized assessment rolls for

the Issuer or on the official ownership records of the Issuer. The notice shall provide for a period of thirty (30) days in which the owner shall pay the installments then due and owing, after which the Issuer may accelerate the principal of the assessment and immediately commence foreclosure proceedings in the manner provided for actions to foreclose mortgage liens or trust deeds. If at the sale no person or entity shall bid and pay the Issuer the amount due on the assessment plus interest and costs, the property shall be deemed sold to the Issuer for these amounts. The Issuer shall be permitted to bid at the sale.

The remedies provided herein for the collection of assessments and the enforcement of liens shall be deemed and construed to be cumulative and the use of any one method or means of collection or enforcement shall not deprive the Issuer of the use of any other method or means. The amounts of accrued interest and all costs of collection shall be added to the amount of the assessment up to the date of foreclosure sale.

Section 8. Remedy of Default. If prior to the final date payment may be legally made under a final sale or foreclosure of property to collect delinquent assessment installments, the property owner pays the full amount of all unpaid installments which are past due and delinquent with interest at the rate of 15% per annum to the date of payment, plus all approved or required costs, the assessment

of said owner shall be restored and the default removed, and thereafter the owner shall have the right to make the payments in installments as if the default had not occurred.

Section 9. Lien of Assessment. An assessment or any part or installment of it, any interest accruing and the penalties and costs of collection shall constitute a lien against the property upon which the assessment is levied on the effective date of this Ordinance. Said lien shall be superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien or other encumbrance and shall be equal to and on a parity with the lien for general property taxes. The lien shall continue until the assessment and any interest, penalties and costs on it are paid, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax or other assessment or the issuance of tax deed, an assignment of interest by the governing entity or a sheriff's certificate of sale or deed.

Section 10. Special Improvement Guaranty Fund. The Issuer does hereby reaffirm the creation of a special improvement guaranty fund and shall annually, so long as any special assessment bonds of the Issuer remain outstanding, transfer to said fund each year such amount as shall equal the amount that a tax levy on all taxable property located within the Issuer at the rate of .0002 will produce, either through a levy of a tax of not to exceed .0002 in any one

year or by the issuance of general obligation bonds or by appropriation from other available sources, until the fund is equal to not less than 25% of the amount of all outstanding special assessment bonds of the Issuer, for the purpose of guaranteeing to the extent of such fund the payment of special assessment bonds and interest thereon issued against local improvement districts for the payment of local improvements therein, all in the manner and to the extent provided by the laws of the State of Utah.

Section 11. Contestability. No assessment shall be declared void or set aside in whole or in part in consequence of any error or irregularity which does not go to the equity or justice of the assessment or proceeding. Any party who has not waived his objections to same as provided by statute may commence a civil action against the Issuer to enjoin the levy or collection of the assessment or to set aside and declare unlawful this Ordinance.

Such action must be commenced and summons must be served on the Issuer not later than 30 days after the effective date of this Ordinance. This action shall be the exclusive remedy of any aggrieved party. No court shall entertain any complaint which the party was authorized to make by statute but did not timely make or any complaint that does not go to the equity or justice of the assessment or proceeding.

After the expiration of the 30-day period provided in this section:

(a) The special assessment bonds issued or to be issued against the District and the assessments levied in the District shall become incontestable as to all persons who have not commenced the action provided for in this section; and

(b) No suit to enjoin the issuance or payment of the bonds, the levy, collection or enforcement of the assessment, or in any other manner attacking or questioning the legality of the bonds or assessments may be instituted in this state, and no court shall have authority to inquire into these matters.

Section 12. All Necessary Action Approved. The officials of the Issuer are hereby authorized and directed to take all action necessary and appropriate to effectuate the provisions of this Ordinance.

Section 13. Repeal of Conflicting Provisions. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed.

Section 14. Publication of Ordinances. An emergency is hereby declared, the preservation of peace, health and safety of the Issuer and the inhabitants thereof so requiring. Immediately after its adoption, this Ordinance shall be signed by the Mayor and City Recorder and shall be recorded in the ordinance book kept for that purpose. This

Ordinance shall be published once in the Citizen, a newspaper published and having general circulation in the Issuer, and shall take effect immediately upon its passage and approval and publication as required by law.

Section 15. Filing of Ordinance and Assessment List.
The City Recorder is hereby authorized and directed to file a copy of this Ordinance within five days from the date hereof in the Utah County Recorder's office. Since this Ordinance incorporates the Assessment List by reference, the City Recorder is further directed to file a copy of the final Assessment List with the Utah County Recorder.

PASSED AND APPROVED by the City Council of American Fork City, Utah County, Utah this 23rd day of May, 1989.



Mayor

ATTEST:


City Recorder



EXHIBIT "B"

ASSESSMENT LIST

ENT14773 BK 2600 PG 788

Parcel No. 1

Assessment to be levied on Parcel No. 1: \$975,109.60

Legal Description of Parcel No. 1:

Commencing at a point located North 90.15 feet and East 106.72 feet from the North one-quarter corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian (basis of bearing South 89°39'06" East along the Section line from said Section corner); thence South 89°59'59" East 406.62 feet; thence South 0°28'28" West 44.96 feet; thence South 89°46'15" East 756.02 feet; thence North 0°0'0" East 8.81 feet; thence South 89°27'34" East 70.84 feet; thence South 0°30'38" West 642.38 feet; thence South 0°51'59" West 721.35 feet; thence South 89°56'10" East 944.21 feet; thence South 0°24'30" East 779.27 feet; thence North 89°50'30" West 1122.81 feet; thence South 2°51'37" West 143.98 feet; thence North 49°50'23" West along the Easterly boundary of State Road Commission Property 1437.00 feet; thence North 30°35'27" West 931.22 feet; thence North 1°11'00" East 635.29 feet; thence North 86°49'00" West 367.92 feet; thence North 1°00'00" East along the East boundary of 500 East Street, American Fork; thence South 89°33'30" East along a fence line 886.93 feet; thence South 0°35'57" West along a fence line 589.27 feet to the point of beginning.

AREA = 94.7590 ACRES

Basis of bearing: South 89°34'06" East along the Section line.

Less a road described as follows:

Commencing at a point located South 0°19'24" East along the Section line 1294.31 feet and West 405.74 feet from the Northeast corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 0°24'30" East 779.27 feet; thence North 89°50'30" West 0.29 feet; thence North 0°38'16" West 376.63 feet; thence along the arc of a 25.00 foot radius curve to the left 38.92 feet (chord bears North 45°14'23" West 35.11 feet); thence North 89°50'30" West 1046.53 feet; thence along the arc of a 433.00 foot radius curve to the right 302.31 feet (chord bears North 69°50'27" West 296.20 feet); thence North 49°50'23" West 786.89 feet; thence along the arc of a 433.00 foot radius curve to the right 388.86 feet (chord bears North 24°06'44" West 375.92 feet); thence North 1°36'54" East 364.05 feet; thence along the arc of a 367.00 foot radius curve to the left 202.51 feet (chord bears North 14°11'33" West 199.95 feet); thence North 30°00' West 55.08 feet; thence along the arc of a 433.00 foot radius curve to the right 231.25 feet (chord bears North 14°42'02" West 228.51 feet); thence North 2°50'04" West 100.18 feet; thence North 0°35'57" East 377.82 feet; thence along the arc of a 25.00 foot radius curve to the left 39.34 feet (chord bears North 44°28'47" West 35.40 feet); thence North 89°33'30" West 789.47 feet; thence North 1°00' East 87.25 feet; thence South 89°33'30" East 886.93 feet; thence South 0°41'46" West 590.34 feet; thence along the arc of a 367.00 foot radius curve to the left 196.00 feet (chord bears South 14°42'02" East 193.68 feet); thence South 30°00' East 55.08 feet; thence along the arc of a 433.00 foot radius curve to the right 238.92 feet (chord bears South 14°11'33" East 235.90 feet); thence South 1°36'54" West 354.05 feet; thence along the arc of a 367.00 foot radius curve to the left 329.59 feet (chord bears South 24°06'45" East 318.62 feet); thence South 49°50'23" East 786.89 feet; thence along the arc of a 367.00 foot radius curve to the left 256.23 feet (chord bears South 69°50'27" East 251.05 feet); thence South 89°50'30" East 1044.92 feet; thence along the arc of a 25.00 foot radius curve to the left 39.62 feet (chord bears North 44°45'37" East 35.60 feet); thence North 0°38'16" West 286.66 feet; thence South 89°56'10" East 3.41 feet to the point of beginning.

AREA = 7.724 ACRES

ENT14773 BK 2600 PG 790

Parcel No. 2

Assessment to be levied on Parcel No. 2: \$41,890.40

Legal Description of Parcel No. 2:

Commencing at a point located North 129.21 feet and West 416.04 feet from the North one-quarter corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 1'11" West 634.84 feet; thence along the State Road right-of-way as follows: North 30°42' West 127.73, North 49°49" West 375.08 feet, North 76°34" West 6.63 feet, North 0°25' East 126.78 feet, North 1°00' East 175.00 feet; thence South 86°49' East 367.92 feet to the point of beginning.

AREA = 3.739 ACRES