Ordinance No. 3513

["Beginning July 1, 1998"]

(Amending or Repealing Ordinances)

Repeals Ord. 3509
ORDINANCE NO. 3513

AN ORDINANCE of the City of Kent, Washington, repealing Ordinance No. 3509 and approving and confirming the assessments and assessment roll of Local Improvement District No. 351 for the construction of a new five-lane arterial extending from Auburn Way North (East Valley Highway) eastward up the hill to Kent Kangley Road at 116th Avenue, as provided by Ordinance No. 3496, and levying and assessing a part of the cost and expense thereof against the several lots, tracts, parcels of land and other property as shown on the assessment roll.

WHEREAS, the assessment roll levying the special assessments against the property located in Local Improvement District No. 351 in the City of Kent, Washington (the "City"), has been filed with the City Clerk as provided by law; and

WHEREAS, the City Council delegated under RCW 35.44.070 to a special committee of the Council to act as the LID 351 Board of Equalization (composed of the members of the Public Works Committee) (the "Board") the conduct of the hearing on the assessment roll; and

WHEREAS, notice of the time and place of hearing on the assessment roll and for making objections and protests to the roll was published at and for the time and in the manner provided by law fixing the time and place of hearing thereon before the Board for the 12th day of April, 2000, at the hour of 1:00 p.m., local time, in the Council Chambers in the City Hall, Kent, Washington, and further notice thereof was mailed by the City Clerk to each property owner shown on the roll; and

LID 351 Final Assessment Roll
WHEREAS, at the time and place fixed and designated in the notice the hearing was held, all written protests received were considered and all persons appearing at the hearing who wished to be heard were heard, and the Board, sitting and acting as a Board of Equalization for the purpose of considering the roll and the special benefits to be received by each lot, parcel and tract of land shown upon such roll, including the increase and enhancement of the fair market value of each such parcel of land by reason of the improvement, considered all such protests; and

WHEREAS, the Board recessed its deliberations to May 1, 2000, at which time it met and considered proposed findings of fact and conclusions of law ("Findings"); and

WHEREAS, the Board entered its Findings and has forwarded them to the Council for consideration; and

WHEREAS, since enactment of Ordinance No. 3509, the Board of Equalization has determined that it transposed references to Protests 23 and 24 in its Findings, Conclusions and Recommendations, requiring further revision; and

WHEREAS, on May 30, 2000, the Board revised its Findings, Conclusions and Recommendations to correct the errors referencing Protests 23 and 24; and

WHEREAS, Ordinance No. 3509 contained a six cent ($0.06) error in the total amount of the assessment roll; and

WHEREAS, it is in the best interest of the City to repeal Ordinance No. 3509 and enact and confirm by new ordinance the LID 351 Final Assessment Roll and to incorporate the revised LID 351 Board of Revised Findings, Conclusions and Recommendations; and
WHEREAS, the Council has brought before it for consideration the Findings, and the exhibits and protests considered by the Board; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: - Repealer. Ordinance No. 3509 is hereby repealed.

SECTION 2: - Roll Confirmation. The assessments and assessment roll of Local Improvement District No. 351, which has been created and established for the purpose of constructing a new five lane arterial extending from Auburn Way North (East Valley Highway) eastward up the hill to Kent Kangley Road at 116th Avenue, as provided by Ordinance No. 3496, as the same now stand, shall be and the same are approved and confirmed in all things and respects in the total amount of $6,911,946.49.

SECTION 3. - Special Benefit. Each of the lots, tracts, parcels of land and other property shown upon the assessment roll is determined and declared to be specially benefited by this improvement in at least the amount charged against the same, and the assessment appearing against the same is in proportion to the several assessments appearing upon the roll. There is levied and assessed against each lot, tract or parcel of land and other property appearing upon the roll the amount finally charged against the same thereon.

SECTION 4. - Findings. The Findings of Fact, Conclusions and Recommendations of LID 351 Board of Equalization (May 1, 2000, as revised May 30, 2000), attached hereto at Exhibit “1”, are hereby adopted by the Council and incorporated herein by this reference.
SECTION 5. - Notice of Roll. The assessment roll as approved and confirmed shall be filed with the Finance Division Director of the City for collection and the Finance Division Director is authorized and directed to publish notice as required by law stating that the roll is in her hands for collection and that payment of any assessment thereon or any portion of such assessment can be made at any time within 30 days from the date of first publication of such notice without penalty, interest or cost, and that thereafter the sum remaining unpaid may be paid in 15 equal annual installments. The estimated interest rate is stated to be 8.5% per annum, with the exact interest rate to be fixed in the ordinance authorizing the issuance and sale of the local improvement bonds for Local Improvement District No. 351. The first installment of assessments on the assessment roll shall become due and payable during the 30-day period succeeding the date one year after the date of first publication by the Finance Division Director of notice that the assessment roll is in her hands for collection and annually thereafter each succeeding installment shall become due and payable in like manner. If the whole or any portion of the assessment remains unpaid after the first 30-day period, interest upon the whole unpaid sum shall be charged at the rate as determined above, and each year thereafter one of the installments, together with interest due on the unpaid balance, shall be collected. Any installment not paid prior to expiration of the 30-day period during which such installment is due and payable shall thereupon become delinquent. Each delinquent installment shall be subject, at the time of delinquency, to a charge of 9% penalty levied on both principal and interest due upon that installment, and all delinquent installments also shall be charged interest at the rate as determined above. The collection of such delinquent installments shall be enforced in the manner provided by law.

SECTION 6. - Severability. If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.
SECTION 7: Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law.

JIM WHITE, MAYOR

ATTEST:

BRENDA JACOBER
BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

P. STEPHEN DIJULIO, OF COUNSEL
BY TOM BRUNER, DEPUTY CITY ATTORNEY

PUBLISHED: 9 day of June, 2000.

I hereby certify that this is a true copy of Ordinance No. 3513, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER (SEAL)
BRENDA JACOBER, CITY CLERK
FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATIONS OF BOARD OF EQUALIZATION
REGARDING LID 351
(REVISED JUNE __, 2000)

I.
FINDINGS OF FACT

A. GENERAL LID FINDINGS

1. For over a decade, the City, King County and other regional and state agencies have determined the need for a cross-valley arterial roadway to serve the business and citizens who use the Kent Valley.

2. The 277th Street Corridor Project ("Project") will provide another east/west corridor across the Valley, connecting the East Valley Highway up the hill to the Kent-Kangley Road at 116th Avenue.

3. In December 1999, the Kent City Council passed an ordinance which formed LID 351 for the purpose of partially funding the Project.

4. Project improvements are as follows:

   1. A five lane roadway with bicycle lanes (including a separate bicycle/pedestrian bridge and pathway across the Green River and uphill to approximately 108th Avenue SE), approximately sixty-six feet curb to curb, with two lanes in each direction and a center turn lane in all areas except the bridge and hill climb and that section of the Corridor running west from the intersection with "I" Street in the City of Auburn.

   2. Bridge over the Green River.

   3. Curb and gutter.

   4. Cement concrete sidewalk on both sides.

   5. Storm drainage improvements.


   7. Landscaping.

   8. Utility modification as required.

   9. Lane channelization and signing.
10. 108th Street Bridge over the Corridor, with westbound onramp to the Corridor from 108th and eastbound offramp to 108th from the Corridor.


5. On April 12, 2000, having given notice in accordance with applicable law, the Board of Equalization, which consisted of the members of the Public Works Committee of the Council, (hereafter, "Board") met for the purpose of hearing any protest to the final assessment roll for LID 351 and forwarding recommendations to the full City Council for final action. At that time the Board received a total of 27 protests from various property owners in the LID which had been filed in accordance with the notice and state law. Each protest was assigned a number beginning with P1.

6. The Board heard testimony from the City and all property owners who had submitted timely protests and wished to be heard. 18 exhibits were offered during the course of the hearing and were given sequential numbers, beginning with one.

7. Based on the testimony, exhibits and final arguments, the Board makes the following additional general findings, which will be followed by specific findings related to each parcel.

B. GENERAL FINDINGS AS TO ALL PARCELS

1. Prior to work commencing on the Project, all of the property owners had signed an Environmental Mitigation Agreement (EMA) which required the owners to pay an established dollar amount not later than 10 years from the date of the EMA if no LID were formed. Creation of the LID and payment of the amount assessed under the LID satisfies the requirements of the EMA. None of the properties would have been allowed to develop without either undertaking full traffic mitigation or signing the EMA.

2. After construction of the improvements, traffic access and circulation throughout the LID boundaries will be improved by the following:

- Providing another east/west arterial corridor from Kent’s “East Hill” residential neighborhoods, across the Green River and across the Valley.

- Providing direct access to SR 167 and the I-5 corridor to the west across the Green River, diverting substantial traffic congestion on Kent-Kangley/Canyon Drive.

3. In developing the final assessment roll, the City initially considered using the zone and termini method set forth in RCW 35.44.030. However, the City testified that because of the variety of property types, sizes, development potential and zoning, the zone and termini method was not used. In its place the special benefit analysis was used. City witnesses testified that this method would more fairly reflect the special benefits to the various properties within the LID boundaries. No other witnesses provided testimony to dispute this assertion.
4. The City hired the firm of Macaulay & Associates, Inc. to perform the special benefit analysis. Robert Macaulay performed the analysis and provided testimony.

5. A Summary Special Benefits Study, dated March 1, 2000, was prepared by Macaulay and submitted as the basis for the final assessment roll. (Exhibit 4)

6. Any finding, general or specific deemed to be a conclusion, shall be considered as such.

C. FINDINGS AS TO SPECIFIC PROTESTS

1. P1, Scott and Debbie Kim. No testimony was provided.¹

2. P2, Mark Patton. No testimony was provided.

3. P3, Michael Gillespie. No testimony was provided.

4. P4, Kristie Kim. No testimony was provided.

5. P5, Mannella/Hinson. Pursuant to stipulation, the assessment is to be reduced to $88,697.40.

6. P6, Michael and Kimberly Lemos. No testimony was provided.

7. P7, Lance and Jill Rolfe. No testimony was provided.

8. P8, Dennis and Zana Heffernan. Mrs. Heffernan provided testimony regarding the effect of the Project on the property.

9. P9, Dr. Joseph Holly. No testimony was provided.

10. P10, Harumi Inari. No testimony was provided.

11. P11, Tai and Sue Yum. No testimony was provided.

12. P12, Dereck and Laura Cook. No testimony was provided.

13. P13, Camilio De Guzman. No testimony was provided.

14. P14, South King County Multi-Service Center. No testimony was provided.

15. P15, J. R. Behyner – Euro Tek (Heinz and Teresa Zoller). No testimony was provided.

16. P16, Sally Roberts, agent Wade Roberts. No testimony was provided.

¹ Information contained in the protest materials was considered by the Board. No witnesses provided additional testimony.
17. P17, King County Housing Authority. No testimony was provided.
18. P18, Brad and Gladys Epperly. No testimony was provided.
19. P19, KPP Properties, LLC. No testimony was provided.
20. P20, James Samuel for Samuel & Company. No testimony was provided.
21. P21, James Lindley. The property owner testified. Later the City and property owner stipulated that the assessment should be reduced to $8,547.50.
22. P22, D. Joe Jenkins. The property owner testified as to his particular situation.
24. P25, John and Roxie Wilburn. No testimony was provided.
25. P26, Tom Reichert. The agent for the property owner testified. However, it was later determined that this property was not within the LID did not have an assessment and thus the Board has no jurisdiction.
26. P27, Maria Mong-Diep. The property owner testified that her family does not utilize the streets as frequently as others due to their particular situation.

II. CONCLUSIONS

A. GENERAL CONCLUSIONS

1. Any conclusion deemed to be a finding shall be so considered.

2. Special benefits are measurable increases in the value of real property in excess of any enhancement to the general area. It is measured as the difference between the market value of the property without the LID project and the market value with the LID project assumed completed.

3. Initially, the City is favored with certain presumptions: that the improvements are a benefit to the property within the LID, the assessment is no greater than the benefit, the assessment is equal or ratable to the assessments upon other properties similarly situated, and the assessment is fair. In Re Indian Trail Trunk Sewer, 35 Wash. App. 840 (1983). The property owners must present expert appraisal testimony to overcome these presumptions.

4. The special benefit analysis performed by the City more fairly reflects the special benefits to the properties within the LID than the zone and termini method.
B. CONCLUSIONS AS TO SPECIFIC PROPERTIES

1. Protests P1 through P4, P6 through P21, P22, P24, P25 and P27 should each be denied on the basis that the property owners have not overcome the City's presumptions.

2. With respect to P23, the assessment should be reduced to $59,263.04. The manager submitted traffic studies which purported to show a reduced trip generation from senior housing. The Board found that the Webster Court Apartments (P24) had a lower per unit assessment than Meeker Court (P23) and that since the apartments were similar in use and location, the assessments should be equalized on a per unit basis.

III. RECOMMENDATIONS

Based on the foregoing Findings and Conclusions, the Board recommends to the City Council as follows:

A. Pursuant to stipulation, the Board recommends P5 assessment be reduced to $88,697.40 and that P21 assessment be reduced to $8,547.50.

B. The Board recommends that the assessment on P23 be reduced to $59,263.04.

C. The Board recommends the following protests be DENIED: P1, P2, P3, P4, P6, P7, P8, P9, P10, P11, P12, P13, P14, P15, P16, 17, P18, P19, P20, P22, P24, P25 and P27.

D. As noted, P26 is not within LID and thus has no assessment.

E. The Board recommends that, except as specifically provided above, the final assessment roll be confirmed without modification.

DATED THIS 30th day of May, 2000.

BOARD OF EQUALIZATION FOR LID 351

Tim Clark, Chair
Connie Epperly
Rico Yingling