Ordinance No. 3695

(Amending or Repealing Ordinances)

CFN=1269 – LID 353
Passed 6/15/04
LID 353 Final Assessment Roll

The date ["Beginning July 1, 1998"] has led to confusion. This date will be deleted from cover sheets of ordinance/resolution revision pages. This cover sheet will be deleted on electronic pages only, no other deletions or changes have been made to the document – 6/21/2012.
ORDINANCE NO. 3695

AN ORDINANCE of the City Council of the City of Kent, Washington, approving and confirming the assessments and assessment roll of Local Improvement District No. 353 for the construction of the South 228th Street Extension, from 54th Avenue South to Military Road, with a bridge over the Green River, additional improvements to Military Road, sanitary sewer improvements between 42nd Avenue South and Military Road, improvements to South 228th Street between 54th Avenue South and 76th Avenue South, and sidewalk and street lighting on 76th Avenue South/4th Avenue North between South 220th Street and SR 167, as provided by Ordinance No. 3619, 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.

RECITALS

A. The assessment roll levying the special assessments against the property located in Local Improvement District No. 353 in the City of Kent, Washington (the "City"), has been filed with the City Clerk as provided by law.

B. The City Council delegated under RCW 35.44.070 a special committee of the Council (composed of the members of the Public Works Committee) (the "Committee") to conduct the hearing on the assessment roll.
C. Notice of the time and place of the 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 the hearing before the Committee for March 23, 2004, at the 4:00 p.m., local time, in the Council Chambers in the City Hall, Kent, Washington, and further notice was mailed by the City Clerk to each property owner shown on the roll.

D. 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 Committee, 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 parcel of land by reason of the improvement, considered all protests.

E. The Committee entered its Findings, Conclusions, and Recommendations Regarding LID No. 353 on April 5, 2004 ("Findings"); and its Supplemental Findings and Recommendations Regarding LID No. 353 on April 29, 2004 ("Supplemental Findings").

F. The Committee recessed its deliberations to May 24, 2004, at which time it met and considered further testimony, submissions, and presentations. After consideration, the Committee entered its Second Supplemental Findings and Recommendations Regarding LID No. 353, dated June 1, 2004 ("Second Supplemental
Findings”), and has forwarded the Findings, Supplemental Findings, and Second Supplemental Findings (collectively, “Findings”) to the Council for consideration.

G. The Council has brought before it for consideration the Findings, based upon the record considered by the Committee.

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

ORDINANCE

SECTION 1. - Roll Confirmation. The assessments and assessment roll of Local Improvement District No. 353, as they have been modified by the Findings, which has been created and established for the purpose of constructing the South 228th Street Extension, from 54th Avenue South to Military Road, with a bridge over the Green River, additional improvements to Military Road, sanitary sewer improvements between 42nd Avenue South and Military Road, improvements to South 228th Street between 54th Avenue South and 76th Avenue South, and sidewalk and street lighting on 76th Avenue South/4th Avenue North between South 220th Street and SR 167, as provided by Ordinance No. 3619, shall be and the same are approved and confirmed in all things and respects in the total amount of $14,079,491.50.

SECTION 2. - 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

LID 353 Final Assessment Roll
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 them as shown on the roll.

**SECTION 3. - Findings.** The Findings attached at Exhibits 1-3 are adopted by the Council and incorporated by this reference; provided, however, consistent with the Stipulated Agreement between Sound Manufacturing and the City and the oral decision of the Committee, Sound Manufacturing's parcel 490 assessment is increased to $45,400 and its parcel 496 assessment is reduced to $8,600.

**SECTION 4. - Notice of Roll.** The assessment roll as approved and confirmed shall be filed with the Finance Director of the City for collection, and the Finance Director is authorized and directed to publish notice as required by law stating that the roll is in the Director's hands for collection and that payment of any assessment or any portion of such assessment can be made at any time within thirty (30) days from the date of first publication of that notice without penalty, interest or cost, and that thereafter the sum remaining unpaid may be paid in fifteen (15) equal annual installments of principal together with accrued interest. The estimated interest rate is stated to be five and one-half (5.50) percent 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. 353. The first installment of assessments on the assessment roll shall become due and payable during the thirty (30)-day period commencing one year after the date of first publication by the Finance Director of notice that the assessment roll is in his 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 thirty (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 thirty (30)-day period during which such installment is due and payable shall be delinquent. Each delinquent installment shall be subject, at the time of delinquency, to a charge under Kent City Code Section 3.22.030 of a penalty levied on both principal and interest due upon that installment equal to the rate fixed in the ordinance authorizing the issuance and sale of the local improvement bonds for Local Improvement District No. 353 plus five (5) percent. All delinquent installments also shall be charged interest at the rate as determined above. The collection of delinquent installments shall be enforced in the manner provided by law.

SECTION 5. - 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 6. - 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, CITY CLERK

APPROVED AS TO FORM:

SPECIAL COUNSEL AND
BOND COUNSEL FOR THE CITY


I hereby certify that this is a true copy of Ordinance No. 3695, 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, CITY CLERK

(SEAL)
FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

REGARDING LID 353

Pursuant to notice, the final assessment roll hearing on LID 353 was held on March 23, 2004, in the Kent City Hall, Kent, Washington. The hearing was conducted by the City Council’s Public Works Committee consisting of Council members Bruce White, Ron Harmon and Debbie Raplee. Following conclusion of all testimony, the Committee submits these Findings of Fact, Conclusions and Recommendations.

I. FINDINGS OF FACT

A. GENERAL FINDINGS

1. LID 353 was formed pursuant to Ordinance 3619, passed by the City Council on October 1, 2002. The LID was created to construct the S. 228th Street Extension and related improvements on S. 228th Street needed to complete the roadway and provide a complete arterial street from East Valley Highway to I-5.

2. These road improvements have been part of the City’s 6 Year Transportation Improvement Plan for many years and are necessary for development of that portion of the City.

3. Beginning in the 1980’s, the City used a variety of agreements to allow developers to improve their property prior to these street improvements being installed. These agreements included LID agreements and what have been called Environmental Mitigation Agreements (EMA’s). The form of these agreements has varied over the years, but all were designed to allow development to proceed in advance of construction of the street improvements.

B. FINDINGS AS TO SPECIFIC PROPERTIES

1. Chang Hyok Kim

   Mr. Kim’s protest letter asked for more time to get an appraisal.

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1 The complete description of the property and assessment amount is found in the letters of protest.
2 Information contained in the protest materials was considered by the Committee. No witnesses provided additional testimony.
2. Chang Hyok Kim. See above.

3. Janell Ochsner. Mrs. Ochsner testified that her questions about an exemption from the assessment had been answered by the City Attorney and that she had no further concerns.

4. Fugie Kajimura. No testimony was provided. It appears her concerns have to do with the cost of the assessment. She may be entitled to an exemption.

5. Charles and Kathy Weaver. No testimony was provided.

6. Zubin Danuwala. No testimony was provided.

7. Silver Oak, LLC. No testimony was provided. The protest letter indicated that there were wetlands on the property, but there was insufficient information to indicate the extent of the wetlands and their effect on future development of the property.

8. Polygon Northwest Company. No testimony was provided. The protest letter indicated that the property was open space and could not be built upon due to restrictions placed on it by the City during PUD approval.

9. Amy Cocanour. No testimony was provided.

10. Toni Thompson. No testimony was provided.

11. Polygon Northwest Company. No testimony was provided.

12. Paolo Serafico. No testimony was provided.

13. Sicklesteel Development, LLC. No testimony was provided.

14. Joyce Barnier. No testimony was provided. The City indicated that Ms Barnier was entitled to an Agricultural Exemption as provided by law and that the City would work with her to have the proper forms available.

15. Dorothy West. No testimony was provided. It appears she may be entitled to an exemption from the assessment.

16. Silver Oak, LLC. No testimony was provided.

17. Pacific Propeller International, LLC. No testimony was provided.

18. Pacific Detroit Realty, LLC. No testimony was provided. The protest letter requested more time to get an appraisal of the property.

19. Davis Property & Investment. No testimony was provided. Mr. Davis’ protest letter asked for more time to get an appraisal of the property.
20. **Sound Manufacturing Company.** Testimony was provided by Chris Jensen. He stated that he had received notice of the hearing on March 19th when he was contacted by his attorney in Enumclaw. He asked for more time to prepare his case. He indicated that he was a small business owner and not a developer, yet the assessments seemed to force him to develop his property. He pointed out that several properties next to his were assessed less, yet had the same frontage on 228th. He acknowledged that he had received notice of the preliminary assessment.

21. **Sysco Food Services of Seattle, Inc.** Testimony was provided by Tim Cash, Director of Legal Services, James Price, an MAI appraiser, and Duana Kolouskova, attorney for the company. Ms Kolouskova indicated that her client’s assessment had doubled from the preliminary assessment and represented 6% of the assessments borne by private property owners within the LID. The company had received notice 2 weeks before the hearing, and while she was not asking for a continuance, she thought it was unfair for the city to give such minimal notice. Ms Kolouskova indicated that the method of assessment was not found in state law and not based on case law. There was no definition of Secondary, Primary, etc. that the City’s appraiser had used in determining fair market value. Sysco does not need the improvements. While her client (or its predecessor) had signed the LID and EMA’s over the years, they were forced to do so by the City in order to further develop their property. She indicated that according to the EMA her client would owe $463,148, not the amount claimed by the City. Her client had quitclaimed 17,000 square feet of property along 228th and had received no compensation. Further, her client had constructed a noise wall along its property line on 228th which was going to be duplicated on the other side and which benefited only the residential properties on the south side of 228th. She indicated that her client had constructed 1450 feet of street improvements along 54th and had received no credit for this.

Mr. Price testified that he was an MAI appraiser and had experience in appraising property in south King County. While he had not conducted a special benefit analysis before, he had reviewed numerous studies for other clients. He indicated that as far a commercial property was concerned, location was more important than frontage and that therefore the basis for the assessment was faulty as it appeared to depend heavily on frontage rather than location. He agreed that there was a benefit to the property from the project, but did not have an opinion as to the amount.

Mr. Cash testified that his company’s predecessors had signed an LID covenant in 1983, but that the level of improvements was much less than contemplated by the current project. He indicated that his company sells food products and utilizes 54th as the means of ingress and egress. His company does not directly access onto 228th.

In rebuttal, the City called Chad Bieren. He testified that the sound wall and street dedication were conditions of approval imposed by the City Council in connection with development permits on the property. No appeal had been taken.
from these requirements. He further indicated that to construct a street improvement in accord with the requirements of the project would require in excess of $500 a foot in this location due to the grade changes. He indicated that this figure was an estimate and that it assumed that the work would be done in accordance with city contracting procedures, which would include paying prevailing wages. Private contractors might not have to pay these prevailing wages.

Ms Foreman testified that if Sysco would have installed the improvements as required by the EMA, she would have appraised the property at $.75 a foot instead of the $1.50.

The City also recalled City Public Works Director Don Wickstrom. He testified that he had been with the city for 35 years and was familiar with development of this area of the City. The original improvements had been put in by the development arm of the railroad and that 54th street was one of these improvements made by the railroad as a condition of the platting of the area.

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. The property owner has the burden of producing evidence to rebut these presumptions. If the property owner presents sufficient evidence to rebut the presumptions (generally through appraisal testimony or other evidence of property value with and without the Project improvements), the City has the ultimate burden of showing special benefits.

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.

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3 In Re Indian Trail Trunk Sewer, 35 Wash. App. 840 (1983).
4 Bellevue Plaza v Bellevue, 121 Wn.2d 397 (1993)
5. The City followed the legally required provisions with regard to notice. However, the Committee believes that 15 days notice, although in compliance with the law, is too short a time for many property owners to retain an appraiser to perform the necessary appraisal work to challenge the City’s assessment.

B. Conclusions As To Particular Properties

1. Pursuant to stipulation, the King County Metro lot at Military Road, Parcel 1504 is reduced from $191,457 to $159,550.

2. The following property owners have failed to overcome the presumptions in favor of the City’s final assessment roll: Ochsner; Kajimura, Weaver, Daruwala, Silver Oak LLC, as to protest 7; Cocanour; Thompson; Polygon, as to protest 11, Serafico, Sicklesteel, Barnier, West, and Silver Oak LLC, as to protest 16.

3. The Committee requests the City Attorney to provide information to Kajimura and West as to the process for claiming an exemption from payment of the assessment.

4. Polygon, with respect to protest 8, has presented evidence that the property may not be further developed. Given this, the Committee believes the assessment should be reduced to $0.

5. The following property owners have requested more time to obtain an appraisal. The Committee will meet on May 11th at 5 p.m. at City Hall to consider any additional information from these property owners: Kim, protests 1 and 2, Pacific Detroit, Davis Properties, and Sound Manufacturing.

6. Pacific Propeller, Sound Manufacturing and Sysco Food Services all were classified as Primary since they fronted upon 228th, but had not installed the improvements to the street. As to each of these properties the Committee finds that the assessments as presented by the City are sustained. However, in light of the testimony, the Committee has determined that the above property owners should be given an option to construct the improvements themselves. In that case the Committee concludes that the assessments should be based on the $.75 per square foot value and not the $1.50 value. If these property owners, either together or individually, wish to construct the improvements they must enter into an agreement with the City concerning the details, timing and other aspects of the construction, which agreement must be approved by the City Public Works Director.

III. RECOMMENDATIONS

Based on the foregoing, the Committee makes the following recommendations:
1. King County Metro lot at Military Road, Parcel 1504 be reduced from $191,457 to $159,550.

2. Polygon Northwest, protest 8 (assessment #1973), is reduced to $0.

3. Further testimony will be accepted from Kim, protests 1 and 2, Pacific Detroit, Davis Properties, and Sound Manufacturing on May 11th as noted above.

4. The protests from Pacific Propeller and Sysco Food Services are denied, provided that these property owners may elect to construct the improvements on 228th, subject to entering into an agreement with the City as noted above. In that case, these properties assessments shall be reduced, based on a special benefit of $.75 a square foot.

5. All other assessments should remain as set forth on the Final Assessment Roll and all other protests should be denied.

DATED this 5th day of April, 2004

Bruce White, Chair

Ron Harmon

Debbie Raplee

Date of Mailing: 4-13-04
SUPPLEMENTAL FINDINGS AND RECOMMENDATIONS REGARDING LID #353

The City Council's Public Works Committee consisting of Councilmembers Bruce White, Ron Harmon, and Debbie Raplee have previously issued findings, conclusions and recommendations regarding LID No. 353. Subsequent to issuing the findings, conclusions, and recommendations, the Committee learned that both the City Attorney and the committee's special counsel would not be available for the next scheduled meeting. In addition, the Committee determined that a deadline should be placed on those property owners who are given an option to enter into an agreement with the City to construct the improvements on 228th. Therefore, the committee wishes to issue these supplemental findings and recommendations which will be in addition to the previously issued recommendations.

1. The Committee will meet at 5:00 PM on May 24, 2004 at Kent City Hall to consider further testimony from Kim, protests 1 and 2, Pacific Detroit, Davis Properties and Sound Manufacturing.

2. Pacific Propeller, Sysco Food Services, and Sound Manufacturing have until 5:00 PM on May 24, 2004 to enter into the agreement to construct the improvements on 228th as referenced in the prior findings, conclusions, and recommendations.

3. The City Clerk is directed to send copies of the Supplemental Findings, Conclusions and Recommendations to all property owners who have filed protests with the City.

DATED this 29th day of April, 2004.

CITY OF KENT CITY COUNCIL

[Signatures]

Bruce White, Chair
Ron Harmon
Debbie Raplee

Date of Mailing: #1 and #2 mailed 4/30/04
#3 mailed 5/03/04
SECOND SUPPLEMENTAL FINDINGS AND RECOMMENDATIONS REGARDING LID #353

The City Council’s Public Works Committee consisting of Councilmembers Bruce White, Ron Harmon, and Debbie Raplee have previously issued findings, conclusions and recommendations regarding LID #353. Pursuant to those findings, the hearing was continued to May 24th to allow certain protesters to provide additional information to the Committee and to allow certain protesters to enter into a contract with the City to construct the improvements on their own.

Notice of the May 24th meeting was duly sent to all protesters. At the continued hearing, the City presented some additional testimony from Carol Storm who indicated that she had contacted the protesters and inquired about whether they were going to attend. Aside from those that had reached a stipulated amount with the City, all protesters indicated that they would not be attending the hearing. The City also presented testimony that a cost estimate and proposed contract had been presented to Pacific Propeller in accordance with the Committee’s previous recommendation. Pacific Propeller had indicated that they did not intend to construct the improvements and would accept the assessment.

Therefore, the committee wishes to issue these supplemental findings and recommendations which will be in addition to the previously issued recommendations.

1. Pursuant to stipulation with the City, the Sysco Food Services assessment is reduced to $883,078.50.

2. Pursuant to stipulation with the City, Sound Manufacturing’s parcel 490 assessment is reduced to $45,400 and parcel 496’s assessment is reduced to $8,600.

3. The protests of Kim, Pacific Detroit, Davis Properties and Pacific Propeller are denied.

DATED this 1st day of June, 2004.

CITY OF KENT CITY COUNCIL

Bruce White, Chair
Ron Harmon
Debbie Raplee

Date of Mailing: 6-8-04