Ordinance No. 3897

(Amending or Repealing Ordinances)

CFN=1300 – LID 359 – 116th Ave. SE Improvements
Passed – 12/9/2008
LID 359 – Final Assessment Roll Ordinance
ORDINANCE NO. 3897

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. 359 for the construction of roadway improvements, sanitary sewer improvements, water main improvements and a storm water detention pond, as provided by Ordinance No. 3808, 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. 359 in the City of Kent, Washington, has been filed with the City Clerk as provided by law.

B. Notice of the time and place of the hearing to make objections and protests to the roll was published in the manner provided by law fixing the initial time and place of the hearing for September 16, 2008, at 7:00 p.m., local time, in the Council Chambers in the City Hall, Kent, Washington, and further notice of the hearing was mailed by the City Clerk to each property owner shown on the roll. Prior to commencement of the hearing on September 16, 2008, the City determined that changes in the names and addresses of certain taxpayers of records within LID No. 359 had been changed on the rolls of the King County Assessor. As a result, the City
Council continued the hearing from September 16, 2008 to November 18, 2008. Further notice of the time and place of the hearing to make objections and protests to the roll was published at and for the time and in the manner provided by law fixing the further time and place of the hearing for November 18, 2008, at 7:00 p.m. local time in the Council Chambers in the City Hall, Kent, Washington, and further notice of the hearing was mailed by the City Clerk to each property shown on the roll.

C. At the time and place fixed and designated in the further 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; testimony was given under oath; and, testimony was subject to cross examination. The City Council, 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 that roll, including the increase and enhancement of the fair market value of each parcel of land by reason of the improvement, considered all such protests.

D. Following its consideration of all such protests, the City Council entered its preliminary ruling and its Special Counsel, James Haney, Ogden Murphy Wallace, prepared Findings, Conclusions, and Decision Regarding LID 359 which are attached hereto as Appendix A, and incorporated herein by this reference.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES ORDAIN as follows:

ORDINANCE

SECTION 1. – Roll Confirmation. The assessments and assessment roll of Local Improvement District (“LID”) No. 359, which has been created and established for the purpose of constructing roadway improvements, sanitary sewer improvements, water main improvements and a storm water
detention pond, as provided by Ordinance No. 3808, as the same now stands, is approved and confirmed in all things and respects in the total amount of $1,307,177.40.

**SECTION 2.** - **Findings.**

2.1 Recitals A through D, above, are incorporated herein by this reference.

2.2 Findings, Conclusions and Decision Regarding LID 359, attached hereto as Appendix A ("Decision"), is incorporated herein by this reference as the decision of the Council, sitting and acting as a Board of Equalization, on the protests received by the Council regarding the assessment roll for LID 359.

2.3 Each of the lots, tracts, parcels of land, and other property shown upon the assessment roll as determined in the Decision are declared to be specially benefited by the LID No. 359 improvements in at least the amount charged against those properties, and the assessment appearing against them is in proportion to the several assessments appearing upon the roll. There is levied and assessed against the property appearing upon the roll the total amount of $1,307,177.40.

**SECTION 3.** - **Notice of Roll.** The assessment roll as approved and confirmed shall be filed with the Finance Department Director of the City for collection, and the Finance Department 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 that 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 and interest. The estimated interest rate is six (6)% per annum. 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 Department 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 that installment is due and payable shall become 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. 359, 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 4. - Charge in Lieu of Assessment. Consistent with Ordinance No. 3808 creating LID No. 359, no property, any portion of which is outside the District may connect to the utility improvements constructed or made a part of such District unless either that property shall have been subject to the special assessments on the assessment roll for the District or the owners of the property shall have paid prior to such connection a charge in lieu of assessment which shall be at least the equivalent of those assessments which would have been applied to that property had it been included within that District. Further, nothing in this ordinance shall preclude charges, including charges in lieu of assessment, for additional connections or services provided by utility improvements constructed by the District and not otherwise accounted for in the assessments set forth in this ordinance.

LID 359 – Final Assessment Roll Ordinance
SECTION 5. – Severability. If any one or more section, 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 publication as required by law.

Suzette Cooke, Mayor

Attest:

Brenda Jacober, City Clerk

Approved as to form:

Foster Pepper PLLC
Special Counsel and Bond Counsel

Passed the 9 day of December, 2008.
Approved the 9 day of December, 2008.
Published the 13 day of December, 2008.
CERTIFICATION

I, the undersigned, City Clerk of the City of Kent, Washington, hereby certify as follows:

1. The attached copy of Ordinance No. 3897 is a full, true, and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City of Kent held at the regular meeting place thereof on December 9, 2008, as that ordinance appears on the minute book of the City; and the ordinance will be in full force and effect five (5) days after the publication of its summary in the city's official newspaper; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 9 day of December, 2008.

CITY OF KENT, WASHINGTON

[Signature]

BRENDA JACOBER, City Clerk
FINDINGS, CONCLUSIONS, AND DECISION REGARDING LID 359

Pursuant to notice, the final assessment roll hearing on LID 359 was held before the Kent City Council on November 18, 2008. The hearing was held in the council chambers at the Kent City Hall, 220 4th Avenue South, Kent, Washington. Four council members participated in the hearing: Council President Raplee, Council member Clark, Council member Harmon, and Council member Ranniger. From the testimony provided, the Council makes the following Findings of Fact, Conclusions of Law, and Decision.

I. FINDINGS OF FACT

A. GENERAL FINDINGS

1. LID 359 was formed pursuant to Ordinance No. 3808, passed by the City Council on September 5, 2006. The LID was created to construct street and utility improvements to 116th Ave. S.E. between Kent Kangley Road and S.E. 256th Street.

2. The street improvement widened 116th Ave. S.E. from two lanes to five lanes and included curb, gutters, sidewalk, a new storm water system, a new street illumination system, and the undergrounding of power and telephone wires. Also included was widening on S.E. Kent-Kangley Road near the intersection of 116th Ave. S.E.

3. An eight-inch diameter sanitary sewer collection system with associated manholes was also installed. Six-inch diameter side sewer stubs from the main line to the property lines at the street were also included. For properties with development potential, stubs were installed in the appropriate number to serve the proposed development.

4. In order to avoid future cutting of the new street improvements, water services and stubs were provided from the existing water main in 116th in order to provide for future development of the individual parcels in the LID.

5. The street improvement project was on the City's Six Year Transportation Improvement Program and was known as the 277th Corridor Extension.

6. The total project cost was $7,078,755.41. LID assessments are proposed to pay $1,331,231.69 of this cost. The remainder of the project has been paid for with a state grant and other funds.
7. The preliminary assessment roll for LID 359 proposed assessments in the total amount of $2,015,197.59. The proposed final assessment roll total of $1,331,231.69 represents a decrease from the preliminary assessment roll of $683,965.90.

8. The method of assessment used to prepare the proposed final assessment roll is a modified zone and termini method. For street and sanitary sewer improvement costs, instead of the five zones used in the statutory zone and termini method, the method proposed by the City uses seven zones back from the street frontage. For single-family zoned properties, the total street and sanitary sewer cost from the zone and termini distribution is then distributed on a per potential lot basis. For water stubs, each property was assessed for actual stub costs attributable to that property. The cost of the storm water detention pond is not assessed against the LID parcels.

9. Any finding set forth below that is more properly deemed a conclusion is hereby adopted and incorporated as such.

B. FINDINGS AS TO SPECIFIC PROPERTIES

1. Michael Favors of M, M, R & S, LLC (Assessment Parcel 13) spoke in support of the final assessment roll. Mr. Favors testified that while no one likes paying assessments, he believed that the assessment roll was fair.

2. Four written protests were received at or prior to the final assessment roll hearing: Assessment Parcel 2 (Apple Lane, LLC), Assessment Parcel 8 (Kangas), Assessment Parcel 18 (Yonce), and Assessment Parcel 19 (Ackerson/Konen).

3. No oral testimony was presented on behalf of Apple Lane, LLC (Assessment Parcel 2). Apple Lane’s protest letter provided three reasons for its protest:

   a. Apple Lane stated that a stream buffer on its property was wider than anticipated, thereby reducing the value of its property;

   b. Apple Lane stated that it would only be able to expand from its current seven residential units to nine and that it therefore received a disproportionately low “per future residential unit” benefit from the water system improvements; and
c. Apple Lane could locate only one lot on 116th Street and the rest of its lots will require an internal roadway and other improvements similar to those provided by the LID, resulting in a disproportionately low "per future lot" benefit.

4. The increased stream buffer was taken into account in formulating the final assessment roll. In formulating the roll, the City assumed that nine residential lots could be developed on the site. This nine lot scenario was taken from a short plat application submitted by Apple Lane on April 2, 2008. A copy of the Notice of Application for the Apple Short Plat was received in evidence. The application indicates that the nine lot scenario is viable with the stream buffers.

5. The Apple Short Plat application also indicates that the existing multifamily units on the site would be removed and nine single-family lots created. This will result in the need for additional water connections, which the LID provides.

6. If Apple Lane were to develop its property in the absence of the LID, Apple Lane would be required to construct street and utility improvements on 116th Avenue S.E. similar to those provided by the LID. With the LID, Apple Lane will not be required to provide those improvements in order to develop.

7. Linda Kangas Swanson spoke on behalf of her mother, Elizabeth Kangas (Assessment Parcel 8). Ms. Swanson expressed concern about the length of time the LID had taken and the amount of money she had had to spend on wetland delineations and engineering studies in order to convince the City that the property could not be developed with ten lots, as assumed at the time of LID formation. Ms. Swanson questioned the City's assumption in the final assessment roll that the property could be divided into three lots, since an easement across adjacent property would be required in order for a third lot to be created. Ms. Swanson said she and her mother have tried to sell the property and have been unable to do so.

8. City staff responded that the City's Design Section, Development Engineering Section, Environmental Engineering Section, Planning Department, and Fire Department had evaluated the property and determined that three lots could be developed on the property under current development codes. The adjacent property is owned by the City of Kent and staff assumed that the City would be willing to give an access easement for development of the Kangas property.
9. Ms. Norma Yonce (Assessment Parcel 18) and her representative testified that she objects to the final assessment for two reasons: (1) because she is on a fixed income and will be unable to pay the assessments and (2) because construction of a "c" curb barrier on the centerline of S.E. Kent-Kangley Road has made it more difficult to get in and out of her driveway and devalued her property.

10. City staff responded that the LID did not improve the section of S.E. Kent-Kangley Road in front of Ms. Yonce's property. The "c" curbing in front of the parcel was installed as the result of construction of a Chevron gas station and convenience store that was built on the corner of 116th Avenue S.E. and S.E. Kent-Kangley Road. The curbing was intended to restrict turning movements to and from the convenience store. The staff position was that because the LID did not install the curbing it was not relevant to the LID assessment.

11. City staff also responded that Ms. Yonce may qualify for deferral of her assessment based on age and income if she is unable to pay.

12. Finally, City staff responded that Assessment Parcel No. 18 was not assessed for the street improvements to 116th Ave. S.E. because the parcel does not front on the street.

13. Mr. David Konen (Assessment Parcel 19) testified that he did not object to the amount of the assessment as much as its timing. He stated that the assessment of $46,800.59 for his parcel was significant in these difficult economic times. Mr. Konen also questioned his ability to achieve four lots on his parcel given the City's stormwater detention requirements.

14. City staff responded that the detention requirements had been taken into account when the potential development of Assessment Parcel 19 was considered for purposes of the assessment roll. Staff concluded that four parcels could be achieved while meeting the City's detention requirements.

15. Other than those filed by the owners of Assessment Parcels 2 (Apple Lane, LLC) 8 (Kangas), 18 (Yonce), and 19 (Ackerson/Konen), no written assessment protests were received.
II. CONCLUSIONS OF LAW

A. GENERAL CONCLUSIONS

1. Any conclusion set forth below that is more properly deemed a finding is hereby adopted and incorporated as such.

2. There are two questions before the City Council in a final assessment roll hearing:
   a. Whether the properties within the LID are specially benefited by the improvements and if so, whether the amount of the special benefits to each property equal or exceed the amount of the assessment; and
   b. Whether each property in the LID is proportionately assessed when compared with the other properties in the LID.

3. Special benefits are measurable increases in the fair market value of real properties in the LID as the result of the LID improvements. The special benefit received by an individual parcel is measured as the difference between the fair market value of the property with the LID improvements and the fair market value of the property without the LID improvements.

4. Initially, the law favors the proposed assessment roll with certain presumptions: (a) that the improvements are a benefit to the property within the LID; (b) that the assessment imposed on each property is no greater than the special benefits received by that property; and (c) that the assessment on each property is proportional to the assessments on other properties. The property owners must present evidence to overcome these presumptions.

5. The method of assessment used by the City staff to prepare the final assessment roll more fairly reflects the special benefits to properties within the LID than does the statutory zone and termini method. The use of potential lots, the assessment of individual water stub costs, and the exclusion of the storm water detention pond costs better recognizes special benefits than would a straight zone and termini method.

B. CONCLUSIONS AS TO INDIVIDUAL PARCELS

1. The protest filed by Apple Lane, LLC (Assessment Parcel 2) should be denied on the basis that the property owner did not
meet its burden of overcoming the presumptions described in Conclusion of Law A(4) above. Staff adequately responded to each of the points raised in the written protest letter and no testimony or other evidence was submitted by Apple Lane.

2. Mr. Favor’s comments on behalf of M, M, R & S, LLC (Assessment Parcel 13) supported the LID assessments and were not a protest. No change should be made to the proposed assessment for Assessment Parcel 13.

3. The protest filed by Mr. Konen (Assessment Parcel 19) should be denied on the basis that the property owner did not meet his burden of overcoming the presumptions described in Conclusion of Law A(4) above. It appears that it is possible to develop four lots on Assessment Parcel 19 while meeting the City’s stormwater detention requirements and no specific evidence to the contrary was offered.

4. With respect to the Kangas property (Assessment Parcel 8), the Council has considered the evidence and concludes that the assessment should be reduced by one-third, from $61,062.86 to $40,708.57. The proposed assessment on the final assessment roll was based on a three-lot development scenario for the Kangas parcel. Achieving three lots on the site is dependent upon obtaining an easement across the adjacent parcel owned by the City. While it is possible that the City would agree to give an easement to a developer of the Kangas property, that is not a certainty. Accordingly, the three-lot scenario is speculative and a two-lot development scenario should have been used. The assessment should therefore be reduced by one-third.

5. With respect to the Yonce property (Assessment Parcel 18), the Council has considered the evidence and concludes that the assessment should be reduced by $3,700, from $11,700 to $8,000. While the “c” curbing was not installed as part of the LID improvements, increased traffic flow made possible by the LID improvements to 116th Ave. SE contributed to the “c” curbing requirement. The resulting change in access to the Yonce property offsets some of the special benefits the property would otherwise receive from the LID improvements. The proposed assessment should be reduced by $3,700 in recognition of this offset.

III. DECISION

Based on the foregoing Findings and Conclusions, the City Council makes the following decisions:
1. The assessment of the Kangas property (Assessment Parcel 8) is reduced from $61,062.86 to $40,708.57.

2. The assessment of the Yonce property (Assessment Parcel 18) is reduced from $11,700 to $8,000.

3. All other protests are denied and the Final Assessment Roll is confirmed as provided in the ordinance to which these Findings, Conclusions, and Decision are attached.