

ASSESSMENT ORDINANCE NO. 2003-04

Bountiful City, Utah

April 1, 2003

The City Council of Bountiful City, Davis County, Utah met in regular session on Tuesday, the first day of April, 2003, at its regular meeting place at 7:00 p.m. The following members of the City Council were present:

Joe Johnson	Mayor
J. Gordon Thomas	Councilmember
Barbara Holt	Councilmember
John S. Pitt	Councilmember
R. Fred Moss	Councilmember
Thomas Tolman	Councilmember

Also present:

Tom Hardy	City Manager
Kim J. Coleman	City Recorder/Finance Director

Absent: -----

E 1854743 B 3270 P 1061
 RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
 2003 APR 16 3:23 PM FEE .00 DEP MEC
 REC'D FOR BOUNTIFUL CITY

After the meeting had been duly called to order and after other matters not pertinent to this ordinance had been discussed, the City Recorder presented to the City Council a Certificate of Compliance With Open Meeting Law with respect to this April 1, 2003, meeting, a copy of which is attached hereto as Exhibit "A".

The following assessment ordinance (the "Assessment Ordinance") was then introduced in writing, was fully discussed, and pursuant to motion duly made by Councilmember Moss and seconded by Councilmember Holt, adopted by the following vote:

YEA: Councilmembers Holt, Moss, Pitt, Thomas, and Tolman.

NAY: None

The Assessment Ordinance was then signed by the Mayor in open meeting and recorded by the City Recorder in the official records of Bountiful City, Utah. The Assessment Ordinance is as follows:

Assessment Ordinance # 2003-04

ASSESSMENT ORDINANCE NO. 2003-04

AN ASSESSMENT ORDINANCE CONFIRMING THE ASSESSMENT ROLLS AND LEVYING AN ASSESSMENT AGAINST CERTAIN PROPERTIES IN BOUNTIFUL SPECIAL IMPROVEMENT DISTRICT NO. 2002-1, DAVIS COUNTY, UTAH FOR THE PURPOSE OF PAYING THE COSTS OF ROAD IMPROVEMENTS, WATER IMPROVEMENTS, WASTEWATER IMPROVEMENTS, SEWER IMPROVEMENTS, LIGHTING IMPROVEMENTS, PUBLIC PARKING IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS (COLLECTIVELY, THE "IMPROVEMENTS") AND COMPLETING ANY MISCELLANEOUS WORK NECESSARY TO COMPLETE THE IMPROVEMENTS IN A PROPER AND WORKMANLIKE MANNER; ESTABLISHING A RESERVE FUND; ESTABLISHING THE EFFECTIVE DATE OF THIS ASSESSMENT ORDINANCE; AND RELATED MATTERS.

BE IT ORDAINED BY THE CITY COUNCIL OF BOUNTIFUL CITY, DAVIS COUNTY, UTAH:

Section 1. Determination of Costs. All costs and expenses for the acquisition, construction and installation of the Improvements (herein defined) within the District have been estimated and determined to be not more than \$3,113,000, including a construction contingency allowed by law. By Acknowledgment Waiver and Consent, the Owners of the property to be assessed within the District have consented to said costs of Improvements.

Section 2. Approval of Assessment List; Findings. The City Council (the "Council") of Bountiful City, Utah (the "Issuer") hereby confirms the assessment list for the Bountiful Special Improvement District No. 2002-1 (the "District"), a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference (the "Assessment List"), and hereby confirms that the Assessment List is just and equitable; 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 City Council of the Issuer 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 acquiring, constructing and installing road improvements, water improvements, wastewater improvements, sewer improvements, lighting improvements, public parking improvements and other related improvements (collectively, the "Improvements") and of completing any miscellaneous work necessary to complete the Improvements in a proper and workmanlike manner.

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

Section 4. Cost of Improvements; Amount of Total Assessments. The total cost of the Improvements in the District, including overhead costs, the costs of funding a reserve fund, and a contingency with respect to incomplete work, is \$3,113,000, of which \$403,000 has been paid by the property owners. The City will not pay any costs of the Improvements. The amount to be assessed against property affected or benefited by the Improvements in the District is \$2,710,000, which amount does not exceed in the aggregate the sum of: (a) the total estimated contract price or prices for the Improvements, including the costs of engineering, designing, and inspection; (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) overhead costs not to exceed fifteen percent (15%) of the sum of (a), (b), (c) and (d); (f) 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), (b) and (c); and (g) an amount sufficient to fund a reserve fund.

Section 5. Method of Assessment. The assessments for the District are levied in accordance with the following methods:

The parking structure improvements have been assessed on a combination of projected taxable value of improved parcels and on the proximity of said assessed properties to the parking structure improvements. The remaining Improvements have been assessed on an area basis.

Section 6. Payment of Assessments.

(A) By Acknowledgment Waiver and Consent, the property owners of the benefited properties within the District have waived the right to pay cash for their assessments during a cash prepayment period. The assessments shall be payable in fifteen (15) substantially equal annual installments including interest on the unpaid balance of the assessment at the same rate as the rate or rates of the special assessment bonds anticipated to be issued by the Issuer plus one-half of one percent. The assessment payment dates shall fall on April 1 of each year beginning April 1, 2004, until all assessments have been paid in full. Interest shall accrue from the effective date of this Assessment Ordinance until paid.

(B) In the event all or any portion of the property assessed hereunder is subdivided into smaller parcels as evidenced by a subdivision plat approved by the Issuer and recorded at the County Recorder's office of Davis County, the Issuer may elect, at its discretion, to allocate the assessment balance on the previously undivided property on a proportionate basis based on area. The required annual assessment installment payments for each subdivided parcel shall be allocated proportionately on an area basis so that the aggregate total of all of

the annual assessment installments for each of the subdivided parcels will equal the total annual assessment installment for the previously undivided property. When an assessment lien is perfected for each of the subdivided parcels, the total assessment levied against the previously undivided property will be released having been replaced by the aggregate of the assessments allocated to each of the subdivided parcels. A release of the new assessment lien for a given subdivided parcel will be delivered by the Issuer at the time the assessment balance for that subdivided parcel is paid in full.

(C) All unpaid installments of an assessment levied against any piece of property may be paid prior to the dates on which they become due. All prepayments must include (i) an additional amount equal to the interest which would accrue on the prepaid assessment to the next succeeding date on which interest is payable on any special assessment bonds ("Assessment Bonds") to be issued pursuant to a bond resolution adopted by the Issuer (the "Bond Resolution"); (ii) such additional amount as, in the opinion of the Treasurer, is necessary to assure the availability of money to pay interest on the Assessment Bonds corresponding to the prepaid assessment as interest becomes due and payable; and (iii) any premiums which may be charged and become payable on the Assessment Bonds corresponding to the prepaid assessment which may be called on a redemption date in order to utilize the assessments paid in advance. The Treasurer shall calculate and deliver written notice of the total prepayment amount to the property owner upon the property owner's written request.

Section 7. Default in Payment. If a default occurs in the payment of any installment of principal or interest, when due, the Treasurer, on behalf of the City Council, shall take one of two actions within fifteen (15) days after such default: (1) declare the unpaid amount delinquent and subject to collection as provided herein, or (2) accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and interest to be immediately due and payable and subject to collection as provided herein. Interest shall accrue and be paid on all amounts declared to be delinquent or accelerated and immediately due and payable at the same rate or rates of interest as are applied to delinquent real property taxes for the year in which the assessment installment becomes delinquent (the "Delinquent Rate"). In addition to interest charges at the Delinquent Rate, costs of collection, as approved by the Treasurer on behalf of the City Council, including, without limitation, attorneys' fees, trustee's fees and court costs, incurred by the Issuer and the Trustee for the Assessment Bonds or required by law shall be charged and paid on all amounts declared to be delinquent or accelerated and immediately due and payable.

The Treasurer shall then give immediate notice, in writing, of the default to the owner of the property in default, as shown by the last available equalized assessment rolls of Davis County. 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 of Davis County. 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 Treasurer, at the direction of the City Council, shall immediately initiate a summary sale pursuant to

Section 17A-3-324(2) and related pertinent provisions of the Act, of all property in default in the manner provided for actions to foreclose trust deeds. The City Council hereby designates the trustee as defined in the Bond Resolution or any successor thereof as trustee (the "Trustee"), to carry out such foreclosure, and such Trustee shall be deemed to have a power of sale and all other rights, power and authority necessary to legally and lawfully foreclose the lien for delinquent assessments, provided, however, that if an entity other than the trustee defined in the Bond Resolution is selected by the City Council, such selection shall occur prior to the expiration of the thirty (30) day cure period referenced herein. The Trustee so selected must satisfy the qualifications for a trustee set forth in Section 57-1-21, Utah Code Annotated 1953, as amended, or any successor statute. If for any reason, the Trustee cannot perform the powers and responsibilities herein provided, it may appoint with the consent of the City Council, a qualified trustee to serve as trustee. 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, including trustee's fees, attorneys' fees and costs, shall be added to the amount of the assessment up to, and including, 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 of principal and interest which are past due and delinquent with interest on such installments at the rate or rates set forth in Section 8 herein to the payment date, plus all Trustee's fees, attorneys' fees and other costs of collection, 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. Any payment made to cure a default shall be applied, first, to the payment of Trustee's fees, attorneys' fees and other costs incurred as a result of such default; second, to interest charged on past due installments, as set forth above; third, to the interest portion of all past due assessments; and last, to the principal portion of all past due assessments.

Section 9. Lien of Assessment. An assessment or any part or installment of it, any interest accruing and the penalties, Trustee's fees, attorneys' fees and other costs of collection shall constitute a lien against the property upon which the assessment is levied on the effective date of this Assessment 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 and the lien of any other assessments on the property. 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. Reserve Fund. The Issuer does hereby establish a reserve fund (the "Reserve Fund") in lieu of funding a special improvement guaranty fund, as additional security for the special assessment bonds ("Assessment Bonds") to be issued by the Issuer with respect to the District. The Reserve Fund shall be initially funded from proceeds of the Assessment Bonds in an amount equal to approximately 10% of the total amount of assessment bonds issued (the "Debt Service Reserve Requirement"). The cost of initially funding the Reserve Fund is included in the assessments of the property owners. The moneys on deposit in the Reserve Fund shall, upon the final payment of the Assessment Bonds, be applied to the final assessment payment obligation of the assessed properties. If the amounts on deposit in the Reserve Fund exceed the final assessment obligation, any excess amounts shall be paid by the Issuer to the owners whose properties were subject to the final assessment payment obligation, as an excess assessment payment.

In the event insufficient assessments are collected by the Issuer to make the debt service payments on the Assessment Bonds, the Issuer shall draw on the Reserve Fund to make up such deficiency. In the event the amount on deposit in the Reserve Fund is less than the Debt Service Reserve Requirement, the Issuer will replenish the Reserve Fund as provided in the Bond Resolution authorizing the issuance of the Assessment Bonds. If the amount on deposit in the Reserve Fund exceeds the Debt Service Reserve Requirement, excess moneys shall be transferred to the Bond Fund established under the Bond Resolution to be applied toward the next assessment payment obligation coming due.

Section 11. Investment Earnings. All investment earnings on the Reserve Fund shall be maintained in said Fund and applied in the same manner as the other moneys on deposit therein as provided in the Bond Resolution authorizing the issuance of the Assessment Bonds.

Section 12. 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 Assessment 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 Assessment 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 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 Assessment Bonds, the levy, collection or enforcement of the assessment, or in any other manner attacking or questioning the legality of the Assessment Bonds or assessments may be instituted in this state, and no court shall have authority to inquire into these matters.


Section 13. Notice to Property Owners. The Treasurer is hereby authorized and directed to give notice of assessment by mail to the property owners in the District. Said notice shall, among other things, state the amount of the assessment and the terms of payment. A copy of the form of notice of assessment is available for examination upon request at the office of the City Recorder.

Section 14. 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 Assessment Ordinance.

Section 15. Repeal of Conflicting Provisions. All ordinances or parts thereof in conflict with this Assessment Ordinance are hereby repealed.

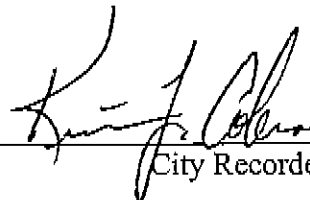
Section 16. Publication of Ordinances. Immediately after its adoption, this Assessment Ordinance shall be signed by the Mayor and City Recorder and shall be recorded in the ordinance book kept for that purpose. This Assessment Ordinance shall be published once in the Davis County Clipper, a newspaper having general circulation within the boundaries of the Issuer, and shall take effect immediately upon its passage and approval and publication as required by law.

PASSED AND APPROVED by the City Council of the Issuer, this April 1, 2003.



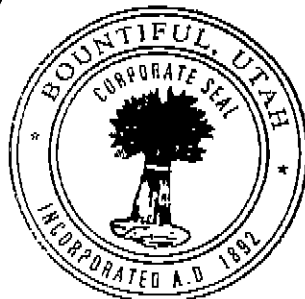
Mayor

ATTEST:



City Recorder

(SEAL)

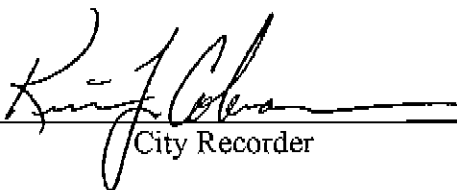


STATE OF UTAH)
 :ss.
COUNTY OF DAVIS)

I, Kim J. Coleman, the duly appointed, qualified and acting City Recorder of Bountiful City, Davis County, Utah (the "City"), do hereby certify that the above and foregoing is a full, true and correct copy of the record of proceedings had by the City Council at its meeting held on April 1, 2003, insofar as the same relates to or concerns Bountiful Special Improvement District No. 2002-1 as the same appears of record in my office.

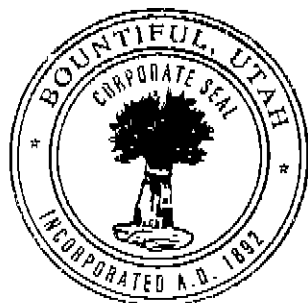
I further certify that the Assessment Ordinance levying the special assessments was recorded by me in the official records of the City on April 1, 2003.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City this April 1, 2003.



City Recorder

(SEAL)



PROOF OF PUBLICATION

Attached to this page is the Proof of Publication, indicating by the affidavit of the publisher that the said Ordinance levying the special assessments which was contained in the Assessment Ordinance adopted by the City Council on the 15th day of April, 2003, was published one time in the Davis County Clipper, a newspaper of general circulation within Bountiful City.

EXHIBIT "A"

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Kim J. Coleman, the undersigned City Recorder of Bountiful City, Davis County, Utah (the "City"), do hereby certify, according to the records of the City in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-6(2), Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the April 1, 2003, public meeting held by the City as follows:

(A) By causing a Notice, in the form attached hereto as Schedule "1", to be posted at the City's principal offices on March 27, 2003, at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and

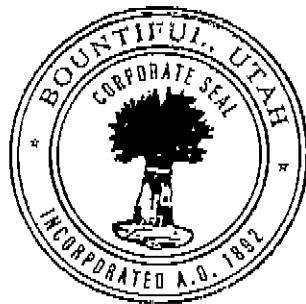
(B) By causing a copy of such Notice, in the form attached hereto as Schedule "1", to be delivered to the Davis County Clipper on March 27, 2003, at least twenty-four (24) hours prior to the convening of the meeting.

IN WITNESS WHEREOF, I have hereunto subscribed by official signature on April 1, 2003.



City Recorder

(SEAL)



SCHEDULE "1"

E 1854743 B 3270 P 1071
NOTICE OF MEETING

BOUNTIFUL CITY COUNCIL MEETING

TUESDAY, APRIL 1, 2003

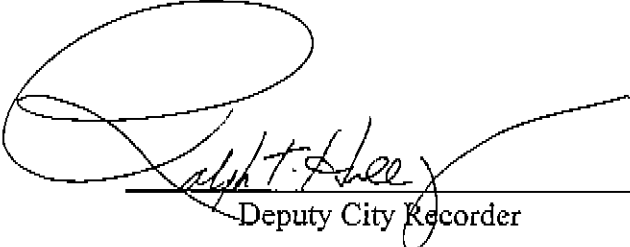
6:30 P.M.

NOTICE IS HEREBY GIVEN that the City Council of Bountiful, Utah will hold its regular Council meeting in the Council Chambers at City Hall, 790 South 100 East, Bountiful, Utah, at the time and on the date given above. The public is invited. Persons who are disabled as defined by the Americans With Disabilities Act may request an accommodation by contacting the Bountiful City Manager at 298-6142. Notification at least 24 hours prior to the meeting would be appreciated.

If you are not on the agenda, the Council will not be able to discuss your item of business until another meeting. For most items it is desirable for the Council to be informed of background information prior to consideration at a Council meeting. If you wish to have an item placed on the agenda, contact the Bountiful City Manager at 298-6142.

AGENDA

1. Welcome
2. Approve minutes of previous meeting
3. Approve weekly expenditures and/or monthly expenditure reports
4. Consider granting a Class A beer license to Moosman Investments, Inc, 1265 South 500 West
5. Consider adopting Findings of Fact from public hearing on proposed rezoning of properties located at 461 South 350 West and 460 South 285 West
6. Consider approval – Acknowledgment, Waiver, & Consent Agreement for Bountiful City, Utah Special Improvement District #2002-01
7. Consider Ordinance 2003-04, approving final assessments for Bountiful City, Utah Special Improvement District #2002-01
8. Council Committee Reports
9. Executive Session to discuss acquisition of real property
10. Adjourn



Deputy City Recorder

EXHIBIT "B"

ASSESSMENT LIST

Parcel Description	Development Description	Land Area Sq. Ft.	Bldg. Sq. Ft.	Assessed Value	Pre-Paid Site Improvements	60 stalls close Proximity	82 stalls Assessed Value	Site Improvements Costs	Total Assessment
Plat 1 Phase 1; Lot 1	Medical Office Building	24,038	112,733	15,478,181	403,000	735,280.99	693,709.07	32,371.74	1,864,361.79
Plat 1, Phase 1; Parcel 2	Mavenck/Retail Pad A	40,188	2,000	200,000	-	-	8,963.70	54,120.78	63,084.48
Plat 1 Phase 1 Parcel 3	Retail Pads B, C & D	81,841	-	-	-	-	-	110,214.46	110,214.46
Plat 1; Phase 1; Parcel 4	Bldg U & Additional Land	391,657	-	-	-	-	-	527,440.59	527,440.59
Plat 1; Phase 2; Lot 3	Wells Fargo Bank Bldg.	45,786	12,350	1,235,000	-	-	55,350.85	61,659.55	117,010.42
Plat 1 Phase 2; Lot 4	Fitness Center/Excel	108,408	42,000	5,100,000	-	-	228,574.42	145,991.97	374,566.40
Plat 1 Phase 2; Lot 5	IHC Building	28,244	3,400	408,000	-	-	18,285.95	38,035.91	56,321.87
TOTALS:		720,162	172,483	22,421,181	403,000	735,280.99	1,004,884.01	969,835.00	3,113,000.00
TOTAL SID BOND PAR AMOUNT.									2,710,000.00
TOTAL PARKING IMPROVEMENT COSTS									1,740,165.00
TOTAL SITE IMPROVEMENT COSTS									1,372,835.00
Less: Pre-paid Site Improvement Costs:									(403,000.00)
TOTAL ASSESSMENT AMOUNT:									2,710,000.00

Blk 38 B4th nmc

All Renaissance Towne Centre Pad 1854743 B 3270 P 1074

03-214-

Blk K B4th nmc

EXHIBIT "B-2"

03-038-0047, 0048, 0023, 0024, 0025
DESCRIPTION OF DISTRICT

03-041-0032

The District shall have the following boundaries:

Beginning at a point on the centerline of Utah State Highway 106 in Bountiful City, Utah, which point is N 89°53'57"E 267.30 ft. along the Section line and N 26°51'21"E 861.06 ft. along the centerline of said Highway 106 from the Southwest Corner of Section 30, T.2N., R.1E., S.L.B.& M. and running thence S 63°08'39"E 571.99 ft. to the centerline of Main Street; thence N 31°14'47"E 951.45 ft. along the centerline of Main Street to the centerline of 200 West Street; thence N 0°09'21"E 274.98 ft. along the centerline of 200 West Street; thence N 89°46'19"W 179.00 ft.; thence N 0°09'21"E 90.18 ft.; thence N 89°44'49"W 293.85 ft.; thence N 63°08'39"W 58.00 ft. to the centerline of Utah State Highway 106; thence S 26°51'21"W 1,063.07 ft. along the centerline of said Highway 106 to the point of beginning. Containing approximately 15.7843 acres.