

3340308 A0313 P 142
DATE 30-APR-1999 13:59PM
FEE No FEE CHARGE
CAROLYN B. MADSEN, RECORDER
FILED BY CRY
FOR DUCHESNE CITY
DUCHESNE COUNTY CORPORATION

ORDINANCE NO. 1999-4-27

AN ORDINANCE CONFIRMING THE ASSESSMENT LISTS AND LEVYING AN ASSESSMENT AGAINST CERTAIN PROPERTIES IN THE DUCHESNE CITY SPECIAL IMPROVEMENT DISTRICT 1997-1, FOR THE PURPOSE OF PAYING THE COSTS OF CONSTRUCTION OF IMPROVEMENTS INCLUDING CONSTRUCTION OF SEWER AND WASTEWATER IMPROVEMENTS INCLUDING BUT NOT LIMITED TO A GRAVITY FLOW LINE AND PRESSURE LINES TO THE MAIN SEWER LINE OF DUCHESNE CITY AND RELATED IMPROVEMENTS, AND ALL OTHER MISCELLANEOUS WORK NECESSARY TO COMPLETE THE IMPROVEMENTS IN A WORKMANLIKE MANNER [THE "IMPROVEMENTS"]; REAFFIRMING THE ESTABLISHMENT OF A SPECIAL IMPROVEMENT GUARANTY FUND; ESTABLISHING THE EFFECTIVE DATE OF THIS ORDINANCE; AND RELATED MATTERS.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DUCHESNE, DUCHESNE COUNTY, UTAH:

SECTION 1. Determination of Costs. All costs and expenses for the making of the improvements within 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. The Mayor and City Council (the "Governing Body") of the City of Duchesne, Duchesne County, Utah (the "City") hereby confirm the Assessment List (the "Assessment List") required by Section 17A-3-318, U.C.A., 1953, as modified, equalized and approved by the Board of Equalization and Review for Duchesne City Special Improvement District 1997-1 (the "District"), a copy of which Assessment List was attached to the Ordinance as formally adopted on April 27, 1999, and now is hereby incorporated by reference as Exhibit "A" which is a list of all properties by legal description and last owner of record as shown in the Assessment List last completed together with the amount of the assessment which list is attached as Exhibit "A" to this Ordinance.

[A copy of the exhibit showing legal descriptions, tax numbers and owners as provided in §17A-3-318, U.C.A. 1953 is on file in the office of the City Recorder of Duchesne City at 165 South Center, Duchesne, Utah, and may be examined at any time during regular business

hours on any business day.]

The Governing Body confirms the findings of the Board of Equalization and Review that the Assessment List as equalized and modified by the Board of Equalization and Review for the District is just and equitable; that each parcel 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 Governing Body 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 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 \$408,735.00, of which total cost the City's portion is \$-0-. The City's portion for the District includes that part of the overhead costs for which an assessment cannot be levied and the cost of making improvements for the benefit of property against which an assessment may not be levied. The amount to be assessed against property affected or benefited by the improvements in the District is \$408,735.00, 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 City, 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).

SECTION 5. Method and Rate. The total assessment for the District is levied on an acreage basis at rates and amounts set out with specificity in Exhibit "A", the Assessment.

SECTION 6. Payment of Assessments.

(a) The whole or any part of the assessments for the District may be paid without interest within fifteen (15) days after this Ordinance becomes effective. Any part of the assessment not paid within such fifteen (15) day period shall be payable over a period of fifteen (15) years from the effective date of this Ordinance in fifteen (15) substantially equal annual installments which include 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 City. 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.

After the above-referenced fifteen (15) day period, 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.

(b) If prepayment of an assessment, or any part thereof, arises out of a need of the property owner to clear the assessment lien from a portion of the parcel now being assessed, the assessment lien as to the portion in question may be released by the City, but only if the following conditions are met:

(i) The amount of the prepayment shall equal that fraction of the total assessment then outstanding of the whole parcel now being assessed, the numerator of which is the total area for which a release is sought and the denominator of which is the total area of all property originally assessed pursuant to this Assessment Ordinance, multiplied by 1.5.

(ii) The City Treasurer and the City Attorney must each determine and certify that the partial release of lien upon payment of the prepayment amount determined under (i) above does not diminish the security of the bondholders based upon the amount of the remaining assessment compared with the amount and value of land remaining to secure such debt. For purposes of this subparagraph (ii), security of the bondholders will not be considered diminished if the fair market value of the remaining property subject to the assessment equals or exceeds two times the remaining unpaid assessment on such property.

(iii) The additional payment for premiums and interest is paid as required above for any prepayment.

For purposes of determining prepayment amounts provided in (i) above, regularly scheduled payments shall not be taken into account. For example, should a property owner desire to clear the assessment lien from a portion of a parcel now being assessed after the lien has been reduced through regularly scheduled payments, he/she would need to prepay a portion of the then outstanding assessment as determined under (i) above. The regularly scheduled assessment payments previously made would not entitle the property owner to a release of a portion of the assessed parcel without such prepayment.

The City may in its discretion deny approval for any development of any parcel assessed under this assessment ordinance until it has received written evidence that all payments then due have been paid.

SECTION 7. Default in Payment. If a default occurs in the payment of any installment of principal or interest, when due, the City 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 18% 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 City 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 List. 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 List for the City or on the official ownership records of the City. 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 City 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 foreclosure, enforcement or improvement district tax sale (the "Sale") no person or entity shall bid and pay the City the amount due on the assessment plus interest and costs, the property shall be deemed sold to the City for these amounts. Duchesne City 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 City 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 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 18% 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

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; Effective Date. 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 Uintah Basin Standard, a newspaper published and having general circulation in Roosevelt, 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 Duchesne 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 that describes the list of properties assessed by tax identification number and a valid description of property within the District with the Duchesne County Recorder.


PASSED AND APPROVED this 27th day of April, 1999.

DUCHESNE CITY

By 

Mayor

ATTEST:



City Recorder

[SEAL]

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 City does hereby reaffirm the creation of a special improvement guaranty fund and shall annually, so long as any special assessment bonds of the City 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 City 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, 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 City 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 City 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 or any other action either at law or in equity 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 ("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 City are hereby authorized and directed to take all action necessary and appropriate to effectuate the provisions