



City of Grand Island

Tuesday, November 22, 2005

Council Session

Item D1

#2005-BE-13 - Consideration of Determining Benefits for Sanitary Sewer District No. 512; Marylane, Kentish Hills and Bradley Subdivisions

Staff Contact: Steven P. Riehle, Public Works Director

Council Agenda Memo

From: Douglas R. Walker, City Attorney

Meeting: November 22, 2005

Subject: Board of Equalization Hearing to Determine Benefits and Consideration of an Ordinance Levying Assessments for Sanitary Sewer District No. 512, Marylane, Kentish Hills and Bradley Subdivision

Item #'s: D-1 & F-1

Presenter(s): Douglas R. Walker, City Attorney
Steven P. Riehle, Public Works Director

This memorandum is intended to supplement the Council Agenda Memorandum on Items D-1 and F-1. The beginning portion of this memorandum discusses the history of the detention cell on Lot 13 in the Marylane Subdivision and was prepared by Steven P. Riehle, Public Works Director, and the discussion on the legal issues in part two of this memorandum was prepared by Douglas R. Walker, City Attorney.

Historical Background

Marylane Subdivision was platted in 1972 by Charles and Mary Fox before the area was annexed into the city. Lot 13 was designated as a detention cell because no storm sewer outlet was available for the subdivision.

Matt & Lori Beiber purchased Lot # 14 of Marylane Subdivision in August 2003 from Charles and Mary Fox to build a home. The Fox's also owned the detention cell property, lot # 13. They wanted the Beiber's to purchase the detention cell lot along with the lot for their home. Lots 13 & 14 were the last lots sold in the subdivision.

The Beiber's purchased the lot for \$10 because the Fox's did not want to continue to maintain the detention cell. The county assessor values the detention cell lot at \$1,145 for property tax computation purposes.

When Sanitary Sewer District #512 was created, the estimated assessments were calculated with one equal assessment per lot.

Lot #'s 1 and 2 of Marylane Subdivision are under common ownership. Lot number 1 (3115 South North Road) has a house built on it. Lot # 2 (3940 Marylane) functions as an extended back yard for lot # 1. The proposed assessment levies an assessment to lot # 2 because someday it could be built upon.

The city has had a number of discussions with the Beiber's on possible options. These options included:

1. Deed the detention cell to the city. The city did not support this option because the cell did not have an outlet. The Beiber's were not interested in this option, since they wanted to maintain the property as a side yard to their home.
2. Do an administrative plat combining the lots into one.
3. We discussed deferring the assessment to the detention cell lot with the city attorney. He did not feel that we could do this since this property did not qualify for any statutory deferments.

Instances where a Lot was designated as a cell and later built on.

1. Lot # 25 of Freedom Acres Subdivision was designated in the subdivision agreement for use as a detention cell. Lot # 25 is at the high end of the development, so a detention cell was built at the low end of the development on lot # 21 (4124 Liberty Lane). The detention cell lot functions as a detention cell as well as a side yard for the home at 4130 Liberty Lane. The detention cell lot was assessed for the construction of sanitary sewer district number 501 in September 2003. The lot may be built upon in the future if storm sewer is available to serve the property. The property has since changed hands.
2. Lots Number 12 and 33 of Old Potash Subdivision were designated as detention cells in a subdivision agreement in 1978. The lots have since been built on. Sanitary sewer was built in the area after the homes were constructed.
3. Lot 1 of Western Heights 4th Subdivision (1315 Branding Iron Lane) was designated as a detention cell and now has a house on it. Sanitary sewer was built in the area after the home was constructed.

Instances where a Lot that is a detention cell was assessed for sanitary sewer

1. Lot 21 Freedom Acres (mentioned above)
2. Lot 14 in Kentish Hills Subdivision (3804 Hampton Road) is a detention cell that is being proposed to be assessed for sanitary sewer under this same district.

A permanent easement was purchased for the construction of water and sanitary sewer mains from the Beibers in November 2003 for \$1,500. A temporary construction easement (based on \$0.50 per square foot) for construction of the sanitary sewer main was purchased from the Beiber's for \$2,000 in September 2005.

Legal Issues

Section 16-672 of the Revised Statutes of Nebraska discuss assessments equalization and reassessments for the cost of constructing sewers. This section of the Nebraska Statutes states that the council shall levy a tax for sewer construction costs on real estate in the sewage district to the extent of benefits to such property by reason of such improvement. The statute further states that the benefits to such property shall be determined by the council sitting as a Board of Equalization after notice to property owners. The statute authorizes the council to assess the costs of the sewer district improvements by front foot method or according to such other rule as the council sitting as the Board of Equalization may adopt for the distribution or adjustment of the costs upon the lots or real estate in the sewage district benefited by the improvement. This section of the Nebraska Statutes gives the City Council discretion in deciding on the method to use for assessing the benefits of the sewage district. The Public Works Department has determined that the most equitable way to assess the benefits from the construction of this sewage district was to have an equal assessment for each lot in the district. The lots in the Marylane and Kentish Hills subdivisions are of unequal size and the foot frontage of the lots can vary significantly. The benefits however were comparable for each lot in the district; therefore, the Public Works Department made the recommendation that each lot be charged an equal assessment.

In the case at hand involving Lot 13 of the Marylane Subdivision, the Public Works Department determined that it was reasonable to go ahead and assess this lot in the same amount as the other lots although there is language in the Marylane Subdivision Agreement which requires Lot 13 to be used for storm water drainage and for the location of a detention cell. The Public Works Department made this determination because this lot, although at the present time being used for a detention cell, will not be used for a detention cell if a storm sewer district is created in the future. It is anticipated that in the future the 200 acre tract adjacent to the east side of the Marylane and Kentish Hills Subdivisions will also be developed and at that time easements will be acquired for locating storm sewers. Once the storm sewers have been installed in this area, there will no longer be a need for the detention cell. If the need for a detention cell is removed from this property it could be available for construction purposes. The Public Works Department has stubbed out a sanitary sewer service to this lot so that a connection can be made to the sanitary sewer in the future if this lot is developed.

In the section of this memo on the history of the assessment process in Grand Island for similar subdivisions, Steve Riehle noted that there have been instances where lots that have had detention cells have been developed and used for constructing a residence. Mr. Riehle has also cited instances where lots used as detention cells were assessed on the same basis as other lots in a sanitary sewer district. It would therefore seem appropriate that the Council follow prior precedent and levy assessments in Sewer District No. 512 as it has in prior sewer districts.

I have reviewed the state statutes to ascertain whether there would be an option to defer the collection of the sewage assessment until some point in the future. From my analysis of the state statutes, I do not believe there are any deferrals which would apply to this property.

Another issue that has been raised about the assessments would be whether this real estate could be excluded from the district. I do not believe that this is a viable option since this district was set up to include Lot 13 of the Marylane Subdivision and this lot fits well within the borders of the district. To remove this lot at this time would cause a reassessment of all the other lots in these two subdivisions and it would not be appropriate to exclude this real estate after the creation of this district.

Another issue that was raised at the prior council meeting was whether a partial assessment could be levied against this lot based upon some factor of valuation. I would not recommend that this approach be used to levying the assessments as this would create a great deal of controversy regarding the relative values of lots within a sanitary sewer district and could create some very inequitable results.

Another issue regarding this lot would be whether an administrative plat could have been done to combine the two lots into one lot. There were discussions between Mr. Beiber and city personnel and Mr. Beiber was made aware of this option. Mr. Beiber chose not to replat his property into one lot but chose instead to continue to have two separately platted lots in the Marylane Subdivision. I believe that Mr. Beiber was informed by city personnel of the proposed method of assessing the benefits to each lot in the sewage connection district at the time this discussion took place and he made a decision not to combine his lots.

In conclusion, I would recommend that the City Council adopt the method of assessment proposed by the Public Works Department. It is my opinion that they are recommending an equitable method of assessing the benefits of the sewage district by assessing the cost to each separate lot.

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

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Item #'s: D-1 & F-1

Presenter(s): Steven P. Riehle, Public Works Director

Background

The Certificate of Final Completion for Sanitary Sewer District 512 was approved on October 11, 2005 with November 8, 2005 set as the date for Council to sit as the Board of Equalization. All work has been completed and special assessments have been calculated for the District.

The Public Hearing for the Board of Equalization was opened on November 8, 2005. Matt and Lori Bieber spoke against the proposed assessment to Lot No. 13 of Mary Lane Subdivision. Lot No. 13 is currently functioning as a detention cell as stipulated in the subdivision agreement. Resolution 2005-BE-13 which would have determined the benefits for the district was referred to the November 22, 2005 City Council meeting to allow staff to time to gather information necessary to make an informed decision on the proposed assessments.

Discussion

The contract for Sanitary Sewer District 512 was awarded to General Excavating of Lincoln, Nebraska on September 14, 2004. Work on the project was completed at a construction price of \$436,000.72. Total cost of the project, including engineering, was \$512,530.13. Costs for the project break down as follows:

Original Bid	\$ 477,488.14
Underruns	\$ 36,751.80
Deductions:	
Liquidated Damages	(\$ 600.00)
Restore Property Pins	(\$ 800.00)
Replace Trees	(\$ 300.00)
Fill & Grade Yards	(\$ 2,000.00)
T.V. Clean Line, Adjust Manholes	(\$ 2,909.86)

Additional Costs	
Fire Hydrant Adjustment	\$ 320.00
Driveway Replacement	\$ 1,554.24
Sub Total (Construction Price)	\$ 436,000.72
<u>Easement Acquisition/Restoration Costs</u>	\$ 32,929.34
<u>Engineering, Publication, TV Insp. Costs</u>	\$ 43,600.07
Total Project Cost	\$ 512,530.13

The estimated total for District 512 at the time of creation was \$521,110.50.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Make a motion to approve the recommendation to allow the Board of Equalization to determine benefits and pass an ordinance allowing the City to recover the majority of the District costs and assess the benefiting owners.
2. Refer the issue to a Committee.
3. Postpone the issue to a future date.
4. Take no action on the issue.

Recommendation

City Administration recommends that the Council, sitting as a Board of Equalization, determine benefits and pass an ordinance to levy Special Assessments to individual properties.

Sample Motion

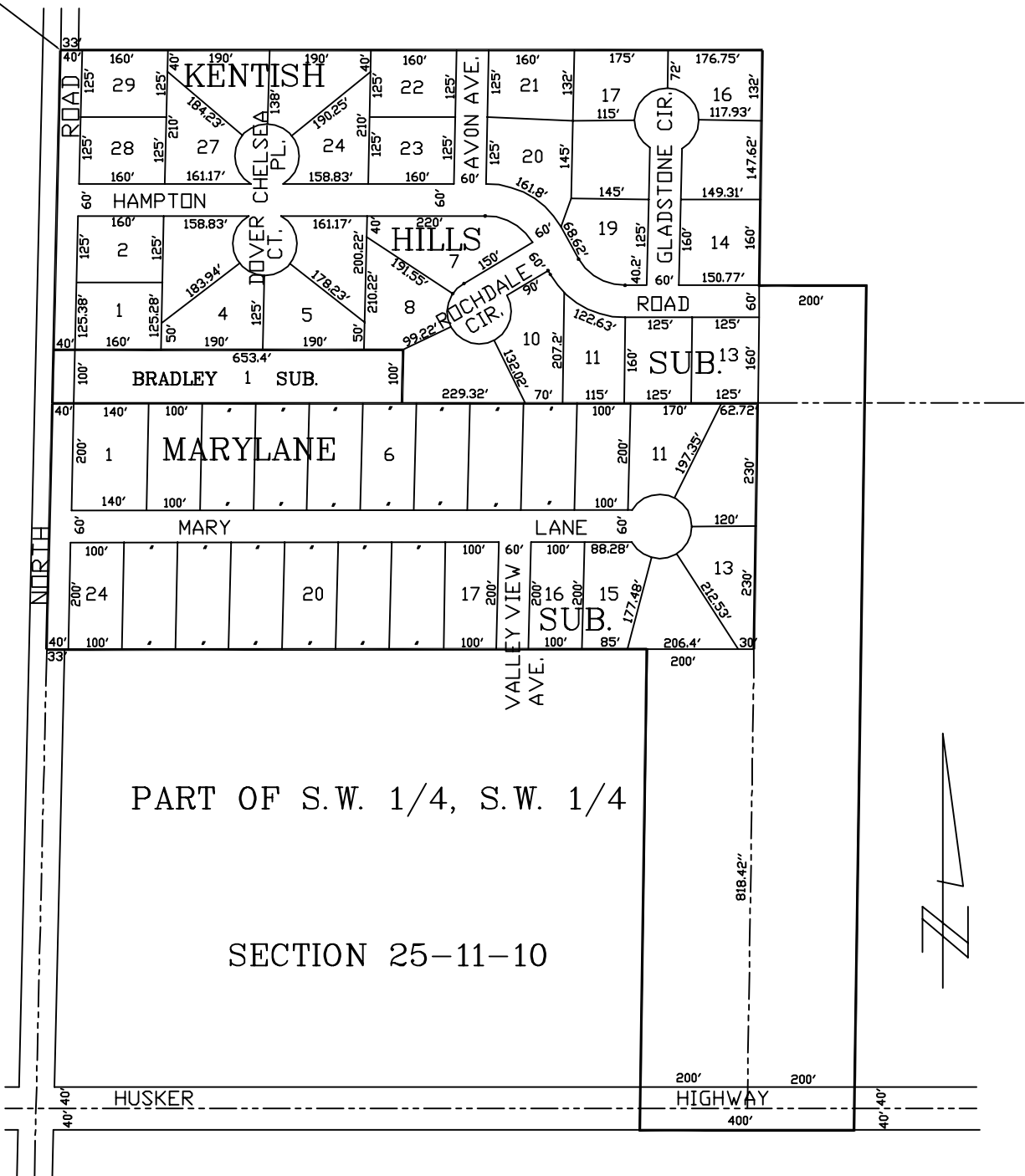
(Sample Motion for the Board of Equalization)

Move to approve the resolution establishing benefits for Sanitary Sewer District No. 512.

(Sample Motion for the Ordinance)

Move to approve the ordinance levying the assessments for Sanitary Sewer District No. 512.

POINT OF BEGINNING



PART OF S.W. 1/4, S.W. 1/4
SECTION 25-11-10

SANITARY SEWER DISTRICT 512

EXHIBIT "A"

CITY OF
GRAND ISLAND
PUBLIC WORKS DEPARTMENT

DATE: 10/17/03
DRN BY: L.D.C.
SCALE: 1"=300'

PLAT TO ACCOMPANY
ORDINANCE NO. 8862

R E S O L U T I O N 2005-BE-13

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, sitting as a Board of Equalization for Sanitary Sewer District 512, after due notice having been given thereof, that we find and adjudge:

That the benefits accruing to the real estate in such district to be the total sum of \$464,064.14; and

Such benefits are equal and uniform; and

According to the equivalent frontage of the respective lots, tracts, and real estate within such Sanitary Sewer District No. 512, such benefits are the sums set opposite the several descriptions as follows:

<u>Name</u>	<u>Description</u>	<u>Assessment</u>
Charles E. & Mary A. Fox	Lot 1, Marylane Subdivision	6,536.11
Charles E. & Mary A. Fox	Lot 2, Marylane Subdivision	6,536.11
Jerry L. & Rose G. Florez	Lot 3, Marylane Subdivision	6,536.11
Neal R. & Sondra L. Schroder	Lot 4, Marylane Subdivision	6,536.11
Lyle E. & Judith Maye Tibbs	Lot 5, Marylane Subdivision	6,536.11
Ronald L. & Delores K. Tenski	Lot 6, Marylane Subdivision	6,536.11
Jeffrey W. & Cynthia R. Hayes	Lot 7, Marylane Subdivision	6,536.11
Kenneth C. & Christine L. Durand	Lot 8, Marylane Subdivision	6,536.11
Cresencio & Maria Carmen Gutierrez	Lot 9, Marylane Subdivision	6,536.11
Keith A. & Joey L. Ruff	Lot 10, Marylane Subdivision	6,536.11
David A. & Ellen I. Nelson Green	Lot 11, Marylane Subdivision	6,536.11
Kenneth I. & Vera L. Henman	Lot 12, Marylane Subdivision	6,536.11
Matthew J. & Lori A. Beiber	Lot 13, Marylane Subdivision	6,536.11
Matthew J. & Lori A. Beiber	Lot 14, Marylane Subdivision	6,536.11
Timothy D. & Susan E. Pfeifer	Lot 15, Marylane Subdivision	6,536.11
Gregory J. & Penny L. Post	Lot 16, Marylane Subdivision	6,536.11
Dale E. & Sharon M. Huffman	Lot 17, Marylane Subdivision	6,536.11
Andrew M. & Joan E. Schwan	Lot 18, Marylane Subdivision	6,536.11
Charles E. & Loretta A. Roehrich	Lot 19, Marylane Subdivision	6,536.11
Terry Lee & Lori L. Jepson	Lot 20, Marylane Subdivision	6,536.11
Elaine K. & Steven A. Markham	Lot 21, Marylane Subdivision	6,536.11

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Vincent E. & Cynthia A. Luhn	Lot 22, Marylane Subdivision	6,536.11
Dennis W. & Cheryl K. Harder	Lot 23, Marylane Subdivision	6,536.11
Jody D. & Robin R. Bennett	Lot 24, Marylane Subdivision	6,536.11
Robert W. & Penelope M. Thomas	Lot 1, Bradley Subdivision	6,536.11
Jeffrey N. & Angela M. Warren	Lot 1, Kentish Hills Subdivision	6,536.11
Frank P. & Marsha Prucha	Lot 2, Kentish Hills Subdivision	6,536.11
Ryan G. & Whitney C. Witt	Lot 3, Kentish Hills Subdivision	6,536.11
Dale G. & Joan J. Clark	Lot 4, Kentish Hills Subdivision	6,536.11
Steven D. & Theresa M. Stirn	Lot 5, Kentish Hills Subdivision	6,536.11
Thomas P. & Ronda K. Kruger	Lot 6, Kentish Hills Subdivision	6,536.11
Dennis W. & Keanna Leonard	Lot 7, Kentish Hills Subdivision	6,536.11
Heath A. & Barbara L. Johnson	Lot 8, Kentish Hills Subdivision	6,536.11
Thomas A. & Lisa M. Olsen	Lot 9, Kentish Hills Subdivision	6,536.11
Elmer E. & Kathleen F. Feldotto	Lot 10, Kentish Hills Subdivision	6,536.11
Randy L. & Laurie R. Peterson	Lot 11, Kentish Hills Subdivision	6,536.11
Danny L. & Lareen M. Halverson	Lot 12, Kentish Hills Subdivision	6,536.11
Monte L. & Michelle G. Shultz	Lot 13, Kentish Hills Subdivision	6,536.11
ABC Engineered Trusses Inc.	Lot 14, Kentish Hills Subdivision	6,536.11
Thomas M. & Jessica M. Whelan	Lot 15, Kentish Hills Subdivision	6,536.11
Ryan T. & Rebecca S. Waind	Lot 16, Kentish Hills Subdivision	6,536.11
Jeffry A. & Jamie A. Vinson	Lot 17, Kentish Hills Subdivision	6,536.11
Gregg & Shirley A. Schultz	Lot 18, Kentish Hills Subdivision	6,536.11
John M. & Dianne McMahan	Lot 19, Kentish Hills Subdivision	6,536.11
Bradley R. & Shree A. Arends	Lot 20, Kentish Hills Subdivision	6,536.11
Stephen C. & Teresa A. Skibinski	Lot 21, Kentish Hills Subdivision	6,536.11
John J. & Debra J. Lantz	Lot 22, Kentish Hills Subdivision	6,536.11
Guy L. Leverington & Patricia J. Beiber	Lot 23, Kentish Hills Subdivision	6,536.11
William F. & Connie J. Parten	Lot 24, Kentish Hills Subdivision	6,536.11
Timothy & Sheri Brown	Lot 25, Kentish Hills Subdivision	6,536.11
Charles T. & Debra L. Costello	Lot 26, Kentish Hills Subdivision	6,536.11
Ronnie R. & Darla M. Sitzman	Lot 27, Kentish Hills Subdivision	6,536.11
Craig & Terry Sue Starke	Lot 28, Kentish Hills Subdivision	6,536.11
Cindy J. Avila	Lot 29, Kentish Hills Subdivision	6,536.11

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Gladys V. Schoel	Part of SE1/4, SW1/4 of Section 25-11-10; more particularly described as: the west 200 feet of the north 1498.42 feet of the south 1538.42 feet of E1/2, SW1/4 of Section 25-11-10.	111,113.95
Lutheran High School Assoc.	Part of SW1/4, SW1/4 of Section 25-11-10; more particularly described as follows: East 200 feet of north 818.42 feet of south 858.42 feet of SW1/4, SW1/4 of Section 25-11-10	0.00
TOTAL		\$464,064.14

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Adopted by the City Council of the City of Grand Island, Nebraska, on November 22, 2005.

RaNae Edwards, City Clerk