

PBOT

PORTLAND BUREAU OF TRANSPORTATION

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Dan Saltzman Commissioner Leah Treat Director

April 11, 2018

EXHIBIT H

SUMMARY OF OBJECTIONS AND FINDINGS TO COUNCIL

Assess benefited properties for street, sidewalk, sanitary sewer, stormwater, ornamental street lighting and water main improvements in the NE 112th Ave and Marx St Local Improvement District (Hearing; Ordinance; C-10043)

I. SUMMARY

Two (2) written objections representing owners of two (2) of the 31 nonexempt properties in the NE 112th Avenue & Marx Street Local Improvement District were received by the filing deadline registering objections against final assessment of the local improvement district. These objections are attached as Attachments 1 and 2.

II. ISSUES RAISED BY THE MAYS OBJECTION.

An objection was submitted by Latricia Mays, owner of 5123 NE 112th Avenue with pending lien No. 151427. This objection is attached as Attachment 1.

Issue #1:

I purchased a home with a carport, wraparound deck, fence and yard, which were impacted by the project, and this project was designed to benefit industrial companies.

Response:

- a. As explained in a September 18, 2013 letter to Ms. Mays' attorney, the carport extended so egregiously into the right-of-way that the carport posts were surveyed as being four (4) east of the planned new west curb. Ms. Mays' fence extended even more egregiously into the right-of-way, and was surveyed as a 14-foot encroachment.



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- b. Once the carport was removed, there was no further encroachment removal necessary to building new sidewalks, which will provide safe pedestrian access without sharing the roadway with vehicles, including large trucks. Omitting the sidewalk along this property simply would have postponed the obligation for this or a future owner of the property to construct the missing gap of sidewalk.
- c. Shifting the road four (4) feet or more to the east would have created an undue and unnecessary hardship for property owners on the east side of the street and would have required unnecessary right-of-way acquisition.
- d. Ms. Mays is correct that this project was designed for industrial companies. This property is nonconforming residential in an IG2hx (General Industrial 2 with an Aircraft Landing Zone overlay a Portland International Airport Noise Impact Zone overlay). The road was designed to serve zoned land uses for the area, including an appropriate curb-to-curb street width (40') to support these current and future uses. Narrowing the street to preserve nonpermitted encroachments into the right-of-way would have unduly compromised truck turning movements. The current or a future owner of the property would have required to widen the street in the future, thereby paying twice to achieve the long-term street design and width.
- e. PBOT seeks to avoid moral hazards in designing projects. Specifically, PBOT does not make major design changes to reward a property owner's previous actions by transferring the costs of those actions, in this case encroachments, to other property owners financially participating in the LID. The alleged hardship of removing the carport and wraparound deck could have been avoided by a prior property owner simply surveying the right-of-way prior to constructing the carport and wraparound deck. A similar due diligence upon purchase of this property could have confirmed this as well; e.g. the prospective new owner simply observing that these existing private elements extended beyond other property owners' fences and existing utility poles in the right-of-way. As noted in Response 'a', the extent of the encroachments was neither ambiguous nor a close call.
- f. PBOT is entitled to charge rent for use of its right-of-way, including back rent, but as a concession to Ms. Mays' did not pursue payment from her for the unpermitted use of the right-of-way

Issue #2:

During the past few years construction has been “crawling along “.

Response:

- a. As design progressed, it was determined that the work on NE 112th Avenue was subject to state and federal regulatory compliance. The decision was made to split the project into two (2) construction phases, in which NE Marx Street was built in a first phase, and NE 112th Avenue, subject to regulatory compliance and planned for a water main replacement, was built in a second phase. This enabled the project to be built within budgeted LID resources, despite being petitioned seven (7) years ago in 2011, and the LID being formed six (6) years ago in 2012.
- b. Collaboration between PBOT and the Portland Water Bureau (PWB) provided the opportunity to replace an obsolete and undersized cast iron water main in NE 112th Avenue built in 1940. PWB paid for the new water main as noted in Finding No. 10 and Exhibit C of this Ordinance. The decision to postpone construction to allow for design and construction of an upsized replacement water main will provide significant savings for PWB ratepayers, and will avoid the disruption to property owners which otherwise would have resulted from street being torn up in the future for a replacement water main.
- c. There were long periods of time with no contractor activity between substantial completion of the second phase of construction and final regulatory compliance. No detours or other inconveniences of construction occurred during that time.
- d. The delay in final assessment from as early as 2014 to this year has provided Ms. Mays with an additional four (4) years to pay her assessment, or to four (4) additional years to begin making payments on LID financing.

Issue #3:

My issue now is the constant parade of homeless vehicles.

Response:

- a. These issues peaked prior to completion of construction of the project, and the City and project staff have endeavored to work with the houseless population on a compassionate basis.
- b. The City has made multiple cleanups of its right-of-way, and Ms. Mays nor other property owners are proposed to be assessed by the LID for these costs.

III. ISSUES RAISED BY THE BUCKLAND OBJECTION.

An objection was submitted by Larry and Sherrie Buckland, owners of 5360 NE 112th Avenue with pending lien No. 151415. This objection is attached as Attachment 2.

Issue #1:

We did not want the project.

Response:

- a. The Bucklands voluntarily signed an LID petition on November 22, 2011, which is the second page of Exhibit A of Resolution No. 36899.
- b. The Bucklands, like other property owners, were provided an opportunity to remonstrate against the LID subsequent to Council passage of Resolution No. 36899. Neither the Bucklands nor any other property owner in the LID chose to remonstrate against LID formation.
- c. The Bucklands' property last sold on May 1, 1995. This was subsequent to a waiver of remonstrance being signed for their property on May 6, 1986 and recorded against their property on June 19, 1986. The property transferred ownership with an encumbrance for a future LID irrespective of whether the Bucklands had subsequently chosen to sign the LID petition.
- d. The Bucklands' property was built in 1987, meaning that the Bucklands and prior owner(s) of the property have enjoyed 31 years' use of the developed property and associated cash flow, as may be applicable, prior to having to begin paying deferred costs for infrastructure improvements.

Issue #2:

A lower cost was incurred for the NE 109th Avenue project, and this cost is double. We were expecting the cost to be \$93,804.46.

Response:

- a. Formation of the NE 109th Avenue LID was approved by Council on October 1, 2008 with the passage of Ordinance No. 182234. Exhibit A of this Ordinance referenced an estimated LID cost of \$1,852,194.68.

- b. Final assessment for the NE 109th Avenue LID was approved by Council on June 22, 2011 prior to the petitioning of this LID on August 5, 2011. Exhibit E of Ordinance No. 184691 on this date referenced a total proposed assessment amount of \$1,137,472.25. The cost savings on the NE 109th Avenue LID was therefore \$714,722.43 or 38.6%.
- c. The LID petition signed by the Bucklands was for \$178,720.99 as shown on the second page of Exhibit A of Resolution No. 36899, not the \$93,804.46 figure cited in their objection. Had the final costs of this current LID been 47.5% under budget, it would have exceeded the percentage savings on the NE 109th Avenue LID or any other LID for which final assessment has been imposed during the past 17 years during which LID costs have been tracked on a detailed level. Further, the percentages of the two projects' "savings," one desired and hypothetical, and the other actual, do not correspond with each other. The LID petition cover letter sent to all property owners in the LID, including the Bucklands on August 5, 2011 made no mention of the savings on the NE 109th Avenue LID.
- d. Mr. Buckland contacted the LID Administrator by telephone on February 21, 2012 expressing concern about his cash flow situation and expressed a desire for the timing of the LID assessment to occur after his mortgage was paid off. The LID Administrator communicated that he did not expect final assessment for this LID to occur before spring 2015. The delay in final assessment has provided three fewer years of overlap between payments for the LID and the mortgage, and six (6) years has elapsed overall during which no payment has been required on the LID.
- e. The last sale amount for the Bucklands' property was \$320,000 on May 1, 1995. As of July 18, 2011, just prior to the August 5, 2011 date that LID petitions were circulated for this LID, Multnomah County carried a real market valuation for the Bucklands' property of \$622,400. This real market valuation was approximately 3.5 times the estimated LID amount for the Bucklands' property of \$178,720.99.
- f. Multnomah County currently carries a real market valuation of \$1,026,320 for the Bucklands property, which is approximately 5.7 times the proposed final assessment amount of \$178,707.75, resulting in a significant decrease in the burden of this LID relative to the value of their property.
- g. The interim financing rate has declined by 155 basis points from 6.75% at the August 5, 2011 petition date to a current rate of 5.20%, an approximate 23% reduction in the interest rate should the Bucklands choose to finance their assessment over 5, 10 or 20 years.

Issue #3:

The LID assessment apportionment is based on area, not on abutting linear footage.

Response:

- a. The Bucklands voluntarily signed an LID petition on November 22, 2011, which is the second page of Exhibit A of Resolution No. 36899. This petition expressly stated that square footage would be the proposed assessment methodology.
- b. The Bucklands did not object to the square footage assessment methodology during formation of the LID; see record of Ordinance No. 185199.
- c. An abutting linear footage assessment methodology is generally not used when there are widely varying lot depths and irregularly-shaped lots, as is the case with this LID. This avoids similarly-sized properties with the same zoning and similar potential land use having widely-varying LID assessments when the benefit to properties is likely to be similar.

Issue #4:

We could use some leniency because of a recent cancer operation.

Response:

- a. While the recent health diagnosis is indeed unfortunate, under Oregon law, LID assessments must be based on special benefit to property.
- b. As noted to response 'g' to Issue No. 2, a lower interim financing rate will be offered to all properties owners financially participating in the LID, including to the Bucklands. Financing contracts with 5, 10 and 20-year options will automatically be sent to all property owners following Council approval of this Ordinance.

IV. RECOMMENDATION

It is the recommendation of the Local Improvement District Administrator that the City Council overrule any and all objections to final assessment and approve the LID Final Assessment Ordinance at its second reading on April 25, 2018.

Respectfully submitted,

A handwritten signature in black ink that reads "Andrew H. Aebi". The signature is written in a cursive, flowing style.

Andrew H. Aebi
Local Improvement District Administrator

ATTACHMENT 1

City Auditor,

When I purchased my home in Oct 2000, it included a Two car Covered Carport, a wrap around Deck that extended out twelve feet, and Several feet of yard in front of that. Fully fenced. I assumed this was all property I was purchasing.

Finding out the City owned 1,000 feet of my front yard, leaving me 7 feet was devastating. The Sidewalk is 7 feet from my front Door.

Taking away fence, Carport, Deck yard, and privacy. Replacing it with 44 feet of Street that leads to the Columbia Slough (Dead end.) The width I was told, is to accomodate Semi trucks. The Sidewalks are also 8 feet wide, and also lead to the Dead end.

Over the last Several years that this project has been Crawling along, my Living Situation has been difficult Due to the Construction Aspect, and R+R Construction being Careless, and inconsiderate. They Were Not Concerned

With Safety issues, such as Nails
Screws on ground. Communication was
not good.

My Only Support was the City
Official, overseeing the project.

Sam Azar worked hard to help
me, and others thru this process.

My battle now is the constant
Parade of homeless Vehicles, parking,
And Dumping, on this big, New
Street.

I fought hard against the injustices
of these Situations, and tried to
understand why there is no Consequence
in our City.

So when asked if there are any
Objections, ask yourself would you?

I have already Swallowed the
pill, that I am paying \$20,267.59
for a road Meant to benefit industrial
Company's.

I find it insulting that your Suggesting
the assessment can be modified, when
thats not going to happen. Let it go
on record, you gave the people
An opportunity to Voice their

Objections, and be done with it.
I Am.

Katricia Mays

AUDITOR 04/11/18 PM 1:42

April 10, 2018

Larry & Sherrie Buckland
7802 SE 62nd
Portland, OR 97206

Portland City Auditor
1221 SW 4th Ave Rm 130
Portland, OR 97204

We want to object to the Street improvement at 5360 NE 112th Portland, OR 97220.

This street work was for Walsh Trucking. We wanted none of it, but where told the majority of the property vote won and Walsh Trucking had the most property, we would get the street any way, so we where compelled to sign. It was and is not viable for us. We feel this was not done in the most honest way. You showed us a cost for 109th st that was \$93'804.46 actual cost they paid and we get a bill for \$178'707.75 almost double. How can that be? Also you based the cost on our property, not the street frontage. From the fence to the middle of the driveway approx. 50' of frontage, that's \$3575.00 a ft..

We could use some leniency. Larry is 73 and I am 65 and just had a cancer operation and we are still working because we can't afford to retire.

Thank You,

Larry Buckland
Sherrie Buckland

Larry & Sherrie Buckland