



STEVE C. MORASCH
Admitted in Oregon and Washington
Direct Line: 360-905-1433
E-Mail: smorasch@schwabe.com

July 28, 2010

Portland City Council
City Hall
1221 SW 4th Ave.
Room 110
Portland, OR 97204

Re: NE 136th Avenue Local Improvement District
July 28, 2010 Hearing

Dear City Council:

We represent Public Storage, the owner of the property located at 13515 NE Prescott Court. We understand that you will be considering initiating the local improvement district ("LID") formation proceedings for a segment of NE 136th Avenue on which Public Storage has frontage, but no current access. We request the City Council consider not forming the LID or alternatively we request the City reduce the scope of the proposed LID such that the financial obligations of the property owners along NE 136th Avenue are minimized.

Right-of-Way Acquisition

As you may know, the improvements to NE 136th Avenue require a roughly five foot wide strip of land from all the property owners. When our client signed the waiver of remonstrance for this project in 1981, it was for "street improvement costs" but not right-of-way acquisition. See Declaration of Deed Restrictions recorded at Book 1562, page 1866 of the Official Records of Multnomah County. To the extent that the proposed LID requires acquisition of right-of-way, it is beyond the scope of the waiver of remonstrance in the 1981 Declaration of Deed Restrictions. Our client hereby remonstrates against any LID that includes right-of-way acquisition.

Further, the LID is set up such that the District, through the City, acquires this land from the property owners and then requires the same property owners to pay for all elements of the acquisition after the improvements are completed. In other words, Public Storage will be paying to purchase land that it already owns. Furthermore, the expense of doing so is more than the simple valuation of the property itself, as Public Storage will be responsible for paying for the

Portland City Council
July 28, 2010
Page 2

improvements, damages, appraisal, insurance, negotiation, and contingency to acquire the land needed for the project.

The Takings Clause of the Fifth Amendment is applied to the states through the Fourteenth Amendment. The Clause “was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 US 40, 49 (1960)(emphasis added). Where is the fairness in acquiring property from a land owner, paying the landowner for it, and then turning around and assessing the land owner for the costs of acquiring the land? It is fundamentally unfair to require a land owner to pay for the costs of acquisition of the land owner’s own property.

Proposal

From what we can determine, the need to acquire private property for the improvements is a result of the City including sidewalks along NE 136th Avenue. We would prefer the City not form an LID at all. If the City insists on forming an LID, we believe the industrial nature of the immediate and surrounding area suggests sidewalks are unnecessary; therefore we request the City Council modify the LID to reflect the removal of sidewalks from the project. This will save property owners the significant costs associated with acquiring the land for the sidewalks, and the costs of constructing the sidewalks themselves.

We are also willing to consider an arrangement by which the private property owners themselves undertake engaging a private contractor to improve NE 136th without the involvement of the City in an attempt to further reduce the costs of the improvements. That would make the LID unnecessary, but we would need time to have these discussions. Delaying the formation of the LID would allow time for this discussion.

Finally, we have talked with the other property owners and we believe all of them – even those that support formation of an LID – are in support of doing the improvements without a sidewalk to eliminate the need of property acquisition. We request that the City not form the LID, or if the LID is formed, it should be without sidewalks so that property acquisition is not necessary.

Thank you for your consideration of this matter.

Sincerely,



Steve C. Morasch

SCM:lrp



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EXCEPTION NO. 8

N.E. 136th Avenue

DECLARATION OF DEED RESTRICTIONS

BOOK 1562 PAGE 1866

THIS AGREEMENT, made and entered into this 20th day of October, 19 81,

WHEREAS, the undersigned (is) (xxx) the owner(s) of Lots 28 - 31 and Lots 36 - 43 of "Reynolds Mountain View" in the N.E. 1/4 of Section 23, T-111, R-2E, W.M. Multnomah County, Oregon.

WHEREAS, the undersigned as owner(s) of said tract and in exchange for approval by Multnomah County of owner's development of Lots 28 - 31 and Lots 36 - 43

wish(es) to burden said tract in "Reynolds Mountain View" with a restriction requiring future owners of all or a part thereof to participate in the street improvement costs on that portion of N.E. 136th Avenue abutting said tract in "Reynolds Mountain View"; and

WHEREAS, the undersigned owner(s) desire to develop Lots 28 - 31 and Lots 36 - 43

before said street is constructed to County Standards;

NOW, THEREFORE, the undersigned hereby agree(s) and stipulate(s) as follows:

- 1. That the undersigned and all future owners of the tract of land (above described) (xxxxxx) shall be obligated to participate in said street improvement initiated by a petition of the owners of land abutting said street or by a resolution of the County Court; and such future owners shall be also obligated to pay their proper share for the development and improvement of said abutting street.

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DECLARATION OF DEED RESTRICTIONS

Page 2

BOOK 1562 PAGE 1867

2. This obligation shall be binding, whether the improvement is initiated by a petition of the owners of land abutting said street, or by a resolution of the Board of County Commissioners.

3. That this entire agreement constitutes a mutual covenant running with the land, and successive future owners shall be bound to it as if original signers hereto.

4. That any deed, lease, conveyance or contract made in violation of this agreement shall be void.

IN WITNESS WHEREOF, the party (parties) hereto have set their hands this 20th day of October, 19 81.

PUBLIC STORAGE PROPERTIES VII LTD.
By: Public Storage, Inc., General Partner
(Firm or Corp.)

Donald N. Hoffman
Vice President

Dean C. Beaumont
Asst. Secretary

STATE OF OREGON)
) ss
County of Washington)

THIS CERTIFIES that on this 20th day of October, A.D., 19 81, before me appeared Donald N. Hoffman and Dean C. Beaumont both to me personally known, who being duly sworn, did say that he, the said Donald N. Hoffman is the Vice President, and he, the said Dean C. Beaumont is the Secretary of the within named Corporation, and that the instrument was signed in behalf of said Corporation by authority of its Board of Directors, and said Donald N. Hoffman and Dean C. Beaumont acknowledged said instrument to be the free act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this day and year first in this, my certificate, written.

W. T. [Signature]
Notary Public in and for said
County and State

My Commission expires Feb. 7, 1985

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11.18.81

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BOOK 1562 PAGE 1868

STATE OF OREGON }
Multnomah County }

I, *Director, Department of Agricul-
tural Services and Extension of Commercial and
for said County, do hereby certify that the within
mentioned as being well received for record and
recorded in the record of
of said County at*

1981 NOV 18 PM 2:02

RECORDING SECTION
MULTNOMAH CO. OREGON

If recording return to:
Engineering Svcs.
2115 SE Morrison St.
Portland, Oregon 97214

In Book 1562 On Page 1866
witness my hand and seal of office affixed

Director
Department of Administration

J. Thonness
Deputy

DH

NOV 18 1981

Aebi, Andrew

From: Morasch, Steve [SMorasch@SCHWABE.com]
Sent: Tuesday, July 27, 2010 4:32 PM
To: Aebi, Andrew
Subject: RE: NE 136th Avenue LID: Public Storage - Agenda Item #1082 for Council Consideration on 7/28/10 at 9:30 AM
Attachments: 3767_001.pdf

Andrew,

Our client has asked me to attend the hearing tomorrow and submit the attached letter. I will be bringing copies of the letter to the hearing but wanted to make sure you got it.

Thanks,

Steve

Steve C. Morasch

Schwabe Williamson & Wyatt
700 Washington Street, Suite 701
Vancouver, WA 98660
Direct Dial: (360) 905-1433
Facsimile: (503) 796-2900

From: Aebi, Andrew [mailto:Andrew.Aebi@portlandoregon.gov]
Sent: Monday, July 26, 2010 11:36 AM
To: Morasch, Steve
Cc: Benjamin, Keith S.; Christopher Tucker (ctucker@publicstorage.com)
Subject: NE 136th Avenue LID: Public Storage - Agenda Item #1082 for Council Consideration on 7/28/10 at 9:30 AM

Steve et al,

The first link below is to this week's Council agenda. The second link below is to the agenda item for the NE 136th Avenue LID.

<http://www.portlandonline.com/auditor/index.cfm?c=26997&>

<http://www.portlandonline.com/auditor/index.cfm?c=50265&a=310413>

If you have any questions or wish to schedule an in-person meeting to discuss any questions you might have, please contact me at 503-823-5648.

Regards,

Andrew Aebi

7/28/2010



Vancouvercenter, 700 Washington Street, Suite 701, Vancouver, WA 98660 | Phone 360.694.7551 | Fax 360.693.5574 | www.schwabe.com

STEVE C. MORASCH

Admitted in Oregon and Washington

Direct Line: 360-905-1433

E-Mail: smorasch@schwabe.com

July 28, 2010

Portland City Council
City Hall
1221 SW 4th Ave.
Room 110
Portland, OR 97204

Re: NE 136th Avenue Local Improvement District
July 28, 2010 Hearing

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improvements, damages, appraisal, insurance, negotiation, and contingency to acquire the land needed for the project.

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Proposal

From what we can determine, the need to acquire private property for the improvements is a result of the City including sidewalks along NE 136th Avenue. We would prefer the City not form an LID at all. If the City insists on forming an LID, we believe the industrial nature of the immediate and surrounding area suggests sidewalks are unnecessary; therefore we request the City Council modify the LID to reflect the removal of sidewalks from the project. This will save property owners the significant costs associated with acquiring the land for the sidewalks, and the costs of constructing the sidewalks themselves.

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Thank you for your consideration of this matter.

Sincerely,



Steve C. Morasch

SCM:lrb



36803

Aebi, Andrew

From: Mike Eckstein [MikeEckstein@canronpdx.com]
Sent: Tuesday, July 27, 2010 6:59 PM
To: Aebi, Andrew
Subject: Portland City Council - July 28, 2010 Hearing; NE 136th LID
Importance: High
Attachments: PCC-LID.pdf

Dear Sir,
Attached please find our letter concerning tomorrow's agenda item.

CANRON
WESTERN CONSTRUCTORS INC.
4600 NE 138th Ave
Portland, Oregon 97230

Phone: 503-255-8634
Fax: 503-253-3907

July 27, 2010

Portland City Council
City Hall
1221 SW 4th Ave.
Room 110
Portland, OR 97204

RE: NE 136th Avenue Local Improvement District
July 28th, 2010 Hearing

Dear City Council:

I'm General Manager of the Supreme Steel operation (Canron Western Constructors, Inc.) located at the property owned by Supreme Steel at 4600 NE 138th Ave. We understand you will be considering initiating the local improvement district ("LID") formation proceedings for a segment of NE 136th Avenue on which Supreme Steel has frontage, but no current access. We request the City Council consider not forming the LID or alternatively, we request the City reduce the scope of the proposed LID such that the financial obligations of the property owners along NE 136th Avenue are minimized.

As you may know, the improvements to NE 136th Avenue require a roughly five foot wide strip of land from all the property owners. When the waiver of remonstrance was signed for this project, it was for "street improvement costs" but not right-of-way acquisition. To the extent that the proposed LID requires acquisition of right-of-way, it is beyond the scope of the waiver of remonstrance, and we hereby protest against any LID that includes right-of-way acquisition.

Further, the LID is set up such that the District, through the City, acquires this land from the property owners and then requires the same property owners to pay for all elements of the acquisition after the improvements are completed. In other words, Supreme Steel will be paying to purchase the land that it already owns. Furthermore, the expense of doing so is more than the simple valuation of the property itself, as Supreme Steel will be responsible for paying for the improvements, damages, appraisal, insurance, negotiation, and contingency to acquire the land needed for the project.

It is fundamentally unfair to require a land owner to pay the costs of acquisition of the land owner's own property.

CANRON
WESTERN CONSTRUCTORS INC.

It would appear, the need to acquire private property for the improvements is a result of the City including sidewalks along NE 136th Avenue. We would prefer the City not form an LID at all. If the city insists on forming an LID, we believe the industrial nature of the immediate and surrounding area suggests sidewalks are unnecessary. Therefore, we request the City Council modify the LID to reflect the removal of the sidewalks from the project. This will save property owners the significant costs associated with acquiring the land for the sidewalks, and the costs of constructing the sidewalks themselves.

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Finally, we have talked with the other property owners and we believe they are supportive of doing the improvements without a sidewalk to eliminate the need of property acquisition. We request that the City not form the LID, or if the LID is formed, it should be without sidewalks so that property acquisition is not necessary.

Thank you for your consideration of this matter.

Yours truly,

A handwritten signature in black ink, appearing to read 'M. Eckstein', with a long horizontal line extending to the right.

Michael Eckstein, General Manager

Canron Western Constructors, Inc. (Supreme Steel)