

RESOLUTION NO. 587

A RESOLUTION of the Birch Bay Water and Sewer District, Whatcom County Washington approving and confirming the final assessment roll for Utility Local Improvement District No. 13 and 14 for Lots 6, 11, 12, 36, 71, 74, 75 and 81, which has been created and established for the purpose of paying the cost of certain sewer improvements and water improvements respectively; and levying and assessing the amount thereof against said Lots.

WHEREAS, an assessment roll levying special assessments against the properties located in Utility Local Improvement District No. 13 and 14 ("ULID No. 13 and 14") in the Birch Bay Water and Sewer District, Whatcom County, Washington ("the District"), created under Resolution No. 547 and Resolution No. 546, was filed with the District Treasurer as provided by law; and

WHEREAS, the District was ordered by Whatcom County Superior Court to hold a re-hearing on the final assessment roll for Lots 6, 11, 12, 36, 71, 74, 75 and 81; and

WHEREAS, notice of the time and place of a re-hearing on and of making objections to the assessment roll for Lots 6, 11, 12, 36, 71, 74, 75 and 81 was duly published at and for the time and in the manner provided by law, fixing the time and place of re-hearing thereon for the 11th day of December, 1997, at the hour of 7:00 p.m. at the District offices at 7096 Point Whitehorn Road, Birch Bay, Washington, and further notice thereof was duly mailed by the District to each property owner; and

WHEREAS, at the time and place fixed and designated in said notice, the re-hearing on said assessment roll for Lots 6, 11, 12, 36, 71, 74, 75 and 81 was duly held; and

WHEREAS, said re-hearing on December 11, 1997 was continued for additional written comment through December 31, 1997 and was continued for additional proceedings at 7:00 p.m. at the District offices on January 8, 1998; and

WHEREAS, additional oral testimony was taken from property owners of some of the subject lots on January 8, 1998; and,

WHEREAS, after the conclusion of additional oral testimony January 8, 1998, the Board authorized acceptance of final written comments through January 21, 1998; and,

WHEREAS, the Board, sitting as a board of equalization, gave due consideration to all written and oral protest received from all persons appearing at said re-hearing and filing written submissions;

NOW THEREFORE, THE BOARD OF COMMISSIONERS OF BIRCH BAY WATER AND SEWER DISTRICT ENTER THE FOLLOWING FINDINGS:

1. U.L.I.D. No. 13 and 14 combined to provide all of the following general benefits to Lots 6, 11, 12, 36, 71, 74, 75 and 81: sewer service to each lot and the surrounding community, increased fire protection, improved water flow and water quality, and improved system maintenance and repair capabilities.

2. U.L.I.D. No. 13 and 14 increased the value of larger lots with installed septic systems by increasing the flexibility and potential of subsequent subdivision, increasing flexibility in siting primary residences and other improvements (no need for drainfield), eliminating the risk of septic system failure and eliminating the costs of septic system maintenance and replacement.

3. The appraisals prepared by Wronsky, Gibbons and Reilly (hereafter "Wronsky") were the most persuasive evaluation of special benefit enjoyed by each property and are hereby determined to be the most accurate assessment of special benefit resulting from U.L.I.D. No. 13 and 14, except as otherwise modified by these findings.

4. In the Wronsky appraisals, the value of the properties was estimated in the "before" condition, that is, without special benefits in place, and in the "after" condition, which is the current condition of the properties. The "after" condition must reflect the market value of the property with the improvements not only installed, but paid for. The difference in value between the "before" and "after" condition is the special benefit to the property, except as otherwise modified by these findings.

5. Appraisals submitted by property owners compared the sales prices of similar properties over time in or near the Double R Ranch and were not persuasive for several reasons:

(a) the later sales data for properties within the Double R Ranch failed to account for U.L.I.D. debt assumed by purchasers in the transactions. Such debt will necessarily reduce a sales price agreed to by a willing seller and a willing purchaser. Hence, comparable sales data for properties within U.L.I.D. 13 and 14 are meaningful in a special benefit analysis only if the

U.L.I.D. debt assumed by the purchaser is added to the sales price. This step was not taken in the appraisals supplied by property owners.

(b) sales prices over time are subject to market influences other than the water and sewer improvements and are therefore, taken alone, an unreliable predictor of special benefit; and,

(c) in considering the "before" and "after" values of the subject properties, appraisals submitted by the property owners failed to take into account the value inherent in those properties as a result of their potential for subdivision into 2 lots. As a result of increased potential for subdivision created by the project, the fair market value, determined as the price a willing buyer would pay a willing seller, changed for all of the subject properties, except Lots 71 and 81. Unlike the appraisals submitted by the property owners, the Wronsky appraisals included the value inherent in the potential to subdivide the subject properties (except Lots 71 and 81) when calculating "before" and "after" values; and,

(d) The appraisals for property owners prepared by Mr. Humphrey were also flawed because they admittedly accounted for the special benefits associated with the sewer improvements only and gave no special benefit for the water system improvements; and,

(e) The appraisals for property owners prepared by Mr. Humphrey were also flawed in that they failed to take into account the value of view property in comparable listings, thereby resulting in misleading comparisons between the value of area property with and without sewer. In particular, Mr. Humphrey's comparison of sales data between Birch Bay View Estates (no sewer) and Bay Ridge Estates (sewer) tends to understate the value of sewer service.

6. There is a very strong likelihood that said lots (except lots 71 and 81) are subdividable. This is based upon, among other factors, numerous past divisions within the Double R Ranch of 200X200 foot lots into 100X200 foot lots, uninterrupted longstanding UR-4 zoning, and inclusion by Whatcom County of the subject properties within the short term planning area of the Birch Bay urban growth area. Nevertheless, in recognition of minimal uncertainty over the timing of such divisions, the special benefit attributable to the water and sewer improvements for each lot capable of subdivision has been discounted five percent (5%).

7. Many of the subject properties that are subdividable into two lots presently have single family residences located thereon. In recognition of the potential for additional costs

associated with subdivision of property with existing improvements, the special benefit attributable to the water and sewer improvements for each lot capable of subdivision upon which a single family residence exists, has been discounted an additional five percent (5%).

8. For the subject properties, where the special benefit attributable to U.L.I.D. 13 and 14 exceeds the proposed assessment, the assessment should be raised to reflect the special benefit. However, where the proposed assessment exceeds the special benefit, the assessment must be lowered to reflect the special benefit.

9. Based upon the foregoing generally applicable findings, the following specific findings are hereby entered for each lot.

a. Lot 6 - Grana.

1. Lot 6 is approximately 1.15 acres and is potentially subdividable into 2 lots.

2. There is one single family residence located on Lot 6.

3. The "before" water and sewer project (hereafter "project") value of Lot 6 was \$23,000. The "after" project value of Lot 6, without any discount for uncertainty or present use as a single family residence, is \$48,000.

4. Providing for a reduction of "after" project value of a total of ten percent (10%) (5% for minimal subdivision uncertainty and 5% for present use of single family residence) - the final "after" project value of Lot 6 is \$43,200.

5. The difference between the final "after" project value (\$43,200) and the "before" project value (\$23,000) is \$20,200. This represents the special benefit of the project. The proposed assessment for Lot 6 of \$25,179, should be lowered to a final assessment amount of \$20,200, to reflect the project's special benefit to the property.

b. Lot 11 - Burch.

1. Lot 11 is approximately 1.14 acres and is subdividable into

2 lots.

2. There is one single family residence located on Lot 11.

3. The "before" water and sewer project (hereafter "project") value of Lot 11 was \$23,000. The "after" project value of Lot 11, without any discount for uncertainty or present use as a single family residence, is \$48,000.

4. Providing for a reduction of "after" project value of a total of ten percent (10%) (5% for minimal subdivision uncertainty and 5% for present use of single family residence) - the final "after" project value of Lot 11 is \$43,200.

5. The difference between the final "after" project value (\$43,200) and the "before" project value (\$23,000) is \$20,200. This represents the special benefit of the project. The proposed assessment for Lot 11 of \$21,702, should be lowered to a final assessment amount of \$20,200, to reflect the project's special benefit to the property.

c. *Lot 12 - Brown.*

1. Lot 12 is approximately 1.06 acres and is potentially subdividable into 2 lots.

2. There is one single family residence located on Lot 12.

3. The "before" water and sewer project (hereafter "project") value of Lot 12 was \$22,500. The "after" project value of Lot 12, without any discount for uncertainty or present use as a single family residence, is \$47,500.

4. Providing for a reduction of "after" project value of a total of ten percent (10%) (5% for minimal subdivision uncertainty and 5% for present use of single family residence) - the final "after" project value of Lot 12 is \$42,750.

5. The difference between the final "after" project value (\$42,750) and the "before" project value (\$22,500) is \$20,250. This represents the special benefit of the project. The proposed assessment for Lot 12 is \$18,320.25, which represents a lower value than the special benefit of \$20,250. Therefore, the proposed assessment of \$18,320.25 should become the final assessment for Lot 12.

d. Lot 36 - Carr.

1. Lot 36 is greater than 200X200 feet and is approximately 0.96 acres. It is potentially subdividable into 2 lots.

2. Lot 36 is vacant.

3. The "before" water and sewer project (hereafter "project") value of Lot 36 was \$15,500. The "after" project value of Lot 36, without any discount for uncertainty, is \$45,500.

4. Providing for a reduction of "after" project value of a total of five percent (5%) (for minimal subdivision uncertainty) - the final "after" project value of Lot 36 is \$43,225.

5. The difference between the final "after" project value (\$43,225) and the "before" project value (\$15,500) is \$27,725. This represents the special benefit of the project. The proposed assessment for Lot 36 is \$19,729.50 which represents a lower value than the special benefit of \$27,725. Therefore, the proposed assessment of \$19,729.50 should become the final assessment for Lot 36.

e. Lot 71 - Hewer.

1. Lot 71 is less than 200X200 feet and is approximately 0.73 acres. It is probably not potentially subdividable into 2 lots.

2. Lot 71 is irregularly shaped and contains one single family residence.

3. The "before" water and sewer project value of Lot 71 was \$18,000. The "after" project value of Lot 71, is \$28,000.

4. Because Lot 71 is not likely subdividable, the "after" project value is not discounted for subdivision uncertainty or for costs associated with changing the present use (single family residence).

5. The difference between the final "after" project value (\$28,000) and the "before" project value (\$18,000), is \$10,000. This represents the special benefit of the project. The proposed assessment for Lot 71 of \$15,502 should be lowered to a final assessment amount of \$10,000, to reflect the project's special benefit to the property.

f. Lot 74 - Ratcliffe.

1. Lot 74 is a 200X200 foot lot (40,000 sq. ft.) and is approximately 0.92 acres. It is potentially subdividable into 2 lots.

2. There is one single family residence located on Lot 74.

3. At the time of sewer installation, Ms. Ratcliffe had the District's field engineer install the side sewer stub on the easterly end of the property (rather than at the center of the property as the District had planned) so that the sewer line could be extended along the easterly property line and the lot could be subdivided in half from west to east.

4. The "before" water and sewer project (hereafter "project") value of Lot 74 was \$22,000. The "after" project value of Lot 74, without any discount for uncertainty or present use as a single family residence, is \$47,000.

5. Providing for a reduction of "after" project value of a total of ten percent (10%) (5% for minimal subdivision uncertainty and 5% for present use of single family residence) - the final "after" project value of Lot 74 is \$42,300.

6. The difference between the final "after" project value (\$42,300) and the "before" project value (\$22,000) is \$20,300. This represents the special benefit of the project. The proposed assessment for Lot 74 is \$18,790, which represents a lower value than the special benefit of \$20,300. Therefore, the proposed assessment of \$18,790 should become the final assessment for Lot 74.

g. Lot 75 - Larson.

1. Lot 75 is 200X200 feet (40,000 sq. ft.) and is approximately 0.92 acres. It is potentially subdividable into 2 lots.

2. Lot 75 is vacant.

3. The "before" water and sewer project (hereafter "project") value of Lot 75 was \$15,500. The "after" project value of Lot 36, without any discount for uncertainty, is \$45,500.

4. Providing for a reduction of "after" project value of a total of five percent (5%) (for minimal subdivision uncertainty) - the final "after" project value of Lot 75 is \$43,225.

5. The difference between the final "after" project value (\$43,225) and the "before" project value (\$15,500) is \$27,725. This represents the special benefit of the project. The proposed assessment for Lot 75 is \$18,790, which represents a lower value than the special benefit of \$27,725. Therefore, the proposed assessment of \$18,790 should become the final assessment for Lot 75.

h. Lot 81 - Sunter

1. Lot 81 is approximately 1.15 acres.

2. Due to physical constraints on the property, including substantial wetlands, Lot 81 is not likely subdividable into 2 lots.

3. The "before" water and sewer project value of Lot 81 was

\$14,500. The "after" project value of Lot 81, is \$31,000.

4. Because Lot 81 is not likely subdividable, the "after" project value is not discounted for subdivision uncertainty or for costs associated with changing the present use (single family residence).

5. The difference between the final "after" project value (\$31,000) and the "before" project value (\$14,500), is \$16,500. This represents the special benefit of the project. The proposed assessment for Lot 81 of \$24,897 should be lowered to a final assessment amount of \$16,500.

NOW THEREFORE, THE BOARD OF COMMISSIONERS OF BIRCH BAY WATER AND SEWER DISTRICT, WHATCOM COUNTY, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1: The Board, sitting as a board of equalization and having made all revisions to the roll it deems necessary, hereby finds and determines that the final assessment roll for U.L.I.D. No. 13 and 14 shall have a total combined final assessment in the following amounts:

Lot 6	\$20,200.00
Lot 11	\$20,200.00
Lot 12	\$18,320.25
Lot 36	\$19,729.50
Lot 71	\$10,000.00
Lot 74	\$18,790.00
Lot 75	\$18,790.00
Lot 81	\$16,500.00

Total amount \$142,529.75

The Board finds the above assessments are just and equitable and that no assessment against said properties is greater than the special benefits to be derived from the improvements. Accordingly, the final assessment rolls for ULID No. 13 and ULID No. 14 as amended by the

re-hearing for Lots 6, 11, 12, 36, 71, 74, 75 and 81, in the total amount of \$142,529.75 is hereby approved and confirmed, and the assessments set forth therein are hereby levied against each lot, tract and parcel of property described in the amended final assessment roll. The above identified total assessments against each lot shall be apportioned on the final assessment rolls with 67% to U.L.I.D. No. 13 and 33% to U.L.I.D. No. 14, which approximates the percentage of costs of each.

Section 2: The Secretary of the Board is hereby directed to place in the hands of the District Treasurer for collection the amended final assessment roll for ULID No. 13 and ULID 14. Upon such placement, the amount of each assessment set forth in the roll, together with any interest or penalty imposed from time to time, shall become a lien against the property so assessed. The lien shall be paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for general taxes.

Section 3: Upon receipt of the amended final assessment roll for ULID No. 13 and ULID No. 14, the District Treasurer is hereby directed to publish notice at the times and in the manner required by RCW 35.49.010, stating that the roll is in his hands for collection and that such assessments or any portion thereof may be paid at any time within 30 days from the date of the first publication of such notice, without penalty, interest or costs.

Section 4: The amount of any assessment, or any portion thereof, against property in ULID No. 13 and ULID No. 14 not paid within the 30-day period from the date of the first publication of the District Treasurer's notice shall be payable in fifteen (15) equal annual installments, together with interest on the diminishing principal balance thereof at a rate of 5.5% per annum. Interest shall commence on the 30th day following the first publication of such notice. The first installment shall become due and payable one year from the expiration of the 30-day prepayment period. Annual installments, including interest and any penalty, shall be paid in full when due, and no partial payments shall be accepted by the District Treasurer.

Section 5: Any installment not paid when due shall thereupon become delinquent. All delinquent installments shall be subject to penalty equal to 12% per annum of the amount of the installment, including interest, from the date of the delinquency until paid.

Section 6: The lien of any assessment may be discharged at any time after the 30-day prepayment period by payment of the entire principal amount of the assessment remaining unpaid together with interest thereon to the due date of the next installment.

Section 7: If any one or more of the provisions of this resolution shall be declared by a court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed severable from the remaining provisions of this resolution and shall in no way affect the validity of the other provisions of this resolution.

Section 8: This Resolution shall be in full force and effect immediately after its adoption.

ADOPTED by the Board of Commissioners of Birch Bay Water and Sewer District, Whatcom County, Washington, at its regular meeting held the 12th day of February, 1998.


COMMISSIONER


COMMISSIONER


COMMISSIONER

THIS IS TO CERTIFY that the above is a true and correct copy of Resolution No. 587 of Birch Bay Water and Sewer District, Whatcom County, Washington, adopted at the regular meeting of the Board of Commissioners on February 12th, 1998.


SECRETARY