

ORDINANCE NO. 1959

AN ORDINANCE APPROVING THE ASSESSABLE COST OF THE IMPROVEMENTS MADE IN AND FOR IMPROVEMENT DISTRICT NO. ST-80, PHASE A, IN THE CITY OF GRAND JUNCTION, COLORADO, PURSUANT TO ORDINANCE NO. 178, ADOPTED AND APPROVED THE 11TH DAY OF JUNE, 1980, AS AMENDED; APPROVING THE APPORTIONMENT OF SAID COST TO EACH LOT OR TRACT OF LAND OR OTHER REAL ESTATE IN SAID DISTRICT; ASSESSING THE SHARE OF SAID COST AGAINST EACH LOT OR TRACT OF LAND OR OTHER REAL ESTATE IN SAID DISTRICT; APPROVING THE APPORTIONMENT OF SAID COST AND PRESCRIBING THE MANNER FOR THE COLLECTION AND PAYMENT OF SAID ASSESSMENTS.

WHEREAS, the City Council and Municipal Officers of the City of Grand Junction, in the State of Colorado, have complied with all the provisions of law relating to certain improvements in Improvement District No. ST-80, Phase A, in the City of Grand Junction, pursuant to Ordinance No. 178 of said City, adopted and approved June 11, 1980, as amended, being Chapter 18 of the Code of Ordinances of the City of Grand Junction, Colorado, and pursuant to the various resolutions, orders and proceedings taken under said Ordinance; and

WHEREAS, the City Council has heretofore caused to be published the Notice of Completion of said local improvement in said Improvement District No. ST-80, Phase A, and the apportionment of the cost thereof to all persons interested and to the owners of real estate which is described therein, said real estate comprising the district of land known as Improvement District No. ST-80, Phase A, in the City of Grand Junction, Colorado, which said Notice was caused to be published in the Daily Sentinel, the official newspaper of the City of Grand Junction) the first publication thereof appearing on November 9, 1980, and the last publication thereof appearing on November 14, 1980); and

WHEREAS, said Notice recited the share to be apportioned to and upon each lot or tract of land within said District assessable for said improvements, and recited that complaints or objections might be made in writing to the Council and filed with the Clerk within thirty (30) days from the first publication of said Notice, to wit: On or before and up to 5:00 o'clock P.M. on the 9th day of December, 1980, and recited that such complaints would be heard and determined by the Council at its first regular meeting after the said thirty days and before the passage of any ordinance assessing the cost of said improvements; and

WHEREAS, proper complaint as to proposed assessments was made by the owners of Lots 2 through 9 in Block 1 of Willowbrook, by Michael G. Kingen and Janice L. Kingen, James Bonella and Keith Miller, and by Warren F. Reams; and

WHEREAS, as to these complaints, the City Council determines as follows:

FINDINGS AS TO REAMS:

The City constructed an arterial roadway from Orchard Avenue to F Road, a distance of one half mile. The terrain necessitated a gradual elevation of the roadway to cross a canal. Assessment was made against the abutting properties on the basis of front footage. The assessment was computed on the basis of a residential street rather than an arterial, with the City assuming the cost over and above the residential street construction cost and also assuming one-third of the cost of the residential street in accordance with general City policy. Developers across the road from Reams paid full cost for a residential street. The City also did not charge for the fill and its emplacement to raise the road over the canal, nor did it charge for the structure over the canal, although the road could not have served all of the lands without such construction. The extra cost of wider sidewalks was not charged to the district nor were medians at the Orchard Avenue intersection. Right of way costs, including an undetermined amount between \$70,000.00 and \$85,000.00 to be paid to complainant Reams, were not charged to the district as might well have been under the case law, as the Council expressed an unwillingness to add these charges to produce an unfairness to those who had been required to donate right-of-way under development regulations of the City, in particular, the Grand Manor developer across the road from complainant Reams who had donated an equivalent amount of land for which Reams was to be paid.

The Reams tracts, north and south of the canal, were constructed access to the new road in the same manner as the lands on the other side of the road. As the road was new construction and no roadway existed at this point prior to the construction, the roadway provided the only access to the Reams property under City regulation and requirement, except as he might have sought to develop some access through the lot on the southeast corner of the tract (possession of which was obtained by the City in the eminent domain proceeding) upon which a value of about \$39,000.00 has been set by Reams, this prior to any roadway being constructed on it.

CONCLUSION:

The Reams assessment should stand as determined by the engineer. The roadway does for the Reams properties only what would be required of him or another developer to permit adequate of the property and at a reduced cost over what would have been paid by the developer. The benefit to the land exceeds the amount of the assessment made against the land. The proof of the pudding being in the eating, one need only consider the developer of an almost identical tract to the Reams tract on the east side of the roadway from Reams who obviously felt sufficient benefit of this roadway to donate right-of-way for it and accept an assessment for its construction, which assessment exceeds the Reams assessment by about \$25,000.00.

FINDINGS AS TO KINGEN, BONELLA AND MILLER:

The City reconstructed F Road in the City, including curb, gutter and sidewalk, and, in relation to the properties of Kingen, Bonella and Miller, constructed a retaining wall, affecting the Miller property only slightly. Assessment against these properties, based upon an evaluation of benefit conducted by the City's appraiser for this project, was determined to be 45% of the one-third cost of the improvement of a residential street, in accordance with the policy of the City Council. The lots of the complainants do not front on F Road, but the rears of the lots do. With the present configuration of the lots to the F Road. Complainants assert that there is no benefit to them from the F Road Construction except as that construction may be of general benefit to the community as a whole.

CONCLUSION:

The Council does not agree that no special benefit is realized by the owners of these lots. There is some benefit derived through the retaining of the sloping land to deter subsidence. There is benefit to the lands through some drainage control provided by the curb, gutter and sidewalk construction. It is determined, however, that in this project the 45% figure is too high; and that the benefit to the property will be more accurately measured at a figure of 22% in relation to the normal costs of this type of improvement. Accordingly, it is determined that the benefit to the properties is at least the amount of the revised assessment as to each property, as follows:

Kingen \$1,515.82

Bonella \$820.32

Miller \$620.59

FINDINGS AS TO MIRACLE THROUGH SERVISS:

This group of complaints also concerns the improvement made to F Road in the City. These consisted of road construction, including curbs, gutters, and sidewalks, and as to these properties, included as well a soundproofing fence through which some requested gates. There is no objection as to the cost of the fence and gates, where installed; however, the cost here was originally assessed only at two-thirds cost, apparently under the belief of the person preparing the assessment roll that this was in conformance with City policy. These properties do not front onto F Road, but their back property lines are on it, the lots falling away to a lower level to the north where the residences are and the fronting street. These parties and predecessors in interest had petitioned for these improvements at an earlier time, but the project had not been undertaken at the time petitioned for because of other considerations at that time. Assessment for the improvements, other than fence and gates were assessed originally at 45% of a computed amount which represented one-third the cost

of construction of a residential street in this area, with curb, gutter and sidewalk. This on the theory that this property benefitted from the curb, gutter and sidewalk and this was about 45% of the cost of the whole.

The complainants disputed this charge of 45% averring that they did not receive any benefit from the curb, gutter and sidewalk and should have to pay for the fence only.

CONCLUSION:

Firstly, the entire cost of the fence and gates should be charged to these properties as they alone benefit.

Secondly, the Council believes there is benefit to the lots through the curb, gutter and sidewalk which is special to these lots. The gates in the area partially indicate this. Too, there would seem to be benefit from better control of the waters coming off of F Road keeping that water off the lots. Lastly, there apparently was perceived benefit when those owners of the lots petitioned for these improvements, even though they were not undertaken at that time. However, the Council does not feel that 45% of the cost is a fair assessment, but that 22% of that cost would be fair. The project as a whole would provide a benefit to the lands of at least the amount of the assessment computed on this basis. The assessment for the lots would then become:

MIRACLE:22% of project plus Fence and gate\$2,730.50		
FLYNN:22% of the project plus Fence and gate\$2,730.50		
FLOWER:22% of the project plus Fence and gate\$2,730.50		
OLIVER:22% of the project plus Fence and gate\$2,730.50		
CHIARO:22% of the project plus Fence and gate\$2,730.50		
HARVEY:22% of the		

project plus Fence and gate\$2,579.09		
<u>WEBER</u> :22% of the project plus Fence and gate\$3,438.78		
<u>SERVISS</u> :22% of the project plus Fence and gate\$2,933.71		

WHEREAS, the City Council has fully confirmed the statement prepared by the City Engineer and certified by the President of the City Council showing the assessable cost of said improvements and the apportionment thereof heretofore made as contained in that certain Notice to property owners in Improvement District No. ST-80, Phase A, duly published in the Daily Sentinel, the official newspaper of the City, and has duly ordered that the cost of said improvements in said Improvement District No. ST-80, Phase A, be assessed and apportioned against all of the real estate in said District in the portions contained in the aforesaid Notice, except as above set out; and

WHEREAS, from the statement made and filed with the City Clerk by the City Engineer, it appears that the assessable cost of the said improvements is \$317,171.33, less the adjustments of the cost made above, said amount including six per centum additional for cost of collection and other incidentals and including interest to the 1st day of April, 1981, at the average rate of 9.6743 per annum on the bonds heretofore sold to raise funds for the construction of said improvements; and

WHEREAS, from said statement and the adjustments made to it, it appears that there should be apportioned a share of the assessable cost to each lot or tract of land in said District in the following portions and amounts, severally, to-wit:

<u>PARCEL NO. DESCRIPTION ASSESSME NT</u>		
2943-072-00-009E4SW4NW4 Sec 7 1S 1E Exc S 200 Ft\$50,983.95		
2943-072-00-035That Pt		

<p>of W4SE4NW4 Sec 7 1S 1E of Grand Valley Canal Exc for Rd ROW as Desc in B-1245 P- 841 & 842 Mesa County Recorder\$ 5,631.89</p>		
<p>2943-072-00-048Beg N 0 deg. 23 min. 16 sec. W 60 ft fr SW Cor SE4NW4 Sec 7 1S 1E N 0 deg. 23 min. 16 sec. W 991.98 ft N 34 deg. 28 min. 04 sec. E 35.35 ft N 88 deg. 24 min. 51 sec. E 307.15 ft S 0 deg. 21 min. 35 sec. E 917.81 ft N 89 deg. 58 min. 01 sec. W 80 ft S 0 deg. 21 min. 35 sec. E 112 ft N 89 deg. 58 min 01 sec. W 246.79 ft Beg Exc for Rd ROW as Desc in B- 1239 P-450, 451, 453, 457, 458 and B-1264 P- 820 County Recorder\$75,367.01</p>		
<p>2943-072-00-051NE4NW4 Sec 7 1S 1E Exc Beg 30 ft S fr NW Cor Sd NE4NW4 S 350 ft E 420 ft N 350 ft W to Beg and Exc Beg 420 ft E fr Sd NW Cor E 240 ft S 400 ft W 240 ft N 400 ft to Beg Exc for Rd on N and Exc The Falls Filing No. One and also Exc for Rd ROW as Desc B-1245 P- 841 and 842 Mesa County Recorder\$75,639.27</p>		
<p>2943-072-01-021Lots 7, 8 and that Pt of Lot 65 Beg 313.84 ft S 89 deg. 50 min. W fr SE Cor Mantey Heights Sub Sec 7 1S 1E N 17 deg.</p>		

<p>44 min. W 520.13 ft N 31 deg. 40 min. W 274.33 ft N 13 deg. 12 min. W 179.62 Ft S 31 deg. 25 min. W 170 ft S 57 deg. 33 min. E 86 ft S 11 deg. 09 min. E 37 ft S 27 deg. 08 min. E 478.1 ft N 46 deg. 31 min. W 138 ft S 17 deg. 44 min. E 350 ft N 89 deg. 50 min. E 125 ft to Beg and Lot 66 Exc that Pt of Lot 66 lyg in Landings Heights Nursing Care Center and also Exc for Rd ROW as Desc in B-1245 P-841 and 842 of Mesa County Recorder\$44,517.48</p>		
<p>2943-072-12-005Lot 1 Blk 1 Landing Heights Nursing Care Center Sec 7 1S 1E Exc Beg N 89 deg. 50 min. E 1023.7 ft fr NW Cor Sd Sec 7 N 89 deg. 50 min. E 235 ft S 0 deg. 11 min. E 400 ft S 89 deg. 50 min. W 225 ft NWly to Beg and also Exc for Rd ROW as Desc B-1245 P-841 and 842 Mesa County Recorder\$ 5,249.72</p>		
<p>2943-072-12-974Beg N 89 deg. 50 min. E 1023.7 ft fr NW Cor Sec 7 1S 1E N 89 deg. 50 min. E 235 ft S 0 deg. 11 min. E 400 ft S 89 deg. 50 min. W 225 ft NWly to Beg being Pt of Lot 1 Blk 1 Landings Heights Nursing Care Center\$14,975.23</p>		

2945-023-00-037Beg SE Cor SW4SW4 Sec 2 1S 1W W 173 ft N 391 ft N 75 deg. 02 min. E 175.3 ft S 406 ft to Beg\$ 7,039.22		
2945-023-00-038Beg 30 ft N of SW Cor SE4SW4 Sec 2 1S 1W N 127.8 ft E 100 ft S 127.8 ft W to Beg\$ 4,068.92		
2945-023-00-039Beg 30 ft N and 100 ft E of SW Cor SE4SW4 Sec 2 1S 1W E 85 ft N 127.8 ft W 85 ft S to Beg\$ 3,458.58		
2945-023-00-040Beg 30 ft N and 185 ft E of SW Cor SE4SW4 Sec 2 1S 1W N 127.8 ft E 115 ft S 127.8 ft W to Beg\$ 4,679.25		
2945-023-03-002Lot 9 Blk 1 Willowbrook Sub Replat Sec 2 1S 1W\$ 2,933.71		
2945-023-03-03Lot 8 Blk 1 Willowbrook Sub Replat Sec 2 1S 1W\$ 3,438.78		
2945-023-03-004Lot 7 Blk 1 Willowbrook Sub Replat Sec 2 1S 1W\$ 2,579.09		
2945-023-03-005Lot 6 Blk 1 Willowbrook Sub Replat Sec 2 1S 1W\$ 2,730.50		
2945-023-03-006Lot 5		

Blk 1 Willowbrook Sub Replat Sec 2 1S 1W\$ 2,730.50		
2945-023-03-007Lot 4 Blk 1 Willowbrook Sub Replat Sec 2 1S 1W\$ 2,730.50		
2945-023-03-008Lot 3 Blk 1 Willowbrook Sub Replat Sec 2 1S 1W\$ 2,730.50		
2945-023-03-009Lot 2 Blk 1 Willowbrook Sub Replat Sec 2 1S 1W\$ 2,730.50		
2945-112-00-004Beg 734.07 ft E of NW Cor NW4 Sec 11 1S 1W S 20 deg. 10 min. E 622.5 ft S 65 deg. 30 min. E 113.3 ft N 631.27 ft W 317.6 ft to Beg\$12,922.86		
2945-112-11-018Lot 20 Vanderen-Ford Heights Replat\$ 3,662.02		
2945-112-11-019Lot 21 Vanderen-Ford Heights Replat\$ 3,662.02		
2945-112-11-021Lot 24 Vanderen-Ford Heights Replat\$ 4,996.63		
2945-112-11-023Lot 25 Vanderen-Ford Heights Replat and Beg NE Cor Lot 25 S 89 deg. 54 min. E 30 ft S 9 deg. 56 min. W 74.5 ft N 13 deg. 08 min. W 75.5 ft to Beg\$ 1,220.67		

<p>2945-112-11-024 Lot 26 Vanderen-Ford Heights Replat Exc Beg NE Cor Lot 25 Sub S 89 deg. 54 min. E 30 ft S 9 deg. 56 min. W 74.5 ft N 13 deg. 08 min. W 75.5 ft to Beg\$ 2,400.66</p>		
<p>2945-112-11-025 Lot 27 Vanderen-Ford Heights Replat Sec 11 1S 1W Exc Beg NE Cor Lot 27 S 00 deg. 32 min. 00 sec. E 10 ft N 56 deg. 18 min. 36 sec. W 18.03 ft S 89 deg. 54 min. E 15.00 ft to Beg\$ 4,068.92</p>		
<p>2945-112-13-002 Lots 20 and 21 Blk 1 Park Lane Sub Sec 11 1S 1W Exc for Rd ROW Desc as Foll Beg NW Cor Sd Lot 21 E 15 ft S 25 deg. 12 min. 04 sec. W 18.79 ft W 7 ft N 17 ft to Beg Recorded in B-1251 P-252 of Mesa County Recorder\$ 1,515.82</p>		
<p>2945-112-13-003 Beg 69.6 ft W of NE Cor Lot 17 Park Lane Sub Sec 11 1S 1W S 3 deg. 6 min. E 149.9 ft W 92 ft to W Li Lot 19 Park Lane Sub N 151 ft to NW Cor Lot 19 E to Beg\$ 820.32</p>		
<p>2945-112-13-004 Beg NE Cor Lot 17 Park Lane Sub Sec 11 1S 1W S 20 deg. 10 min. E 158 ft S 89 deg. 21 min. W 116 ft N 3 deg. 6 min.</p>		

W 149.9 ft E 69.6 ft to Beg\$ 620.59		
2945-112-13-044Lot 3 and 4 Blk 1 Olympic Acres Sub Sec 11 1S 1W\$ 906.15		

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

Section 1. That the assessable cost and apportionment of same, as hereinbefore set forth, is hereby assessed against all the real estate in said district, and to and upon each lot or tract of land within said District, and against such persons and in the portions and amounts which are severally hereinbefore set forth and described.

Section 2. That said assessments, together with all interests and penalties for default in payment thereof, and all cost of collecting same, shall from the time of final publication of this Ordinance, constitute a perpetual lien against each lot of land herein described, on a parity with the tax lien for general, State, County, City and school taxes, and no sale of such property to enforce any general, State, County, City or school tax or other lien shall extinguish the perpetual lien of such assessment.

Section 3. That said assessment shall be due and payable within thirty days after the final publication of this Ordinance without demand; provided that all such assessments may at the election of the owner, be paid in installments with interest as hereinafter provided. Failure to pay the whole assessment within the said period of thirty days shall be conclusively considered and held an election on the part of all persons interested, whether under disability or otherwise, to pay in such installments. All persons so electing to pay in installments shall be conclusively considered and held as consenting to said improvements, and such election shall be conclusively considered and held as a waiver of any and all rights to question the power and jurisdiction of the City to construct the improvements, the quality of the work the regularity or sufficiency of the proceedings, or the validity or correctness of the assessment.

Section 4. That in case of such election to pay in installments, the assessments shall be payable in ten equal annual installments of the principal, with interest upon unpaid installments payable annually in accordance with the coupons on the bonds issued to fund the District. The first of said installments of principal shall be due and payable within ninety days after the final publication of this Ordinance and the remainder of said installments shall be due on the first day of January of each year thereafter until all of said installments are paid in full.

Section 5. That the failure to pay any installments, whether of principal or interest, as herein provided, when due, shall cause the whole unpaid principal to become due and payable immediately and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of ten percent per annum until the day of sale, the owner may pay the amount of such delinquent installment or installments, with interest at ten percent per annum as aforesaid, and all penalties accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any piece of real estate not in default as to any installments, may at any time pay the whole of the unpaid principal, with interest accrued.

Section 6. That payment made to the City Finance Director at any time within thirty days after the final publication of this Ordinance, and an allowance of the six percent added for the cost of collection and other incidentals shall be made on all payments made during said period of thirty days.

Section 7. That monies remaining in the hand of the City Finance Director as the result of the operation and payments under Improvement District No. ST-80, Phase A, after the retirement of all bonds and proper payment of monies owing by the District shall be retained by the Finance Director and shall be used thereafter for the purpose of further funding of past or subsequent improvement districts which may be or may become in default or for such purposes as the City Council of the City of Grand Junction may from time to time direct.

Section 8. That all provisions of Ordinance No. 178 of the City of Grand Junction, as amended, being Chapter 18 of the Code of Ordinances of the City of Grand Junction, Colorado, shall govern and be taken to be a part of this Ordinance with respect to the creation of said Improvement District No. ST-80, Phase A, the construction of the improvements therein, the apportionment and assessment of the cost thereof and the collection of such assessments.

Section 9. That this Ordinance, after its introduction and first reading shall be published once in full in the Daily Sentinel, the official newspaper of the City, at least ten days before its final passage, and after its final passage, it shall be numbered and recorded in the City Ordinance record, and a certificate of such adoption and publication shall be authenticated by the certificate of the publisher and the signature of the President of the Council and the City Clerk and shall be in full force and effect on and after the date of such final publication, except as otherwise provided by the Charter of the City of Grand Junction.

Introduced and read at a regular meeting of the City Council of the City of Grand Junction, Colorado, held on the 1st day of April, 1981.

Karl M. Johnson

Acting President of the Council

Attest:

Neva B. Lockhart, CMC

City Clerk

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 1959, was introduced, read, and ordered published by the City Council of the City of Grand Junction, Colorado, at a regular meeting of said body held on the 1st day of April, 1981, and that the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, at least ten days before its final passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 7th day of May, 1981.

Neva B. Lockhart

Neva B. Lockhart, CMC
City Clerk

Published: April 5, 1981

Final Publication: May 8, 1981

Effective: June 7, 1981