

**EAST WENATCHEE WATER DISTRICT
DOUGLAS COUNTY, WASHINGTON
RESOLUTION NO. 613**

A RESOLUTION of the Board of Water Commissioners of East Wenatchee Water District, Douglas County, Washington, relating to Utility Local Improvement District No. 2 (Baker Flats); approving and confirming the assessments and assessment roll of ULID No. 2 for the Baker Flats water system, as included in the Plan and System Improvements, and as provided by Resolution No. 594; and, levying and assessing the cost and expense thereof against the several lots, tracts, parcels of land and other property as shown on the assessment roll.

BE IT RESOLVED BY THE BOARD OF WATER COMMISSIONERS OF EAST WENATCHEE WATER DISTRICT, DOUGLAS COUNTY, as follows:

Section 1. RECITALS FINDINGS AND CONCLUSIONS

1.1 The assessment roll levying the special assessments against the property located in Utility Local Improvement District No. 2 ("ULID No. 2") in East Wenatchee Water District, Douglas County, Washington (the "District"), has been filed with the Secretary of the Board of Water Commissioners (the "Board") of the District as provided by law.

FINDINGS OF FACT

1.2 Notice of the time and place of hearing on the assessment roll and for making objections and protests to the roll was published at and for the time and in the manner provided by law. The time and place of hearing on the assessment roll was set for the 18th day of August, 2010, at the hour of 6:00 p.m., local time, at the Douglas District building, 1151 Valley Mall Parkway, East Wenatchee, Washington. And, further notice of the hearing on the assessment was timely mailed by the Secretary of the Board to each property owner shown on the roll.

1.3 At the time and place fixed and designated in the notice, the hearing was held. All written protests received were considered and all persons appearing at the hearing who wished to be heard were heard. The Board, sitting and acting as a Board of Equalization, considered the roll and the special benefits to be received by each lot, parcel and tract of land shown upon such roll, including the increase and enhancement of the fair market value of each such parcel of land by reason of the improvement.

1.4 Construction of all water system and related improvements have been substantially completed.

1.5 All procedures, provided for by law, with respect to the adoption of the Final Assessment Roll have been followed.

1.6 The water system improvements ordered under ULID No. 2 were deemed necessary to provide adequate capacity and distribution to the Baker Flats area of the District.

1.7 In arriving at the final assessment proposed for each property, the ULID did not employ the "zone and termini" formula provided in RCW 35.44.030 and .040. Rather, a special benefit analysis supported by qualified appraisal evidence was used to determine the increased value on a per acre basis. The District expressly finds, consistent with the appraisal opinion, that the assessment approach utilized for the ULID more thoroughly and correctly reflects the special benefits to each property within the ULID flowing from the improvements constructed, than application of the "zone and termini" formula. The special benefit methodology allows appropriate consideration of the actual benefit to each of the properties.

1.8 Additionally, the assessment methodology employed by the District ensures similarly situated properties within the ULID are proportionally assessed to one another.

1.9 Written protests to the proposed Final Assessment Roll were filed with the District, and are addressed as follows.

1.10 Appearing at the hearing on August 18, 2010 and testifying were District representative Greg Brizendine and consulting engineer Randy Asplund. The District took notice of the appraisal

testimony and report (March 10, 2008) of Kirk Dosser, Pacific Appraisal Services, received at the formation hearing on ULID No. 2. Also appearing and testifying were Gordon Brett, Douglas County PUD; Bob Hillis (representing LTD Properties); Arnie Pipkin; Archie Sasser; Marcie Espinoza (for Jose and Rosa Rivera); and, Brett Drescher. No qualified appraisal testimony was presented in support of protests.

1.11 Any conclusion of law hereinafter set forth which may be deemed to be a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW

1.12 From the above findings of fact and the record before the Board, the following conclusions are adopted.

1.13 If a District employs a method of assessment pursuant to a ULID other than the “zone and termini” method provided by statute, a finding must be made, supported by the record, that the alternate method more fairly reflects the special benefit resulting from the improvement. RCW 35.44.047; See also *Bellevue Plaza v. Bellevue*, 121 Wn.2d 397, 414, 851 P.2d 662 (1993). The basis for choosing an alternate method is satisfied by slight evidence supporting the fairness of the method chosen. *Hansen v. LID*, 54 Wn. App. 257, 261-62, 773 P.2d 435 (1989). Here, the record has the requisite finding based on substantial and unchallenged evidence in the hearing record in support of the assessment methodology.

1.14 An improvement constructed under a ULID is presumed to specially benefit properties within the ULID on an equitable basis and is presumed to have been made fairly and legally. See, e.g., *Bellevue Plaza* at 403, citing *Abbenhaus v. Yakima*, 89 Wn.2d 855, 860 61, 576 P.2d 888 (1978).

1.15 A property owner protesting a ULID assessment has the burden of establishing, by a preponderance of expert appraisal evidence, that the method of assessment employed by the District was founded on a “fundamentally wrong basis” and does not properly reflect the special benefits resulting from the improvements constructed. *Bellevue Plaza* at 403; *Abbenhaus, supra*; *Hansen* at 262.

1.16 Parcel No. 43 – Douglas County PUD. The Board considered the written protest and testimony of the PUD and determines that the Parcel is not currently benefited by the ULID improvements. The final assessment for Parcel No. 43 is reduced to \$0. At such time as the property is available for development and seeks to connect to the District’s water system, a capital facility or other charge in lieu of assessment will be levied.

1.17 Parcel No. 34 – LTD Properties, LLC. The Board considered the written protest and testimony relating to the Parcel. Water usage is not a basis for an assessment. This property is benefitted by the ULID improvements, including the fire flow capacity to the Parcel. The assessment against Parcel 34 in the amount of \$33,113 is confirmed.

1.18 Parcel Nos. 65 and 84 – WSDOT. The District granted the request of WSDOT for a new hearing date in light of issues with notice to the State under laws particular to the State. A hearing on the WSDOT protest has been re-scheduled for October 6, 2010. This Resolution does not fix the final assessments against Parcel 65 and 84.

1.19 Parcel 58 – Pipkin. The Board considered the written protest and testimony relating to the Parcel. Based on the evidence in the record, the area of land within the ULID is 8.42 acres and not 17.15 acres. As a result, the assessment against Parcel 58 in the amount of \$117,797 is reduced to a final assessment of \$57,845.

1.20 Parcel No. 50 – Nelson/Pipkin. The Board considered the written protest and testimony relating to the Parcel. Based on the evidence in the record, the area of land within the ULID is 7.73 acres and not 8.27 acres. As a result, the assessment against Parcel 50 in the amount of \$56,808 is reduced to a final assessment of \$53,105. The other basis for challenge to the assessment against Parcel 50 is rejected. A claim regarding “useable land,” rather than consideration of the entirety of the parcel, ignores such relevant valuation considerations such as minimum lot size, building setback lines, and lot coverage and density allowances based on the overall size of a parcel.

1.21 Parcel No. 135 – Sasser. No written protest was received for this Parcel. The Board did hear from Mr. Sasser. In light of the zoning applicable to Parcel No. 153, the property is assessed uniformly and ratably with other properties in the ULID. The protest is both procedurally deficient

and unsupported substantively by the record, and is rejected. The assessment against Parcel 135 in the amount of \$5,840 is confirmed.

1.22 Parcel No. 42 – Drescher. No written protest was received for this Parcel. The Board did hear from Mr. Drescher. In light of the zoning applicable to Parcel No. 53, the property is assessed uniformly and ratably with other properties in the ULID. A claim regarding “useable land,” rather than consideration of the entirety of the parcel, ignores such relevant valuation considerations such as minimum lot size, building setback lines, and lot coverage and density allowances based on the overall size of a parcel. The protest is both procedurally deficient and unsupported substantively by the record, and is rejected. The assessment against Parcel 42 in the amount of \$103,531 is confirmed.

1.23 Parcel Nos. 182, 183, 184, 185 and 187 – Linterman. The Board considered the written letter relating to these Parcels.

1.23.1 These Parcels appear to be in a current use classification as “farm and agricultural land.” In such a classification, the Parcels may be currently exempt from payment of assessments for the ULID improvements. RCW 84.34.320. But, there has been no showing that the assessments are not otherwise supported and valid. As a result, the assessments against these Parcels are confirmed. The Board further addresses this issue, as follows.

1.23.2 RCW 84.34.320 provides for a deferral of assessments for “farm and agricultural land” or “timber land.” The Board notes that “open space land” is not the same as “farm and agricultural land” or “timber land.” The governing statutes make a clear distinction among such classifications. The Department of Revenue in its regulations similarly recognizes that distinction by providing that only property characterized as farm and agricultural land under RCW 84.34.020(2) and timber land as defined in RCW 84.34.020(3) qualify for deferral of assessments. WAC 458-30-225, -500. Open space is defined separately at RCW 84.34.020(1). Only land classified as farm and agricultural land or timber land is eligible for the statutory deferral.

1.23.3 It is not the place of this decision to make a determination that property is or is not subject to deferral consistent with the application of those statutes and regulations. If a parcel is so classified, the statutes clearly provide that when such property is

“withdrawn from classification or there is change of use and such land has been exempted from any special benefit pursuant to RCW 84.34.320, the **previously exempt benefit assessments** shall be come due on only that portion of the land which is withdrawn or changed.”

RCW 84.34.370 (emphasis supplied). An assessment cannot “become due” if it is not levied in the first instance.

1.23.4 Further, the District is obligated to evaluate the property for special benefits at its highest and best use. The District recognizes that property may be placed in a deferral status or other use classification. But until the property is no longer subject to an owner’s control regarding classification, there is nothing to preclude a property owner from withdrawing or modifying the classification or designation and enjoying the special benefits associated with the availability of the public water system in Baker Flats. As a result, the assessments against these Parcels are confirmed.

1.24 Parcel No. 125 – Rivera. No written protest was received for this Parcel. The Board did hear from Ms. Espinoza. At such time as the property is available for development and seeks to connect to the District’s water system, a capital facility or other charge in lieu of assessment will be levied.

1.25 Except as otherwise modified herein, the objections to the assessments or the Final Assessment Roll are overruled and the Final Assessment Roll is approved and confirmed, except as to Parcels 65 and 84 which will be considered by the Board at a subsequent hearing.

1.26 With the exception of Parcels 65 and 84, each of the lots, tracts, parcels of land and other property shown upon the assessment roll is determined and declared to be specially benefited by this improvement in at least the amount charged against the same, and the assessment appearing against the same is in proportion to the several assessments appearing upon the roll.

1.27 Any Finding of Fact hereinbefore stated which may be deemed to be a Conclusion of Law herein is hereby adopted as such.

Section 2. ASSESSMENT ROLL. The assessments and assessment roll of Utility Local Improvement District No. 2, which has been created and established for the purpose of acquisition, construction and installation of Baker Flats Plan and System Improvements, as provided by Resolution No. 594, as the same now stand shall be and the same are approved and confirmed in all things and respects in the total amount of \$2,973,068.00, provided, however, the total amount of the final assessment roll remains subject to the further hearing as to Parcels 65 and 84.

Section 3. ASSESSMENT LEVIED. There is levied and assessed against each lot, tract or parcel of land and other property appearing upon the roll the amount finally charged against the same, as set forth herein.

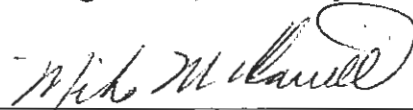
Section 4. COLLECTION OF ASSESSMENTS

4.1 The assessment roll as approved and confirmed shall be filed with the Douglas County Treasurer (the "Treasurer") for collection and the Treasurer is authorized and directed to publish notice as required by law stating that the roll is in her hands for collection and that payment of any assessment thereon or any portion of such assessment can be made at any time within 30 days from the date of first publication of such notice without penalty, interest or cost, and that thereafter the sum remaining unpaid may be paid in 20 equal annual installments. The assessment interest rate is hereby fixed at 2.9% per annum. The first installment of assessments on the assessment roll shall become due and payable during the 30-day period succeeding the date one year after the date of first publication by the Treasurer of notice that the assessment roll is in her hands for collection and annually thereafter each succeeding installment shall become due and payable in like manner.

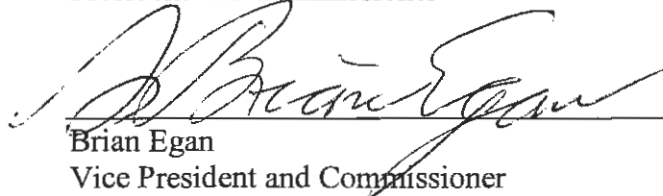
4.2 If the whole or any portion of the assessment remains unpaid after the first 30-day period, interest upon the whole unpaid sum shall be charged at the rate as determined above, and each year thereafter one of the installments together with interest due on the unpaid balance, shall be collected. Any installment not paid prior to expiration of the 30-day period during which such installment is due and payable shall thereupon become delinquent. Each delinquent installment shall be subject, at the time of delinquency, to a charge of 12% penalty levied on both principal and interest due upon that installment, and all delinquent installments also shall be charged interest at the rate as determined above. The collection of such delinquent installments shall be enforced in the manner provided by law.

4.3 Assessments when collected shall be deposited into the District's Water Revenue Bond Fund, 2010, to which they have been pledged by Resolution No. 609.

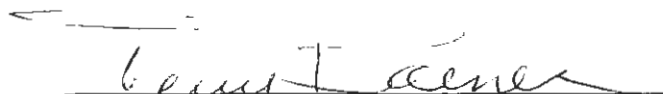
ADOPTED by the Board of Water Commissioners of East Wenatchee Water District, Douglas County, Washington, at a regular open public meeting thereof, this 1st day of September, 2010.



Mike McCourt
President and Commissioner



Brian Egan
Vice President and Commissioner



Terry Barnes
Secretary and Commissioner

CERTIFICATION

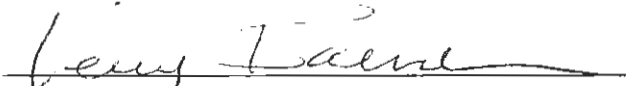
I, the undersigned, Secretary of the Board of Water Commissioners (the "Board") of East Wenatchee Water District, Douglas County, Washington (the "District"), hereby certify as follows:

1. The attached copy of Resolution No. 613 (the "Resolution") is a full, true and correct copy of a resolution duly adopted at a regular meeting of the Board held at the regular meeting place thereof on September 1, 2010, as that resolution appears on the minute book of the District; and the Resolution is now in full force and effect; and

2. A quorum of the members of the Board was present throughout the meeting and a majority of those members present voted in the proper manner for the adoption of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of September, 2010.

EAST WENATCHEE WATER DISTRICT
DOUGLAS COUNTY, WASHINGTON



Terry Barnes
Secretary of the Board of Water Commissioners