

ORDINANCE 1547

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, REPEALING ORDINANCE NO. 1537; ORDERING REASSESSMENTS FOR CERTAIN PROPERTIES IN UTILITY LOCAL IMPROVEMENT DISTRICT NO. 6 PURSUANT TO A WASHINGTON STATE COURT OF APPEALS ORDER; AND PROVIDING THAT PAYMENT OF THE COSTS OF THE IMPROVEMENTS BE MADE BY SPECIAL ASSESSMENTS UPON THESE CERTAIN PROPERTIES IN THE DISTRICT

WHEREAS, a petition was filed with the City Council, signed by the owners of the property aggregating a majority of the area within the proposed district, setting forth the nature and territorial extent of the proposed improvement, the mode of payment and that a sufficient portion of the area within the proposed district was owned by the petitioners as shown by the records in the office of the Auditor of King County, petitioning for the extension of the City's sewer system and service together with related improvements, more specifically described hereinafter ("Improvement"); and

WHEREAS, the City Engineer caused a preliminary estimate to be made of the cost and expense of a vacuum sewer system and certified that estimate to the City Council, together with the other information in his possession regarding the Improvement, and a statement of what portion of the cost and expense of the Improvement should be borne by the owners of the property within the proposed district; and

WHEREAS, the City Council conducted a public hearing on October 2, 2007, on the proposed district formation and determined it to be in the best interests of the City and of the owners of the property within the proposed district that the Improvement petitioned for, as hereinafter described, be carried out and that the District be created in connection therewith; and

WHEREAS, after a subsequent petition was received to include additional property owners in the District, the City conducted a further study and determined that the vacuum sewer system would not be able to handle the expected flows from the properties to be served, and that it was accordingly necessary to change the design from a vacuum sewer system to a gravity sewer system; and

WHEREAS, a hearing on the proposed assessment roll was subsequently conducted by a Hearing Examiner on behalf of the City Council and, following the hearing, the Examiner recommended approval of the district assessments as presented; and

WHEREAS, the City Council subsequently adopted the Hearing Examiner’s recommendation and approved the final assessment roll for the District as presented; and

WHEREAS, the District was implemented, but seven property owners filed appeals of their respective assessments; and

WHEREAS, on appeal, the Court of Appeals annulled “the assessments only of the appealing property owners, allowing the City to pursue a reassessment”; and

WHEREAS, the seven appellants further petitioned the State Supreme Court to review the decision of the Court of Appeals, but the State Supreme Court declined to accept review and remanded the matter to the Superior Court for proceedings in accordance with the Court of Appeals’ prior decision; and

WHEREAS, the appellants and City agree that the appellants’ assessments have been annulled by the Court of Appeals and have submitted a joint stipulation to the Superior Court regarding the same as provided in the Mandate issued by the Court of Appeals; and

WHEREAS, the City Council adopted Ordinance No. 1537 on October 7, 2014, which the City Council now wishes to repeal in its entirety and replace with this ordinance; and

WHEREAS, this ordinance is enacted pursuant to the direction of the Court of Appeals and does not modify or annul the prior assessments of, nor create a new appeal period for, any property owner within the District other than the seven appellants; and

WHEREAS, this ordinance shall apply retroactively to November 20, 2007, the date that the City Council originally approved establishment of the District;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Pursuant to the Court of Appeals’ decision which annulled the assessments of the seven (7) appellants, the City Council hereby adopts the following revised description of the Improvement project: design and construction of a gravity sewer system in the herein specified portions of the City of North Bend Final Comprehensive Sewer Plan, July 2001 defined Tanner Area and Truck Town sub-basin, including but not limited to one (1) sanitary sewer pump station; approximately 62,200 linear feet of 8” through 27” sewer main; one (1) side sewer service to each abutting parcel within the ULID No. 6 boundary; and other appurtenances.

Section 2. Pursuant to the Court of Appeals’ decision, the City Council orders reassessments to be conducted for those seven (7) property owners whose properties are included within ULID No. 6 and identified in Exhibit A, as the shaded parcels shown on the map, a copy of which is attached hereto and incorporated in full by this reference. The parcels subject to this reassessment are more fully and legally described in Exhibit B, which is attached hereto and incorporated in full by this reference.

Section 3. The total cost and expense of the Improvement is declared to be \$19,020,359 minus all payments previously made by all property owners who are part of the District. The entire cost and expense of the improvements, including all labor and materials required to completely construct the Improvement, all engineering, surveying, inspection, ascertaining ownership of the lots or parcels of land included in the assessment district, and all advertising, mailing and publication of notices, accounting, administrative, printing, legal, interest and other expenses incidental thereto, shall be borne by and assessed against the property specially benefited by such Improvement included in the District embracing as nearly as practicable all property specially benefited by such Improvement.

Section 4. In accordance with the provisions of RCW 35.44.047, the City may use any method or combination of methods to compute assessments which may be deemed to fairly reflect the special benefits to the properties owned by the seven (7) appellants and subject to reassessment herein. Date of valuation for reassessments will be September 23, 2011, the date of the original Final Special Benefits Study for the District.

Section 5. Within fifteen (15) days of the passage of this ordinance there shall be filed with the City Finance Director the title of this Local Improvement District No. 6, a copy of the diagram or print showing the boundaries of the District, a list of the seven (7) property owners who are subject to this reassessment and the preliminary reassessment roll or abstract of such roll showing thereon the lots, tracts and parcels of land that will be specially benefited thereby and the estimated cost and expense of such Improvement to be borne by each lot, tract or parcel of land. The City Finance Director shall immediately post the proposed reassessment roll upon her index of local improvement reassessments against the properties owned by the seven (7) appellants and affected by the local improvement.

Section 6. This ordinance is enacted pursuant to the ruling of the Court of Appeals and does not modify or annul the prior assessments of, nor create a new appeal period for, any property owners within the District other than the seven (7) appellants. At a later date, final reassessments will be conducted and the City shall bring these reassessments back to the City Council for consideration and possible adoption as final reassessments. The seven (7) appellant property owners shall retain the right to appeal under RCW Chapter 35.44 any final reassessments adopted by the City Council.

Section 7. This ordinance shall apply retroactively to November 20, 2007. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 8. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

Section 9. Repealer. Ordinance No. 1537 is hereby repealed in its entirety.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 6TH DAY OF
JANUARY, 2015.**

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

Published: January 21, 2015
Effective: January 26, 2015

ATTEST/AUTHENTICATED:

Susie Oppedal, City Clerk