

Susan Hutchens
 City Clerk, City of Los Altos, CA

RESOLUTION NO. 2009-36

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS ADOPTING ENGINEER'S REPORT, CONFIRMING THE ASSESSMENT AND ORDERING THE WORK AND ACQUISITIONS, AND DIRECTING ACTIONS WITH RESPECT THERETO

BLUE OAK LANE SEWER ASSESSMENT DISTRICT

RESOLVED, by the City Council (the "Council") of the City of Los Altos (the "City"), State of California, that:

WHEREAS, on June 23, 2009, this Council adopted its Resolution of Intention to Make Acquisitions and Improvements (the "Resolution of Intention") under the Municipal Improvement Act of 1913, Division 12 of the Streets and Highways Code of California, (the "Act") to initiate proceedings under the Act in and for the City's Blue Oak Lane Sewer Assessment District (the "Assessment District") for the making of certain public improvements (the "Improvements") as described in the Resolution of Intention;

WHEREAS, in the Resolution of Intention, this Council directed the Engineer of Work appointed therein to make and file a report in writing (the "Engineer's Report") in accordance with and pursuant to the Act;

WHEREAS, the Engineer's Report was duly made and filed, and duly considered by this Council and found to be sufficient in every particular, whereupon it was determined that the Engineer's Report should stand as the Engineer's Report for all subsequent proceedings under and pursuant to the Resolution of Intention;

WHEREAS, and this Council ordered that a public hearing be held before this Council, in the regular meeting place thereof, Council Chambers, City Hall, 1 North San Antonio Road, Los Altos, California on Tuesday, September 8, 2009, at the hour of 7:00 o'clock p.m., for the purposes of: this Council's determination whether the public interest, convenience and necessity require the acquisitions and improvements; whether the properties in the Assessment District are specially benefited by the acquisitions and improvements; the tabulation of special assessment ballots and the determination of the existence of any majority protest; and this Council's final action upon the Engineer's Report and the assessments therein;

WHEREAS, notice of the public hearing was duly given as required under the Act; the public hearing was duly and regularly held; all persons interested desiring to be heard were given an opportunity to be heard; and all matters and things pertaining to the Improvements were fully heard and considered by this Council; all protests, both written and oral, were duly heard and considered; and all assessment ballots submitted by property owners were received and tabulated;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby orders as follows:

1. **No Majority Protest; Protests Overruled.** It is hereby determined that, upon the conclusion of the public hearing, and after tabulation of the assessment ballots submitted, no majority protest against the assessment existed because the assessment ballots submitted in opposition to the assessment did not exceed the ballots submitted in favor of the assessment. In tabulating the ballots, they were weighted according to the proportional financial obligation of the affected properties. This Council hereby overrules the protests, if any, written and oral, against the proposed acquisitions and improvements or the grades at which the work is proposed to be done, as a whole or as to any part, or against the Assessment District or the extent thereof to be assessed for the costs and expenses of the Improvements, as a whole or as to any part thereof, or against the engineer's estimate of costs and expenses, in whole or in part, or against the maps and descriptions, in whole or in part, or against the diagram or the assessment to pay for the costs and expenses of the Improvements, in whole or in part.

2. **Public Interest.** The public interest, convenience and necessity require that the Improvements be made and that the Assessment District be created.

3. **Assessment District Described.** The Assessment District benefited by the Improvements and to be assessed to pay the costs and expenses of the Improvements, and the exterior boundaries thereof, are as shown by a map thereof filed in the office of the City Clerk (the "Clerk"), which is hereby incorporated by reference.

4. **Engineer's Report Approved.** The Engineer's Report as a whole and each part thereof is hereby approved and confirmed, to wit:

- (a) the plans and specifications for the proposed Improvements;
- (b) the maps and descriptions of the lands and easements to be acquired, if any;
- (c) the engineer's estimate of the itemized and total costs and expenses of the Improvements and of the incidental expenses in connection therewith;
- (d) the diagram showing the Assessment District and the boundaries and dimensions of the respective subdivisions of land within the Assessment District; and
- (e) the assessment of the total amount of the costs and expenses of the proposed Improvements upon the several subdivisions of land in the Assessment District in proportion to the estimated benefits to be received by those subdivisions, respectively, from the Improvements, and of the expenses incidental to the Improvements.

Final adoption and approval of the Engineer's Report as a whole, as hereby determined and ordered, is intended to and shall refer and apply to the Engineer's Report, or any portion thereof, as amended, modified, revised or corrected by, or pursuant to and in accordance with, any resolution or order, if any, heretofore duly adopted or made by this Council.

5. **Improvements Ordered, Assessment District Formed and Assessments Confirmed.** This Council hereby orders that the Improvements described in the Resolution of Intention be made, that the Assessment District be formed, and that the assessment to pay the costs and expenses of the Improvements is hereby confirmed and levied. For further particulars pursuant to the provisions of the Act, reference is hereby made to the Resolution of Intention and the Engineer's Report.

6. **Benefits Determined.** Based on the oral and documentary evidence, including the Engineer's Report, offered and received at the public hearing, this Council expressly finds and determines

- (a) that each of said several subdivisions of land will be specially benefited by the Improvements at least in the amount, if not more than the amount, of the assessment apportioned against those subdivisions of land, respectively, and
- (b) that there is substantial evidence to support, and the weight of the evidence preponderates in favor of, this finding and determination as to special benefits.

7. **Recording Ordered.** The Clerk shall promptly:

- (a) Deliver the assessment to the official of the City who is the Superintendent of Streets, together with the assessment diagram, as approved and confirmed by this Council, with a certificate of such confirmation and of the date thereof, executed by the Clerk, attached thereto. The Superintendent of Streets shall record the assessment and assessment diagram in his or her office in a suitable book to be kept for that purpose, and append thereto his or her certificate of the date of such recording, and such recordation shall be and constitute the assessment roll herein.

(b) Cause a copy of the assessment diagram and a notice of assessment, substantially the form provided in Section 3114 of the Streets and Highways Code of California, executed by the Clerk, to be filed and recorded, respectively, in the office of the County Recorder of the County of Santa Clara, such notice to be in substantially the form provided in Section 3114 of the Streets and Highways Code.

From the date of recording of said notice of assessment, all persons shall be deemed to have notice of the contents of such assessment, and each of such assessments shall thereupon be a lien upon the property against which it is made, and unless sooner discharged such liens shall so continue for the period of 10 years from the date of recordation, or if bonds are issued to represent the assessments, then such liens shall continue until the expiration of 4 years after the due date of the last installment upon the bonds or of the last installment of principal of the bonds.

The appropriate officer or officers of the City are hereby authorized to take all actions and to pay any and all fees required by law in connection with the above.

8. Cash Payment Ordered.

(a) **Cash Payment.** Under the Act, this Council hereby directs that the owners of property within the Assessment District shall be given written notice of the confirmation of the assessments and of the recording thereof in the office of the Superintendent of Streets and of the opportunity of such owners to pay all or a portion of the assessments in cash for a period of not less than 30 days.

(b) **Collection Officer.** The City Finance Director is appointed Collection Officer (the "Collection Officer") for the assessments and the person to whom payment of the assessments shall be made, at the following address:

Finance Director
City of Los Altos
1 North San Antonio Road
Los Altos, California 94022
Attn: Collection Officer, Blue Oak Lane Sewer Assessment District

The Superintendent of Streets is hereby relieved of all responsibility for collecting assessments.

(c) **Mailed Notices.** The Collection Officer shall cause notices to pay assessments to be mailed under Section 10404 of the Act, which notice shall state that bonds will be issued under the Improvement Bond Act of 1915 to represent any unpaid assessments. The mailed notice shall be mailed to each owner of real property within the Assessment District at his or her last known address as the same appears on the tax rolls of the County, or on file in the office of or as known to the Clerk, or to both addresses if the address is not the same, or to the general delivery when no address so appears.

(d) **Published Notice.** The Collection Officer shall also cause the notice to be published once a week for two successive weeks (with at least five days intervening between the respective publication dates, not counting such dates) in a newspaper published and circulated in the Assessment District.

(e) **Contents of Notices.** Each mailed and published notice shall state:

(i) that the assessment has been recorded as provided in Section 10402 of the Streets and Highways Code,

(ii) the date of recordation,

(iii) that all sums assessed therein are due and payable immediately and payment thereof is to be made to the Collection Officer at the Collection Officer's office within 30 days after the date of recording the assessment, and

(iv) the effect of failure to pay within such time, including the fact that bonds will be issued pursuant to the Improvement Bond Act of 1915 to represent and upon the security of the assessments which are not paid within this 30-day period.

The mailed assessment notices shall contain a designation by street number or other description of the property assessed sufficient to identify that property and the amount of the assessment on that property.

(f) Proceeds of Collections. The Collection Officer shall establish a fund (the "Cash Payment Fund"), separate and distinct from other funds of the City, into which shall be deposited all sums received from the cash payments. The Cash Payment Fund shall be designated:

"City of Los Altos,
Blue Oak Lane Sewer Assessment District,
Cash Payment Fund"

The Cash Payment Fund may be invested by the Collection Officer in lawful investments for the District; provided, however, that the Collection Officer shall be under no obligation to invest any or all of the amounts in the Cash Payment Fund.

If this Council issues bonds for the Assessment District, the moneys in the Cash Payment Fund shall be applied to the Improvements for the Assessment District and the Cash Payment Fund shall be closed. If the Council determines not to issue bonds to finance the Improvements, the Collection Officer shall return the amounts of each cash payment (with any interest thereon) to the persons responsible for paying that cash payment and the Cash Payment Fund shall be closed. The timing of such determinations shall be entirely at the discretion of the Council.

9. Effective Date. This resolution shall be effective upon the date of its adoption.

I **HEREBY CERTIFY** that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 8th day of September, 2009 by the following vote:

AYES: PACKARD, CARPENTER, CASAS, BECKER, SATTERLEE
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE


Megan Satterlee, MAYOR

ATTEST:

 9-15-09
Susan Kitchens, CITY CLERK