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AGENDA COVER MEMO

DATE: September 2, 2003

TO: Lane County Board of Commissioners

DEPT.: Public Works

PRESENTED BY: Frank Simas
Right of Way Manager

AGENDA ITEM TITLE: In the Matter of Certification of Final Assessment for Improvements to Prairie Road (County Road Number 203) Between Mile Post 1.59 and Mile Post 2.03 and Setting Lien Value Against Adjacent Parcel 17-04-10-22 Tax Lot 2402.

I. MOTION

THAT THE ORDER BE ADOPTED CERTIFYING ASSESSMENTS AND SETTING LIEN VALUE AGAINST ADJACENT PARCEL 17-04-10-22 TAX LOT 2402 FOR IMPROVEMENTS TO PRAIRIE ROAD BETWEEN MILE POST 1.59 AND MILE POST 2.03 AS REPORTED BY THE COUNTY PUBLIC WORKS DIRECTOR, AS PROPER AND CORRECT AND THAT THE ASSESSMENT AGAINST THIS INDIVIDUAL PARCEL OF LAND BE ESTABLISHED AS THE FINAL COMPLETE AND CORRECT ASSESSMENT WITH PAYMENT TO BE MADE IN ACCORDANCE WITH ORS 371.655.

II. ISSUE OR PROBLEM

To discuss waiving a portion of the assessment to the extent that the improvement is determined not to benefit the owner.

III. DISCUSSION

A. Background

The construction of improvements has now been completed and inspected and was approved as constructed solely for the purpose of levying final assessments by the County Engineer on January 30, 2003. In accordance with Lane Manual Chapter 21.149(2), the Public Works Director accepted the project solely for the purpose of levying final assessments on January 31, 2003.

In accordance with ORS 371.645, a Public Hearing was held on August 20, 2003 at 1:30 P.M., for hearing objections to the assessments. The Board, having heard the objections and evidence presented, ordered by Board Order No. 03-8-20-8 that the assessments for improvements to Prairie Road MP 1.59 to MP 2.03, be established and certified, except Map 17-04-10-22 Tax Lot 2402. The Board directed staff to investigate this parcel for possibly waiving a portion of the assessment to the extent that the improvement is determined not to benefit the owner. The Board also directed staff to investigate the legality of assessing easements holders for the costs of constructing assessable improvements adjacent to their easements.

Staff met with the owners of this parcel on site in order to view the drainage channel easement area which has little, if any remaining utility to the owners. Since the easement has no utility, it was their opinion that it cannot be benefited by the construction of the improvements and therefore should not be assessed.

B. Analysis

If the Board approves, the new adjusted assessable frontage for Map 17-04-10-22, Tax Lot 2402, will be reduced from 314.05 feet to 249.05 feet to reflect the area burdened by the channel easement. The adjusted itemized assessment is shown on the attached Exhibit A.

Analysis by legal counsel indicates that utility easement holders may not be assessed for adjacent improvements. See attached memo from legal counsel.

C. Alternatives/Options

1. Certify the new adjusted amount of assessment.
2. Direct staff to investigate further options.

D. Recommendations

It is recommended that the Board certify the adjusted assessment and approve the Order.

IV. IMPLEMENTATION/FOLLOW-UP

Upon certification by the Board, the property owner will be notified to pay the final assessment in full within 30 days or to make arrangements for installment payments. Collection of assessments will be handled by the Department of Assessment and Taxation. As required by ORS 371.650, the County Clerk will record the Order and enter the assessments into the County Lien Docket.

V. ATTACHMENTS

Exhibit "A" – Certified Final Property Assessment Summary.
Memo from Legal Counsel.

MEMORANDUM

LANE COUNTY
OFFICE OF LEGAL COUNSEL

To: Board of Commissioners
From: Marc Kardell *MK* Extension: 3301
Date: 27 August 2003
Re: Prairie Road Utility Easement assessments BCC/agenda item of 9/24/03

Question Presented:

May Lane County assess utility easement holders for costs of improvements adjacent to a utility easement?

Brief Answer: Not at present.

Analysis:

The Charter for Lane County addresses "Public Improvements" at Section 9. Property may be assessed to the extent that the Board finds that the "public improvement" specially benefits property. Section 9(5) tells us who the owner of specially benefited property may be. It says:

"The word 'owner' shall mean the record holder of legal title, except that if there is a purchaser of land according to a recorded land sale contract, the purchaser shall be regarded as the owner."

This definition would exclude one holding an easement from having an assessable interest. The definition is also consistent in all respects relevant here with the ORS definition. ORS Chapter 371 is entitled "Road Districts and Road Assessment Plans." There, the term "owner" is defined at 371.605(1):

"Owner" means a vendee under a recorded land contract or if there is no such contract, the holder of the record title, which vendee or holder has a present interest equal to or greater than a life estate.

These definitions, and the results that flow from their use, are consistent with other law in the U.S. McQuillan on Municipal Corporations discusses assessing property of public utilities at §38.77. It says:

The equipment and fixtures in the street, used by public service corporations, and the rights and privileges and franchises enjoyed by them, and which have been availed of for the purpose of placing this kind of property in the street, is not subject to the assessment for public improvements. (Emphasis supplied.)

Conclusion:

Absent, at minimum, a Charter amendment, utility easements may not be assessed for adjacent improvements. Even with such an amendment, it is unlikely that there would normally be any property interest specially benefited that does not serve the public purpose. Therefore neither now, nor likely in the future, may Lane County assess utility easements.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON

ORDER NO.

(IN THE MATTER OF CERTIFICATION OF FINAL
(ASSESSMENT FOR IMPROVEMENTS TO
(PRAIRIE ROAD (COUNTY ROAD NUMBER 203)
(BETWEEN MILE POST 1.59 AND MILE POST 2.03
(AND SETTING LIEN VALUE AGAINST ADJACENT
(PARCEL 17-04-10-22 TAX LOT 2402.

WHEREAS, the Director's Report for Prairie Road, MP 1.59 to MP 2.03 (County Road Number 203), including the estimated assessments for improvements, was accepted by Board Order No. 02-2-13-6 and certain adjacent properties were ordered subject to a lien by Board Order No. 02-3-20-4; and

WHEREAS, construction of improvements to said Prairie Road, MP 1.59 to MP 2.03, began in the spring of 2002 and the assessable items have now been completed and inspected and, in accordance with ORS 371.640, the project was approved as constructed solely for the purpose of levying final assessments by the County Engineer on January 30, 2003, and, in accordance with Lane Manual Chapter 21.149(2), the Public Works Director accepted the project solely for the purpose of levying final assessments on January 31, 2003; and

WHEREAS, in accordance with ORS 371.645, a Public Hearing for objections to the assessments was held on August 20, 2003 at 1:30 P.M. in the commissioners conference room. The Board, having heard the objections and evidence presented, ordered by Board Order No. 03-8-20-8 that the assessments for improvements to said Prairie Road, MP 1.59 to MP 2.03, be established and certified, except parcel 17-04-10-22 tax lot 2402. The Board directed staff to investigate said parcel for possibly waiving a portion of the assessment to the extent that the improvement is determined not to benefit the owner; and

WHEREAS, staff met on site with the owners of parcel 17-04-10-22 tax lot 2402 and came to an acceptable agreement for waiving a portion of their frontage that does not benefit their property. Their assessable frontage would be reduced from 314.05 feet to 249.05 feet. **NOW THEREFORE**

BE IT ORDERED that the new adjusted amount of the assessment for parcel 17-04-10-22 tax lot 2402 is hereby established and certified as the final amount assessed to said parcel as shown on "Exhibit A" attached herein. **ALSO**

BE IT ORDERED that the owners of the property so assessed shall have the option to apply for installment payments being available at an interest rate of 7.00 percent, which equals the prime rate of 4.00 percent as of August 19, 2003, plus 3 percent per annum. Said interest rate of 7.00 percent shall also apply to all assessments that become delinquent. **AND ALSO**

BE IT ORDERED, in accordance with ORS 371.650(1), that this order shall be recorded and filed with the County Clerk and entered into the appropriate County lien docket.

Dated this _____ day of _____, 2003.

APPROVED AS TO FORM

Date 9-15-03 lane county


OFFICE OF LEGAL COUNSEL

Peter Sorenson, Chair
Lane County Board of Commissioners

Lane County Department of Public Works Certified Final Property Assessment - Summary

	No. of Units Placed	Credited Units	Assessed Units	Subtotal	Eng Cost @ 28.00%	SubTot w/ Eng Costs	Line Items Waived	Credit @ 0.00%	Line Total
Conc. Curb & Gutter (8" Base)	249.05 LF		249.05 @ \$06.08/LF	\$1,514.22	\$423.98	\$1,938.21			\$1,938.21
Concrete Walks (4" Thick)	88.58 SY		88.58 @ \$18.81/SY	\$1,666.19	\$466.53	\$2,132.72			\$2,132.72
Concrete Driveway (6" Thick)	42.92 SY		42.92 @ \$37.06/SY	\$1,590.62	\$445.37	\$2,035.99			\$2,035.99
Concrete Driveway (8" Thick)	24.89 SY		24.89 @ \$38.98/SY	\$970.21	\$271.66	\$1,241.87			\$1,241.87
Totals:				\$5,741.24	\$1,607.55	\$7,348.79			\$7,348.79

Total discounts applied to this project: \$0.00

Total deferrals for Prairie Road (MP 1.59 - 2.03): \$0.00

For a total Certified Final Assessment of: \$7,348.79