



CHURCHILL LEONARD
LAWYERS

June 1, 2020

Hubbard City Council
City of Hubbard
3720 2nd Street
Hubbard, OR 97032

Re: Sewer Reimbursement District – Kooiman Estates Subdivision
Our File No. 13744

To the Hubbard City Council,

This letter is sent on behalf of our client, James Halbirt, regarding the proposed Reimbursement District requested by the developer of Kooiman Estates for the purpose of charging surrounding property owners for reimbursement for sewer line improvements installed in support of the Kooiman development. When Mr. Halbirt and our office previously appeared to oppose the proposed partition and zone change and annexation application for the Kooiman property and the proposed Kooiman development, representatives at the City of Hubbard assured our client that the proposal to annex the Kooiman property into the City of Hubbard, will in no way affect or result in the annexation of Mr. Halbirt's real property or responsibility for fees related to the Kooiman development, which development is located directly north of Mr. Halbirt's property. Despite our objections to the proposed development, and objections to the specific zone change, annexation, and partition applications before the City Council (which were also objected to by a great number of other individuals), the City Council chose to approve the prior applications and annexed the Kooiman property into the City of Hubbard and approved the zone change and partition to allow development of Kooiman Estates.

Now, my client has been put on notice regarding his proposed inclusion in a reimbursement district for improvements installed specifically to serve Kooiman Estates. If Mr. Halbirt's property is included in the reimbursement district, he could be exposed to tens of thousands of dollars in costs/liability for reimbursement to the developer of Kooiman Estates for improvements that do not actually serve Mr. Halbirt's property. Such potential costs and liability for improvements that do not serve my clients property are the exact reason Mr. Halbirt chose to oppose the initial applications for this development and are costs that cannot be reasonably applied to my client and his property simply based on proximity to the improvement, which was installed without comment or involvement by my client, for the sole benefit of the developer of Kooiman Estates.

The Halbirt property should be excluded from the reimbursement district completely.

The reimbursement district for the sewer line improvements specifically installed for development of Kooiman Estates should be borne solely by the developer and/or the homeowners of Kooiman Estates. Any reimbursement of the improvements for Kooiman Estates by any property not specifically supported and served by the improvements should not be required to bear any costs

for improvements in support of a development to which they previously objected. Allowance of the deferment of any such cost reimbursements to properties outside Kooiman Estates simply adds to the profit of the developer on Kooiman Estates, which is why the developer seeks to calculate reimbursements based on frontage as opposed to other calculations.

Mr. Halbirt owns Tax Lot 2700, which consists of 1.93 acres, more or less. Mr. Halbirt's property is outside of the City of Hubbard city limits. Mr. Halbirt's property consists of a single homesite on a steep incline sloping down towards 3rd Street, which makes future development of Mr. Halbirt's property very unlikely. In addition to being outside of the Hubbard city limits, Mr. Halbirt's property is not connected to city water or sewer services, as Mr. Halbirt's property is serviced by a well and septic tank and drain field. Despite Mr. Halbirt's existence outside of city limits, his lack of city services, and his previous objections to the Kooiman Estates Subdivision, the developer of Kooiman Estates claims that Mr. Halbirt should be potentially responsible for \$73,870.78 in costs for the sewer improvements serving Kooiman Estates. It is not hard to see that such a claim is completely unreasonable unduly burdensome to Mr. Halbirt if allowed.

While we recognize that Hubbard City Code Chapter 3.07 provides terms that lay out instances when such fees will be formally incurred, even with such circumstances in place in the City code, the likelihood of being required to pay the requested fee over the next 10-15 years as provided in the code chapter is still too penal to homeowners not being serviced by the system and improvements. Chapter 3.07.100 of the Hubbard Municipal Code provides the obligations to pay the reimbursement fee, stating:

- (1) A person who applies to the city for a permit to develop property within a reimbursement district shall, upon approval of the permit, pay the city, in addition to any other applicable fees and chargers, the reimbursement fee established by the council, if within 10 years from the date of the resolution forming the reimbursement district, the person applies for any of the following permits:
 - (a) A building permit for a new building;
 - (b) Building permit(s) for any addition(s) of a building, which cumulatively exceed 25 percent of the existing square footage in any 36-month period;
 - (c) A development permit as defined in this chapter;
 - (d) A permit issued for connection to a public improvement.

Additionally, "development permit" under 3.07.100(1)(c) is held to include, "any final land use decision, limited land use decision, expedited land division decision, partition, subdivision, planned unit development, applicable public or private infrastructure permit, or driveway permit." Based on these terms and definitions, there is the potential that any attempt to repair a driveway, add on to one's home, or otherwise attempt to utilize any available land use applications, would automatically include a \$73,870.78 fee for Mr. Halbirt for the next 10-15 years. To allow such a monetary burden on a single homeowner for improvements they are not even using, is not reasonable and must be rejected in this instance.

Stated differently, if allowed as proposed by the applicant, the developer of Kooiman Estates would effectively have a \$73,870.78 lien on Mr. Halbirt's property for a period of 10-15 years, which would significantly limit and restrict Mr. Halbirt's quiet enjoyment and use of his own property for an extended period of time. In addition, such a monetary restriction or burden on his property would significantly affect the marketability and value of Mr. Halbirt's property in such a way that it would constitute an improper taking from the value and use of his property, especially where Mr. Halbirt's property is outside of the City of Hubbard and does not connect to the services for which the reimbursement fees are sought. To allow the developer of Kooiman Estates to obtain reimbursement for the sewer improvements from properties outside of Kooiman Estates, especially those properties not even connected to the sewer improvements, essentially creates a mortgage on those properties for the sole purpose adding to the developer's profits on Kooiman Estates in the event that any of those property owners need to avail themselves of any land use process in the next 10-15 years.

Inclusion of Mr. Halbirt's property in the proposed Reimbursement District is unreasonable and overly burdensome, and restricts the use of a private property existing outside of city limits and that is not connected to city services, in an extreme and improper way. For these reasons, Mr. Halbirt's property should be removed from the proposed Reimbursement District and the true cost of those improvements maintained with the development for which they were installed.

If included, the Halbirt property should only be liable for reimbursement if the property connects to the city services within the 10-15 year reimbursement period.

Based on the terms of the Hubbard Municipal Code Chapter 3.07.100(1) (code cited above), while Mr. Halbirt acknowledges that inclusion in the proposed reimbursement district does seemingly automatically require, nor would seem to immediately result in, his payment of the proposed reimbursement fee for the sewer improvements if the Reimbursement District is approved. However, if this understanding is incorrect and approval of the Reimbursement District would automatically result in immediate liability for the reimbursement payment to the developer through the city, we ask that you please clarify that for Mr. Halbirt and the other property owners subject to this potential burden. However, even if not immediately due or owing, the broad categories provided in Chapter 3.07.100(1)(a-d) create a bar of any significant improvement, repair, or alteration of Mr. Halbirt's property for a period of 10-15 years that is overly burdensome and virtually guarantees contribution to repay the developer, placing a significant burden on Mr. Halbirt and the other property owners affected that are not part of Kooiman Estates. For this reason, a more logical approach to the inclusion of Mr. Halbirt's property, and any other property included in the Reimbursement District, but which are not currently connected to city services provided by the improvements at issue in this matter, would be to limit the criteria for requiring reimbursement to the developer.

For any such properties like Mr. Halbirt's that are not connected to city sewer services as served by the city and the improvements for which reimbursement is sought, if Mr. Halbirt were required to be included in the Reimbursement District, we would ask that you limit the criteria for requiring

reimbursement from Mr. Halbirt's property to requiring reimbursement if, and only if, Mr. Halbirt or a future owner of his property obtains a permit to connect to the city sewer services provided by the installed sewer line. Without an application and permit to connect to the improvement to receive city services there is no reasonable justification for Mr. Halbirt's property to be included in the Reimbursement District where his property exists outside of the city limits and does not utilize city water or sewer services. The developer's only claim for reimbursement is the proximity of Mr. Halbirt's property to the installed sewer line, which the developer claims justifies charging Mr. Halbirt \$73,870.78. Such a proposal is clearly unreasonable and should not be allowed just to increase the developer's profits on Kooiman Estates by shifting the cost of improvements to property owners adjacent to Kooiman Estates and that are not even receiving city services.

To require reimbursement for sewer improvements designed to serve Kooiman Estates from property owners outside of that subdivision who do not use city sewer services in the event that any such property owner seeks to improve or repair their property for a 10-15 year period, even if they still do not intend to apply to obtain services from the improvements they are being forced to pay for is unreasonable and unconscionable. One way to limit this impact would be for the city to limit the criteria for reimbursement to requiring reimbursement only if a property owner whose property was not using city sewer services at the time the Reimbursement District was proposed, later owner applies to obtain city services and use the improvement for which the Reimbursement District was created. Limiting the criteria for repaying to applications and approval for use of the city service for which reimbursement is sought is the only reasonable way to include properties not currently using said services in the Reimbursement District without unduly burdening those properties and the property owners and inhibiting their quite enjoyment of their real property.

Hubbard Municipal Code Chapter 3.07 is ambiguous and unclear as to what specific instances could result in reimbursement.

As discussed above, the general definition of "development permit," as well as the other language in Hubbard Municipal Code Chapter 3.07.100(1)(a-d) is unclear and makes it difficult for the property owners to understand when they might be charged the proposed reimbursement fees for the sewer improvements if the Reimbursement District is approved. While the restrictions on building new buildings or expanding current structures seems relatively clear, even those terms are ambiguous and require additional clarity. For instance, if a property owner's house burns down, does an application to replace the destroyed structure result in their having to pay the reimbursement fee if the Reimbursement District is approved? A building permit for a replacement structure would have to be issued, so does this trigger a property owner's obligation to pay?

If Mr. Halbirt's septic drain field needed to be repaired or replaced and Mr. Halbirt had the ability to install a new septic drain field and continue to not use city services, would that result in his liability to pay the reimbursement fee if he is included in the Reimbursement District? Or, if the city assumes responsibility for maintenance and control of the 4th street extension upon completion

of the Kooiman Subdivision, is Mr. Halbirt's driveway access to and from his property from 4th Street considered to be a "connection to a public service"?

Land use applications, development permits, and building permits are very general terms and in many instances an applicant would not even think about applying for such a permit or approval until they are faced with an unforeseen situation requiring action to remedy a problem. Without further clarity in the Municipal Code as to the specific instances in which a property owner may be required to incur fees in the tens of thousands of dollars, in addition to application and development or construction fees they are already faced with, is extremely burdensome on property owners not within the Kooiman Subdivision and extension of reimbursement requirements without further clarity causes a significant anxiety for property owners regarding the potential limitations of the use of their property for at least a decade, if not longer.

For this reason, additional clarity and specificity in Municipal Code Chapter 3.07 is needed before any reimbursement district should be approved.

Hubbard Municipal Code Chapter 3.07 is ambiguous and unclear as to how property owners will be required to pay reimbursements.

In addition to being unclear about the specific instances that could give rise to a property owner's responsibility for pay the reimbursement fees under the proposed Reimbursement District, Chapter 3.07 is silent and contains no terms regarding how and/or over what amount of time the property owners will be required to pay for the reimbursement fees if/when charged.

As proposed by the developer, the fees for the individual properties in the Reimbursement District range from \$40,175.34 up to \$107,327.49. These are not small charges to property owners and could be as high as a full mortgage on the real property, especially for the two properties outside of the Hubbard City limits. The alternative proposal by Matt Wadlington is more reasonable, but still places significant costs on the property owners around \$10,000.00 each on the surrounding property owners, and a fee of over \$200,000.00 on tax lot 100 if developed in any way (we note that tax lot 100 has been annexed into the city and is in the process of obtaining approval for subdivision and development, which such development would be supported by the sewer line improvements). One-time payment requirements for such amounts (even the smaller amounts) are very burdensome on property owners, and can even be crippling in some instances. Even if payments were spread over the life of the proposed Reimbursement District, or a longer period, the additional costs to property owners, especially those not using the improvements or city service, is unreasonable.

Before a reimbursement district should be considered, additional information regarding the plan for how the city would collect payments and over what period of time needs to be discussed and included in Chapter 3.07. Without such clarity for discussion as part of this hearing, citizens are not able to articulate the full impact of the potential reimbursement levies, and thus the City

Council will not have all information before them to determine the reasonableness of the proposed Reimbursement District.

Hubbard Municipal Code Chapter 3.07 does not provide proper due process for property owners within the proposed Reimbursement District to challenge findings that they are responsible for reimbursement.

In addition to not including any information regarding how reimbursement fees will be repaid, Hubbard Municipal Code Chapter 3.07 provides no ability of any property owner to question or challenge a finding of the city on if and when a reimbursement must be paid. As stated specifically in Chapter 3.07.100(2), “The city’s determination of the person responsible for paying the reimbursement fee and when the fee is due is final.”

Based on this, upon the city finding that a property owner is now responsible for payment of a reimbursement fee, the property owner has no ability to challenge that finding or even provide information for discussion of how the fee should be paid and in what amount. This lack of due process for addressing such fees is contrary to normal land use processes, which allow for public comment and appeal. Further, this means that the upcoming public hearing regarding the proposed Reimbursement District is the citizens’ only time to be heard on this issue, after which time, if approved, there are no further opportunities for input or appeal if/when the city determines such reimbursement fees are due and owing.

In order for the Municipal Code to be fair in administering any proposed reimbursement districts, now or in the future, the ability to challenge a city determination that a reimbursement fee is owing should be a part of such code provision in order for the code to be properly administered. Enforcement of such significant fees for improvements that not all property owners are even utilizing without the ability to challenge such determinations when they are made, would constitute and unlawful taking from the property owners without due process of law.

For the foregoing reasons, we ask that before any reimbursement districts be considered that the City revisit Municipal Code Chapter 3.07 to address these ambiguities in the code and address the lack of due process in what could be significant costs applied to individual property owners outside of city limits and not utilizing city services for which they are being required to contribute.

In the event that the Reimbursement District is approved, the proposed allocation of reimbursements from Matt Wadlington is more reasonable than the allocation proposed by the developer.

Upon review of the applicant/developer’s materials, and the subsequent report provided by Matt Wadlington, in the event that the proposed Reimbursement District is approved and Mr. Halbirt’s property is included, we support the reasoning behind Mr. Wadlington’s report and proposed allocation for the Reimbursement District.

As noted by Mr. Wadlington in his letter to Mike Krebs, “The methodology proposed by the developer to distribute costs does not accurately reflect the benefit provided to each tax lot,” identifying an error in the proposed allocation from the developer based on frontage. Mr. Wadlington goes on to identify Tax Lot area as a better measurement for prorating the costs of the installed system, stating, “the benefit to each customer is a function of the potential discharge flow volume into the system. The potential discharge flow volume is based on use, density, and area.” Mr. Wadlington goes on to recognize that the cost to any parcel should “not be greater than the estimated cost of the wastewater connection to serve the tax lot if the Reimbursement District improvements were not available.” Such an approach is much more reasonable in allocating the fees based on the area of the various properties, with a cap on the total cost based on the cost it would require for any property to have obtained service without the installed improvements.

One current critique of Mr. Wadlington’s analysis is that contrary to his statement that “potential discharge flow volume is based on use, density, and area,” using tax lot area as the methodology does not fully address density or use as to some of the current properties. Specifically, in looking at the current density of the properties proposed for inclusion in the Reimbursement District, the density of improvements lies solely within Kooiman Estates, where 31 homesites presently exist, compared to 4 residential homesites on the remaining properties proposed for inclusion. If we were to prorate cost of reimbursement based on density based on the current number of homesites, utilizing Mr. Wadlington’s total of \$267,929.93 for reimbursement, then Kooiman Estates would be responsible for \$237,308.89 (88% of total), with the other four properties containing a single homesite each, being responsible for \$7,655.13 each (3% of the total each). The density calculation is also supported by the current use of the system based on the number of current homesites (ignoring the fact that Tax Lots 2700 and 2800 are not connected to the city sewer service at this time and are contributing 0% of the use currently).

Based on the density and use calculations, and the fact that a number of the properties are not connected to or using the city sewer services, calculations based on area alone, may also not be fully accurate. However, based on the availability of city services for sewer service where they were not previously available, along with the proposed cap on total cost based on the estimated cost to each property to provide service if the improvements had not been installed, we feel that the area calculation and table proposed by Mr. Wadlington (including his reduction in the total reimbursement amount claimed by the developer) is much more reasonable than that proposed by the developer in their original application materials. In addition, based on the lack of use of city services currently by Tax Lots 2700 and 2800, we would propose that in addition to applying the Tax Lot area methodology, the City should consider limiting the application of the reimbursement fees to those properties not currently connected to city sewer services to charging the reimbursement fee to those properties only if/when they apply to be connected to city sewer services within the 10-15 year life of the proposed Reimbursement District. Only by limiting the reimbursement events to connection to the city services and installed improvements does the city fully capture the potential discharge flow volume based on area, density, and actual use of the system.

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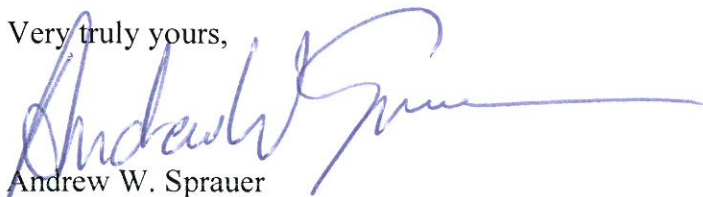
Based on the foregoing information and discussion, we ask that in reviewing the application for the proposed Reimbursement District related to improvements for Kooiman Estates Subdivision, and based on the lack of connection to city services for water and sewer by Mr. James Halbirt, that the City Council: (1) choose to remove Mr. Halbirt's property from the proposed Reimbursement District; or (2) in the event that Mr. Halbirt's property is not removed from the proposed Reimbursement District, that the events providing for repayment of the reimbursement fees be limited to an application for connection to the installed improvements for providing city sewer services to Mr. Halbirt's property. In addition, we ask that prior to a decision to approve any proposed reimbursement district(s), the City should consider revisiting Hubbard Municipal Code Chapter 3.07 to address: (A) the ambiguity in the events or applications that would lead to an obligation to pay the proposed reimbursement fees; (B) the complete lack of information regarding how and over what time period reimbursement fee payments would be made; and (C) to revise the code chapter to include terms for appeal of decisions related to requiring reimbursement by any property owner to allow for proper due process before taking such significant value from any property owners. Finally, in the event that the City chooses to approve the proposed Reimbursement District, we feel that the allocation of costs as proposed by Matt Wadlington calculating the costs by area and capping costs of the reimbursement based on the cost to extend services to the various properties without the existing improvements make the most sense out of the cost allocation proposals made. In addition, if those properties that were not connected to city sewer services were again only required to pay reimbursements, in the event they applied to obtain city sewer service and became connected to the improvements that would further address the factors of area, density, and use presented by Mr. Wadlington.

Mr. Halbirt and I will be attending the City Council Meeting via Zoom on Tuesday, June 9, 2020 and look forward to discussing this matter further at that time.

We appreciate your courtesies and consideration in this matter and public hearing.

Thank you.

Very truly yours,



Andrew W. Sprauer

Lawyer

asprauer@churchill-law.com

Phone Extension #104