

LOCAL IMPROVEMENT DISTRICT WORKSHOP

Formation Process--Practice Tips

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I N S L E E B E S T
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INTRODUCTION

- Supplement to “Chapter Three: Procedures.”
- Important but easily overlooked LID rules and statutes.
- Non-LID statute requirements, e.g. SEPA.

MONEY TO START LID?

Several residences in residential subdivision have failing on-site septic systems. Owners of failing systems want city to form LID for sewer improvements. Some owners are opposed to LID, but most owners are ambivalent. Fearing an unsuccessful LID, and hoping to save money in a recession, city engineer decides not to investigate feasibility of LID and perform preliminary engineering design. Do LID statutes provide a financing solution?

MONEY TO START LID— Preformation Contracts

Yes. “Preformation Expenditure” Contract.

RCW 35.43.184:

- Contract—Owners and engineer or other designated official.
- Improvement expenses-- e.g., engineering plans, surveys, appraisals, studies, legal services.
- Reimbursement to owners: LID bond proceeds; LID assessments.
- No reimbursement if LID not formed in 6 years.
- Preformation work--under direction only of city engineer or other city person.

SPECIAL FINANCIAL ASSISTANCE TO OWNERS?

A residential subdivision area has many failing septic systems. Many of the LID supporters are retirees on fixed incomes. They want to connect to the sewer improvements immediately after construction, but are concerned that they will not have sufficient funds to pay for connection charges. City does not offer payment of connection charges in installments. Do the LID statutes offer financing options?

SPECIAL FINANCIAL ASSISTANCE— Charges are LID costs

- Lid costs include cost of acquiring property and other facilities or rights, including rights to use facilities related to or useful in connection with the local improvements, whether by payment of connection charges, capacity charges, or other similar charges. RCW 35.44.020 (1995 amendment).
- Connection charges, latecomer reimbursement charges, capacity charges may be included in LID assessment, and financed over time.
- LID costs are paid by city, not lot owners. Therefore, amend charge ordinance to provide that financing of charge through LID assessment satisfies payment of charge by lot owner.

HAPPY OPPONENTS?

Developer wants to construct sewer and water extensions to serve new mixed use project, and to finance extensions by LID. The extensions pass several old residences on large parcels, all of which are owned and lived in by retirees on fixed income. The retirees have sent numerous emails to the mayor and city council, voicing strong opposition to the project and the LID. Any hope for developer in LID statutes?

HAPPY OPPONENTS--

Assessment Reimbursement Accounts

- Yes. RCW 35.43.188 (Assessment reimbursement accounts).
- Owners of properties in LID may pay assessments for “underdeveloped” properties.
 - “Underdeveloped”: (1) undeveloped or not developed to highest and best use and (2) likely to be developed or redeveloped before the dissolution of LID.
- Terms of reimbursement in ordinance forming LID.

HAPPY OPPONENTS--

Assessment Reimbursement Accounts

- Benefited owner reimburses assessment plus interest at rate in ordinance when property develops or redevelops:
 - Lump sum or over 5 years.
- Ordinance may require reimbursement at dissolution of LID.
- Ordinance may prohibit reimbursement if underdeveloped properties are not developed or are redeveloped before dissolution of LID.
- Reimbursement amounts are liens on benefited properties.

SEPA REVIEW?

City engineer is preparing preliminary design of water system improvements prior to formation hearing.

Improvements include 8-inch pipes, 10-inch pipes and pumping station. Engineer contacts city attorney, who asks whether SEPA environmental review has been completed. Is SEPA review required? If so, when must it be completed?

SEPA REVIEW?

- SEPA review is required. Chapter 43.21C RCW; Chapter 197-11 WAC.
- Major actions significantly affecting the quality of the environment.
- Some “major actions” exempt from SEPA review.
- Formation of LID involving installation, construction, replacement or alteration of storm water, sewer and water facilities, lines, equipment, hookups or appurtenances including, utilizing or relating to lines 8 inches or less in diameter. WAC 197-11-800(17); 197-22-800(23)(b).

SEPA REVIEW?

- If not exempt, prepare environmental checklist and issue threshold determination (DNS, MDNS, DS).
 - If DS, then EIS.
- Should complete SEPA review before passing LID formation ordinance. Why?
 - Start appeal period on SEPA grounds, which is 30 days after passage of LID formation ordinance, or 30 days after 30-day protest period, if applicable. RCW 43.21C.075, 35.43.100.
 - If do not start appeal period, then SEPA appeal period 90 days after next significant action, which is awarding contract for construction of LID improvement. RCW 43.21C.080.

SEPA REVIEW?

- Must give official notice stating date and place for commencing appeal. RCW 43.21C.075
 - Include in notice of publication of ordinance.

PROPERTY OUTSIDE OF LID

LID Administrator proposes LID for sewer system in a developing area. Two intersecting streets form a boundary of the LID. A sewer line will be constructed in the intersection. A lot outside of the LID touches a corner of the intersection. The owner of that lot opposes the LID, and asks the LID Administrator for a letter, stating that the lot is not part of the LID. Under the LID statutes, is the lot included in the LID process?

PROPERTY OUTSIDE OF LID— Special Notice Requirement

- Perhaps.
- A property owner must receive notice of the proposed formation of the LID, if the property “would be required as a condition of federal housing administration loan qualification . . . to be connected to the specific sewer . . . facilities installed by the local improvement district. The notice shall include information about this restriction.”
RCW 35.43.270
- Statute--no guidance regarding when owner “would be required to connect.”

PROPERTY OUTSIDE OF LID— Special Notice Requirement

- FHA--division of Department of Housing and Urban Development (HUD).
- FHA insures housing loans under the National Housing Act.
- HUD representatives, on behalf of FHA:
 - Only properties that “abut” improvement must connect to the facilities.
 - Property “abuts” when there is no intervening land between the property and the improvement.

PROPERTY OUTSIDE OF LID— Special Notice Requirement

- Before sending notice, confirm policy with HUD officials:
 - Recommended: Signed certificate stating policy.
- These owners do not have same rights as owners of property within the LID.

FARM AND AGRICULTURAL LAND

In a developing area of the city, which has new residential subdivisions and vegetable and flower farms, city engineer proposes to form a LID for water and sewer improvements. Are there special rules governing the farms?

FARM AND AGRICULTURAL LAND

- Land designated by county assessor as “farm and agricultural land” when LID is formed--exempt from assessment until classification withdrawn or use is changed. RCW 84.34.320
- Upon withdrawal or use change, assessment that would have been paid is due, plus interest compounded annually at one rate until LID bonds are retired, and another rate thereafter until the change in status.
- Before creating LID, file notice of LID creation with county assessor and county legislative authority.
- County assessor sends notice to property owner.
- On confirmation of assessment roll, file notice with county assessor and county legislative authority.

FARM AND AGRICULTURAL LAND

- Owner may waive exemption.
- “Farm and agricultural land”:
 - 20 or more acres:
Devoted primarily to production of livestock or agricultural commodities for commercial purposes;
Enrolled in federal conservation reserve program (USDA);
or Other similar commercial activities established by rule.
 - 5 acres or more but less than 20 acres:
Devoted primarily to agricultural uses, and which has produced gross income at certain levels.
 - Less than 5 acres:
Devoted primarily to agricultural uses and which has produced gross income of different levels.

FARM AND AGRICULTURAL LAND

- Land having incidental uses as are compatible with agricultural purposes, including wetlands preservation.
- Land containing housing for employees and the principal place of residence of the farm operator or owner, if the housing or residence is on or contiguous to the classified parcel and the use of the housing or residence is integral to the classified land.

CALCULATING LID PROTEST VOTE

In a 60% “protest” LID, (1) seller on a real estate contract files a protest, (2) husband but not a wife files a protest, (3) deed of trust beneficiary files a protest, and (4) one condominium apartment owner files a protest. Are these protests valid, and if so, what are their shares of the total protest vote?

CALCULATING LID PROTEST VOTE

- Protests filed by owners of at least 60% of total cost of improvement, according to records of county assessor. RCW 35.43.180
- Statute has no guidance regarding determination of “ownership.”
- Real estate contract:
 - “Owner” is purchaser, not seller. Committee v. Val Vue Sewer District, 14 Wn.App. 838 (1976)

CALCULATING LID PROTEST VOTE

- Spouses:
 - Either spouse, acting alone, may manage and control community property. RCW 26.16.030
- Deed of trust beneficiaries (and mortgagees):
 - Cannot file protests against LID formation. First Federal Savings and Loan Ass'n of Walla Walla v. Richland, 39 Wn. App. 401 (1985)

CALCULATING LID PROTEST VOTE

- Condominiums:
 - Owner of condominium apartment owns apartment and undivided interest in common areas and facilities, including land. Chapter 64.32 RCW
 - Each apartment and its undivided interest in common areas and facilities is separate parcel subject to special assessments. RCW 64.32.190
 - Area of land of apartment owner is calculated by dividing total area of all land for building and facilities by number of apartments.

LID OUTSIDE OF CITY

LID administrator proposes an LID partially outside of city boundaries. A property owner in LID but outside of city wants property rezoned from residential to commercial. City prefers residential development, as opposed to commercial development. Owner fears LID will lead to City annexation. Owner threatens to sue the city if the LID is formed, alleging that the city is violating “all sorts of” state laws. Are other laws applicable?

LID OUTSIDE OF CITY

- LIDs may include property outside of the City. RCW 35.43.035; 35.43.075; 35.43.180
- The outside-city LID must comply with other statutes and regulations:
 - Growth Management Act: Urban governmental services, such as water, sewer and storm drainage, may be constructed only in urban growth areas (not rural areas), or in certain designated areas, except for limited circumstances to protect basic public health and the environment and when the service is financially supportable at rural densities and will not permit urban development. RCW 36.70A.110

LID OUTSIDE OF CITY

- Creation of LID outside of city subject to review by boundary review board. RCW 35.43.035 and 36.93.090(4)
- City and county comprehensive plans must include capital facilities element, consisting of proposed locations and capacities of expanded or new capital facilities. RCW 36.70A.070
- City comprehensive plans must be consistent with county comprehensive plan. RCW 36.70A.040(4)
- County must adopt county-wide planning policies to ensure that county and city comprehensive plans are consistent. RCW 36.70A.210