

PBOT

PORTLAND BUREAU OF TRANSPORTATION

1120 SW Fifth Ave, Suite 1331, Portland OR 97204

Main: 503-823-5185 TTY: 503-823-6868 Fax: 503-823-7576 Portland.gov/Transportation

Jo Ann Hardesty Commissioner **Chris Warner** Director

June 16, 2022

SUMMARY OF OBJECTIONS AND FINDINGS TO COUNCIL

Assess benefited properties for street, sidewalk and stormwater improvements in the N Burlington Ave and Edison St Local Improvement District (Hearing; Ordinance; C-10057)

I. SUMMARY

A written objection representing one (1) of the owners of the 34 nonexempt properties in the North Burlington Avenue & Edison Street Local Improvement District was received by the filing deadline registering objections to final assessment of the local improvement district.

II. SPECIFIC RESPONSES TO THE OBJECTION FILED BY PROPERTY OWNER DAVID PATTERSON.

An objection was submitted by David Patterson, owner of the property at 6904 N JOHN AVE; State ID #1N1W12BD 2300; tax account #R426000740; property ID #R192082; legal description JAMES JOHNS 2ND ADD, BLOCK 18, SW 1/2 OF LOT 3&4; pending lien record #161210; see Attachment 1.

ISSUES RAISED BY THE OBJECTION

Issue No. 1: This property is a 50 x 100 lot with a 117-year old residential unit and is being unfairly assessed.

Findings:

- a. The Local Improvement District Administrator discussed the proposed LID with Mr. Patterson in a May 16, 2017 telephone conversation prior to formation of the LID. The scope of the improvements included a full reconstruction of the street, curb and sidewalk, and the poor condition of the street was discussed with Mr. Patterson during that telephone conversation. Mr. Patterson did not submit a remonstrance against LID formation, and City Council approved formation of the LID on June 28, 2017 with the approval of Ordinance No. 188494.
- b. This property was the subject of an Early Assistance Appointment (Case / File No. 2018-183092-000-00-EA) for construction of new construction for senior housing of at least 80 to 90 units with parking, outdoor amenities and landscaping. This EA also included adjacent properties addressed as 6914 N John Ave. and at 6924 N John Ave, but an LID assessment is only proposed for 6904 N John Ave. These three (3) properties are in common ownership within an RM2 (Residential Multidwelling 2) zone with significant redevelopment potential, and all three (3) properties remain in common ownership.
- c. The comprehensive neighborhood-wide improvements eliminated the need for an expensive retaining wall, right-of-way acquisition from 6904 N John Ave. that might have reduced the development potential for the property, and the likely need to build offsite stormwater improvements. The improvement of N John Ave. between N Decatur St. and N Edison Street provided a stormwater disposal point for N Edison Avenue stormwater runoff. Many complaints were received from nearby property owners about the lack of stormwater management.
- d. The proposed assessment of \$113,238.09 is \$18,057.19 or 13.8% below the amount estimated at LID formation, for which Mr. Patterson did not submit a remonstrance. This assessment will be eligible for 5, 10 and 20 year financing.

Issue No. 2: The property has had existing curb and sidewalk for over a century with no access to N Edison St.

Findings:

- a. Properties are not exempted from LID assessment solely due to lack of physical access. This LID fulfilled the obligation of this property to build abutting street improvements, which allows future development to proceed on this property, whether as the contemplated 80 to 90-unit senior housing complex, or as a different development proposal.
- b. This LID also replaced 100 feet of curb and sidewalk on N Burlington Avenue south of N Edison Street, which was a condition of development of the adjacent property. The existing curb and sidewalk adjacent to 8522 N Edison St. was similarly in very poor condition prior to construction of the LID, and replacement would have been a condition of the contemplated development. The old sidewalk adjacent to 6904 N John Ave. was in much worse condition. It was completely impassable to pedestrians and was unearthed by the contractor during construction.
- c. The LID built new curb in a different location than the old curb, moving it to the south to avoid tree removal and Title 11 Tree Code issues that otherwise would have been an impediment to the future development of this property.
- d. There was an existing gap in pavement between the edge of previous pavement and the previously-existing intermittent curb. The fully reconstructed street eliminated these gaps as well the obligation of this property to complete half street improvements.
- e. The downhill property across the street at 8320-8334 N Edison St. suffered property damage due to the previous lack of stormwater management on N Edison St. This LID fulfills an obligation of 6904 N John Ave. and other uphill properties to manage public stormwater runoff to avoid adverse impacts to downhill properties; see Attachment 2.

Issue No. 3: This project did not install a proposed staircase from N Edison Street to N John Avenue.

Findings:

- a. A new staircase on N John Avenue was not within the scope of this LID as approved by Council with the passage of Ordinance No. 188494 on June 28, 2017.
- b. PBOT explored the possibility of using Transportation System Development Charge (TSDC) funding to construct a new staircase on N John Avenue in conjunction with LID construction. PBOT did not pursue this scope addition due to cost, but still built all scope elements of the LID as approved by Council.

III. RECOMMENDATION

It is the recommendation of the Local Improvement District Administrator that the City Council overrule any and all objections and approve the Final Assessment Ordinance for the N Burlington Avenue & Edison Street Local Improvement District.

Respectfully submitted,

A handwritten signature in black ink that reads "Andrew H. Aebi". The signature is written in a cursive, slightly slanted style.

Andrew H. Aebi
Local Improvement District Administrator

5/20/22
①

4 PAGES TO Mayor Wheeler ^{Exhibit F} FOR CONSIDERATION BY
Portland's City Council on Wednesday, June 22, 22 9:30 AM

Regarding letter Of objection, to be heard by city council Wednesday, June 22, 2022.
Enclosed:

- 1) Notice of proposed assessment dated June 1, 2022
- 2) E mail from David Patterson stating objections and concerns of the proposed assessment dated June 14, 2022
- 3) E mail from Andrew Aebi Dated June 14, 2022

4) AND THIS ADDITION HAND DELIVERED TO LIENS & REVENUE DIVISION - *# COPY MAILED TO OFFICE OF Mayor Wheeler 6-15-22*

In addition to the original letter focusing mostly on the fact of this property being assessed \$113,238.09 unfairly further information may be helpful. This property is a 50 x 100 lot with a residence that has been occupied for its 117 years.

100 feet of this property has bordered north Edison and had existing curb and sidewalk for over a century. This property sits on a very steep slope and I have had personal knowledge of this property for over 70 years. There is NOT now or ever has been access from this property to N. Edison St.

This property has always been accessed by a dirt walkway with no curbs or sidewalks on the one block dead end North John Avenue.

Entry to the home on is further hindered by the steel guard rail blocking over 1/2 of the entry also making parking of vehicles next to impossible.

David Patterson 503-351-4610



CITY OF PORTLAND

JUN 15 2022

REVENUE

To: City of Portland
 Office of Management and Finance
 Ted Wheeler, Mayor
 Michelle Kirby, Chief Financial Officer
 Thomas W. Lannom, Revenue Division Director
 Suite 600
 111 SW Columbia Street
 Portland, Or 97201-5840
 PO Box 8834
 Portland, OR 97207-8834

Account No.: 161210
 Project No.: C10057
 Tax Account No: R426000740
 R192982

From: David Patterson
 12500 SE Bluff Dr
 Clackamas, OR 97015

NOTICE OF PROPOSED ASSESSMENT

PROJECT:

NORTH BURLINGTON AVE & EDISON LID - CONSTRUCT STREET, STORMWATER PLUS ANY TRANSITION WORK ON ABUTTING STREET SEGMENTS IN THE NORTH BURLINGTON & EDISON LOCAL IMPROVEMENT DISTRICT

PROPERTY ADDRESS: 6904 N JOHN AVE PROTLAND OR 97203
 LEGAL DESCRIPTION: JAMES JOHNS 2ND ADD, BBLOCK 18, SW 1/2 OF LOT 3&4
 PROPOSED ASSESSMENT: \$113,238.09

This proposed assessment is apparently for property that abuts the construction completed on North Edison St.

Direct access to Edison St from this property does not exist because of a 12 foot rise from North Edison. The only ways to access this property is by way of a hazardous dirt path using this unimproved steep North John Avenue connection to North Edison St., or by doing a 650 foot walk-around Lot 18.

This is what Mrs. Miller did in order to clean and maintain that old sidewalk on North Edison for over the past 100 years. I can vouch for at least 70 of those years from knowing and helping Mrs. Miller in keeping that sidewalk in good condition; until she passed.

Through those years, Mrs. Miller, had only limited access from North John Avenue in order to enter her house, including no adequate parking. All these conditions remain the same today. Paying the same property taxes for all these years, as others do, and still without the benefit of a usable paved street, curb or sidewalk. AND ending up getting this huge proposed assessment yet having NO change to the accessibility.

This project did not install the proposed stairway that would have given access North Edison Street from North John Street. This apparently was scrapped from the project because of cost. I feel the disrespect given to Mrs. Miller's legacy.

Thank you Council for consideration of these objections to the apportionment of the cost.


 David Patterson

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E-MAIL LIENS@PORTLAND
SEPT 6-14-2022 OREGON. GOV



CITY OF PORTLAND

OFFICE OF MANAGEMENT AND FINANCE

Ted Wheeler, Mayor
Michelle Kirby, Chief Financial Officer
Thomas W. Lannom, Revenue Division Director

Liens Section - Revenue Division
111 SW Columbia St., Suite 600
Portland, Oregon 97201-5840

(503) 823-4090

Mail to: PO Box 8834
Portland, OR 97207-8834

To: PATTERSON.DAVID
12500 SE BLUFF DR
CLACKAMAS OR 97015

Date: 06/01/2022
Account No.: 161210
Project No.: C10057
Tax Account No.: R426000740

NOTICE OF PROPOSED ASSESSMENT

PROJECT:

NORTH BURLINGTON AVE & EDISON LID - CONSTRUCT STREET, STORMWATER,
PLUS ANY TRANSITION WORK ON ABUTTING STREET SEGMENTS IN THE NORTH
BURLINGTON & EDISON LOCAL IMPROVEMENT DISTRICT

The work on this improvement is now complete and the true costs are known. The City Council proposes to assess the benefiting property in the amount shown below. This amount could be modified as a result of objections filed by other property owners in the district, unless the cost to property owners is fixed.

PROPERTY ADDRESS: 6904 N JOHN AVE PORTLAND OR 97203

LEGAL DESCRIPTION:

JAMES JOHNS 2ND ADD, BLOCK 18, SW 1/2 OF LOT 3&4

PROPOSED ASSESSMENT: \$ 113,238.09

A public hearing will be held on the proposed assessment at the regular meeting of the City Council to be held in the Council Chambers of City Hall, 1221 SW 4th Avenue, Portland, Oregon, beginning at 09:30 AM on Wednesday, June 22, 2022.

At this hearing, City Council will consider any objections to the apportionment of the cost or the character of the work. No action is required at this time unless you wish to object. If you do wish to object, send your written objection to the address noted above. Written objections must be received at the Revenue Division by 05:00 PM on Wednesday, June 15, 2022. If you have questions, please call (503) 823-5648.

DO NOT PAY at this time. An assessment notice will be mailed to you approximately ten days after the hearing. You can decide on your payment method at that time.

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Andrew Aebi <andrew.aebi@portlandoregon.gov>

6/14/2022 3:22 PM

T00686 - N Burlington & Edison LID: Pending Lien #161210

To David Patterson <pattersondave@comcast.net>

Hi David,

Your correspondence was received and will be entered into the Council record, but it will not be counted as an objection since it was sent via e-mail. If you wish for this to be counted as an objection, please submit a physical copy by 5:00 PM tomorrow to the attention of Sherree Matias at 111 SW Columbia St., Suite #600, Portland, OR 97204 in accordance with the instructions previously sent to you.

Thank you,

Andrew Aebi

Andrew Aebi | M.B.A.

Local Improvement District Administrator

Columbia / Lombard Wayfinding Project Manager

Portland Bureau of Transportation

1120 SW 5th Avenue, Suite #1331, Portland, OR 97204

Phone: 503-823-5648

andrew.aebi@portlandoregon.gov

LIDs: www.portlandoregon.gov/transportation/localimprovementdistricts

Columbia/Lombard Wayfinding Project: www.portland.gov/columbia-lombard

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Image

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- [Part_2.html \(2 KB\)](#)

David Atkinson
12500 SE Bluff Dr.
Clackamas, OR 97015

Ted Wheeler
111 SW Columbia St Suite #600
ATTN: Sherree Mathis
Portland, Oregon 97204



OREGON LEGISLATIVE POLICY & RESEARCH OFFICE

State Capitol Room 453
Salem, Oregon 97310

(503) 986-1813

Julie Neburka, Researcher

November 1997

Basics about LOCAL IMPROVEMENT DISTRICTS

Local improvement districts, or special assessment districts, function as mainstays of local improvement financing. Special assessment was used as early as the thirteenth century, when an English law provided for special assessment to finance construction and maintenance of a drainage system in certain marsh lands. This English special assessment system was adopted by the American colonies, and after independence, local governments continued to use special assessment under authority of state laws.

A local improvement district is a geographic area in which real property is taxed to defray all or part of the costs of a public improvement. The distinctive feature of a special assessment is that its costs are apportioned according to the estimated benefit that will accrue to each property. In Oregon, local improvement districts are governed by local ordinances, but the Bancroft Bonding Act (ORS 223.205-295) addresses the means by which local governments may finance public improvements. The tax limitation brought about by Ballot Measure 5 (1990) created several changes to the ways in which local governments can finance public improvements, marking perhaps the most significant change to special assessments in recent years.

Are local improvement districts the same thing as special districts or economic improvement districts?

No. *Special districts*, such as water districts or mosquito abatement districts, are separate government organizations with their own governance structures. *Economic improvement districts* (sometimes called “empowerment zones”) are districts created within cities in order to support business recruitment, development, and commercial activities in particular locations. In Oregon, *local improvement districts* use special assessments to finance local improvements in cities, counties, and some special districts. Common improvements include such things as storm and sanitary sewers, street paving, curbs, sidewalks, water lines, recreational facilities, street lighting, and off-street parking. In addition, special assessments are used to finance reconstruction of deteriorated, substandard, or outmoded facilities, both in older developed areas and in areas newly annexed to a city.

On what basis may local governments designate local improvement districts?

The basic principle of special assessment is that it is a charge imposed upon property owners who receive special benefits from an improvement beyond the general benefits received by all citizens of the community. Three “principles of benefit” describe the main factors to be considered by a public agency when deciding to use special assessment. They are:

- *Direct Service*. An example would be the construction of a street that gives access to a property previously without access. The benefit exists in terms of improved land development value.
- *Obligation to Others*. This is not an intuitively obvious benefit. An example would be the construction of a storm sewer and catch basin, which would have no direct service benefit to a property on the top of a hill. The benefit exists in the fact that the uphill land may be

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developed and provided access without causing damage to downhill land.

- *Equal Sharing.* An example would be a sidewalk down the length of a street. Each property owner is usually responsible for the sidewalk in front of the property, not always because the property owner desires a sidewalk, but because all properties served by the sidewalk system benefit equally from it.

How does a local government determine the benefits of a public works project financed by special assessment?

Governing bodies need to exercise discretion in determining the benefits of a project financed by special assessment. Considerations include the following.

- Each project should meet the standards applied to other public works in the community. In the majority of cases, local improvement districts are created in order to finance public improvements in new developments. Therefore, the governing body is responsible for establishing standards for a project.
- The facility should *initially* be built in accordance with this community-wide standard. Property owners are not easily persuaded that a *new* special benefit is received from the reconstruction of a project that is already in place.
- The assessed cost must be distributed among property owners according to the proportionate benefits to each owner's land. Since individuals do not always agree on the value of the project, a governing body may consider objections from those charged.
- A developer may be granted the privilege of special assessment financing for new facilities. Using the lower interest rate on municipal borrowing reduces the developer's cost. Since there may be risks to all citizens of the jurisdiction, some governing bodies do not allow this use of special assessment.

What gives local governments legal authority for collecting special assessments?

Special assessment usually is upheld as a valid exercise of state taxing power, and less frequently as an exercise of eminent domain or police power. The Oregon Constitution requires uniform taxation on the same class of subjects, and the Oregon Supreme Court held near the turn of this century that apportionment according to benefit constitutes a sufficient kind of uniformity, and therefore special assessment is a valid form of taxation.

The Oregon Constitution gives cities the power to assume authority under home rule charters to finance local improvements by special assessment. The Legislature has provided cities with a procedure for special assessment financing (ORS 223.387-399) which applies when city charter or ordinance provisions do not specify otherwise. Cities are also specifically empowered by statute to provide for improvements and assessments in specific situations, including the provision of off-street parking and the installation of pedestrian malls.

The Oregon Constitution also allows counties to adopt home rule charters by which they may assume authority to undertake special assessment improvement projects. A county may be able to exercise local

improvement district and special assessment prerogatives under the broad general powers granted to counties in 1973 under ORS 203.030-065. This has been construed by the attorney general as granting non-home rule counties the same authority in matters of county concern (except in the area of the structure and organization of county government) as is possessed by counties operating under home rule charters.

How did Ballot Measure 5 (1990) change the way in which local governments finance public improvements?

Local governments in Oregon are financed primarily through property taxes. Ballot Measure 5 (1990) limited the amount of tax local governments can levy for funding the operations of public schools and other local government services. Current maximum allowable taxes for schools are \$5 per \$1000 of a property's real market value; the maximum for local government operations is \$10 per \$1000 of a property's real market value. Should local taxes exceed the \$10 per thousand limit, the taxes must be reduced evenly by the percentage necessary to meet the limitation for that category. (The local taxes could, for example, exceed the limit for school taxes but not exceed the limit for government operations taxes. In that instance, only school taxes would be reduced.)

But what does the property tax limitation have to do with special assessments?

Measure 5 changed the way in which local governments finance public works projects. Prior to 1990, the Bancroft Bonding Act (ORS 223.205-295) allowed local governments to assess property owners for their share of specific local improvements. Bonds could then be sold in the amount of the improvement, secured directly by the assessments charged the property owners, and indirectly by the lien against the assessed property. Under Measure 5, if bonds for particular projects have been approved by voters in an election, they may be issued as general obligation bonds not subject to property tax rate limitations. The Portland area, for example, has passed several bond issues recently for the benefit of such things as parks, libraries, and the zoo. If the bonds have **not** been approved by the voters, and are issued as limited tax bonds, they fall under the tax rate limitation for government operations of \$10 per \$1000 of real market valueⁱ. This means that if a local government has reached its taxing limits, it cannot issue Bancroft bonds without voter approval. When governments in all areas of the state come under tax rate compression (meaning they are taxing at the full \$15 per \$1000 combined rate for schools and government operations), their capacity for issuing Bancroft bonds for local public improvements without voter approval will be eliminated.

Will Measure 50 (1997) affect Local Improvement Districts?

Passage of Measure 50 (1997) does not affect special improvement assessments themselves. Measure 50 could, however, indirectly affect ability to sell bonds for the improvement if the bonds are only backed by the special assessments and cannot be backed by property taxes.

Surely there are other ways in which local governments can finance public improvements!

There are other means by which local governments can finance public improvements, though they are not exactly comparable to special assessments. As mentioned above, a local jurisdiction may issue general obligation bonds with voter approval. This requirement asks *all* the citizens of a jurisdiction to pay for improvements to a particular neighborhood. In the majority of cases, local improvement districts are formed in order to pay for the infrastructure requirements of new development, and thus

general obligation bonds require that citizens of established communities pay for new development, violating the fundamental principle of special assessments that properties receiving special benefits should pay for them. In addition, as Bancroft bonding is a means for allowing private developers to share the risk of new development with local government (through the use of lower government interest rates), the costs of new development are driven up as the developer must assume all up-front costs of the necessary public improvements.

Local governments may also issue revenue bonds, which are backed by the revenues generated from the operation of the financed improvement. Revenue bonds thus may be issued only for those activities which generate revenues, such as water lines or sewer systems. Curbs and sidewalks, for example, would not be eligible for revenue bond financing. Finally, there are “pure” assessment bonds, backed only by the private properties directly affected by the financed improvement. Bond underwriters consider these to be extremely risky, as they are not as secure as publicly-backed bonds, and so they are difficult or nearly impossible--especially for small and/or rural communities to sell on the bond market.

Oregon law also gives local governments authority to assess Systems Development Charges (SDCs) on new development to pay for sewer, water, street, or park capital improvements. The state law specifies that the assessments be within an amount determined by the local government as the cost of accommodating the new development.

ⁱ Oregon Laws 1991, Ch. 902, Section 98 (8): “‘Limited tax bond’ means a bond or other obligation which is a full faith and credit obligation, and which is payable from any taxes which the issuer may levy within the limitations of section 11 or 11b, Article XI of the Oregon Constitution.”

Background material is taken from the report *Financing Local Improvements by Special Assessment*, Bureau of Governmental Research and Service, University of Oregon, 1982. (BGRS Report #82-1)