

CITY OF BAINBRIDGE ISLAND, WASHINGTON

ORDINANCE NO. 2007-07

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to Local Improvement District No. 20 (South Island Sewer LID); modifying, amending, approving and adopting the findings, conclusions and recommendation made by the Hearing Officer appointed to conduct the final assessment roll hearing in the South Island Sewer LID, created by Ordinance No. 2003-38; levying, confirming, and assessing a part of the cost and expense of the local improvement district against the several lots, tracts, parcels of land and other property as shown on the assessment roll as revised; providing for the use of assessment proceeds when collected; and, fixing the assessment interest rate.

PASSED FEBRUARY 14, 2007

This document prepared by:

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** The cover page, captions of sections and table of contents of this ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this ordinance.*

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THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON,
DOES ORDAIN, as follows:

Section 1. Recitals. The City Council makes the following recitals:

1.1 Local Improvement District No. 20, sometimes known as the South Island Sewer LID (“LID No. 20” or the “LID”) in the City of Bainbridge Island, Washington (the “City”), was created by Ordinance No. 2003-38, for the purpose of improving four neighborhoods and an elementary school site within the City by the construction and connection of sanity sewer facilities (the “Project” or the “Improvements”). The final assessment roll proposing the special assessments to be levied against the property located in the LID was filed with the City Clerk as provided by law.

1.2 The City Council adopted Ordinance 2006-14 on April 13, 2006, providing for hearing by a hearing officer. On August 9, 2006, the Council adopted Resolution No. 2006-36. That resolution fixed the date of October 10, 2006, for the hearing on the final assessment roll and appointed Hearing Officer Rodney Kerslake.

1.3 Notice of the time and place of hearing and for making written objections and protests to the final assessment roll was published at the times and in the manner provided by law fixing the time and place of commencement of the hearing thereon for October 10, 2006, at 6:00 p.m., local time, in the Council Chambers at City Hall, located at 280 Madison Avenue North in Bainbridge Island, Washington, and further notice thereof was mailed to each property owner shown on the roll as required by law. A description of the assessment methodology using language contained in the mailed notices, consisting of Part A Costs and Part B Costs is set forth in Exhibit A attached to and made a part of this ordinance.

1.4 At the time and place fixed and designated in the notices, the hearing was convened and commenced before the Hearing Officer. A total of six written protests or objections were received from property owners by the City Clerk prior to the conclusion of the hearing that evening. All persons appearing at the hearing who wished to be heard by the Hearing Officer were heard, for the purpose of considering the roll and the special benefits to be received by each lot, parcel and tract of land shown upon such roll, including the increase and enhancement of the fair market value of each such parcel of land by reason of the Project and Improvements.

1.5 On October 26, 2006, the Hearing Officer issued his Findings of Fact, Conclusions of Law and Recommendation to the City Council ("Recommendation"). A complete record of proceedings before the Hearing Officer, including the Recommendation, is on file with the City Clerk.

1.6 The City Council by Resolution No. 2006-47 set a time and place for considering appeals from recommendations of the Hearing Officer and established requirements to be observed by qualified property owners wishing to appeal to the Council.

1.7 The City Clerk on November 3, 2006, gave mailed notice of the filing of the Recommendation, and of the opportunity to appeal the Recommendation of the Hearing Officer to the City Council. The notice was mailed to the six property owners who filed timely written protests, or objections and provided them with copies of the Recommendation, all in the manner prescribed by Ordinance No. 2006-14 and Resolution No. 2006-47 (copies of which also were provided to such property owners in that mailing).

1.8 Two notices of appeal to the City Council from the Recommendation were timely filed with the City Clerk, by Beil/Ley (Property ID No. RB-72) and Quinn (Property ID No. RB-4).

1.9 Subsequently a timely written statement of grounds for appeal, was filed by November 13, 2006 by Beil/Ley, and Quinn requested of the City Clerk that his Notice of Appeal be treated as his written statement.

1.10 At a public meeting of the City Council on January 10, 2007, the Appeals of Beil/Ley and Quinn, being the only remaining property owners in LID No. 20 who had not waived their rights to further administrative or judicial appeal from their proposed assessments, were considered by the Council.

Section 2. Hearing Officer's Recommendation Modified and Otherwise Accepted and Approved.

2.1 Except as otherwise modified herein, the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation dated October 26, 2006 ("Recommendation"), attached as Exhibit B and made a part of this ordinance, are accepted and incorporated by this reference.

2.2 Recommendation Finding 10 is modified, as follows:

10. Part B assessments are proposed to be assessed against only those properties initially connecting to the sewer system.² The Part B assessments include charges for mandatory contractual connections and charges for use of existing sewer facilities necessary to handle sewerage generated by the new systems. The charges include Kitsap County Sewer District No. 7 connection fee, ~~Lynnwood~~Lynwood Center Lift Station fee, and a City permit fee. In the case of the sewer District No. 7 fee, the City, as a part of the LID, purchased capacity from the district's sewer treatment plant to handle the increased sewer flow generated from the new system. In regard to the ~~Lynnwood~~Lynwood Center Lift Station that was ~~con-structed~~constructed at the expense of a private developer, the City bought out the remaining capacity (mandated by a late-comer's agreement) for ~~\$434,500~~\$429,500, again, to handle anticipated flows from the sewer system constructed under LID No. 20. Also, if a property required the use of a "grinder" pump to convey the sewerage from that property to the main sewer line, the charge for that pump was reflected in the Part B assessment. Finally, for those properties whose owners elected to have the costs of side sewer connections to the main sewer included in the LID assessments, those costs were included in the Part B assessment.

2.3 Recommendation Finding 14 is modified as follows:

14. The protests filed generally raise contentions that the protestors' properties have been damaged by such things as noise and odor from ~~"grinder"~~pumps ~~a pump (lift) station~~, physical disturbance of their property by

improvements constructed, excessive costs associated with ~~side~~ sewer construction, and assessment for sewer connections to a lot that might not be built upon. *See* Exhibits 11 through 16. None of the protestors directly assert that their properties were not specifically benefited by the sewer improvements made under the LID or that their properties were not benefited in the amount of their proposed assessments. Only one of the six property owners filing protests appeared at hearing and presented testimony. No expert appraisal testimony was presented by the protesting owners to support their objections to their proposed assessments.

2.4 Recommendation Finding 15 is modified as follows:

15. Appearing at hearing and testifying was Johnpaul Jones. Mr. Jones testified that the enjoyment of his property has been negatively impacted by the noise and odors resulting from the placement of a ~~“grinder”~~ pump (lift) station that was located near his home and also as a result of a portion of the pump being actually constructed on his property. In cross examination, Mr. Jones acknowledged that he was aware that he could file a claim for damages against the City and, if unsuccessful with that claim, could file a lawsuit against the City. He also admitted that he had earlier filed a claim against the contractor who installed the sewer system and had received \$8,000 in compensation from the contractor and that the City had resolved about 50% of the problems associated with the smell and noise emanating from the nearby pump station.

2.5 Recommendation Conclusion 4 is modified as follows:

4. While not challenged in these proceedings, the City may properly assess properties under an LID for receipt of services without capital

improvements. *Seattle v. Rogers Clothing*, 114 Wn.2d 213, 223-224, 787 P.2d 39 (1990). ~~To the extent that~~However, the assessments made under Part B for the sewerage treatment plant previously constructed by District No. 7 and the Lynwood Center Lift Station constructed by a private developer ~~could be considered as not being~~are capital improvements made under LID No. 20 ~~they~~20. They are facilities that provide necessary capacity rights in existing facilities and services for operation of the sewer system constructed under LID No. 20 and are costs properly charged to property owners under the LID.

Section 3. Additional Part B Costs Assessed. By notice dated December 18, 2006, property owners in the LID were informed of a new and additional opportunity, at their discretion, to have certain future Part B connection costs added to their respective assessments at this time. A total of 16 such owners availed themselves of this opportunity and entered into Local Improvement District No. 20 Agreements in forms provided by the City and recorded in the Kitsap County Auditor's office. Accordingly, the Part B and total final assessments against such owners' properties identified in Exhibit C, attached to and made a part of this ordinance, should be and are increased as shown on that exhibit, and the Final Assessment Roll shall be revised accordingly.

Section 4. Other Assessment Roll Revision. The following assessment should be and is revised in the amounts and for the reason set forth below, and the Final Assessment Roll shall be revised accordingly.

Name: Will Quinn
Property ID No.: RB-4
Change in Part A Assessment: N/A
Change in Part B Assessment: Corrected to \$8,591
New Total Assessment: \$24,694
Reason: Correction

Section 5. Appeal Overruled, and Confirmation of Assessments and Assessment Roll.

5.1 After due consideration the City Council finds that the Beil/Ley appeal should be and it is overruled and denied.

5.2 Each of the lots, tracts, parcels of land and other property shown upon the Final Assessment Roll, as modified and revised in Sections 3 and 4, is determined, found and declared by the City Council, sitting and acting as a Board of Equalization, to be specially benefited by the Project and Improvements installed or financed in LID No. 20 in at least the amount charged against the same, and the assessment appearing against the same is in proportion to the several assessments appearing upon the roll. There is levied, confirmed and assessed against each lot, tract or parcel of land and other property appearing upon the Final Assessment Roll the amount finally charged against the same thereon for a total of \$5,504,595.40. A copy of the Final Assessment Roll as thus revised and confirmed is attached and made a part hereof as Exhibit D.

Section 6. Filing of Roll for Collection and Related Matters.

6.1 The Final Assessment Roll as thus revised, approved and confirmed shall be filed with the City Finance Director for collection and he is authorized, unless otherwise directed by the City Administrator to defer such action pending consideration of pro rata reductions of assessments by the Council as contemplated by Resolution No. 2006-37. In the

event the City Council at its discretion elects to further modify the Final Assessment Roll as contemplated by Resolution No. 2006-37, such filing and collection shall be deferred until that modification is accomplished by ordinance.

6.2 Following any period of deferral as provided in Section 6.1, the City Finance Director shall mail and publish notice as required by law stating that the roll is in his hands for collection and that payment of any assessment thereon or any portion of such assessment can be made at any time within 30 days from the date of first publication of such notice without penalty, interest or cost. Thereafter the sum remaining unpaid may be paid in 20 equal annual installments of principal. The assessment interest rate is fixed at 1% per annum.

Section 7. Installment Payment of Assessments and Collection. The first annual installment of assessments on the Final Assessment Roll shall become due and payable during the 30-day period succeeding the date one year after the date of first publication by the City Finance Director of notice that the assessment roll is in his hands for collection and annually thereafter each succeeding installment shall become due and payable in like manner. If the whole or any portion of any assessment remains unpaid after the first 30-day period, interest upon the whole unpaid sum shall be charged at the rate as established above, and each year thereafter one of the installments of principal together with interest due on the unpaid balance, shall be collected. Any installment not paid prior to expiration of the annual 30-day period during which such installment is due and payable shall thereupon become delinquent. Each delinquent installment shall be subject, at the time of delinquency, to a charge of 6% penalty levied on both principal and interest due upon that installment, and all delinquent installments also shall be charged interest at the rate as determined above. The collection of such delinquent installments shall be enforced in the manner provided by law.

Section 8. Use of Assessment Proceeds. Assessments, together with interest thereon and any penalties (“Assessment Proceeds”), shall be deposited when collected, in the Local Improvement Fund, District No. 20 (the “LID Fund”) created by Ordinance No. 2003-38. Assessment Proceeds thus deposited shall be used to pay the cost and expense of Improvements, as follows, and in the following order: (1) any remaining costs of the LID for which adequate provision has not otherwise been made; (2) the principal of and interest on Public Works Trust Fund Loan No. PW-04-691-002 until that loan has been repaid in full; and (3) and to repay contributions by the City for the LID. Thereafter, any Assessment Proceeds remaining in the LID Fund may be applied to such lawful purposes as the City Council may direct by ordinance, pursuant to RCW 35.45.090 as now in effect or hereafter amended, or other applicable legislation.

Section 9. Charges In Lieu of Assessment. No property may connect directly or indirectly to the Project or Improvements constructed, acquired for, or made a part of the LID unless either that property shall have been subject to special assessment on the assessment roll for that LID or the owners of that property shall have paid prior to such connection a charge in lieu of assessment which shall be at least the equivalent of those assessments which would have been applied to that property had it been assessed within LID No. 20.

Section 10. Ratification of Prior Acts. Any actions taken consistent with the purpose and authority but prior to the effective date of this ordinance are ratified, approved, and confirmed.

Section 11. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

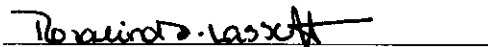
Section 12. Effective Date. This ordinance shall take effect five (5) days after passage and publication as required by law.

PASSED by the City Council of the City of Bainbridge Island, Washington, this 14th day of February, 2007.

APPROVED by the Mayor this 22nd day of February, 2007.


Darlene Kordonowy, Mayor

ATTEST/AUTHENTICATE:


Rosalind Lassoff, City Clerk

FILED WITH THE CITY CLERK:	February 8, 2007
PASSED BY THE CITY COUNCIL:	February 14, 2007
PUBLICATION DATE:	February 28, 2007
EFFECTIVE DATE:	March 5, 2007
ORDINANCE NO.	2007-07

EXHIBIT A

DESCRIPTION OF ASSESSMENT METHODOLOGY

Assessment Methodology

The Improvements include sanitary sewer facilities for each of the four respective neighborhoods, referred to as Part A Costs or Shared Construction Costs and sanitary sewer facilities for particular properties, referred to as Part B Costs, sometimes called on-site costs or Individual Connection Costs. The four neighborhoods for which Part A Costs have been determined separately are Emerald Heights, Pleasant Beach North, Point White and Rockaway Beach. Part A Costs also have been determined for the Blakely Elementary School site.

Part A Costs consist of the total costs for construction of sewer facilities, including design, engineering and other professional services, together with contingencies, to be completed and available for service in the street or right-of-way in front of or near every property in each of the respective neighborhoods in the LID and the school site. Part A Costs applicable to your neighborhood have been divided equally among the properties in your neighborhood to produce the Part A Assessment for your property that is set forth on the attached page.

The total of all the Part A Costs for off-site improvements, expected to serve the four neighborhoods and the elementary school, is \$4,231,463, approximately \$609,051 of which cost is expected to be paid by the City, and the balance thereof shall be borne by and assessed against the properties specially benefited by such improvements included within the local improvement district.

Part B Costs consist of the actual costs for connecting a given property to the new sewer facilities, including payment of mandatory contractual connection charges for the use of existing sewer facilities, and other items, as follows:

Kitsap County Sewer District No. 7 Connection Fee	\$5,991
Lynwood Center Connection Fee (\$700 for Rockaway Beach)	2,200
City of Bainbridge Island Permit Fee	100
Sub-Total	<u>\$8,291</u>

Where grinder pumps are required, their actual cost, including installation, has been assessed with the above Sub-Total.

When requested by the property owner, there also has been assessed with the above Sub-Total the actual cost of physical installation and connection of a side sewer (the "Side Sewer Costs"), which varies with the distance, depth and difficulty of the required excavation and back-filling, and other features of specific properties. Individual Connection Costs (Part B Costs) will not be made a part of the assessment against any property unless requested by the owner. The total of Part B Costs to be assessed in the LID is \$1,758,480, all of which shall be borne by and assessed against the appropriate properties as requested by affected owners.

EXHIBIT A con't

Property owners who have physically connected to the sewer were given the opportunity to choose, at their discretion, to combine all of their Part B Costs, including Side Sewer Costs, into the amount of the assessment, to be confirmed and levied against their properties by ordinance as a total assessment payable in whole or in part during a statutory 30-day prepayment period following assessment confirmation, or thereafter in annual installments with interest. The term of the assessment installments will be twenty years. The \$3,622,412 total of Part A Costs, together with the \$1,627,606 total of Part B Costs, result in a total preliminary final assessment roll of \$5,380,892.

EXHIBIT B

**ORIGINAL
OCTOBER 26, 2006, REPORT OF HEARING OFFICER**

EXHIBIT C

**ADDITIONAL PART B CONNECTION CHARGES
TO BE ASSESSED**

Name	Property ID No.	Amount of Part A Assessment in Assessment Hearing Mailed Notice	Amount of Part B		Total Assessment
			Assessment Requested by Owner Pursuant to City Agreement	Assessment	
Beverlyn N Robinson	EH-22	\$17,911.06	\$8,291.00	\$26,202.06	
Christopher & Kim Bennis	EH-25	\$17,911.06	\$8,291.00	\$26,202.06	
Harald L Hurlen	PB-09	\$8,112.00	\$8,291.00	\$16,403.00	
Barry & Kathryn Mahony	PB-27	\$8,112.00	\$8,291.00	\$16,403.00	
David Pollock	PW-11	\$12,242.00	\$8,291.00	\$20,533.00	
Marsha Madigan	PW-16	\$12,242.00	\$8,291.00	\$20,533.00	
Donald & Harriet Bennett	PW-17	\$12,242.00	\$8,291.00	\$20,533.00	
John C. Ive	PW-25	\$12,242.00	\$8,291.00	\$20,533.00	
Gary E. Carson	PW-43	\$12,242.00	\$8,291.00	\$20,533.00	
Gary E. Carson	PW-44	\$12,242.00	\$8,291.00	\$20,533.00	
Mary C. Eklund	PW-54	\$12,242.00	\$8,291.00	\$20,533.00	
Archie Anderson	PW-59	\$12,242.00	\$8,291.00	\$20,533.00	
Dan Gunn	PW-66	\$12,242.00	\$8,291.00	\$20,533.00	
Sumi Stevens	RB-21	16,103.00	\$6,791.00	\$22,894.00	
Ruscitto A. Clemson	RB-56	16,103.00	\$6,791.00	\$22,894.00	
John & Deborah Stratz	RB-70	16,103.00	\$6,791.00	\$22,894.00	

EXHIBIT D

**REVISED FINAL ASSESSMENT ROLL
AS CONFIRMED BY THIS ORDINANCE**

CERTIFICATION

I, the undersigned, City Clerk of the City of Bainbridge Island, Washington (the "City") hereby certify as follows:

1. The attached copy of Ordinance No. 2007-07 the ("Ordinance") is a full, true and correct copy of the Ordinance duly adopted at a regular meeting of the City Council, at the regular meeting place thereof on February 14, 2007 as the Ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect five days after publication in the official newspaper of the City.

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the adoption of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of February, 2007.

CITY OF BAINBRIDGE ISLAND,
WASHINGTON

Rosalind D. Lassoff
ROSALIND LASSOFF, City Clerk