

**M**INUTES OF THE VERNAL CITY BOARD OF EQUALIZATION HEARING  
FOR ASSESSMENT AREA 2008-02 HELD OCTOBER 2, 2013 at 6:00 p.m. in  
the Vernal City Council room, 374 East Main, Vernal, Utah 84078.

**PRESENT:** Board members Gary Showalter, Dave Everett, Ted Munford, Bert Clark, Sonja Norton and JoAnn Cowan.

**WELCOME:** Gary Showalter welcomed everyone to this public meeting to deal with one specific issue.

**PUBLIC HEARING: ASSESSMENT AREA 2008-02 BOARD OF EQUALIZATION:** Gary Showalter noted that this is the first of three meetings to be held this week at 6:00 p.m. for this issue. He asked the citizens to limit their comments as there is a regular City Council meeting beginning at 7:00 p.m. Ken Bassett explained that this Special Improvement District was established in 2008 for the purpose of making improvements to the main line and service lines for the water system at Ashley Park Estates. Initially, it was thought that the sewer lines would need to be repaired as well, however, it was determined that only one leak needed to be repaired. The Community Impact Board provided a grant and loan to complete the repairs. The grant had to be used to replace the main line and the loan would cover the expenses associated with the service lines for each unit. The City entered into the Special Improvement District with the intent that the property owners would be able to pay over a period of 20 years for their respective assessments for the water service line improvements. Two different kinds of connections were made to the units, either through the garages or around the units to a hot box. Units #37 to #42 and #43 to #48 are 6-plexes, so the total cost for the service lines for those buildings were divided by six. Mayor Showalter asked for an explanation of a hot box. Keith Despain, with Engineering Services, explained that a hot box consists of a valve where the underground pipes hook into the interior plumbing enclosed by a box and heated to keep the line from freezing. Ken Bassett noted that the construction costs are different for each unit, and the engineering costs associated only with the service lines has been assessed to the property owners equally. Each property owner was sent a preliminary notice of their assessment. The assessment amounts must be approved by the Board of Equalization prior to becoming final. Once final, a final assessment notice will be sent out and the property owners will have 15 days to pay the total amount or they can finance it over a period of 20 years. There will be no interest cost because the loan from the Community Impact Board is at zero interest. However, if the annual payment is not made and the assessment becomes delinquent, a statutory delinquent interest rate will be assessed. Ken Bassett presented a spreadsheet to the Council showing the assessments for each property. He noted that this project was lengthy with issues dealing with the contractor. Councilmember Norton clarified that the figures in the notice of intention were only estimates. Ken Bassett answered yes.

Mr. John Richards, counsel for Ashley Park Estates HOA, stated that there are several issues of concern dealing with this project. He noted that this is a 2008 assessment. In many instances, the units have changed hands from when this was first approved and installed. The actual assessment for each unit is catastrophically high ranging from \$2000 to \$6000. There is a letter dated in 2010 from the City stating the expectation was an assessment of around \$1000 with no impact fee at all. There has also been some discussion that there may be \$716 charge for later line

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installation. Overall, the home owners do not see the exposure beyond \$1700 per unit. Mr. Richards stated that he also did not see why it has taken so long and may have gone past the statute of limitations, with a subset of owners who were unaware of this obligation, making it too late to charge them. On top of that, the homeowners want to know that the bill is accurate. He stated that meters were installed, and there was disagreement with US General, but the concern is when someone has a statement for over \$6000 and is the third owner since this project began, the assessment cannot be applied. Lastly, a big problem that is still not resolved is that the City never placed any encumbrances on the property to make potential buyers aware of this issue. Some units were sold with escrows in place in order to close and that money has been frozen in these accounts waiting for this project to be resolved. Mayor Showalter stated they have been given the itemized costs for each unit. John Richards stated the homeowners do not understand why the assessments are so significantly different and how the Community Impact Board funding was used. Mayor Showalter stated that in order for the escrow to be set up, some type of disclosure had to be made.

Mr. Dennis Judd, Vernal City attorney, stated that he was not certain what may have been done regarding the disclosure at the time this special improvement district was initially undertaken. However, there is a contract agreement entered into with Homeowners Association (HOA) and City which 75% of the homeowners signed agreeing to pay for the improvements. The City's negotiations with the HOA at that time was that at least a majority sign and agree to the project or the City would not do it. Those homeowners were all aware of the work, and the City staff took care of the paperwork and notices associated with the assessment. If someone was interested in purchasing any of the units, the property owners had an obligation to notify them about the assessment. The City only recently could put a total cost per unit to send out the notices. Ken Bassett agreed that during the establishment of the Special Improvement District, hearings were held with the property owners where the majority supported the project so the Council adopted a resolution to proceed. That document was recorded with the Uintah County Recorder so if the property changes hands the potential buyer would see the resolution. However, the encumbrance cannot be established until this process is completed. Once the final assessment notice is given to the property owners, and if payment is not made within the specified time period, the City establishes liens and those documents are recorded as well. Once the contractor completed the work, he filed 22 claims against the City with some of those claims being on the service line work. In accordance with the contract documents, The City was required to go through mediation and then arbitration to settle the dispute. A final judgment was reached in 2012 with the contractor losing all 22 claims. When the City approached the CIB for funding for this project, the application was for grant money for the main lines and a loan for the service lines. The City also indicated that the loan would be paid using the assessment funds from the property owners. The City also received money for the sewer line repairs. Since the sewer line did not need major repairs, the CIB agreed to allow the City to use those funds for the water system.

Dennis Judd stated he did not have a lot of details on the claim that the statute of limitations prevented the City from charging the property owners, but felt that it would not be relevant. Ted Munford stated that considering the points brought up with new owners not being made aware of these costs, he does sympathize. as the property owners selling the units should have been more honest. As for the high cost, the initial estimate is higher than the actual assessments, and the

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zero interest rate over twenty-years is great. Ken Bassett stated that Mr. Richards mentioned the impact fee which the City does charge for new connections. This development is not new so no impact fee was charged.

Adam Martinez, HOA President, stated he purchased his unit toward the end of this project and is not very knowledgeable with the whole issue. He noted that it was quite a surprise to be hit with this assessment as it was not disclosed. JoAnn Cowan stated that the realtor or property owner is obligated to disclose it, and when a title search is done, those documents should have told you. Mr. Martinez stated that he received calls from realtors and he tells them that as far as he knows there is nothing there. He stated that with the passage of time there has been a lot of miscommunication causing massive confusion. Sonja Norton agreed that when a property is sold, there are two catches for potential buyers to become aware of any costs. The first is the obligation of the real estate agent and owner to disclose it. The second is the title search. She suggested the new owners talk to their title companies.

Bob Dalton, owner of unit #26, stated that the issue of the title company picking up any type of assessment is not correct. Two companies researched it, and there is not anything there that states there will be an assessment. A lot of these homes had problems with water loss, and the costs were escalating so the owners simply abandoned their properties. He asked why there is such a variance in the costs. He asked the City to provide better itemization as there are a number of errors that exist. For example, unit #24 and #25 both have a hot box, but there is not a specific charge for that. Ken Bassett explained that the hot box or driveway service connection was included in the construction cost unless a change was made. He pointed out that on unit #4 the connection was initially going to be through the garage, and since it was changed to a hot box, there is an additional amount for that change. He explained that if there is a cost under the hot box column on the spreadsheet, then there was a change made to the original bid. On unit #23, the connection was changed from a hot box to the garage, causing a reduction in the cost. Mr. Dalton stated that neither the contractor nor the engineer understood what a hot box was so it was not in the original contract. He asked where the individual engineering fee came from and what was provided for that fee. Also, where is the specific itemization for each unit, especially those with a high cost? Further, he stated that his understanding was once this project was completed and they received the final bill, they had a year to pay in full or the amount remaining would be added to the tax rolls. Some of the property owners did not get their notices, and the City should have contacted the Board of Trustees to get the correct addresses so the notices could be delivered. Ken Bassett reminded Mr. Dalton that comments for a specific unit need to be made by the owner. Bob Dalton stated he was the proxy for many of the units. Mayor Showalter stated he would need written permission from those unit owners. Ken Bassett answered that the notices were sent certified mail to the addresses listed on the County records which must be done by State statute. The HOA does have one property listed which is the club house. As far as the engineering fees, that cost was based on the total design and construction engineering for the service lines which was computed as a percentage of the total project, and then divided by the number of units. Keith Despain explained that each unit had an original bid for the connection from the main line to the unit. If any item needed to be added or deleted, that cost or deduction is reflected on the cost sheet. Some homeowners elected to change their connections after the work had been bid. Ken Bassett asked if the contractor understood what a hot box was and did he bid on it during construction. Keith Despain answered that yes the

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contractor knew what a hot box referred to and bid the work as designed. Bob Dalton disagreed and stated that the engineers should have provided a soil test.

Coleen Dalton, owner of unit #26, asked why she was assessed engineering of \$937 when the line to her unit had already been replaced prior to this project. She noted that Engineering Services did meet with her several times to make sure the line was ready to be hooked onto the new line by the curb, but the only cost should be the meter. Mayor Showalter asked if the engineers billed her for their time. Coleen Dalton answered no.

Mr. Corey Foley, owner of unit #45, stated that he bought his unit on the 1<sup>st</sup> of June, and the real estate agent mentioned the assessment. He approached Mr. Bassett who helped him understand the project and gave him an estimate for the escrow account. He stated that he will pay the assessment because it is the right thing to do, and his assessment is accurate, although other unit owners do not agree. JoAnn Cowan stated that she was perplexed why the resolution did not show up. Ken Bassett stated it may depend on how it is worded on the title search. Corey Foley stated that it would have been better if the lien had been placed on the properties. Ken Bassett stated that by statute the lien cannot be placed until this project was completed including the litigation as some of the claims were associated with the service lines. If the arbitrator had awarded the contractor more money for the work on the service lines, the property owners would have been assessed more money. Ted Munford agreed that this was a miserable process but the City did not know the cost until the lawsuit was sorted out.

Adam Martinez stated that the title companies are professional and should be able to pick up that there is an assessment pending, but that did not happen.

Jody Smith, owner of unit #18, stated that this water project caused a sink hole under her house that has been filled three times and is still not fixed. The problem showed up immediately after the water project was completed and has made the home not safe to live in. Bob Dalton stated there is a lot of ground water in this area and the water table is high. Jody Smith stated it is frustrating to pay engineers \$937 and still have problems.

Edgar Lacayo, owner of units #38 & #41, stated that he received an assessment for each unit, and when he purchased them, he was not informed that this assessment would occur. JoAnn Cowan stated that buyers were blindsided. Sonja Norton stated that if the resolution was recorded correctly, it should show up on every unit. The notice will say it is a resolution which should make the title company question it. Gary Showalter asked if there were any additional significant concerns. There were no more comments and the public hearing was closed.

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Mayor Gary Showalter

ATTEST:

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Roxanne Behunin, Deputy Recorder

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