

ORDINANCE NO. 03-1

AN ORDINANCE OF BAYVIEW WATER AND SEWER DISTRICT, OF KOOTENAI COUNTY, IDAHO, APPROVING AND CONFIRMING THE ASSESSMENT ROLL OF ITS LOCAL IMPROVEMENT DISTRICT NO. 2 FOR THE CONSTRUCTION AND INSTALLATION OF CERTAIN WATER IMPROVEMENTS WITHIN THE LIMITS OF LOCAL IMPROVEMENT DISTRICT NO. 2; PROVIDING FOR ASSESSMENTS AND FOR THE ISSUANCE OF BONDS; CREATING CERTAIN FUNDS AND ACCOUNTS AND PROVIDING FOR CERTAIN COVENANTS WITH REGARD THERETO; PROVIDING FOR THE APPEAL PROCEDURE; PROVIDING FOR THE PUBLICATION OF A SUMMARY OF THIS ORDINANCE; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

**BAYVIEW WATER AND SEWER DISTRICT
Kootenai County, Idaho**

LOCAL IMPROVEMENT DISTRICT NO. 2

BE IT ORDAINED BY THE BOARD OF DIRECTORS OF BAYVIEW WATER AND SEWER DISTRICT, of Kootenai County, Idaho as follows:

WHEREAS, Bayview Water and Sewer District (the "District"), of Kootenai County, Idaho, is a water district operating and existing under and pursuant to the laws of the State of Idaho, and as such is authorized and empowered to create local improvement districts and to construct improvements pursuant to Idaho Code, Title 50, Chapter 17; and

WHEREAS, said District is authorized by Idaho Code, Title 50, Chapter 17, to issue local improvement district bonds for the purpose of paying the cost of improvements and betterments within local improvement districts of the District; and

WHEREAS, the Board of Directors (the "Board") has heretofore duly created Local Improvement District No. 2 ("LID No. 2") for the purpose of making certain water improvements therein; and

WHEREAS, the members of the Board have considered the report of J-U-B Engineers, Inc., of Coeur d'Alene, Idaho (the "Engineer"), with respect to the apportionment and the correctness of the assessments and the amounts levied on any particular lot or parcel of land,

including the benefits accruing thereon, and the proper apportionment of the total cost of the improvements to be borne thereby, and the inclusion of any lot or parcel of land in the proposed LID No. 2; and

WHEREAS, it appears to the Board that each lot, tract, parcel, and other property included within LID No. 2 will be specially benefited by the doing and making of the improvements within said LID No. 2, in an amount at least equal to the specific amount or amounts set opposite each such lot, parcel of land, and other property upon the assessment roll for said LID No. 2 (the "Assessment Roll"), heretofore filed herein and heard before the Board, and that each and all of said assessments are strictly in accordance with the benefits attributable to each lot, parcel of land and other property, and are in amount and apportionment strictly in accordance with Section 50-1707, Idaho Code, and the resolutions and ordinances of the District, and that said Assessment Roll and each and all of the assessments set forth therein are correct and proper in every respect; and

WHEREAS, notice of the time and place of hearing on the final assessment roll was duly and regularly given to all property owners within LID No. 2 by publication thereof and by mailing to all property owners in the manner required by law, and the hearing was duly and regularly held on September 12, 2003, at which hearing all material submitted was reviewed and all those persons desiring to be heard were heard, and disposition of the protests has been made by Resolution adopted; and

WHEREAS, the Board now desires to confirm the Assessment Roll, to levy the assessments, and to authorize the issuance of local improvement district bonds;

NOW, THEREFORE, BE IT FURTHER ORDAINED as follows:

Section 1: CONFIRMATION OF ASSESSMENT ROLL

The assessments shown on the Assessment Roll for LID No. 2 for the purpose of making certain water improvements, and engineering, surveying, supervision, inspection and installation, with payment of all legal and other miscellaneous expenses, all of which is provided for under the Resolution of Intention, are hereby in all respects approved and confirmed. No single assessment has been increased in an amount greater than twenty percent (20%) of the amount of the assessment as set forth in the Notice of Hearing.

Section 2: PROPERTY AFFECTED; LEVY OF ASSESSMENTS

Each lot or parcel of land and other property shown upon the Assessment Roll is hereby found to be benefited to the amount of the assessment levied thereon, and there is hereby levied and assessed against each of the lots, parcels and other properties, as set forth and described in said Assessment Roll, the amount as finally charged against each such lot, parcel and other property as it appears in said Assessment Roll.

Section 3: CERTIFICATION OF ASSESSMENT ROLL

The Secretary, upon passage of this Ordinance, is directed to certify and file the confirmed Assessment Roll forthwith with the Treasurer.

Section 4: ASSESSMENTS ARE LIENS; RECORDATION OF NOTICE

The assessments made by this confirming Ordinance shall be a lien upon the property assessed, from and after the date the Secretary records a notice which shall contain the date of adoption of this confirming Ordinance and a description of the area or boundaries of LID No. 2. The Secretary is hereby directed to make said recording with the Kootenai County Recorder, immediately upon the passage of this Ordinance.

Section 5: DUE DATE OF ASSESSMENTS; PAYMENT IN INSTALLMENTS

Said assessments shall become due and payable to the Treasurer within thirty (30) days from the date of the adoption of the Resolution disposing of the protests and this Ordinance confirming the Assessment Roll, or October 12, 2003. The Treasurer shall mail notice of the assessment amount due to each property owner assessed at the post office address if known, or if unknown, to the post office in Bayview, Idaho, stating the total amount of the property owner's assessment, plus the substance of the terms of payment of the same as hereinafter set forth. An affidavit of mailing the foregoing notice shall be filed in the Secretary's office.

Any property owner who has not paid his assessment in full within said thirty-day period shall be conclusively presumed to have chosen to pay the same in twenty (20) equal annual installments, the first of which shall become due and payable one (1) year from the date of the passage of this Ordinance, with a like amount due on the same day of each year thereafter until the full amount of the assessment, with interest due thereon, shall be paid in full. Assessments paid in installments shall bear interest on the whole unpaid sum from the date of adoption of this Ordinance. The rate of interest per annum which such installments shall bear is hereby fixed as the net effective rate of interest on the LID No. 2 Bonds. If any installment is not paid within twenty (20) days from the date it is due, the same shall become delinquent and the Treasurer shall add a penalty of two percent (2%) thereon. Installments may be prepaid in the manner provided by Section 50-1715, Idaho Code.

Section 6: COST AND EXPENSES

The total cost and expenses of improvements shall include the contract price of all improvements, together with any costs or expenses incurred for engineering, clerical, printing and legal services, as well as for advertising, surveying, inspection of work, collection of assessments, interest upon bonds or warrants, and an amount for contingencies as may be considered necessary by the Board. Said costs are hereby levied and assessed by the benefits derived method of assessment against each of the lots, parcels and properties located within LID No. 2, as described in the Ordinance creating LID No. 2.

Section 7: **INSTALLMENT DOCKET**

The Treasurer shall, upon passage of this Ordinance, establish a Local Improvement Installment Docket for LID No. 2 as provided in Section 50-1717, Idaho Code.

Section 8: **AUTHORIZATION OF BONDS**

The issuance of bonds to defray the cost of improvements made within LID No. 2 is hereby authorized. Said bonds shall be designated "Bayview Water and Sewer District Local Improvement District No. 2 Bonds" (the "Bonds"), and shall be more particularly described in an Ordinance to be adopted by the Board, authorizing the issuance and sale of the Bonds. Said Bonds shall be issued in the amount of the cost of the improvements within LID No. 2 as set forth in this Ordinance, less the amount of any assessments paid in within the thirty-day (30) period as set forth herein.

Section 9: **CREATION OF BOND AND INTEREST FUNDS**

The Treasurer is hereby authorized and empowered, and it shall be his/her duty, to receive and collect all assessments levied on property within LID No. 2 to pay the cost of said improvements, the installments thereof, the interest thereon, and the penalties accrued, and to pay and disburse such payment to the person or persons lawfully entitled to receive the same, in accordance with the laws of the State of Idaho and all ordinances and resolutions of District.

There is hereto created, and shall be maintained by the Treasurer, a special fund designated "Bayview Water and Sewer District Local Improvement District No. 2 Bond Fund" (the "Bond Fund"), or such other designation conforming to accepted accounting practices. All moneys constituting payment of principal of said unpaid installments of assessments are to be deposited into the Bond Fund, and shall be used and applied for the purpose of paying the principal of the Bonds herein authorized and for no other purpose whatsoever. The Bond Fund is hereby pledged as security for such payment of principal of and interest on the Bonds.

There is hereby created, and shall be maintained by the Treasurer, a special fund designated "Bayview Water and Sewer District Local Improvement District No. 2 Interest Fund" (the "Interest Fund"), or such other designation conforming to accepted accounting practices. All moneys constituting payment of interest on said unpaid installments of assessments are to be deposited into the Interest Fund, and shall be used and applied for the purpose of paying the interest on the Bonds herein authorized and for no other purpose whatsoever. The Interest Fund is hereby pledged as security for such payment of interest on the Bonds.

Moneys in the Bond Fund and the Interest Fund shall be deposited in such bank or banks as are designated as depositories of public moneys of the District under the laws of the State of Idaho, or invested in bonds or warrants of the District. Interest received on such funds so deposited or invested shall be placed to the credit of the Fund from which it is earned.

Section 10: APPEAL PROCEDURE

The confirmation of the Assessment Roll for LID No. 2 herein made is a final determination of the regularity, validity and correctness of said Assessment Roll, of each assessment contained therein, and of the amount levied on each lot or parcel of land or other property within LID No. 2, subject to the right of appeal as set forth in Section 50-1718, Idaho Code.

Any person who has filed objections to the Assessment Roll, or any other person who feels aggrieved by the decision of the Board then confirming said Assessment Roll, shall have the right to appeal. Such appeal shall be made within thirty (30) days from the date of publication of this Ordinance, by filing a written notice of appeal with the Secretary and with the Secretary of the District Court of Kootenai County, describing the property and objections of the appellant.

After said 30-day appeal period has run, no one shall have any cause or right of action to contest the legality, formality, or regularity of any assessment.

Section 11: RATIFICATION OF PROCEEDINGS

All proceedings heretofore had in connection with the creation of LID No. 2, the preparation and adoption of the Assessment Roll, and hearing thereon, and the giving of notice of said hearing on said Assessment Roll, are hereby in all respects ratified, approved, and confirmed.

Section 12: IRREPEALABILITY

From and after the date the Bonds are issued, this Ordinance shall be and remain irrevocable until the Bonds and the interest thereon shall be fully paid and discharged, as herein provided.

Section 13: SEVERABILITY

If any section, paragraph, clause or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of each section, paragraph, clause or provision shall in no manner affect any remaining provision of this Ordinance.

Section 14: ENFORCEABILITY CLAUSE

The District shall enforce and seek remedies for breaches of the terms of this Ordinance, as provided by the laws of the State of Idaho.

Section 15: PUBLICATION AND EFFECTIVE DATE

After its passage and adoption, a summary of this Ordinance, substantially in the form attached hereto as Exhibit "A", shall be published once in the official newspaper of the District under the provisions of the Idaho Code, and upon such publication shall be in full force and effect.

PASSED AND ADOPTED this 16th day of September, 2003.

BAYVIEW WATER AND SEWER DISTRICT

Chairman, Board of Directors

ATTEST:

Secretary

(SEAL)

CERTIFICATION

I, the undersigned Secretary of Bayview Water and Sewer District, Kootenai County, Idaho, HEREBY CERTIFY that the foregoing Ordinance is a full, true, and correct copy of an Ordinance duly adopted at a regular meeting of the Board of Directors of the Bayview Water and Sewer District, duly and regularly held at the regular meeting place thereof on September 16, 2003, of which meeting all members of said Board had due notice and at which a majority thereof were present; and that at said meeting said Ordinance was adopted by the following vote:

AYES, and in favor thereof, Directors:

NOES, Directors:

ABSENT, Directors:

ABSTAIN, Directors:

I FURTHER CERTIFY that I have carefully compared the same with the original Ordinance on file and of record in my office; that said Ordinance is a full, true, and correct copy of the original Ordinance adopted at said meeting; and that said Ordinance has not been amended, modified, or rescinded since the date of its adoption, and is now in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of said District on September 16, 2003.

Secretary

(SEAL)

SUMMARY OF ORDINANCE NO. 03-1

AN ORDINANCE OF BAYVIEW WATER AND SEWER DISTRICT, OF KOOTENAI COUNTY, IDAHO, APPROVING AND CONFIRMING THE ASSESSMENT ROLL OF ITS LOCAL IMPROVEMENT DISTRICT NO. 2 FOR THE CONSTRUCTION AND INSTALLATION OF CERTAIN WATER IMPROVEMENTS WITHIN THE LIMITS OF LOCAL IMPROVEMENT DISTRICT NO. 2; PROVIDING FOR ASSESSMENTS AND FOR THE ISSUANCE OF BONDS; CREATING CERTAIN FUNDS AND ACCOUNTS AND PROVIDING FOR CERTAIN COVENANTS WITH REGARD THERETO; PROVIDING FOR THE APPEAL PROCEDURE; PROVIDING FOR THE PUBLICATION OF A SUMMARY OF THIS ORDINANCE; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

**BAYVIEW WATER AND SEWER DISTRICT
Kootenai County, Idaho
LOCAL IMPROVEMENT DISTRICT NO. 2**

A summary of Ordinance No. _____, adopted on September 12, 2003, by the Board of Directors of Bayview Water and Sewer District, is as follows:

Section 1: Approves and confirms the assessments as shown on the Assessment Roll for LID No. 2, finding that no single assessment has been increased in an amount greater than twenty percent (20%) of the amount of the assessment as set forth in the Notice of Hearing.

Section 2: Provides that each lot or parcel of land shown upon the Assessment Roll is found to be benefited to the amount of the assessment levied thereon, and levies and assesses such amount against each lot, parcel or other property the amounts set forth in the Assessment Roll.

Section 3: Directs the District Secretary to certify and file the confirmed Assessment Roll forthwith with the Treasurer.

Section 4: Provides that the assessments made by this confirming Ordinance shall be a lien upon the property assessed, from and after the date the Secretary records a notice which shall contain the date of adoption of this confirming Ordinance and a description of the area or boundaries of LID No. 2. The Secretary is hereby directed to make said recording with the Kootenai County Recorder, immediately upon the passage of this Ordinance.

Section 5: Provides that the assessments shall become due and payable to the Treasurer within thirty (30) days from the date of the adoption of the Resolution disposing of the protests and confirming the Assessment Roll, or October 12, 2003. Instructs the Treasurer to

mail notice of the assessment amount due to each property owner assessed stating the total amount of the property owner's assessment, plus the substance of the terms of payment thereof.

Any property owner who has not paid his assessment in full within said thirty-day period shall be conclusively presumed to have chosen to pay the same in twenty (20) equal annual installments, the first of which shall become due and payable one (1) year from the date of the passage of the Ordinance, with a like amount due on the same day of each year thereafter until the full amount of the assessment, with interest due thereon, is paid in full. Assessments paid in installments shall bear interest on the whole unpaid sum from the date of adoption of the Ordinance at the rate of interest as the net effective rate of interest as borne by the Bonds. If any installment is not paid within twenty (20) days from the date it is due, the same shall become delinquent and the Treasurer shall add a penalty of two percent (2%) thereon. Installments may be prepaid in the manner provided by Section 50-1715, Idaho Code.

Section 6: Provides that the total cost and expenses of improvements shall include the contract price of all improvements, together with any costs or expenses incurred for engineering, clerical, printing and legal services, as well as for advertising, surveying, inspection of work, collection of assessments, interest upon bonds or warrants, and an amount for contingencies as may be considered necessary by the Board. Said costs are hereby levied and assessed by the benefits derived method of assessment against each of the lots, parcels and properties located within LID No. 2.

Section 7: Directs the Treasurer to establish a Local Improvement Installment Docket for LID No. 2 as provided in Section 50-1717, Idaho Code.

Section 8: Authorizes the issuance of bonds to defray the cost of improvements made within LID No. 2.

Section 9: Authorizes and empowers the Treasurer to create Bond and Interest Funds, to be used to pay the principal of and interest on the LID No. 2 Bonds.

Section 10: Determines that the Assessment Roll and each assessment thereon for LID No. 2 are final, subject to the right of appeal within thirty (30) days as set forth in Section 50-1718 Idaho Code.

Section 11: Ratifies, approves and confirms all proceedings taken in connection with the creation of LID No. 2, the preparation and adoption of the Assessment Roll, and hearing thereon, and the giving of notice of said hearing on said Assessment Roll.

Section 12: Provides that once the LID No. 2 Bonds are issued, the Ordinance is irrevocable until the Bonds and the interest thereon shall be fully paid and discharged.

Section 13: Provides that if any section, paragraph, clause or provision of the Ordinance is held to be invalid or unenforceable for any reason, such determination shall not affect any remaining thereof.

Section 14: Provides that the District shall enforce and seek remedies for breaches of the terms of the Ordinance, as provided by the laws of the State of Idaho.

Section 15: Provides that after publication of this summary, the Ordinance shall be in full force and effect.

A full text of Ordinance No. _____ is available at the office of the Secretary of Bayview Water and Sewer District and will be provided to any citizen upon personal request during normal business hours.

DATED this 12th day of September, 2003.

BAYVIEW WATER AND SEWER DISTRICT

ATTEST:

Chairman

Secretary

(S E A L)

CERTIFICATION OF BOND COUNSEL

I, the undersigned Bond Counsel for Bayview Water and Sewer District, of Kootenai County, Idaho, hereby certify that I have read the attached Summary of Ordinance No. _____ of said District and that the same is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 12th day of September, 2003.

PRESTON GATES & ELLIS LLP

/s/ Michael C. Ormsby

Michael C. Ormsby, Bond Counsel