

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Jeff Monsen	Jm	4/10/98	RECEIVED APR 15 1998 WHATCOM COUNTY COUNCIL	04/21/98	Introduction
Division Head:				5/5/98	Finance / Council
Dept. Head:	Jm	4/10/98			
Prosecutor					
Purchasing/Budget:					
Executive:	PK	4-15-98			

SUBJECT:

Ordinance amending WCC 12.44 to create a procedure for reimbursement of roadway construction costs that benefit others.

ATTACHMENTS:

Ordinance
Cover memorandum

Related County Contract #:

Should Clerk schedule a hearing: NO / / YES / / Requested Date: 05/05/98

SUMMARY STATEMENT:

The amendment to WCC 12.44 will provide a procedure for reimbursement to an individual and/or Whatcom County for roadway investments specifically benefitting additional future development.

Distribution Request

Indicate those who should receive a copy after Council action.
List specific names to the right.

ADS Facilities Management	
ADS Finance	
ADS Human Resources	
ADS Info Services	
Assessor	
Auditor	
Cooperative Extension	
District Court	
Executive	
Health	
Hearing Examiner	
Jail	
Juvenile	
Parks	
Planning	Michael Knapp
Prosecutor	
Public Works	Jeff Monsen
Sheriff	
Superior Court	
Treasurer	
Other	

COUNCIL ACTION TAKEN:

1998 - 177 4/21/98: Introduced
5/5/98: Public Hearing held. Amended & Adopted 6 - 1,
Imhof opposed; Ord. #98-033

Ordinance or Resolution Number
(this item): Ord. # 98-033

ORDINANCE NO. 98-033

**AMENDING WHATCOM COUNTY CODE 12.44
TO CREATE A PROCEDURE FOR REIMBURSEMENT OF ROADWAY
CONSTRUCTION COSTS THAT BENEFIT OTHERS**

WHEREAS, RCW Chapter 35.72 authorizes and establishes a procedure for providing reimbursement to parties constructing road improvements; and

WHEREAS, it is deemed necessary and advisable to adopt uniform rules for administration of the reimbursement program; and

WHEREAS, current County procedures for such reimbursement need to be clarified and to be collected in one Whatcom County Code chapter; and,

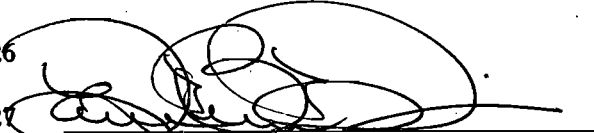
WHEREAS, it is in the best interest of Whatcom County, hereinafter referred to as the "County", to implement procedures for reimbursement for owners who construct road improvements that benefit others,

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 12.44 is hereby repealed and replaced by Exhibit 'A' attached hereto.

ADOPTED this 5 day of May, 1998.

ATTEST:


WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

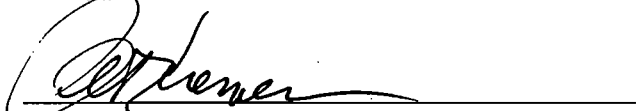

Dana Brown-Davis, Council Clerk


Robert Imhof, Council chair

APPROVED AS TO FORM:

Approved Denied


Civil Prosecuting Attorney


Pete Kremen, County Executive
Date: 5-14-98

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EXHIBIT "A"

PROCEDURE FOR REIMBURSEMENT OF ROADWAY
CONSTRUCTION COSTS THAT BENEFIT OTHERS

Sections:

- 12.44.010 Purpose
- 12.33.020 Definitions
- 12.44.030 Applicability
- 12.44.040 Application for Developer Reimbursement Agreement
- 12.44.050 Preliminary Determinations
- 12.44.060 Preliminary Determination Notice
- 12.44.070 Developer Reimbursement Agreement
- 12.44.080 Recording/Effective Date/Payment of Assessment/Lien for Non-Payment
- 12.44.090 Segregation
- 12.44.100 Term of Developer Reimbursement Agreements
- 12.44.110 Interest or Assessment
- 12.44.120 County Latecomer Administrative Fees
- 12.44.130 Payment of Developer Reimbursement Charge
- 23.44.140 Appeal
- 12.44.150 Enforcement of Latecomer Obligations
- 12.44.160 County Participation in Assessment Reimbursement
- 12.44.170 Effect of Annexation
- 12.44.180 Date for Review

Section .010. Purpose

To establish a uniform methodology and process for the administration of reimbursement contracts applied for after January 1, 1998, for Developers in circumstances where a developer constructs a road improvement and desires to be compensated by property owners benefited by the improvements.

The provisions of this chapter are in addition to and intended to supplement any other requirements contained elsewhere in the Whatcom County Code.

Section .020. Definitions

(1) **Developer** The individual or entity that contracts with the County for the construction of Road Improvements, where such improvements are a requirement for development of real property owned by such entity or individual.

1 (2) **Assessment Reimbursement Area** means that area which includes all parcels of real
2 property adjacent to Road Improvements or are likely to require connection to or service by
3 Road Improvements constructed by a Developer.

4
5 (3) **Direct Construction Cost** include but are not limited to such things as acquisition of
6 right-of-way and/or easements, design, engineering, surveying, inspection, grading, paving,
7 installation of curbs, gutters, pedestrian facilities, street lighting, bike lanes, and traffic control
8 devices, relocation of private utilities as required by the County, (i.e. power, telephone, cable
9 and gas), relocation and/or construction of street lights, traffic control devices, signage, and
10 other similar improvements.

11
12 (4) **Cost of Construction** is the sum of the Direct Construction Costs incurred to construct
13 the Road Improvements plus indirect costs which are limited to the County Latecomer
14 Administrative Fee (Section .120), Construction Interest (subsection (9), below), and
15 Developer Administrative Costs (subsection (5), below).

16
17 (5) **Developer Administrative Costs** means all indirect costs incurred by the Developer in
18 the creation and execution of a Facilities Improvement Agreement and managing the project;
19 such as office supplies, mailings, clerical services, telephone expenses, accounting expenses,
20 project oversight, and the like. Administrative costs shall not exceed three percent (3%) of all
21 Direct Construction Costs.

22
23 (6) **Developer Reimbursement Agreement** means a written contract between the County
24 and one or more Developers providing partial reimbursement for Cost of Construction to the
25 Developer by owners of property who are likely to utilize the improvements and who did not
26 contribute a proportionate share to the original Cost of Construction.

27
28 (7) **Assessment** means an equitable pro rata charge to be paid by an owner of property
29 within the Assessment Reimbursement Area for the cost of private construction of Road
30 Improvements made pursuant to a Facilities Improvements Agreement.

31
32 (8) **Road Improvements** mean roadway improvements made in existing or subsequently
33 dedicated or granted rights of way or easements and any improvements associated therewith
34 including but is not limited to such things as acquisition of right-of-way and/or easements,
35 design, engineering, surveying, inspection, grading, paving, installation of curbs, gutters,
36 pedestrian facilities, street lighting, bike lanes, and traffic control devices, relocation of private
37 utilities as required by the County, (i.e. power, telephone, cable and gas), relocation of street
38 lights, traffic control devices, signage, and other similar improvements.

39
40 (9) **Construction Interest** means the sum of money to be added to the Direct Construction
41 Cost and reimbursed to the Developer for the use of the Developer's monies during the
42 Construction Term. The interest rate shall be 1% above the Federal Reserve bank prime loan
43 rate published most recently before the date of the Facilities Improvement Agreement.
44 Interest accrual begins on the date of execution of the Facilities Improvement Agreement and
45 will continue throughout the Construction Term.

1 Construction interest shall be computed utilizing the Two Thirds Rule, i.e. (direct Cost of
2 Construction x Construction Interest Rate ÷ 365) x (the Construction Term expressed in
3 days x 0.67) = Construction Interest.
4

5 (10) **Construction Term** means that period of time between the date of execution of the
6 Facilities Improvement Agreement and the date of acceptance of the project by the County or
7 the construction completion date as set forth in the Facilities Improvement Agreement,
8 whichever occurs first.
9

10 (11) **Facilities Improvement Agreement** means any agreement entered into by an
11 individual or entity with the County for the purpose of constructing improvements that are
12 required by the County to be constructed as a prerequisite to the development of real property.
13

14 (12) **Adjacent** means abutting on public roads, streets, right of way or easements in which
15 Road Improvement(s) is installed or directly connecting to Road Improvements through an
16 interest in real property such as an easement or license.
17

18 **Section .030 Applicability.**
19

20 This chapter is intended to apply to all Road Improvements (subject to the limitation that as
21 to road improvements this chapter's applicability is limited to those improvements defined in
22 RCW 35.72) where the construction of such improvements are the result of a Whatcom County
23 ordinance or ordinances that require such improvements as a prerequisite to property
24 development. Road Improvements constructed in order to comply with the Whatcom County
25 Development Standards, Subdivision Code, Zoning Code, Comprehensive Plan and Whatcom
26 County Code chapter 12.08 or 12.14 as applicable, are hereby declared to be prerequisites to
27 further property development for the purpose of RCW 35.72.010.
28

29 **Section .040 Application for Developer Reimbursement Agreement.**
30

31 Any Developer using private funds to construct Road Improvements in the County, may
32 apply to the County for a Developer Reimbursement Agreement in order to recover a pro rata
33 share of the Costs of Construction from subsequent users of the Road Improvements made by
34 Developer.
35

36 The application for a Developer Reimbursement Agreement shall be made prior to the date
37 Road Improvements have been accepted by the County pursuant to the Facilities Improvement
38 Agreement. Application shall be made on forms prepared by the Public Works Department
39 and shall be accompanied by the County Administrative Fee set forth in Section .120. The
40 application shall contain the following information which shall be approved by a State of
41 Washington licensed engineer or licensed land surveyor:
42

- 43 A. A detailed description of the road improvements to be installed.
- 44
- 45 B. A legal description of the Developer's property.

- 1 C. A legal description map and assessor's parcel numbers of the properties within the
2 Developer's proposed Assessment Reimbursement Area together with the name and
3 address of the owners of each property as shown in the records of the Assessor's
4 office of Whatcom County.
5
6 D. Vicinity maps of Developer's property.
7
8 E. The Developer's proposed Assessment Reimbursement Area and general location
9 of the Road Improvements.
10
11 F. Itemized cost data approved by a State of Washington licensed engineer for the C
12 Cost of Construction.
13
14 G. The Developer's proposed allocation of the Cost of Construction to the individual
15 properties within the proposed Assessment Reimbursement Area and the method
16 used for such allocation and segregations.
17
18 H. An Application Summary with project description, name of Developer and legal
19 descriptions for each of the properties within the Assessment Reimbursement Area
20 together with a statement of intent to collect the proposed allocation of Cost of
21 Construction to each property. The Application Summary shall include the
22 following language:

23
24 "This Application Summary shall have no further force or
25 effect nor shall it constitute an enforceable obligation against
26 any of the properties described herein upon the recording of a
27 Developer Reimbursement Agreement made as to the
28 property herein described.
29

30 This Application Summary shall have no further force or
31 effect nor shall it constitute an enforceable obligation against
32 any of the properties described herein after one year from the
33 date of recording; provided, the effective term of the
34 Application Summary may be extended by filing an extension
35 executed by the Developer and approved in writing by the
36 Public Works Department."
37

38 The Application Summary shall be in recordable form.
39

40 Filing of an Application Summary is elective. If no Application Summary is filed, then the
41 provisions of section .080(A) and (B) shall not apply.
42

43 The Public Works Director shall establish policies and procedures for processing
44 applications and complying with the requirements of this ordinance.
45

1 **Section .050 Preliminary Determinations.**

2 The Public Works Department shall review and approve the preliminary Assessment
3 Reimbursement Area and preliminary Assessment for real property benefited by the Road
4 Improvements based on the following:

5
6 A. The likelihood that benefited property will be developed within fifteen years from
7 the date of recording of the Developer Reimbursement Agreement.

8
9 B. The likelihood that at the time of development of the benefited property such
10 property will not be required to install similar Road Improvements because they were already
11 installed by the Developer.

12
13 C. For Road Improvements, that benefited parcels are Adjacent to such Road
14 Improvements or likely to require connection to or service by Road Improvements.

15
16 D. An equitable allocation of the Cost of Construction among the properties within the
17 Assessment Reimbursement Area, so that each pays for benefits attributable to those
18 Improvements. The method or methods used to calculate the allocation of the Assessment may
19 be either front footage, number of units, square footage, or may be the zone and termini
20 method or other recognized methods reasonably calculated to equitably allocate the
21 Assessment. Credit may be given to property owners who have already paid a higher share
22 by monetary or in-kind value for the already developed portion of the road.

23
24 **Section .060 Preliminary Determination Notice.**

25
26 A. The preliminary Assessment Reimbursement Area and the preliminary Assessment
27 as approved by the Public Works Department shall be sent by certified mail to the property
28 owners of record within the preliminary Assessment Reimbursement Area in accordance with
29 RCW 35.72, as from time to time amended.

30
31 B. The applicant or any property owner within the preliminary Assessment
32 Reimbursement Area may, in writing within 30 days of mailing of the notice, request a hearing
33 to be held before the County Council to contest the preliminary Assessment Reimbursement
34 Area and preliminary Assessment. Notice of such hearing shall be mailed not less than 20
35 days before the date of the hearing to all property owners of record within the Assessment
36 Reimbursement Area. Public hearing before the County Council shall be conducted as soon as
37 is reasonably practical. After public hearing the County Council may approve, modify, or
38 reject the Assessment Reimbursement Area and the Assessment for each property within the
39 Assessment Reimbursement Area applying the standards set forth in this ordinance. The
40 County Council's determination with regard to the Assessment Reimbursement Area and the
41 Assessment shall be determinative and final.

42
43 C. In the event no written request is received as required, the determination of the
44 Public Works Department shall be final.

1 **Section .070** **Developer Reimbursement Agreement.**

2
3 Based upon the preliminary Assessment Reimbursement Area and preliminary if no hearing
4 is requested, or based upon the County Council's determination of the Assessment
5 Reimbursement Area and Assessment if a hearing is requested, the Public Works Department
6 shall prepare and give to the applicant a Developer Reimbursement Agreement.
7

8 **Section .080** **Recording/Effective Date/Payment of Assessment/Lien for Non-payment.**

9
10 **A.** The Developer's right to Assessments shall relate back to the date the Developer
11 records an Application Summary pursuant to section .040(G), above.
12

13 **B.** Any property described in the recorded Application Summary shall be subject to the
14 Assessment after it has been approved by the County pursuant to this chapter.
15

16 **C.** The Developer Reimbursement Agreement shall be promptly recorded by the
17 County with the Whatcom County Auditor.
18

19 **D.** The County shall not issue a building permit or similar development permit or
20 approval unless the County has received full payment of the Assessment, including
21 interest, applicable to the property connecting to or using the Road Improvements
22 constructed by the Developer.
23

24 **E.** If property is developed within the Reimbursement Area, the amount of such
25 Assessment shall be a binding obligation upon the owner of record (and successors)
26 of the affected property.
27

28 **Section .090** **Segregation**

29
30 The Public Works Department shall, upon the request of any property owner within the
31 Assessment Reimbursement Area, segregate the Assessment. The segregation shall be based
32 upon the same factors applied when the Assessments were originally established. The
33 property owner seeking segregation of the Assessment shall pay an administrative fee to the
34 County based upon a segregation fee schedule to be established by the Public Works
35 Department.
36

37 **Section .100** **Term of Developer Reimbursement Agreements.**

38
39 Each Developer Reimbursement Agreement shall be valid for a period not to exceed fifteen
40 years from the date of its recording.
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1 **Section .110** **Interest on Assessment.**

2
3 Each Assessment established in the Developer Reimbursement Agreement shall bear
4 interest from the date of recording of the Developer Reimbursement Agreement at an interest
5 rate fixed at the Federal Reserve rate for one-year Treasury bills on the secondary market.
6

7 **Section .120** **County Latecomers Administrative Fees.**

- 8
9 **A.** The County shall charge the Developer for processing Developer Assessment
10 Agreements a base fee of \$450.00 for Road Improvements. To the base fee shall be
11 added one and one half (1½ %) percent of the Cost of Construction.
12 **B.** Further, for every separate parcel of property within the applicant's proposed
13 Assessment Reimbursement Area \$150 shall be added to the base fee established
14 pursuant to the above schedule.
15
16 **C.** The base fee and the parcel fee may be adjusted annually to reflect inflationary
17 costs, increase or decrease, through the Whatcom County Unified Fee Schedule.
18
19 **D.** The County Latecomer Administrative Fee shall be paid upon application for a
20 Developer Reimbursement Agreement.
21

22 **Section .130** **Payment of Developer Reimbursement Charge.**

23
24 Each Assessment shall be due in its entirety pursuant to 0.080 , Section D, and shall be
25 paid to the County in one lump sum including interest until date of payment. The County will
26 pay over, to Developer, the amounts due within forty-five (45) days of receipt.
27

28 When the Assessment for any property has been paid in full, the Public Works Director
29 shall record a certification of payment that will release such property from the Developer
30 Reimbursement Agreement.
31

32 **Section .140** **Appeal.**

33
34 A Developer may appeal the interpretation and/or decisions of the Public Works
35 Department concerning any aspect of this chapter to the County Council. The burden of proof
36 shall be upon the appellant to demonstrate that the decision (s) of the Public Works Department
37 was based on an error of law or was clearly erroneous, based upon the information at the
38 disposal of the Department. Such interpretation and/or decisions shall be considered final at
39 the time of the mailing of the notice described in Section .060 above. Appeals, if any, must be
40 filed within thirty (30) days from mailing date of that notice.
41

42 **Section .150** **Enforcement of latecomer obligations.**

43
44 In processing and imposing obligations in this chapter for reimbursement of Developers, the
45 County in no way guarantees payment of assessments by latecomers or enforceability of

1 assessments or the amount(s) thereof against such persons or property. Nor will the offices or
2 finances of the County be used for enforcement or collection of latecomer obligations beyond
3 those duties specifically undertaken by the County herein. It shall be the obligations of a
4 Developer to take whatever authorized means are available to enforce payment of latecomer
5 assessments; and, Developers are hereby authorized to take such actions.

6
7 **Section .160** **County Participation In Assessment Reimbursement.**

8
9 As an alternative to financing projects under this chapter solely by owners of real estate, the
10 County may join in the financing of improvement projects and may be reimbursed in the same
11 manner as the owners of real estate who participate in the projects, provided that as to Road
12 Improvements, the conditions of the County's participation shall be specified by ordinance. The
13 County may be reimbursed only for the costs of improvements that benefit that portion of the
14 public who will use the developments within a given assessment reimbursement area. No costs
15 of improvement that benefit the general public may be reimbursed.

16
17 **Section .170** **Effect of annexation.**

18 Annexation to a city or town of all or a portion of an assessment reimbursement area shall not
19 affect liability for assessment charge of properties so annexed nor responsibilities of an owner
20 under the contract.

21
22 **Section .180** **Date for Review.**

23 The terms set forth herein shall be reviewed four years from date of adoption.