

CITY OF NEWPORT
RESOLUTION 3500

**A RESOLUTION AMENDING CITY OF NEWPORT
SYSTEM DEVELOPMENT CHARGE PROJECT PLANS**

Findings:

1. The City of Newport adopted Resolution No. 3431 (as amended by Resolution No. 3454) establishing a System Development Charge methodology and rates.
2. The System Development Charge (SDC) methodology includes a Projects Plan for each type of SDC that lists the capital improvements that the City intends to fund with the improvement fee revenues, the estimated cost of each improvement, and the percentage of that cost that is eligible to be funded with revenue from the fees. Pursuant to Newport Municipal Code Section 12.15.040, Project Plan lists may be amended by Council resolution.
3. Credits for the improvement fee portion of an SDC are available to developers to offset the cost of constructing a capital improvement on a Project Plan list. Such credits are limited to the value of that portion of the improvement that has been built larger or with greater capacity than is necessary for the particular development, and cannot exceed the amount of the improvement fee unless associated with a phased project in which case the credits must be acted upon within 10 years.
4. If a public improvement for which a credit is sought is not on the SDC Project Plan list, the developer may submit an application for placement of the improvement on the list.
5. On November 6, 2009, the City of Newport received such a request from Landwaves, Inc. for construction of (a) the Highway 101 and 40th Street intersection; (b) 40th Street to a minor arterial street standard from Highway 101 to the intersection with College Way; (c) a 12" sewer main beneath 40th Street; and (d) a water boost pump station, auxiliary power generator, and 12" water mainline beneath 40th Street. Dedication of these improvements has been accepted by the City, and are intended to serve the entire Wilder development and OCCC main campus.
6. As the developer is now at a point where they have prepared a final plat for a portion of their project it is possible for them to provide the City with evidence establishing the difference in value between what was constructed and the city's minimum standard facility size or capacity needed to serve the initial phase of development. It is therefore prudent for the city to add the projects to the SDC Project Plan list so that city staff can continue to work with Landwaves, Inc on determining the amount of SDC credits they have earned.

7. In adding the projects to the SDC Project Plan list, there is no need to estimate the cost of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues since the work has already been completed and will not change the SDC amount payable by others.

Based on these findings,

THE CITY OF NEWPORT RESOLVES AS FOLLOWS:

Section 1. The Water System Development Charge Project Plan list contained in Table 8.4.1 of the 2008 Water System Master Plan (Resolution No. 3464, originally adopted under Resolution No. 3431) shall be amended to include a water boost pump station, auxiliary power generator, and 12" water mainline beneath 40th Street between Highway 101 and College Way.

Section 2. The Wastewater System Development Charge Project Plan list contained in Table 4.4.4 of the document titled "Public Infrastructure System Development Charge Methodology," dated September 2007 (Resolution No. 3431), shall be amended to include a 12" sewer main beneath 40th Street between Highway 101 and College Way.

Section 3. The Transportation System Development Charge Project Plan list contained in Table 6.5.1 of the document titled "Public Infrastructure System Development Charge Methodology," dated September 2007 (Resolution No. 3431), shall be amended to include construction of the Highway 101 and 40th Street intersection, without a traffic signal, and the construction of 40th Street to a minor arterial street standard from Highway 101 to the intersection with College Way.

Section 4: The effective date of this resolution is April 5, 2010.

Adopted by a 9-0 vote of the Newport City Council on April 5, 2010.

Signed on April 5, 2010.



William D. Bain
Mayor

ATTEST:



Margaret M. Huber
City Recorder

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COAST GUARD CITY, USA

mombetsu, japan, sister city

March 12, 2010

Bonnie Serkin
Landwaves, Inc.
1733 NE Seventh Avenue
PO Box 12085
Portland, Oregon 97212

RE: Request for System Development Charge Credits for Phase 1 Wilder

Bonnie,

The November 6, 2009 letter (attached) that your attorney, Dana Krawczuk, prepared identifies transportation, wastewater and water system projects that you have built that you would like to see eligible for System Development Charge (SDC) credits. We have reviewed them and agree that they are appropriate projects. What we need to sort out though, is the amount of the credits. The Newport Municipal Code describes how credits are to be apportioned. Specifically, it states:

"If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit..."

The letter indicates that credits are being sought for the following improvements:

- Transportation SDC Credits - Construction of the Hwy 101/40th Street intersection and the construction of 40th Street to a minor arterial street standard from the Hwy 101 to the intersection with College Way, to serve the entire Wilder development and OCCC main campus.
- Wastewater SDC Credits - A sanitary sewer mainline installed beneath 40th a portion of which was upsized from 8" to 12" to provide capacity for the industrial zoned GVR site and to serve the entire Wilder development and OCCC main campus.
- Water SDC Credits - A water booster pump station and auxiliary power generator and a 12" water mainline installed beneath 40th to serve the entire Wilder development and OCCC main campus.

Additionally, Parks SDC credits are being sought for park and open space sites that are identified as Tracts A and B on the Final Plat for Phase I of Wilder, which was submitted to the City for review on March 1, 2010.



For the purpose of determining SDC credits we assume the “particular development project” is the 40 residential lots depicted on the Wilder Phase I plat. With that in mind, a credit is due for the portion of the above referenced improvements that exceeds what the City would otherwise require for the 40 lots. To assist you in calculating this number we provide the following as the minimum City standards for this development.

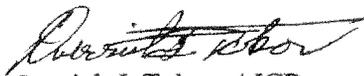
- Minimum Transportation Requirement – A local (minor) street would be required to provide access to the 40 lots. The minimum right-of-way width for a local street is 50’ with an improved surface of 36 feet. Sidewalks would be required on both sides of the street. With respect to the Hwy 101 intersection, ODOT would make the determination of required improvements; however, we expect that they would require a left turn lane for the 40 units.
- Minimum Wastewater Service Requirement – An 8” line would be required to serve the 40 residential lots.
- Minimum Water Service Requirement – A pump station would be needed to ensure sufficient fire flow for the 40 units. Auxiliary power would not be required. An 8” service line would be needed.
- Minimum Parks Requirement – The City does not have a minimum requirement for park dedications or improvements.

Your November letter includes approximate cost figures for street, wastewater, and water system expenditures. We will need supporting documentation for those numbers. For the minimum requirements, we would appreciate your providing engineers cost estimates. The difference between the two is the SDC credit for transportation, wastewater and water. SDC credits for the park dedication (Tracts A and B, of Wilder Phase 1) will be based upon the appraisal that you are preparing. You’ll also be eligible for an SDC credit for the park improvements once they are completed and accepted.

The street, wastewater, and water projects will need to be added to the City’s SDC Project List in order for you to receive the credits. This is done by resolution of the City Council. The park project (both the dedication and improvements) is already on the Project List. Once I have the above information, I can prepare the resolution for Council consideration.

I hope that this is sufficient guidance for you to determine the SDC credits for which your project is eligible. Please don’t hesitate to contact me if you have questions.

Sincerely,



Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626

xc: Jim Voetberg, City Manager
Lee Ritzman, Public Works Director
Dana Krawczuk, Attorney, Ball Janik, LLP

Attachment

BALL JANIK LLP

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DANA L. KRAWCZUK
ALSO ADMITTED IN WASHINGTON

dkrawczuk@balljanik.com

November 6, 2009

BY E-MAIL

Re: Request for Transportation, Wastewater and Water SDC Credit and to Place the Improvements on the SDC Project List

Dear Mr. Voetberg:

Please consider this letter as Landwaves' written request for (1) transportation, wastewater and water Systems Development Charge (SDC) credits associated with the Improvements (defined below) Landwaves has constructed in Wilder and (2) to place the Improvements on the City's SDC project list. NMC 12.15.065.C. Our request is timely filed because it is filed no later than 60 days after the City of Newport's September 9, 2009 acceptance of the Improvements. NMC 12.15.065.C .1.

Each Improvement and the related requested SDC credit is detailed below, but in summary, Landwaves estimates¹ that it has earned the following credits:

- o Transportation SDC credit related to the oversizing of 40th Street and the intersection of 40th Street and Highway 101, which cost Landwaves \$3,927,091.
- o Wastewater SDC credit related to the oversizing of the sanitary sewer mainline located beneath 40th Street, which cost Landwaves \$663,760.
- o Water SDC credit related to the oversizing of the booster pump station and water mainline located beneath 40th Street, which cost Landwaves approximately \$816,570.

1. Background

One June 18, 2007, the City adopted the South Beach Neighborhood Plan and Related Urban Growth Boundary Amendments, Comprehensive Plan Text Amendments and Zoning Map Amendments that encompassed approximately 750 acres. The South Beach Neighborhood Plan envisioned a village core that was anchored by the Oregon Coast Community College's ("OCCC") main campus and a vibrant mix of commercial and multifamily housing. The Plan also envisioned that a mix of housing types would surround the village core.

¹ As detailed below, the figures used in this letter are rough estimates. After meeting with the City to determine the level of detail needed, Landwaves will provide more precise numbers.

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The main transportation artery in South Beach was planned to be a loop road off of Highway 101 with intersections onto Highway 101 from 40th Street and 50th Street.

Landwaves is the predominate landowner in South Beach. Landwaves, the City and OCCC have worked collaboratively to bring the South Beach Neighborhood Plan to fruition. For example, on January 23, 2008 the City, Landwaves and OCCC entered into a development and cost sharing agreement related to the construction of 40th Street and Highway 101 intersection (the "40th Street Agreement"). Similarly, when the annexation and rezoning of a portion of South Beach was challenged by ODOT, the City and Landwaves jointly defended the decision and brokered a compromise with ODOT.

The first step that Landwaves took towards implementing the South Beach Neighborhood Plan was to petition to annex approximately 85 acres of South Beach into the City, and to assign City zoning to the annexed property (the "Annexation"). The property subject to the Annexation included the future OCCC main campus, Phase 1 of Wilder, and other property not owned by Landwaves. The initial approval of the Annexation (Ordinance 1922) was appealed to LUBA by ODOT. Once ODOT's issues were addressed, the City readopted the Annexation (with additional conditions) as Ordinance 1931 on August 6, 2007. Landwaves then partitioned approximately 80 acres of its property to create the parcel that would become OCCC's new main campus. Partition # 5-PAR-07.

Landwaves owns approximately 200 acres within South Beach, which it intends to develop as the sustainably built neighborhood of Wilder. Wilder will be comprised of multiple phases that are developed over time. A Wilder concept map is attached. Only Phase 1 (which includes subphases 1A-1F) has been annexed into the City. Landwaves has obtained preliminary planned development, final development plan and tentative plat approval for Phases 1A, 1B and 1C of Wilder, collectively referred to herein as the "Plan Approvals." The Plan Approvals have been modified a number of times to reflect refinements based on topography and the land needs of purchasers, such as OCCC.

To date, Landwaves has constructed 40th Street from its intersection with Highway 101 to College Way, including the required improvements to the intersection with Highway 101, a sanitary sewer mainline located beneath 40th Street, a 12-inch water mainline located beneath 40th Street, and a booster pump station, collectively referred to herein as the "Improvements." All of the Improvements qualify as "Capital Improvements." NMC 12.15.015.C. All of the Improvements were required as a condition of development approval to one or more of the many land use actions that have been approved in South Beach. As detailed below, the Improvements are all sized so that they have capacity beyond the need generated by Phase 1 of Wilder, the "particular development project." At this time, none of the Improvements are listed on the City's adopted SDC project list. However, through this application we request that the Improvements be included on the SDC project list. Therefore, all of the Improvements

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are considered "Qualified Public Improvements" that are eligible for SDC credit. NMC 12.15.015.H. and NMC 12.15.065.C.

2. **Transportation SDC Credit**

The Qualified Public Improvements that Landwaves seeks transportation SDC credit for include (1) the improvements to the intersection of 40th Street and Highway 101 (the "Intersection") and (2) the construction of 40th Street from the Intersection to the intersection with College Way ("40th Street"). Landwaves estimates that including hard and soft costs, 40th Street cost approximately \$4,760,922 and that the Intersection cost approximately \$891,169. Under the 40th Street Agreement, the City reimbursed Landwaves for some of its costs, so Landwaves actual out of pocket expenses for 40th Street were approximately \$3,510,922 and were approximately \$416,169 for the Intersection, a total of \$3,927,091.

The construction of the Intersection and 40th Street were required by the Annexation. 40th Street is a minor arterial and was designed to serve the entirety of Wilder and the OCCC campus, not just Phase 1 of Wilder (the only property within the Annexation that is currently owned by Landwaves). For example, the grade of 40th Street was required to be much flatter than it would have been if the road was serving only Phase 1 of Wilder. 40th Street is sized so that it has capacity that can accommodate the trips generated by the OCCC main campus, subsequent phases of Wilder and other property within South Beach. Similarly, the Intersection has capacity to absorb more traffic than will be generated by Phase 1 of Wilder's share of the 180 trip cap required by the Annexation. The Intersection is constructed to provide capacity for properties not owned by Landwaves, such as OCCC's main campus and GVR's industrial property, which were both included in the Annexation. Additionally, when Ash Street connects to 40th Street, additional trips can be added to the Intersection without causing the Intersection to fail to meet ODOT mobility standards.

3. **Wastewater SDC Credit**

The Qualified Public Improvement that Landwaves seeks wastewater SDC credit for is the sanitary sewer mainline installed beneath 40th Street (the "Sewer"). Landwaves estimates that including hard and soft costs, the Sewer cost approximately \$663,760. The construction of the Sewer was required by the Plan Approvals. The Sewer was designed to have capacity and serve the entirety of Wilder and the OCCC campus that can gravity feed to the line, not just Phase 1 of Wilder. For example, near the Intersection, the Sewer was upsized from 8 inches to 12 inches to provide capacity for industrial property owned by GVR.

4. **Water SDC Credit**

The Qualified Public Improvements that Landwaves seeks water SDC credit for include (1) the water booster pump station and auxiliary power generator (the "Booster Pump") and (2) the 12-inch water mainline installed beneath 40th Street (the "Water Line"). Landwaves

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estimates that including hard and soft costs, the Booster Pump cost approximately \$384,000 and the Water Line cost approximately \$432,570, for a total cost of \$816,570. The construction of the Booster Pump and Water Line were required by the Plan Approvals.

Like the Sewer, the Water Line was designed to have capacity and serve the entirety of Wilder and the OCCC campus with both domestic water and water for fire suppression, not just Phase 1 of Wilder. The Booster Pump also provides excess capacity because it includes more pumps that would be necessary for Phases 1 of Wilder, and is designed to have capacity and serve the entirety of Wilder and OCCC.

5. Request to Place the Improvements on the City's SDC Project List.

The Improvements identified above, including the Intersection, 40th Street, the Sewer, the Booster Pump and the Water Line, are not currently listed on the City's SDC project list. It is our understanding that the City's capital improvement plans (CIPs) have not been updated since the adoption of the South Beach Neighborhood Plan. For example, the City's update to the Transportation System Plan has been under review for over a year, and includes transportation planning for South Beach. The TSP guides what must be included in the CIP, so the transportation CIP currently does not include South Beach projects. The 40th Street Agreement recognized this when it acknowledged that Landwaves intended to seek SDC credit for the Intersection and 40th Street, and that the City would consider including the Intersection and 40th Street in the TSP and CIP. Sections 1.3.4 and 2.2.4 of the 40th Street Agreement.

As a large land owner in South Beach with a strong desire to see South Beach become a success, Landwaves pioneered development in South Beach and incurred substantial infrastructure costs that were entirely front loaded to the first subphases of Wilder. Even though the Improvements are not included on any CIP or SDC project list, they are foundational infrastructure improvements that serve the region of Newport south of the bridge. Therefore, the Improvements are of the type and location that is appropriate for inclusion on the SDC project list, so Landwaves request that the City Manger place the Improvements on the SDC project list. NMC 12.15.065.C .6.

6. Transferability of Excess SDC Credits

Landwaves understands that SDC credits may only be used to offset the improvement fee portion of the SDC. Landwaves thinks that it likley that the amount of SDC credits Landwaves has earned will exceed the improvement fee portion of the SDCs charged for Wilder Phase 1. Because the subsequent phases of Wilder are future phases of development, Landwaves understands that any excess SDC credits can be used on later phases of Wilder (so long as the credits are used within 10 years). NMC 12.15.065.C .3.

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7. **Additional Details**

Landwaves understands that it has the burden of proof for earning the requested SDC credits. Given the complicated land use history and complex nature of the Improvements and South Beach development, Landwaves requests feedback from the City regarding the nature of additional evidence or analysis that the City may need to evaluate our SDC credit request. We suggest that once the City has had a chance to review our request, we set up a telephone conference.

Sincerely,



Dana L. Krawczuk

DLK:DLK

cc: Derrick Tokos, Planning Director
Bonnie Serkin and Will Emery, Landwaves
Don Whitehead, P.E., David Evans and Associates, Inc.



WILDER COMMUNITY MASTER PLAN
OVERALL MASTER PLAN CONCEPT
WITH PROPOSED LAND SWAP AREAS

JULY 2009

