

**KUNA CITY COUNCIL SPECIAL MEETING
MINUTES
MARCH 8, 2010
KUNA CITY HALL COUNCIL CHAMBER, 763 W. AVALON**

1. CALL TO ORDER AND ROLL CALL:

Mayor Dowdy called the special meeting to order at 6:00 p.m.

PRESENT: Mayor Dowdy, Council President Bachman,
Councilmember Cardoza, Councilmember Hoiland
and Councilmember Lang.

ALSO PRESENT: City Attorney Richard T. Roats, City Engineer
Gordon Law and City Clerk Lynda Burgess.

2. RESOLUTION:

RESOLUTION NO. R10-2010: ESTABLISHING A CREDIT FOR THE CITY OF KUNA TREATMENT PLANT CONNECTION FEE UPON PAYMENT OF ASSESSMENT IN LID 2006-1; PROVIDING FOR CONDITIONS OF TRANSFER OF EQUIVALENT DWELLING UNITS; PROVIDING THAT THIS RESOLUTION SHALL NOT BE SEPARABLE FROM ORDINANCE 2010-3; AND PROVIDING AN EFFECTIVE DATE.

CA/Roats asked if council preferred to go through the Resolution section by section, or in its entirety, before council would discuss each section.

C/Bachman suggested going through the document section by section with discussion.

CA/Roats explained Section 1 – Credit Toward Sewage Treatment Plant Connection Fee: As has been discussed during the appeal process, this section confirms that the City will upon payment in full of an EDU in the amount of \$3,233.75, plus penalties, interest and other charges, as set forth in the Lien Ordinance, the property shall receive a credit against sewage treatment plant connection fee.

Council had no questions.

CA/Roats explained Section 2 – Establishing a Fixed Connection Fee: If the EDU is paid in full during the open pay period of 30 days from the passage of the Lien Ordinance, the sewage treatment plant connection fee is set at \$500.00 as long as the EDU is utilized within 10 years. If the EDU is not used within 10 years, the sewage treatment connection fee raises to \$1,000.00. In addition, if after the open pay period, an EDU is paid for, but within a period of 5 years, the EDU shall be fixed at \$4,326.00. IF the EDU is paid for greater than 5 years from the date of the Lien Ordinance, then the rate is fixed at the then current rate for the sewage treatment plant connection fee. All EDUs paid for in full after the open pay period, the sewage treatment plant connection fee shall be fixed for a period of 10 years from

the date of payment. The intent is to give property owners an incentive to prepay their EDUs during the thirty-day open pay window or as soon as possible and provide benefits for doing so.

C/Bachman asked if the \$500 wouldn't be due until they pulled a building permit. They would just pay the assessment amount.

CE/Law confirmed that that is correct and they would receive the credit at the time they pulled the building permit of \$3,233.75 and the rest of the treatment plant connection fee costs \$500.

CA/Roats discussed the use of the EDU within a period of time, such as 10 years or a period of time that Council determines to be appropriate.

C/Hoiland asked if payment occurs after the 30 days, does the \$3,233.75 credit apply.

CA/Roats answered yes.

C/Hoiland clarified that LID members will receive credit of the base payment of \$3,233.75 regardless if it is paid before or after the 30 days. The additional credit, what ever it is set at, applies beyond that.

CE/Law confirmed that that is the intent.

C/Hoiland thought it should be more explicit in the wording.

CA/Roats stated that the payment will be credited appropriately.

CE/Law directed C/Hoiland to section 1. Once it's paid in full, there is a credit of \$3,233.75.

C/Hoiland asked, regardless if it's paid early or late or with interest and penalties?

CE/Law indicated that C/Hoiland was correct. If it's paid in the open pay period, there is some additional benefit described in paragraph 2.

M/Dowdy pointed out that, in the first sentence of paragraph number 2 where it says "if an EDU is paid for in full prior to the expiration of the 30 day open pay period" that language needs to be fixed based upon C/Bachman's questions, that the only thing that would have to be paid in full prior the 30 day expiration would be the actual assessment amount of \$3,233.75. It's not the actual EDU that is paid in full since the other \$500 wouldn't be due until the permit is pulled.

CA/Roats explained that the \$500 is the connection fee for the sewer treatment fee paid in the 30 day window. The EDU connection fee is not being combined. The EDU fee is \$3,233.75.

C/Bachman stated that Council could still clarify that by inserting "if an EDU assessment is paid in full prior to the expiration of the 30 day open pay period as per the lien ordinance, the

sewage treatment connection fee per EDU shall be established and fixed in the credit amount plus \$500.”

CA/Roats explained Section 3 – Credit against Sewage Treatment Plant Connection Fee: This section provides that if a building permit is issued and paid for, after the passage of the Lien Ordinance, the property shall be entitled to a credit of the EDU assessment, provided any penalties, interest or other charges that have accrued and the sewage treatment plant connection fee have, have also been paid.

CA/Roats explained Section 4 – Transfer of Assigned EDUs: Provides for a transfer policy for the EDUs. It deals with the three situations that may arise. Transfer to any city platted lot connected to the sewer system at the discretion of the owner; transfer of EDUs within the LID to other properties and reallocation on LID property owned in common.

C/Bachman asked if the bank looked at this. If so, have they provided any feedback?

CA/Roats replied that the bank has looked at the resolution but it has not provided feedback and is not expected to. The bank is only concerned with the transfer of EDUs that affect its security interests. It appears that the bank wants to deal on a case by case basis.

C/Cardoza asked if provisions of paragraphs 2 and 3 apply to transfers allowed in paragraph 4.

CA/Roats responded yes.

CE/Law (*unintelligible*)

C/Cardoza asked if that shouldn't that be spelled out in number 4.

CA/Roats responded yes, it will be clarified.

CE/Law (*unintelligible*)

C/Cardoza stated that paragraph 4, section 1 reads “If an EDU is not paid in full, then the EDU shall be reallocated on LID property.” What is the explanation for that? If it's not paid for, why would you want to transfer it?

CA Roats explained that the situation as it is set up now, due to the 2006 Resolution, if a parcel was assessed EDUs at 3 per acre, and the property owner now wants to develop with more than 3 per acre or less than 3 per acre, there is no ability for any type of overall development planning for higher or lower density. Members are only permitted 3 EDUs per acre. Under the proposal, members can shift EDUs on a property to maximize the benefits of the property. They may want higher density, multi-family located in one site and large lots on another site within the property. This gives them the ability to shift EDUs.

C/Bachman stated that this can also be applied to someone who does a lot split, is that correct?

CA/Roats asked if she means that they have a lot that had an EDU on it now.

C/Bachman said that there have been discussions about people who could split their property, if eligible. Would that reallocate the EDUs or reduce and split the assessment?

CE/Law answered that that would be allowed under certain conditions, reallocation of EDUs.

C/Bachman asked if the resolution handles the school district issue.

CA/Roats indicated that this deals with the reallocation of EDUs resulting from the school purchasing the property and a reallocation to other properties that are in the development.

C/Bachman asked CA/Roats if they needed to elaborate on the wording "can demonstrate a reasonable use of the EDUs". What do we mean by that?

CA/Roats stated that the attempt is to be broad to allow for beneficial uses.

C/Bachman asked Council their thoughts on the 10 year timeline.

C/Hoiland thought it was fair and felt that stretching it out any longer could potentially hurt the City with costs.

C/Lang felt that if the time limit is shortened, it would not be a benefit to the LID holders because of the economy.

C/Cardoza complained that, over the past 3 or 4 months, he asked for an explanation of the costs of operating the sewer plant so that Council can set a reasonable sewer connection fee. Is there any explanation for why the Council has not gotten a breakdown between the \$4,326 and the \$3233.75?

CE/Law reminded C/Cardoza that the operation of the plant does not have anything to do with the \$4,326. The operation of the plant is paid for out of monthly fees, not out of connection fees.

C/Cardoza asked why the connection fee is proposed to be set \$3,233.75 rather than \$1,000 more.

CE/Law explained that the City has other obligations going forward that will need to be taken care of. This resolution may make it more feasible to buy from the LID members rather than the City. We have to protect the City to provide the necessary facilities as needed.

C/Bachman asked CE/Law to describe what improvements the connection fees pay for.

CE/Law reported that the connection fees pay for capital expenditures such as building, equipment, property, and those types of facilities.

C/Bachman suggested looking into a short-term rate, possibly 3-5 years at the existing rate of \$4,326 as a benefit to LID members.

CE/Law stated that if it was adopted, we would say it was fixed and not go higher than \$4,326 for the next number of years that Council decides on.

C/Bachman confirmed that if it went beyond that, it would be what the current rate was for that time.

C/Hoiland indicated that he supported that concept as an extra incentive.

C/Bachman told C/Cardoza that it could help address his issue.

C/Cardoza stated that the LID people have an interest whereas someone walking through the door doesn't have an interest. How do you be fair to the LID person? He read the second half of number 2, where it says "if after expiration, 30 day prepayment" it goes on to say "the EDU shall be established and fixed upon the date of payment in full." He was confused about that sentence as to how number 3 applies. Number 3 specifically has a plant connection fee of \$4,326 yet the last part of paragraph 2 specifically goes on to say "shall be established and fixed upon the date of payment." He doesn't follow the two.

CA/Roats answered that what C/ardoza was looking at has the \$4,326 that has been taken out. It now reads the then current rate.

C/Hoiland explained to C/Cardoza he had an older version of the Resolution.

CA/Roats clarified that that was an issue that has been addressed to make it clear.

C/Cardoza stated that the version he has was received at 10:30 a.m. today. He asked when the change was done.

CA/Roats believed it was emailed to council on Friday. Councilmember Bachman made a suggestion regarding the clarification of the then current rate. This language was inserted as suggested this morning at 10:00 a.m.

C/Bachman indicated that she called CE/Law this morning with the same question C/Cardoza posed. The language was matched from section 2 in section 3.

CC/Burgess explained that the original version was emailed to Council last Friday and the latest version was placed on their desk this evening.

CE/Law explained that there were 2 changes between the newest version and the one that C/Cardoza has. One was a spelling change and the other was the one C/Bachman just described. Also to note, the difference between paragraphs 2 and 3, is to specifically deal with those who apply for a building permit without paying their EDU first. Paragraph 2 is more general and allows them to pay anytime.

CA/Roats further clarified that paragraph 2 is five years, if paid after 30 days. Is it Council's intent to lock in for 5 years? Lock it in at today's rate.

C/Hoiland said if paid after 30 days.

M/Dowdy indicated the 5-year period is the time they can pay it to lock the price. It would start from the end of the 30 day open pay period.

CA/Roats asked how staff should treat the prepays as regards the benefits in paragraph 3 of the Resolution between February 18 and today's date.

C/Hoiland asked if the 4 prepays would get the same benefits we were talking about.

In response to C/Bachman, CE/Law explained that 4 people had already paid since the closing of the LID on February 18. The way this resolution is worded, it's to be effective on the date of its adoption. They were charged the \$4,326. The thinking is they fell into the open pay period and they should get the full benefit. He asked if Council was in agreement.

Council agreed.

CA/Roats also recommended changes to paragraph 1, regarding penalties and interest.

C/Bachman confirmed that it should read "together with any penalties, accrued interest and other charges."

C/Hoiland asked what the other charges would be.

CA/Roats explained that one of the issues the statute provides is the creation of a reserve fund that would increase the payment per EDU of up to 10% of the EDU assessment. He recommended, at this point, that council not address or add this condition to the resolution or ordinance.

C/Cardoza asked if there is an advantage to the City if the EDU's are paid in full in 30 days.

CA/Roats responded that the biggest advantage is the to the LID members. The advantage to the city is knowing that it is paid off. Questions about default and its impact on the housing market; what the city has to do and the impact on developmen; easier for bank to sell bonds if there is a number of prepayments. These are factors that are considered in the bond sales. The costs certainly increase for the LID members after the 31st day if there is no payment. The spreadsheet shows an increase in costs.

C/Cardoza stated, rather than rewarding those that have the money to pay off the assessment, should the City treat all of them the same, and give them the same conditions. Should we allow all of them to just pay the \$500 plus the \$4,326 and treat them all equally if it doesn't affect the city? If it's paid in full, the money doesn't come to the City, it goes to the bank.

CA/Roats confirmed that the assessment portion goes to the bank and the connection fee goes to the City.

C/Cardoza wondered if the City is rewarding those with money in the bank to a better advantage over those who don't and are accruing interest over the next 20 years.

CA/Roats opined that there is no doubt that it is beneficial to pay off the assessments.

CE/Law reviewed the amendments requested by Council, in paragraph 2 following the word EDU, "if an EDU assessment," in paragraph 2 and paragraph 3 to add language that fixes the treatment plant connection fee at \$4,326 for 5 years without adjustment upward. In paragraph 7, the effective date will be February 18 for the date of passage of the lien ordinance.

CA/Roats also mentioned a change in paragraph 3, "after the passage of this resolution."

M/Dowdy added that paragraph 1 needs to have "other fees or other charges" added.

CA/Roats indicated, in paragraph 4, any credits or benefits that have been earned as provided for in Sections, 1, 2 or 3, may be transferred.

C/Bachman confirmed that the Resolution number is R10-2010.

CE/Law stated that there had been some discussion keying in the 5-year fixed amount of the treatment plant connection fee at the end of the 30 days. Is there a reason that all of them couldn't be based on February 18, 2010?

C/Hoiland agreed that if it's just a difference of a couple of weeks, it would make it easier and simplify.

Moved by C/Bachman, seconded by C/Lang to adopt Resolution No. R10-2010 establishing a credit for the City of Kuna Treatment Plant connection fee upon payment of assessment in LID 2006-1; providing for conditions of transfer of equivalent dwelling units; providing that this Resolution shall not be separable from Ordinance 2010-3; and providing an effective date with the changes as discussed. Motion carried 3-1 (C/Cardoza voted no).

- 2. ADJOURNMENT:** There being no further business to conduct, it was moved by C/Lang, seconded by C/Bachman to adjourn at 7:05 p.m. Motion carried 4-0.

J SCOTT DOWDY, MAYOR

ATTEST:

LYNDA BURGESS, CITY CLERK

DATE APPROVED: APRIL 6, 2010