

ORDINANCE NO. 29-1992

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, CLOSING THE PUBLIC HEARING; ORDERING IMPROVEMENTS AND LEVYING ASSESSMENTS AGAINST VARIOUS PERSONS AND THEIR PROPERTY FOR THE PAYMENT OF A PART OF THE COST OF IMPROVING AND PAVING PORTIONS OF THE FOLLOWING STREETS IN THE CITY OF ABILENE, TAYLOR COUNTY, TEXAS, TO-WIT: 1991 SPRING ASSESSMENT PAVING PROGRAM.

UNIT I - 30' WIDE STREET F/C to F/C

1. Almond Street - From N. 13th Street to Cedar Hill Cemetery South
2. Victoria Street - From Sandefer Street to Vogel Avenue
3. Orange Street - From Anson Avenue to W. Stamford Street
4. Walnut Street - From University Boulevard to 300 feet north
5. S. 18th Street - From Portland Avenue to Grand Avenue
6. Grand Avenue - From S. 19th Street to Hunt Street
7. Fulton Street - From Grand Avenue to Santos Street

PROVIDING FOR THE TIME WHEN SUCH ASSESSMENTS BECOME DUE AND PAYABLE; STIPULATING THE RATE OF INTEREST AND FIXING A CHARGE AND LIEN AGAINST SAID PROPERTY, MAKING SAID CHARGE A PERSONAL LIABILITY OF THE PROPERTY OWNERS OWNING PROPERTY ABUTTING ON SAID STREETS, BOULEVARDS, AVENUES, OR PORTIONS THEREOF; PROVIDING FOR THE COLLECTION THEREOF; AFFIRMING AND RATIFYING THE CONTRACT LET FOR THE CONSTRUCTION OF SAID AFOREMENTIONED IMPROVEMENTS; PROVIDING A SEVERABILITY CLAUSE, AND DECLARING AN EMERGENCY.

WHEREAS, heretofore, a resolution was duly adopted by the City Council, ordering the improvements, and determining the necessity of levying an assessment against the owners of property abutting upon the streets above named, as heretofore determined and approved; and,

WHEREAS, plans and specifications, prepared by the Engineering Division of the City of Abilene, Texas, for the construction of said improvements, and filed with the City Council, were examined, approved and adopted by the Council, as required by applicable law; and,

WHEREAS, competitive bids were taken for the construction of said improvements, and a contract was awarded by the City of Abilene to \_\_\_\_\_  
Bontke Brothers Construction Co.

the lowest, responsible bidder, contingent upon a sufficient assessment being levied against abutting property owners, which, in the opinion of the City Council, would enable the City of Abilene to finance said improvements; and,

WHEREAS, in compliance with law, the City Engineering Division, at the direction of the City Council, prepared an estimate of costs and a report which describes the streets, or portions thereof, to be improved; the names of the owners of property abutting said streets, or portions thereof, to be improved; the legal description of the property abutting said streets, or portions thereof, to be improved; the number of feet of said properties abutting said street to be improved; the amount, or amounts, per front foot proposed to be assessed against said owners, and the total proposed assessment against said properties abutting the streets, or portions thereof to be improved; and,

WHEREAS, thereafter, the estimate and report was filed with the City Council, and, by them, examined and approved, and a resolution passed by the said Council, on the 28th day of May, A.D., 1992, determining the necessity of making an assessment for part of the cost of said paving against property owners and their property, and fixing a time and providing for a hearing to such owners, their agents, or attorneys, all in accordance with the terms of said applicable laws, at which hearing, said owners were to be heard as to the benefits of the said improvements as to their property, as to any error or invalidity in said proceedings, or to any matter or thing connected with said improvements; and,

WHEREAS, thereafter, in accordance with law, the City Secretary of the City of Abilene gave notice of public hearing to the property owners on said streets, or portions thereof, their agents and attorneys, by causing a notice of said hearing to be published in the official newspaper or the City of Abilene, Texas, the Abilene Reporter News, a daily newspaper of general circulation in said City, three (3) times prior to said hearing, the first publication thereof appearing twenty-one (21) days prior to said hearing, to-wit: the 31st day of May A.D., 1992, and the Assistant Director of Planning & Development Services for Public Works gave actual notice to said property owners, their agents and attorneys, by mailing a notice of the public hearing to them at their respective addresses, all in accordance with, and as required by, law; and,

WHEREAS, said hearing was held, at the time and place mentioned in said resolution and notice, to-wit: on the 25th day of June, A.D., 1992, at 9:00 o'clock A.M., in the Council Chamber of the City Hall of the City of Abilene, Taylor County, Texas; and,

WHEREAS, at said public hearing, Dale Williamson, City Engineer, testified briefly as to the nature of the improvements to be constructed, and explained the method of apportioning the costs, and A. V. Perez, a licensed real estate broker and appraiser, testified that the improvements to be placed abutting the properties involved would, in each instance, increase the value of such property by more than the cost of such improvements to the property owners, and all the property owners, their agents or attorneys, or other persons desiring to contest the amounts of the proposed assessments; the lien and liability thereof; the special benefits accruing to abutting property owners by means of the improvements for which assessments were levied; the accuracy, sufficiency, regularity and validity of the proceedings and contract in connection with which such improvements and proposed assessments were made, and upon any other matter in connection with the improvements in question, were heard, and all errors, inaccuracies, deficiencies and invalidities were, thereupon, corrected and rectified by the City Council to the end that the amounts of said assessments were just and equal; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That the public hearing to consider the proposed assessments to be levied against abutting owners of the streets, or portions thereof, as set forth in Part 3 hereof, be, and the same is hereby, closed, and all objections to the proposed curb and gutter assessments be, and the same are hereby, overruled.

PART 2: That the City Council hereby finds and determines, upon the evidence heard in reference to each and every parcel of property abutting upon the streets and units hereinafter set out, that the enhancement in value to accrue to said property, and the real and true owners thereof, by virtue of the construction of said improvements in said portions of said streets, will be in excess of the amount of the costs of said improvements proposed to be, and as herein assessed against said abutting properties and the real and true owners thereof; and finds that the apportionment of the costs of said improvements and the assessments hereinbelow made are just and equitable and produce substantial equality, considering the benefits received and the burdens imposed thereby, and are in accordance with the laws of the State of Texas and the Charter of the City of Abilene; and, further, finds that all proceedings and contracts heretofore had with reference to said improvements are, in all respects, regular, proper and valid, and that all prerequisites to the fixing of the assessment liens against said abutting properties, as hereinafter described, and the personal liability of the real and true owners thereof, whether named, or correctly named, herein or not, have been, in all things, regularly had and performed in compliance with the law and the proceedings of said City Council.

PART 3: That, in accordance with Tex. Rev. Civ. Stat. Ann. Art. 1105b, and the Charter of the City of Abilene, and pursuant to the proceedings heretofore enacted by the City Council in reference to the above named improvements, there shall be, and is hereby, levied an assessment against the parcels of property, hereinafter mentioned, and against the real and true owners thereof (whether such owners shall be correctly named herein or not), the sums of money itemized and shown opposite the description of the respective parcels of property and the several amounts assessed against the same, and the owners thereof, as far as such owners are known, being shown as follows:

IN ACCORDANCE WITH THE PAVING ASSESSMENT ROLL FOR THE 1991 SPRING ASSESSMENT PAVING PROGRAM PREPARED BY THE ENGINEERING DIVISION OF THE CITY OF ABILENE, A COPY OF WHICH IS ON FILE IN THE OFFICE OF THE CITY SECRETARY OF THE CITY OF ABILENE AND WHICH IS HEREBY MADE REFERENCE TO, AND INCORPORATED AS A PART OF THIS ORDINANCE, AS FULLY AS THOUGH COPIED VERBATIM HEREIN.

PART 4: That, where more than one person, firm or corporation owns an interest in any property, above referred to, each said person, firm or corporation shall be personally liable only for its, his or her prorata of the total assessment against such property, in the proportion that its, his or her respective interest bears to the total ownership of such property, and its, his or her respective interest in such property may be released from the assessment lien upon payment of such proportionate sum.

PART 5: That the several sums above referred to, and assessed against the said parcels of property, and the owners thereof, and interest thereon at the rate of eight percent (8%) per annum, together with reasonable attorney's fees and costs of collection, if incurred, are hereby declared to be, and are made a lien upon the respective parcels of property against which the same are assessed, and a personal liability and charge against the real and true owners of such property, whether such owners be named herein or not, and the said liens shall be, and constitute, the first enforceable lien and claim against the property on which such assessments are levied, and shall be a first and paramount lien thereof, superior to all other liens and claims, except State, County, School District, and City ad valorem taxes.

PART 6: Provided, that upon proper execution of a Promissory Note and a Mechanic's and Materialman's Lien, on forms prescribed by the City of Abilene, the sums so assessed against the abutting property, and the owners thereof, may be paid, in equal, monthly installments not to exceed thirty-six (36) months, as requested by owners; however, there shall be no monthly installment payment less than Ten Dollars (\$10.00) per month, the first payable on or before thirty (30) days from the acceptance of the improvements in the unit or district upon which the property abuts, by the Assistant Director of Planning & Development Services for Public Works of the City of Abilene, and one (1) each month thereafter until the total amount is paid. Such note shall bear interest from date, at the rate of five percent (5%) per annum, payable monthly with each installment, and shall provide that all past due principal and interest shall be interest at the rate of eight percent (8%) per annum, from maturity until paid. Provided, however, that any owner shall have the right to pay the entire amount, or any installment thereof, before maturity by payment of principal and accrued interest, and, further provided, that, if default shall be made in the payment of any installment of interest or principal, promptly as the same matures, then the entire amount of the assessment upon which such default is made shall, at the option of the City of Abilene, or its assigns, be and become immediately due and payable, and shall be collectible, together with reasonable attorney's fees and costs of collection, if incurred.

PART 7: That, if default is made in the payment of any of the said sums hereby assessed against said property owners and their property, collection thereof shall be enforced, either by the sale of the said property by the Assessor and Collector of Taxes of the City of Abilene, as near as possible in the manner provided for the sale of property for non-payment of ad valorem taxes, or, at the option of the said City, the payment of the said sums shall be enforced by suit in any court having jurisdiction.

PART 8: That, for the purpose of evidencing the several sums payable by said property owners, and the time and terms of payment, and to aid in the enforcement thereof, assignable certificates may be issued by the City of Abilene upon the acceptance of the said work of improvement by the Assistant Director of Planning & Development Services for Public Works of the City of Abilene, which shall be executed by the Mayor, signing the same, or by his facsimile signature impressed thereon, attested by the City Secretary under the impress of the

corporate seal, and shall be payable to the City of Abilene, or its assigns, which certificate shall declare the said amounts and the time and terms of payment thereof, and the said rate of interest payable thereon, and shall contain the name of the owner and the description of his property by lot or block number or front feet thereof, or such description as may otherwise identify the same by reference to any other fact, and, if said property shall be owned by an estate, then the description thereof as so owned shall be sufficient.

And, the certificates shall further provide that, if default shall be made in the payment of an installment or principal or interest thereon, when due, then, at the option of the said City of Abilene, being the holder and owner thereof, the whole of the said assessment shall, at once, become due and payable, and shall be collectible, with reasonable attorney's fees and costs, if incurred, plus eight (8%) interest thereon.

And, the certificates shall further set forth and evidence the said personal liability of the owner and the lien upon his premises, and shall provide that, if default shall be made in payment thereof, the same may be enforced, either by sale of the property by the Tax Assessor-Collector of the City of Abilene, as above recited, or by suit in any court having jurisdiction.

And, the certificates shall further recite that the proceedings with reference to making said improvements have been regularly had in compliance with the terms of the applicable law, and that all prerequisites as to the fixing of the lien and claims of personal liability evidenced by such certificates have been performed, which recitals shall be evidence of the facts so recited, and no further proof thereof shall be required.

And, the said certificates shall also provide that the amounts payable thereunder shall be paid to the City Treasurer of the City of Abilene, who shall credit said payments upon the said certificates, and shall immediately deposit the amounts so collected in a special fund, and which payments shall be paid by the Treasurer to the said City of Abilene, or other holder of said certificates, on presentation thereof to him, duly credited thereon, the said credit thereon being the Treasurer's Warranty for making such payment, and the said City of Abilene, or other holder of said certificate, shall receipt, in writing, to said Treasurer, when paid in full, together with all costs of collection.

And, the said certificates shall further provide that the city of Abilene shall exercise all legal power, when requested to do so by the holder of said certificate, to aid in the collection thereof, but the City of Abilene shall, in nowise, be liable to the holder of said certificates, in any manner, for payment of the amount evidenced by the said certificates, or for any costs or expense in the premises, or for any failure of the said City Council, or any of its officers, in connection therewith.

Full power to make and levy reassessments, and to correct mistakes, errors, invalidities or irregularities, either in the assessments or in the certificates issued in evidence thereof, is, in accordance with the law in force in this City, vested in said City.

PART 9: All assessments levied are a personal liability and charge against the real and true owners of the premises described, notwithstanding such owners may not be named, or may be incorrectly named.

PART 10: That the assessments herein levied are made and levied under, and by virtue of, the terms, powers and provisions of Tex. Rev. Civ. Stat. Ann. Art. 1105b, which said law has been adopted as an alternative method for the construction of street improvements in the City of Abilene, Texas, and Article I, Section 5, of the Charter of the City of Abilene, Texas.

PART 11: That the assessments so levied are for the improvements in the particular unit or district upon which the property described abuts, and the assessments for the improvements in one unit or district are, in nowise, related to or connected with the improvements in any other unit or district, and, in making assessments and in holding said hearing, the amounts assessed for improvements in one unit or district have been, in nowise, affected by any fact, in anyway, connected with the improvements or the assessments thereof in any other unit or district.

PART 12: That, it being the opinion of the City Council that the assessments levied in Section 3 of this Ordinance will be adequate for the City of Abilene to finance said improvements, the contract previously awarded to Bontke Brothers Construction Co. contingent upon said assessments being levied, be, and the same is hereby, in all things, affirmed and ratified, and the Assistant Director of Planning & Development Services for Public Works be, and is hereby authorized and directed to issue a work order to said company.

PART 13: That, should any portion of this Ordinance be declared void, it is the intention of, and hereby declared by, the City Council that the balance and remainder of such Ordinance, or any parts not void, shall remain in full force and effect as though separately passed and approved.

PASSED ON FIRST READING this 28 day of May A.D., 1992.

PASSED ON SECOND AND FINAL READING this 25 day of June, A.D., 1992.

ATTEST:

[Signature]  
City Secretary

[Signature]  
Mayor

APPROVED:  
[Signature]  
City Attorney