

Eagle Mountain, Utah

Ordinance No. 98-14

November 24, 1998

The Town Council of Eagle Mountain, Utah County, Utah met in regular session on Tuesday, the 24th day of November, 1998, at its regular meeting place. The following members of the Town Council were present:

| | |
|-------------------|---------------|
| Robert E. Bateman | Mayor |
| Diane Bradshaw | Councilmember |
| William Chipman | Councilmember |
| Dan Valentine | Councilmember |
| Cyril Watt | Councilmember |

Also present:

| | |
|-----------------|--------------------|
| John D Newman | Town Administrator |
| Janet Valentine | Town Clerk |
| Jerry Kinghorn | Town Attorney |

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this resolution had been discussed, the Town Clerk presented to the Town Council a Certificate of Compliance With Open Meeting Law with respect to this November 24, 1998 meeting, a copy of which is attached hereto as Exhibit "A".

It was noted that waivers had been executed by the owners of all of the property to be assessed within the Eagle Mountain, Utah Special Improvement District No. 98-3 (Sweet Water Road/Storm Drainage Phase I) (the "District") waiving the appointment of a Board of Equalization and Review and notice of and the public hearings of said Board. The following assessment ordinance (the "Ordinance") was then introduced in writing, was fully discussed, and pursuant to motion duly made by Councilmember Diane Bradshaw, and seconded by Councilmember William Chipman, adopted by the following vote:



YEA:
5-Ayes Passed Unanimously

NAY:

The Ordinance was then signed by the Mayor in open meeting and recorded by the Town Clerk in the official records of Eagle Mountain, Utah. The Ordinance is as follows:

ORDINANCE NO. 98-14

AN ORDINANCE confirming the assessment rolls and levying an assessment against certain properties in Eagle Mountain, Utah Special Improvement District No. 98-3 (Sweet Water Road/Storm Drainage Phase I), Utah County, Utah for the purpose of paying the costs of constructing roads with underground supporting utilities, installing the first phase of a storm water drainage system, and completing any miscellaneous work necessary to complete the improvements in a proper and workmanlike manner; establishing a Reserve Fund; establishing the effective date of this Ordinance; and related matters.

BE IT ORDAINED BY THE TOWN COUNCIL OF EAGLE MOUNTAIN, UTAH COUNTY, UTAH:

Section 1. Determination of Costs. All costs and expenses for the making of the improvements within the District have been determined, the property price for all property to be acquired to make the improvements has been finally determined and the reasonable cost of any work to be done has been determined.

Section 2. Approval of Assessment List; Findings. The Town Council (the "Council") of Eagle Mountain, Utah County, Utah (the "Issuer") hereby confirms the assessment list for Eagle Mountain, Utah Special Improvement District No. 98-3 (Sweet Water Road/Storm Drainage Phase I) (the "District"), a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference (the "Assessment List"), and hereby confirms that the Assessment List is just and equitable; that each piece of property to be assessed within the District will be benefitted in an amount not less than the assessment to be levied against said property; and that no piece of property listed in the assessment list will bear more than its proportionate share of the cost of such improvements.

Section 3. Levy of Assessments. The Council of the Issuer does hereby levy an assessment to be assessed upon the real property identified in the Assessment List. The assessments levied upon each parcel of property therein described shall be in the amount set forth in the Assessment List.

The assessments hereby levied are for the purpose of constructing roads with underground supporting utilities, installing the first phase of a storm water drainage system, and of completing any miscellaneous work necessary to complete the improvements in a proper and workmanlike manner. Said improvements are more particularly described in the Assessment List.

The assessments are hereby levied and assessed upon each of the parcels of real property described in the Assessment List according to the extent that they are specially

benefitted by the improvements acquired or constructed within the District. The assessments are levied upon the parcels of land in the District at equal and uniform rates.

Section 4. Cost of Improvements; Amount of Total Assessments. The total cost of the improvements in the District is \$5,090,000, of which total cost the Issuer's portion is \$-0-. The Issuer's portion for the District includes that part of the overhead costs for which an assessment cannot be levied, if any, and the cost of making improvements for the benefit of property against which an assessment may not be levied, if any. The amount to be assessed against property affected or benefitted by the improvements in the District is \$5,090,000, which amount does not exceed in the aggregate the sum of: (a) the total contract price or prices for the improvements under contract duly let to the lowest and best responsible bidders therefor and a portion of the costs of engineering, designing, and inspection; (b) the reasonable cost of utility services, maintenance, labor, materials or equipment supplied by the Issuer, if any; (c) the property price, if any; (d) connection fees, if any; (e) the interest on any interim warrants issued against the District; (f) overhead costs not to exceed fifteen percent (15%) of the sum of (a), (b), (c) and (d); and (g) where the assessment is levied prior to the time all of the improvements in the District are entirely completed and accepted, an amount for contingencies of not to exceed 10% of the sum of (a), (b) and (c).

Section 5. Method and Rate. The total assessment for the District is levied in accordance with the following method and at the following rates:

| <u>Improvements</u> | <u>Assessment</u> | <u>Method of Assessment</u> |
|------------------------------|-------------------|-----------------------------|
| Sweet Water Road Project | \$3,773.06 | per acre |
| Storm Water Drainage Project | \$1,339.58 | per acre |

Section 6. Payment of Assessments.

(a) By Waiver and Consent, the property owners of the benefitted properties within the District have waived the right to pay cash for their assessments during a cash prepayment period. The assessment shall be payable over a period of ten (10) years from the effective date of this Ordinance in ten (10) substantially equal annual installments including interest on the unpaid balance of the assessment at the same rate as the rate or rates of the special assessment bonds anticipated to be issued by the Issuer plus one-half of one percent. The assessment payment dates shall fall on November 19 of each year beginning November 19, 1999 until all assessments have been paid in full. Interest shall accrue from the effective date of this Ordinance until paid.

(b) If prepayment of an assessment, or any part thereof, arises out of a need of the property owner to clear the assessment lien from a portion (the "Release Parcel") of the parcel now being assessed (the "Assessed Parcel"), the

assessment lien upon the Release Parcel may be released by the Issuer, but only if all of the following conditions are met:

(i) Prepayment of the assessment in which the amount of the prepayment shall be calculated by: (a) multiplying the total assessment, including all accrued and unpaid interest, then outstanding on the Assessed Parcel by a fraction, the numerator of which is the total area of the Release Parcel, including a pro rata portion of the undevelopable area of the Assessed Parcel, and the denominator of which is the total area of the Assessed Parcel; and then (b) multiplying such amount by 1.25.

(ii) The Treasurer or the Attorney for the Town must determine that the partial release of lien upon payment of the prepayment amount determined under (i) above does not diminish the security of the bondholders based upon the amount of the remaining assessment compared with the amount and value of land remaining to secure such debt. For purposes of this subparagraph (ii), security of the bondholders will not be considered diminished if the fair market value of the remaining property subject to the assessment equals or exceeds two times the remaining unpaid assessment on such property. In determining the value of the remaining land, the Treasurer or the Attorney for the Town is entitled to, but need not rely on credible evidence or documentation presented by the owner of said property.

(iii) The additional payment for premiums and interest is paid as required above for any prepayment.

For purposes of determining prepayment amounts provided in (i) above, regularly scheduled payments shall not be taken into account. For example, should a property owner desire to clear the assessment lien from a portion of a parcel now being assessed after the lien has been reduced through regularly scheduled payments, he/she would need to prepay a portion of the then outstanding assessment as determined under (i) above. The regularly scheduled assessment payments previously made would not entitle the property owner to a release of a portion of the Assessed Parcel without such prepayment.

Following a prepayment made pursuant to this subsection (b), the Treasurer shall recalculate the amount of all subsequent assessment installments to be paid on the remaining portion of the Assessed Parcel, after taking into account the reduction in the outstanding principal balance of the assessment resulting from such prepayment.

(c) In the event all or any portion of the property assessed hereunder is subdivided into smaller parcels as evidenced by a subdivision plat approved by the

Issuer and recorded at the County Recorder's office of Utah County, the Issuer may elect at its discretion to allocate the assessment balance on the previously undivided property on a proportionate basis based on square footage. The required annual assessment installment payments for each subdivided parcel shall be allocated proportionately on a square footage basis so that the aggregate total of all of the annual assessment installments for each of the subdivided parcels will equal the total annual assessment installment for the previously undivided property. When an assessment lien is perfected for each of the subdivided parcels, the total assessment levied against the previously undivided property will be released having been replaced by the aggregate of the assessments allocated to each of the subdivided parcels. A release of the new assessment lien for a given subdivided parcel will be delivered by the Issuer at the time the assessment balance for that subdivided parcel is paid in full.

(d) In the event title to all or any portion of the property assessed hereunder is transferred to another person or entity which is unrelated to the prior owner, the owner of said assessed property shall be required to prepay that portion of the assessment applicable to the transferred parcel (based upon the calculation described in Subsection (b) above). For purposes of this subsection (d), a contribution of a parcel of property to the Issuer or to another political subdivision of the State of Utah for use for an essential governmental function shall be excepted from the requirement of this subsection (d). For purposes of this subsection (d), parties are deemed to be unrelated if they are not related persons within the meaning of Section 144(a)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and an essential governmental function is a function of a type which is an essential governmental function under Section 115 of the Code when conducted by a state or a political subdivision thereof.

All unpaid installments of an assessment levied against any piece of property may be paid prior to the dates on which they become due, but any such prepayment must include an additional amount equal to the interest which would accrue on the assessment to the next succeeding date on which interest is payable on any special assessment bonds issued in anticipation of the collection of the assessments plus such additional amount as, in the opinion of the Town Treasurer, is necessary to assure the availability of money to pay interest on the special assessment bonds as interest becomes due and payable plus any premiums which may be charged and become payable on redeemable bonds which may be called in order to utilize the assessments paid in advance.

Section 7. Default in Payment. If a default occurs in the payment of any installment of principal or interest, when due, the Treasurer, on behalf of the governing body of the Issuer, may declare the unpaid amount to be immediately due and payable and subject to collection as provided herein. In addition, the Treasurer, on behalf of the governing body of the Issuer, may accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and interest then due to be

immediately due and payable. Interest shall accrue and be paid on all amounts declared to be delinquent or accelerated and immediately due and payable at the same rate or rates of interest as are applied to delinquent real property taxes for the year in which the assessment installment becomes delinquent (the "Delinquent Rate"). In addition to interest charges at the Delinquent Rate, costs of collection, as approved by the Treasurer on behalf of the Governing Body, including, without limitation, attorneys' fees, trustee's fees and court costs, incurred by the Issuer or required by law shall be charged and paid on all amounts declared to be delinquent or accelerated and immediately due and payable.

Upon any default, the Town Treasurer shall give notice, in writing, of the default to the owner of the property in default, as shown by the last available equalized assessment rolls of Utah County. Notice shall be effective upon deposit of the notice in the U.S. Mail, postage prepaid, and addressed to the owner as shown on the last equalized assessment rolls of Utah County. The notice shall provide for a period of thirty (30) days in which the owner shall pay the installments then due and owing, after which the Treasurer, on behalf of the Issuer, may place in operation the procedure necessary to provide for a tax sale of all delinquent property in the manner provided by Title 59, Chapter 2, Part 13, Utah Code Annotated 1953, as amended, for the sale of property for delinquent general property taxes, or the Treasurer on behalf of the Issuer may accelerate the principal of the assessment and immediately commence foreclosure proceedings in the manner provided for actions to foreclose mortgage liens or trust deeds. In the event the Issuer elects to foreclose in the manner provided for the foreclosure of trust deeds (i.e. non-judicial foreclosure by power of sale), the Town Treasurer or the governing body of the Issuer shall be empowered to designate a trustee, and successor trustees if necessary, to carry out such foreclosure, and such trustee(s) shall be deemed to have a power of sale and all other rights, power and authority necessary to legally and lawfully foreclose the lien for delinquent assessments. Any trustee so selected must satisfy the qualifications for a trustee set forth in Utah Code Annotated § 57-1-21, or any successor statute. If at the sale no person or entity shall bid and pay the Issuer the amount due on the assessment plus interest and costs, the property shall be deemed sold to the Issuer for these amounts. The Issuer shall be permitted to bid at the sale.

The remedies provided herein for the collection of assessments and the enforcement of liens shall be deemed and construed to be cumulative and the use of any one method or means of collection or enforcement shall not deprive the Issuer of the use of any other method or means. The amounts of accrued interest and all costs of collection, including trustee's fees, attorneys' fees and costs, shall be added to the amount of the assessment up to, and including, the date of foreclosure sale.

Section 8. Remedy of Default. If prior to the final date payment may be legally made under a final sale or foreclosure of property to collect delinquent assessment installments, the property owner pays the full amount of all unpaid installments of principal and interest which are past due and delinquent with interest on such installments at the rate or rates set forth in Section 7 herein to the payment date, plus all trustee's fees,

attorneys' fees and other costs of collection, the assessment of said owner shall be restored and the default removed, and thereafter the owner shall have the right to make the payments in installments as if the default had not occurred. Any payment made to cure a default shall be applied, first, to the payment of attorneys' fees and other costs incurred as a result of such default; second, to interest charged on past due installments, as set forth above; third, to the interest portion of all past due assessments; and last, to the payment of outstanding principal.

Section 9. Lien of Assessment. An assessment or any part or installment of it, any interest accruing and the penalties, trustee's fees, attorneys' fees and other costs of collection shall constitute a lien against the property upon which the assessment is levied on the effective date of this Ordinance. Said lien shall be superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien or other encumbrance and shall be equal to and on a parity with the lien for general property taxes. The lien shall continue until the assessment and any interest, penalties and costs on it are paid, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax or other assessment or the issuance of tax deed, an assignment of interest by the governing entity or a sheriff's certificate of sale or deed.

Section 10. Debt Service Reserve Fund. The Issuer does hereby establish a special debt service reserve fund (the "Reserve Fund") in lieu of funding a special improvement guaranty fund, as additional security for the special assessment bonds ("Assessment Bonds") to be issued by the Issuer with respect to the District. The Reserve Fund shall be initially funded from proceeds of the Assessment Bonds in an amount equal to \$509,000, which amount shall constitute the Reserve Fund Requirement. The cost of initially funding the Reserve Fund will be added to the assessments of the property owners. After the Assessment Bonds have been paid in full, remaining funds on deposit in the Reserve Fund will be disbursed to the then current property owners of record of all properties in the District. Such remaining funds shall be disbursed pro rata to such owners based upon the ratio which the assessment against each such property bore to the total assessments, except that owners of properties with respect to which there has been a default in the payment of assessments, in whole or in part, shall not be entitled to such a disbursement unless such delinquency, together with costs of collection and penalties, shall have been paid in full as of the date such disbursement is made. In addition, if and when the Issuer subsequently collects delinquent assessments through a sale of property or otherwise, the owners of property whose assessments were paid in full as of the time of the first disbursement from the Reserve Fund, as provided in the immediately preceding sentence, shall be entitled to receive their pro-rata share of such additional amounts calculated as provided above, but not to exceed the difference between their portion of the original deposit of proceeds from the Assessment Bonds in the Reserve Fund and the amount disbursed to them from the Reserve Fund as provided above.

In the event insufficient assessments are collected by the Issuer to make the debt service payments on the Assessment Bonds, the Issuer shall draw on the Reserve Fund to

make up such deficiency. In the event the amount on deposit in the Reserve Fund is less than the Reserve Fund Requirement, the Issuer will replenish this Reserve Fund as provided in the bond resolution authorizing the issuance of assessment bonds.

Section 11. Contestability. No assessment shall be declared void or set aside in whole or in part in consequence of any error or irregularity which does not go to the equity or justice of the assessment or proceeding. Any party who has not waived his objections to same as provided by statute may commence a civil action against the Issuer to enjoin the levy or collection of the assessment or to set aside and declare unlawful this Ordinance.

Such action must be commenced and summons must be served on the Issuer not later than 30 days after the effective date of this Ordinance. This action shall be the exclusive remedy of any aggrieved party. No court shall entertain any complaint which the party was authorized to make by statute but did not timely make or any complaint that does not go to the equity or justice of the assessment or proceeding.

After the expiration of the 30-day period provided in this section:

(a) The special assessment bonds issued or to be issued against the District and the assessments levied in the District shall become incontestable as to all persons who have not commenced the action provided for in this section; and

(b) No suit to enjoin the issuance or payment of the bonds, the levy, collection or enforcement of the assessment, or in any other manner attacking or questioning the legality of the bonds or assessments may be instituted in this state, and no court shall have authority to inquire into these matters.

Section 12. Notice to Property Owners. The Treasurer is hereby authorized and directed to give notice of assessment by mail to the property owners in the District. Said notice shall, among other things, state the amount of the assessment and the terms of payment. A copy of the form of notice of assessment is available for examination upon request at the office of the Town Clerk.

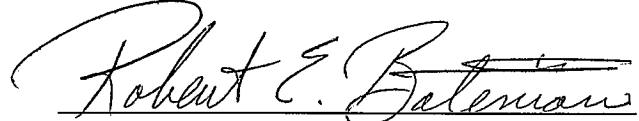
Section 13. All Necessary Action Approved. The officials of the Issuer are hereby authorized and directed to take all action necessary and appropriate to effectuate the provisions of this Ordinance.

Section 14. Repeal of Conflicting Provisions. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed.

Section 15. Publication of Ordinances. Immediately after its adoption, this Ordinance shall be signed by the Mayor and Town Clerk and shall be recorded in the ordinance book kept for that purpose. This Ordinance shall be published once in the New

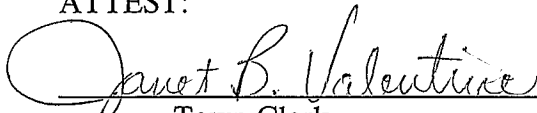
Utah (aka Lehi Free Press), a newspaper having general circulation in the Issuer, and shall take effect immediately upon its passage and approval and publication as required by law.

PASSED AND APPROVED by the Town Council of the Issuer, this 24th day of November, 1998.



Mayor

ATTEST:



Town Clerk

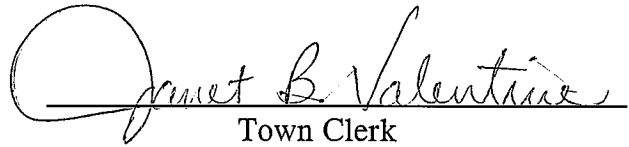


STATE OF UTAH)
 :SS.
COUNTY OF UTAH)

I, Janet Valentine, the duly appointed, qualified and acting Town Clerk of Eagle Mountain, Utah County, Utah, do hereby certify that the above and foregoing is a full, true and correct copy of the record of proceedings had by the Town Council of Eagle Mountain, Utah County, Utah at its meeting held on the 24th day of November, 1998 insofar as the same relates to or concerns Eagle Mountain, Utah Special Improvement District No. 98-3 as the same appears of record in my off ice.

I further certify that the Ordinance levying the special assessments was recorded by me in the official records of Eagle Mountain on the 24th day of November, 1998.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of Eagle Mountain this 24th day of November, 1998.


Town Clerk

PROOF OF PUBLICATION

Attached to this page is the Proof of Publication, indicating by the affidavit of the publisher that the said Ordinance levying the special assessments which was contained in the Ordinance adopted by the Town Council on the 24th day of November, 1998, was published one time in the New Utah.

EXHIBIT "A"

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Janet Valentine, the undersigned Town Clerk of Eagle Mountain, Utah County, Utah (the "Town"), do hereby certify, according to the records of the Town in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-6(2), Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the November 24, 1998 public meeting held by the Town as follows:

(a) By causing a Notice, in the form attached hereto as Schedule "1", to be posted at the Town's principal offices on November 23, 1998, at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and

(b) By causing a copy of such Notice, in the form attached hereto as Schedule "1", to be delivered to the New Utah on November 23, 1998, at least twenty-four (24) hours prior to the convening of the meeting.

IN WITNESS WHEREOF, I have hereunto subscribed by official signature this 25 day of November, 1998.


Town Clerk



SCHEDULE "1"

NOTICE OF MEETING

AGENDA
EAGLE MOUNTAIN TOWN COUNCIL MEETING

Tuesday, November 24, 1998 at 7:00 p.m.

1680 East Heritage Drive
Eagle Mountain, Utah 84043

1. Roll Call
2. Pledge of Allegiance
3. Approval of Agenda
4. Approval of Minutes (11-10-98)
5. General Discussion/Questions/Announcements
6. Warrant Register/ Jeri Wilson
7. Discussion of the 1998-99 fiscal year budget
8. Public Comment
9. Impact Fee Appeals
10. Utah National Guard – Camp William's Operations/Major Robert Dunton
11. The Ranches Update/Bob Lynds
12. Consideration to approve The Ranches - Diamond Spring, R1-N9 Development Agreement/Bob Lynds
13. Eagle Mountain Properties Update/Nick Berg
14. Final Plat Approval, Eagle Point Plat D
15. Final Plat Approval, Eagle Point Condominiums, Plat A
16. Final Plat Approval, Autumn Ridge, Phase I
17. Partial Payment Requests/Korey Walker
 - A. Condie Construction – TSSD Sewer Outfall Line
 - B. CIC – The Ranches Parkway Road, Water and Sewer Construction
18. Bond Releases/Korey Walker
 - A. Sundance @ Red Hawk Ranch, Plat A
 - B. Mountain View, Phase 1
 - C. Eagle Point, Plat A
 - D. Eagle Point, Plat B
 - E. Dunex Bond Release
19. Contract Change Orders/Korey Walker
 - A. Condie Construction – TSSD Sewer Outfall Line (Change Order No: 1)
 - B. Condie Construction – TSSD Sewer Outfall Line (Change Order No: 2)
 - C. Condie Construction – TSSD Sewer Outfall Line (Change Order No: 4)
 - D. CIC – The Ranches Parkway (Change Order No: 3)
 - E. CIC – The Ranches Parkway (Change Order No: 4)
20. Bid Award/Korey Walker
 - A. The Wastewater Treatment Plant Expansion, 1998 – bid awarded to W.W. Clyde and Company
21. Assessment Ordinance for the Eagle Mountain – 1998 Special Improvement District/Jerry Kinghorn
22. Revenue Bond Anticipation Notes Project Cost Budget/Gary Tassainer
23. Consideration and approval of a health care provider for employees of Eagle Mountain/John Newman.
24. Appointments
25. Department Reports:
 - A. Administration/ Airport Advisory Board /Mayor Rob Bateman
 - B. Planning Commission/ Bill Chipman
 - C. Parks & Recreation/Youth Council/Diane Bradshaw
 - D. Public Works Board/Dan Valentine
 1. Customer Water Use and Billing Amounts/John Newman & Korey Walker
 - E. Public Safety/Cyril Watt
26. Consideration to approve a Resolution Defining Costs of Connection Fee Requirements, All Utility Services Offered by the Town of Eagle Mountain and Amending Certain Matters in Resolutions 97-52, 97-53, 97-54, 97-58 and 97-60
27. Motion to adjourn into a Closed Executive Session for the purpose of discussing personnel issues
28. Action from the Closed Executive Session.
29. Adjournment.

Approval: _____

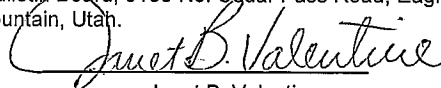
Mayor Robert E. Bateman

Date: _____

24 Nov 98

CERTIFICATE OF POSTING

The undersigned, duly appointed Town Clerk, does hereby certify that the above notice and agenda was posted in three public places within Eagle Mountain Town Limits on this 23 day of November 1998. These public places being 1) the Town Offices, 1680 E. Heritage Dr., Eagle Mountain, Utah; 2) Cedar Pass Ranch Bulletin Board, 9155 No. Cedar Pass Road, Eagle Mountain; and 3) the Bulletin Board located at Meadow Ranch Subdivision, Hwy 73, Eagle Mountain, Utah.



Janet B. Valentine
Town Clerk

EXHIBIT "B"

ASSESSMENT LIST

| | <u>Assessment per Acre</u> |
|---|----------------------------|
| All property improved by the Sweet Water Road Project (see attached legal description) | \$3,773.06 |
| All property improved by Storm Water Drainage Project (see attached legal description) | \$1,339.58 |