

ORDINANCE NO. 347-93

AN ORDINANCE LEVYING ASSESSMENTS FOR PART OF THE COST OF SANITARY SEWER IMPROVEMENTS WITHIN TRINITY MEADOWS RACEWAY AND EL CHICO AND EL CHICO SOUTH ADDITIONS IN THE CITY OF WILLOW PARK, TEXAS; FIXING CHARGES AND LIENS AGAINST TRINITY MEADOWS RACEWAY, AND AGAINST THE OWNERS THEREOF; PROVIDING FOR THE ENFORCEMENT OF ASSESSMENTS AND LIENS UPON DEFAULT; PROVIDING FOR THE COLLECTION OF SUCH ASSESSMENTS AND THE ISSUANCE OF ASSIGNABLE CERTIFICATES OF ASSESSMENT AS EVIDENCE THEREOF; PROVIDING FOR THE TIME AND MANNER OF PAYMENT OF ASSESSMENTS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Willow Park, Texas is a Type A general law municipality located in Parker County, Texas and created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City of Willow Park has heretofore adopted Resolution No. 01A-1993 describing a necessity for and ordering the construction of commercial sanitary sewer improvements within the Trinity Meadows Raceway and El Chico and El Chico South Additions, located within the corporate limits of the City of Willow Park, Texas, by the installation of gravity collection sewer lines, pressure sewer lines, duplex lift stations and meter stations connecting to the existing equalization basins and transfer pump station, and approximately 2380 linear feet of 4" pressure sewer lines, 15,382 linear feet of 6" pressure sewer lines, and 7562 linear feet of 8" gravity collection sewer lines, one duplex grinder pump lift station, and one duplex submersible lift station with underground storage required for the sanitary disposal of excreta and offal from lots within Trinity Meadows Raceway and El Chico and El Chico South Additions (hereinafter sometimes referred to as the "Project").

WHEREAS, estimates of the cost of the above-described sewer improvements were prepared and filed and approved and adopted by the City Council, and a time and place was fixed for a hearing and the proper notice of the time, place and purpose of said hearing was given and said hearing was had and held at the time and place fixed therefore, to-wit, at 6:30 p.m. on the 11th day of March, 1993, in the City Council Chamber in the City Hall in the City of Willow Park, and at such hearing all persons desiring to be heard were given full and fair opportunity to be heard; and

WHEREAS, after hearing all protests and objections which were made by the abutting benefitted property owners in connection with the assessments to be levied, and after having considered all proper matters, the City Council is of the opinion that said

assessments should be made and levied as herein ordered.

WHEREAS, it is the intention of the City Council by this ordinance to by levy assessments against the owners of Trinity Meadows Raceway, Inc. for Phase I of the project, and levy assessments on the remainder of the projects by separate ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILLOW PARK, TEXAS:

I

The benefit hearing for the assessment for sanitary sewer improvements as described above has been hereby closed and all protests and objections, if any, to the assessments levied have been hereby overruled.

II

The City Council finds from the evidence submitted at said public hearing that the assessments herein should be made and levied against all parcels of property within Trinity Meadows Raceway to be served by such sanitary sewer improvements against the real and true owners of such properties, and that such assessments and charges are right and proper and are substantially in proportion to the benefits to the respective parcels of property by means of the improvements for which such assessments are levied, and establish substantial justice and equality and uniformity between the respective owners of the respective properties, and between all parties concerned, considering the benefits received and burdens imposed, and further finds that in each case the abutting property assessed is specially benefited in enhanced value to the said property by means of the said improvements and for which assessment is levied and charge made, in a sum in excess of the said assessment and charge made against the same by ordinance, and further finds that the apportionment of the cost of the improvements is in accordance with the provisions of Section 402.061, *et. seq.*, Texas Local Government Code and the Charter and ordinances in force in this City, and that the proceedings of City heretofore had with reference to said improvements are and were in all respects valid and regular.

III

There shall be, and is hereby levied and assessed against the following property:

Lot 1, Block 1, and Lot 1, Block 2 of Trinity Meadows, an addition to the City of Willow Park, Parker County, Texas, as appearing in a Final Plat recorded in cabinet A, Slide 740 in Parker County, Texas

and against

Trinity Meadows Raceway, Inc. the real true owners of said property (whether such owners be correctly named or not) the sum of four hundred and forty-one thousand,

nine hundred dollars (\$441,900.00), said amount being nine-tenths (9/10's) of the estimated cost of the improvements and less than the benefit to said property. No error or mistake in naming any owner or in describing any property shall invalidate any assessment or any certificate issued in evidence thereof, and the omission of improvements on any particular unit or in front of any property exempt by law from the lien of special assessment for sewer improvements shall not invalidate any assessment levied. The total amount assessed against the respective parcels of property, and the owners thereof, is in accordance with the proceedings of the City relating to said improvements and assessments thereof, and is less than the total assessment allowed and permitted by law.

IV

Where more than one person, firm or corporation owns an interest in any property so described in Section III, each said person, firm or corporation shall be personally liable only for its, her or his pro rata portion of the total assessment against such property in proportion as its, her or his respective interest in such property bears to the total assessment herein levied on such property; and its, her or his respective interest in such property may be released from the assessment lien upon payment of such proportionate sum.

V

The several sums above mentioned and assessed against the said parcels of property, and the owners thereof, and any interest accrued thereon, together with reasonable attorneys' 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 correctly named 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 thereon, superior to all other liens and claims, except state, county, school district, and city ad valorem taxes.

The amounts assessed against the abutting benefited properties and the owners thereof shall be due and payable on or before thirty (30) days after the completion and acceptance by the City of Willow Park of the Project or any unit thereof upon which said properties abut, except that, if the abutting benefitted owner so elects, by complying with the terms hereinafter set forth, said assessments may be paid in installments, as follows, to wit: sixty monthly installments of principle and interest, the first of such installments being due and payable not earlier than thirty (30) days nor later than six (6) months after the completion and acceptance by the City of the Project. Any such assessment to be paid in installments shall bear interest from said date of acceptance at the rate of eight percent (8%) per annum. Any owner electing to pay the assessment in installments, as provided for herein, as a condition precedent to such election, may be required to execute a promissory note and mechanic's and materialman's lien contract evidencing the owner's intent to pay the assessment in accordance with the terms hereinabove set forth, and

granting a mechanic's lien upon and conveying the said benefited abutting property in trust to secure the payment by the owner. Any owner shall have the right to pay any and all of such installments at any time before maturity by paying principal and interest accrued to the date of payment. Should any assessment or installment thereof not be paid on its due date, the City or its assigns shall have the option to accelerate the entire unpaid balance of the assessment and declare the same to be immediately due and payable and same shall be collectible with accrued interest, attorney's fees and costs of collection, if incurred. This and other terms governing any default in the payment of any installment shall be set forth in the mechanic's and materialman's lien contract and shall be uniform among all owners executing the contract.

VI

If default shall be made in the payment of any assessment, collection thereof shall be enforced either by the sale of property by the Assessor and Collector of Taxes of the City as near as possible in the same manner provided for the sale of property for the non-payment of ad valorem taxes, or at the option of City of Willow Park, or its assigns, payment of said sums shall be enforced by suit in any court of competent jurisdiction, or as provided in any mechanic's or materialman's contract as aforesaid, and the City shall exercise all of its lawful powers to aid in the enforcement and collection of said assessment.

VII

For the purpose of evidencing the several sums assessed against the respective parcels of abutting property and the owners thereof, and the time and terms of payment, and to aid in the enforcement and collection thereof, assignable certificates in the principal amount of the respective assessments shall be issued by the City upon completion and acceptance by the City of the improvements in each unit of improvement as the work in such unit is completed and accepted.

VIII

Any irregularity in the name of the property owner, the description of the property or the amount of the assessment shall not invalidate or impair any assessment levied hereby or any certificate issued, and any such mistake, error, invalidity or irregularity, whether in such assessment or in the certificate issued in evidence thereof may be (but is not required to be in order to be enforceable) corrected at any time by the City Council.

IX

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.

X

The assessments so levied are for the improvements in the particular unit which will serve the property described, and the assessments for the improvements in any unit are in no wise affected by the improvements or assessments in any other unit, and in making assessments and in holding said hearing, the amounts assessed for improvements in any one unit have been in no wise connected with the improvements or the assessments therefore in any other unit.

XI

This ordinance shall be cumulative of all provisions of ordinances of the City of Willow Park, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

XII

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

XIII

This ordinance shall take effect and be in full force and effect from and after the date of its passage and it is so ordained.

PASSED AND APPROVED on this 7th day of September, 1993.

William J. Clemens

MAYOR

ATTEST:

Barbara Kilough

CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Walter W. Leonard

City Attorney

Date: Sept. 7, 1993

ADOPTED: Sept. 7, 1993

EFFECTIVE: Sept. 7, 1993