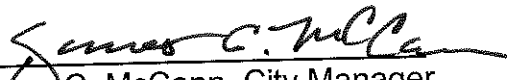


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Dan Takasugi, Public Works Director/City Engineer
DATE: May 5, 2009
SUBJECT: Consideration of a Resolution Authorizing a Reimbursement Agreement with Robert and Sylvia Pestoni for the Public Sewer Lift Station Located in Rancho de Calistoga Mobile Home Park Constructed as Part of the Pestoni Subdivision located on Highland Court

APPROVAL FOR FORWARDING:


James C. McCann, City Manager

ISSUE:

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3 Consideration of a Resolution Authorizing a Reimbursement Agreement with Robert
4 and Sylvia Pestoni for the Public Sewer Lift Station Located in Rancho de Calistoga
5 Mobile Home Park Constructed as Part of the Pestoni Subdivision located on Highland
6 Court.

RECOMMENDATION:

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10 Adopt the Resolution.

BACKGROUND/DISCUSSION:

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12
13 Robert and Sylvia Pestoni were the developers of the Pestoni Development, an eight
14 lot, 5.72 acre parcel on Highland Court. The developer entered into a Deferred
15 Improvement Agreement on November 5, 1991 in order to record the final map prior to
16 construction of the public improvements.

17
18
19 The developer was provided with a subdivision improvement agreement and a
20 reimbursement agreement on September 7, 1993. The developer's final map was also
21 approved on September 7, 1993. However the reimbursement agreement has passed

22 its 10-year term and expired on September 7, 2003 without the collection of any
23 reimbursement from benefited properties.

24
25 The construction of the public road and utility improvements were completed in 2002
26 except for the replacement of the public sewer lift station located within the Rancho de
27 Calistoga Mobile Home Park. The sewer lift station was completed in 2009 and was
28 accepted by Council on April 7, 2009 in accordance with the approved plans and City
29 standards.

30
31 Although the Pestoni's had opportunities to construct public improvements during the
32 term of the original reimbursement agreement, there are several extenuating and
33 mitigating circumstances that Council may consider in determining whether the
34 Pestoni's should be authorized to seek a new reimbursement agreement for the newly
35 constructed sewer lift station.

36
37 The original reimbursement agreement was based on a rough cost estimate of \$50,000
38 for the replacement of the sewer lift station at Rancho de Calistoga Mobile Home Park.
39 Costs for the new lift station actually constructed amounted to \$287,570. Normally a
40 reimbursement agreement would recoup funds for improvements already constructed.
41 It is doubtful that the Pestoni's could have collected reimbursement from 1993 to 2003
42 on a sewer lift station that he had not yet constructed.

43
44 During the term of the original reimbursement agreement from 1993 to 2003, a
45 moratorium ordinance was adopted on December 16, 1996 on the consideration of all
46 applications for development which required water and sewer connections. During this
47 time Mr. Pestoni would have been greatly impeded from collecting against the original
48 reimbursement agreement.

49
50 Given these extenuating and mitigating circumstances, staff recommends that a new
51 20-year term reimbursement agreement for the new sewer lift station be authorized by
52 Council. The provisions for reimbursement agreements in Municipal Code 13.08.270,
53 13.08.275, and 16.14.100 do not prohibit Council from granting a second
54 reimbursement agreement.

55
56 On March 3, 2009, Council approved an amendment to the Municipal Code 13.08.270,
57 removing the 10-year sunset clause for sewer reimbursement agreements. This
58 amendment, however, did not restrict Council from imposing a sunset clause. In
59 consultation with our City Attorney's office, a sunset clause of some reasonable duration
60 would be advisable. In this particular case, a 20-year term is reasonable.

61

62 In order to construct the new reimbursement agreement to be as fair and defensible as
63 possible, staff intends to revisit many of the assumptions on the original reimbursement
64 agreement, including potentially redefining the area of benefit. Once a new
65 reimbursement agreement is drafted, it will be brought to Council under a public
66 hearing, with noticing to any properties within the area of benefit. Staff anticipates the
67 public hearing to be scheduled in late summer or fall of 2009.

68

69 **FISCAL IMPACT:**

70

71 The preparation of a Reimbursement Agreement is a time and cost intensive endeavor.
72 Mr. Pestoni and his engineer have been advised of the costs. All costs associated with
73 the preparation of a new Reimbursement Agreement, including reimbursement of staff
74 time, will be funded by the developer.

75

76 **ATTACHMENTS**

77

- 78 1. Resolution
- 79 2. Letter from Leroy Carlenzoli on behalf of the Pestoni's, dated March 31, 2009,
80 requesting a new reimbursement agreement for the sewer lift station
- 81 3. Original Reimbursement Agreement dated September 7, 1993, which expired on
82 September 7, 2003

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RESOLUTON 2009-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA,
AUTHORIZING A REIMBURSEMENT AGREEMENT WITH
ROBERT AND SYLVIA PESTONI FOR THE PUBLIC SEWER LIFT STATION
LOCATED IN THE RANCHO DE CALISTOGA MOBILE HOME PARK
CONSTRUCTED AS PART OF THE PESTONI SUBDIVISION
LOCATED ON HIGHLAND COURT**

WHEREAS, in order to develop eight residential lots of record (APNs 011-360-031, 032, 033, 034, 035, 036, 037 and 038) located on Highland Court and Foothill Blvd., Robert and Sylvia Pestoni (Applicant) were required to construct the necessary supporting public infrastructure including water, sewer, storm drain, curb, gutter, sidewalk, roadway and sewer lift station improvements; and

WHEREAS, the improvement plans were approved on August 2, 1994 and the sewer lift station improvement plans were approved on August 21, 2007; and

WHEREAS, the developer was provided with a reimbursement agreement on September 7, 1993 for the construction of a new sewer lift station at Rancho de Calistoga Mobile Home Park, based on a cost estimate of \$50,000; and

WHEREAS, the City Council adopted an ordinance on December 16, 1996, placing a moratorium on applications for development which required a water and sewer connection; and

WHEREAS, the developer's original reimbursement agreement for the sewer lift station had a 10-year term and the term expired on September 7, 2003 without collecting any reimbursement; and

WHEREAS, the developer completed construction of the sewer lift station in 2009 at a cost of approximately \$287,570 in accordance with the approved plans and the improvements were accepted by the City Council on April 7, 2009; and

WHEREAS, the provisions in the Calistoga Municipal Code, Sections 13.08.270, 13.08.275, and 16.14.100 do not prohibit the City Council from granting a second reimbursement agreement for sewer improvements that provide capacity beyond the needs of the developer's project.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Calistoga hereby authorizes a reimbursement agreement with Robert and Sylvia Pestoni for the Public Sewer Lift Station located in the Rancho de Calistoga Mobile Home Park, constructed as part of the Pestoni Subdivision located on Highland Court; and

REC'D APR - 1 2009

March 31, 2009



City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Attn: Jim McCann, City Manager

Subject: Pestoni Subdivision
Subdivision Improvement Reimbursement Agreement
For the Sewer Lift Station

Dear Jim:

The Final Map for the Highland Court Subdivision was recorded in 1993 along with the Improvement Plans, Subdivision Improvement Agreement and Subdivision Improvement Reimbursement Agreement for the Sewer Lift Station.

The Subdivision's streets and infrastructure were completed in 2002.

The Sewer Lift Station was just completed in early 2009, which included numerous upgrades over and above the original 1993 Improvement Plans.

At the beginning of this endeavor, the City of Calistoga allowed people to pay for water allocation by paying for the cost of leak detection. Our client, Pestoni Highland LLC, paid these fees with the assurance that this project would be receiving water. Calistoga then set a moratorium on sewer hookups stopping all construction until the new sewer facility was installed.

The 1993 Subdivision Improvement Reimbursement Agreement for the Sewer Lift Station was based on the estimated 1993 costs of \$50,000. We are now asking that this reimbursement be updated and implemented since the final project had been completed, and all requirements requested by the City of Calistoga have been met. The cost for the Lift Station as installed was \$287,570.

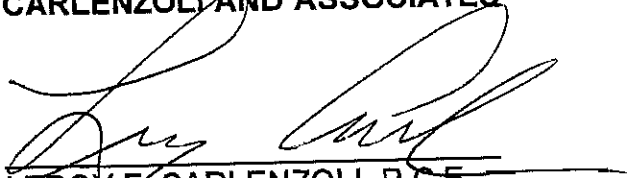
The newly completed Sewer Lift Station now allows for future use of parts of Foothill Boulevard and the other parcels in the area that the City may authorize.

Jim McCann
March 31, 2009
Page 2

Attached for your review is a copy of the original Subdivision Improvement Reimbursement Agreement.

We look forward to your review of this important improvement to the City of Calistoga facilities.

CARLENZOLI AND ASSOCIATES



LERROY E. CARLENZOLI, R.C.E.

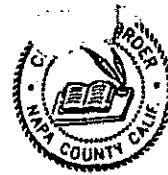
LEC:lev

Attachment

c: Bob Pestoni

Bill McBride, City of Calistoga

Dan Takasugi, City of Calistoga, City Engineer



1993 032025

OFFICIAL RECORDS OF
NAPA COUNTY
H. KATHLEEN BONDS

RECORDING REQUESTED BY

AT REQUEST OF NAPA LAND TITLE COMPANY
10/04/1993 02:31 PM
Fee: \$.00 Pgs: 5
TT: \$.00

When Recorded Return to
City Clerk
City of Calistoga
1232 Washington Street
Calistoga CA 94515

Exempt from Recording Fees
Section 6103 Gov't. Code

SUBDIVISION IMPROVEMENT
REIMBURSEMENT AGREEMENT

This Subdivision Improvement Reimbursement Agreement is made and entered into this 7th day of September 1993 by and between Robert Pestoni and the City of Calistoga, a municipal corporation (City) with reference to the following facts and recitals:

A. Robert Pestoni is the owner of certain real property situated, lying and being in City and better known as Pestoni Subdivision.

B. Robert Pestoni has received approval from the City Planning Commission and the City Council to construct improvements on said property.

C. Robert Pestoni has caused plans to be prepared which are to guide the construction process.

D. Robert Pestoni is required to install off site improvements in order to properly connect Subdivision utilities to existing City facilities.

E. Some of the proposed improvements to be constructed will provide benefits to properties lying outside of the Subdivision Boundary.

F. Robert Pestoni must provide design and plans for the improvements and install the improvements to the requirements set by the City.

G. The City is unwilling or unable at this time to expend Municipal Funds for the work required and whereas Robert Pestoni is prepared to pay for the improvements out of his own funds, subject however to reimbursement as more particularly provided hereinafter.

H. Chapter 13 of the Calistoga Municipal Code and specifically Section 13.08.275, provides for the City to enter into a special reimbursement agreement with the person or persons paying for necessary public improvements upon approval of the City Council.

I. It is acknowledged by the parties that the front footage reimbursement formula set forth in Section 13.08.270 of the Calistoga Municipal Code is not suitable for the project contemplated by this agreement and that therefore special conditions exist which justify the application of Section 13.08.275 of the Calistoga Municipal Code to provide for a different formula for reimbursement of Robert Pestoni for the amounts paid to design and construct improvements to provide benefits to properties lying outside of the Subdivision Boundary.

J. It has been determined that the existing sanitary sewer lift station located in the Rancho de Calistoga Mobile Home park is presently undersized and needs to be replaced. Robert Pestoni shall pay for the cost to replace the lift station. All future developments shall return a fair share portion of the cost of replacing the sewer lift station.

K. Robert Pestoni has received an estimate of cost to construct the following improvements which will benefit the properties listed in the attachment. Robert Pestoni shall construct the improvements and be repaid the percent of the construction cost listed for the properties as each of these properties is developed.

<u>Item</u>	<u>Cost</u>
Sewer lift station replacement	\$ <u>50,000.00</u>

L. The work to be done is shown on the approved improvement plans for Pestoni Subdivision on file in the office of the City Engineer.
Now, Therefore, the parties agree as follows:

1. Payment in Full by Robert Pestoni. Robert Pestoni shall pay for all work as specified in this agreement as relates to improvements which are mutually beneficial to Robert Pestoni and to owners and developers of adjoining properties. Robert Pestoni shall furnish City with proof of payment of all necessary expenses connected with construction of Pestoni Subdivision all as approved by the City Planning Commission and City Council before City will accept Pestoni Subdivision as complete.

2. Hold Harmless. Robert Pestoni shall hold City harmless from and against any and all claims, demands, costs, liabilities or expenses arising out of or in any manner attributable to the performance and completion of the works of improvement contemplated

by this agreement.

3. Robert Pestoni's Right to Reimbursement. The total amount paid by Robert Pestoni for the sanitary sewer lift station replacement which is beneficial to other parties as stated in this agreement shall be reimbursed to Robert Pestoni from the developers of these various properties as their plans are submitted to the City. City shall withhold final approval of the plans until all required payments are made.

4. Term. The duration of the City's obligation to ensure repayment to Robert Pestoni is ten years from the date of execution of this agreement.

5. Attorney's Fees. In any legal action brought by either party to enforce the terms hereof the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

6. Binding Upon Successors. This Agreement, and all of the rights, duties and liabilities contained here, shall ensure to the benefit of and shall bind the respective heirs, executors, administrators, successors and assigns of the parties hereto.

7. Recordation. This Agreement shall be subscribed by the parties and duly acknowledged in form suitable for recordation.

In Witness, Whereof, the parties hereto have executed this Agreement effective the day and year first hereinabove written, the City by its duly authorized officers and Robert Pestoni.

Robert Pestoni
Sylvia Pestoni

Robert Pestoni
Sylvia Pestoni

City of Calistoga
A Municipal Corporation

By Leanne George

Attest: Patt Osborne
Patt Osborne
City Clerk

Approved as to Form:

Malcolm Mackenzie
Malcolm Mackenzie
City Attorney

RESIDENTIAL

<u>APN</u>	<u>NUMBER OF LOTS</u>	<u>NUMBER OF PEOPLE</u>	<u>PERCENT</u>
11-400-14	107	349.00	43.14
11-400-13	40	130.00	16.07
11-400-12	20	65.00	8.03
11-400-2	1	3.25	0.40
11-400-3	1	3.25	0.40
11-400-4	1	3.25	0.40
11-400-5	1	3.25	0.40
11-400-7, 20, 21, 22	4	13.00	1.61
11-400-8	1	3.25	0.40
11-400-9	1	3.25	0.40
11-400-10	1	3.25	0.40
11-400-23	1	3.25	0.40
11-400-24, 25	2	6.50	0.80
11-360-4	1	3.25	0.40
11-360-5	1	3.25	0.40
11-360-7	1	3.25	0.40
11-360-8	3	9.75	1.21
11-360-11	1	3.25	0.40
11-360-12	1	3.25	0.40
11-360-13	1	3.25	0.40
11-360-14	1	3.25	0.40
11-360-15	1	3.25	0.40
11-360-16	2	6.50	0.80
11-360-17	1	3.25	0.40
11-360-19	3	9.75	1.21
11-360-25, 26, 27	3	9.75	1.21
11-360-28	2	6.50	0.80
PESTONI SUBDIVISION	8	26.00	3.21
11-422-21, 22, 23 & 31 (RIVERLEA PLACE)	-	34.00	4.20

COMMERCIAL

	<u>ACREAGE</u>	<u>NUMBER OF PEOPLE</u>	<u>PERCENT</u>
11-360-2	0.70	11	1.36
11-360-3	1.72	28	3.46
11-370-24	1.22	20	2.47
11-460-7, 8, 9, 11, 12, 13, 14 (RIVERLEA SQUARE)	0.24	20	2.47
<u>PROPOSED CHURCH</u>	<u>2.50</u>	<u>8</u>	<u>0.99</u>
TOTAL:		809	100.00