Reviewed Date:	Approved:	Meeting Date:	Agenda Item:
	Bryan Whitemyer, City Manager	February 14, 2011	4

Executive Summary

Presented By: **Thom Clark, Community Development Director**

Meeting Date: **February 14, 2011**

Subject: **Consideration of a Refund for Assessments Levied in Fiscal Years 2008/2009, 2009/2010, and 2010/2011 in the Euclid North Lighting and Landscape District, the Euclid North Benefit Assessment District, the Euclid South Lighting and Landscape District, and the Euclid South Benefit Assessment District**

Enclosures:

1. **2008 Letter from Fitzpatrick Homes**
2. **Excerpt from January 26, 2009 City Council Minutes**
3. **Fitzpatrick Homes Property Tax Bills for Fiscal Years 2008/2009, 2009/2010, and 2010/2011**
4. **Copy of Reimbursement Check in the Amount of $8,912.70 from City of Hughson to Fitzpatrick Homes**
5. **JB Land Holdings Property Tax Bills for Fiscal Years 2008/2009, 2009/2010, and 2010/2011**
6. **Copy of Reimbursement Check in the Amount of $8,783.21 to JB Land Holdings LLC**

Budget Action: **Maximum Possible Reimbursement Amounts Have Been Included in the Mid-Year Budget**

Desired Action: **Adopt Resolution No. 2011-XX, A Resolution of the City Council of the City of Hughson Reimbursing Assessments for the Euclid North and Euclid South Lighting and Landscape Districts and Benefit Assessment Districts**

Background:

At its regularly scheduled meeting of January 12, 2009, the City Council considered a request from both owners of the Euclid North (since renamed Legacy) and Euclid South Subdivisions to reimburse Lighting and Landscape District (LLD) and Benefit Assessment District (BAD) levies in those subdivisions.

The owners, Fitzpatrick Homes and JB Land Holdings LLC (formerly Feathers Glen LLC) respectively, also requested a suspension of future levies other than administrative costs. They asserted that the assessments were levied to maintain improvements in the subdivisions and the subdivisions were not built. The City Council directed the City Attorney to research the issue and return with a report and then subsequently continued the matter until the next meeting on January 26, 2009.

At the regularly scheduled meeting of January 26, 2009, the City Council determined that the levies were assessed in error and directed staff to refund the first installment of the FY 2008/2009 assessment, which had already been paid (see item 6 from the attached January 26, 2009 minutes) and we *assumed* to suspend further assessments in the subdivisions. See discussion below.

The enabling legislation for the formation and maintenance of Lighting and Landscaping Districts is the Landscape and Lighting Act of 1972 (Part 2 of Division 15 of the California Streets and Highways Code). The enabling legislation for formation and maintenance of Benefit Assessment District is the Benefit Assessment Act of 1982. Proposition 218 (1996) voting requirements also apply to both the 1972 Act and 1982 Act if assessments are increased or assessment methods changed[1].

The City annually reviews the anticipated costs for each district for the next year, establishes assessments attributable to each parcel, and orders such assessments to be levied through the County property tax roles.

Discussion:

We have recently been contacted by Fitzpatrick Homes regarding the assessments in the Legacy Subdivision. We were contacted earlier in the year on the same subject by the owner of the Euclid South Subdivision. They assert that although we did refund them the full amount of the first installment of assessments from FY 2008/2009, we did not suspend future levies as directed by the City Council and they were then forced to continue paying future assessments to avoid a tax default.

The amount of the first installment of assessments levied in FY 2008/2009 against the Legacy Subdivision (previously Euclid North) was $8,912.70 (see attached property tax notices)[2]. The City subsequently cut a check dated 3/31/09 (copy attached) to Fitzpatrick Homes, but did not suspend future assessments.

[1] California Constitution Article XIIID, Sections 4 and 5.

[2] Note that the property tax bills use a different nomenclature for Lighting and Landscape Districts (LLD) than we use. They are shown as LMD, short for Landscape Maintenance District.

The amount of the first installment of assessments levied in FY 2008/2009 against the Euclid South Subdivision was $8,783.21 (see attached property tax notices). The City subsequently cut a check dated 3/27/2009 (copy attached) to JB Holdings LLC.

The minutes from the attached January 26, 2009 meeting do not clearly reflect the action taken by the City Council that night. In an effort to clearly understand this issue I obtained the recording of the minutes from the City Clerk and carefully listened to the dialog and motion on this item. While the discussion, as well as the request from the owners of the subdivisions, focused on both reimbursement and suspension of future assessments, the actual motion was only for reimbursement of the first installment. This *may* be the reason that future assessments continued to be levied in the subdivision but I have found no confirming data in the administrative record. It was certainly the intent to have future assessments suspended.

During the mid-year budget review, the issue of the Euclid assessment districts was analyzed and it was determined that, administratively, we would suspend future assessments except for the administrative costs of maintaining the districts. This determination was made because there are no improvements to maintain in the subdivision. In fact, there is only approval of a Tentative Subdivision Map for the property – no Final Map has been filed. At the mid-year budget review, a ballpark number of about $28,000 was used to show the City Council what the future impacts of suspending the assessments would do to the General Fund on an on-going basis. The issue before you tonight is a different issue.

<u>Assessments for the Euclid North LLD and BAD</u>

Specifically, the Legacy Subdivision developer has requested reimbursements of already paid assessments, except for administrative costs. For both the LLD and BAD these assessments are (by fiscal year):

08/09 2nd Installment	09/10 1st & 2nd Installments	10/11 1st & 2nd Installment
$8,912.70	$13,423.50	$14,786.90[3]

The total of these assessments is $37,123.10.

Administrative costs, as shown in the budget for the three affected fiscal years are:

08/09 fiscal year	09/10 fiscal year	10/11 fiscal year

[3] Although the second installment has not yet been paid, at the time of this report it is unknown whether or not we can remove the 2nd installment from the tax rolls this year. We have included it here as a maximum amount to be reimbursed. Only half of this number will actually be reimbursed if we are successful in removing the 2nd installment from the tax roll.

LLD	$1,500	$1,500	$1,414
BAD	$1,500	$1,500	$1,414

The total of these administrative costs is $8,828. Deducting the administrative costs from the total assessments leaves a remainder of $28,295.10. This is the amount presumed to be requested by Fitzpatrick Homes, since their request was for a refund of the paid assessments, less administrative fees.

Assessments for the Euclid South LLD and BAD

The owners of this subdivision have also requested a refund of assessments levied in the Euclid South LLD and BAD. The assessments for both the LLD and the BAD in these two districts are (by fiscal year):

08/09 2nd Installment	09/10 1st & 2nd Installments	10/11 1st & 2nd Installment
$8,783.21	$11,704.10	$14,326.88[4]

The total of these assessments is $40,675.71. The administrative costs are identical to the Euclid North costs for all three fiscal years: $8,828. Deducting the administrative costs from the total assessments leaves a remainder of $31,847.71.

On a side note, while researching the tax rolls for this subdivision, it became apparent that the assessments have only been levied on one of the two parcels making up this (proposed) subdivision. To ensure that the other parcel, APN 018-020-017, joins the Euclid South LLD and BAD, staff has placed a note in the Tentative Map file for the subdivision requiring this parcel to join the districts prior to recordation of the Final Map. The attached resolution also contains this requirement in an effort to strengthen the administrative record.

Engineer's Report:

The Engineer's Annual Levy Report is required by both the 1972 Act and the 1982 Act. This report describes the districts, any annexations or changes to the districts, and the proposed assessments for the next fiscal year.

The description of the districts and services from the Engineer's Annual Levy Report is as follows:

"Each Landscape and Lighting District provides and ensures the continued maintenance, servicing, administration, and operation of various landscaped and lighting improvements and associated appurtenances located within the public rights-of-way and dedicated landscape easements in various tracts through the City. Each District (sic) is identified as a distinct area within the City with specific costs and benefits to the parcels within each District. The

[4] Ditto footnote 3.

spreading of the improvement costs is based upon the total cost of the improvements in the District and is proportionally spread among all benefiting properties within each District as determined under §§22503 of the California Streets and Highways Code.

Each property is assessed only for the cost of the improvements from which benefit is received. Improvements within the District may include but are not limited to street lighting, planting materials, irrigation systems, drainage systems, detention basin, open space areas, public pedestrian paths, and entry monuments, and may include any combination of grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation drainage, or electrical facilities.

Each Benefit Assessment District may provide the costs of various improvements to roads, sidewalks, public facilities, storm water facilities, undergrounding of utilities and any other benefits allowed under the Act".

Since there are no improvements on the property, it is obvious that maintenance of improvements is not needed. Similarly, there is no reason to begin collecting capital funds for future improvements since the developer is responsible for all costs associated with construction of the subdivision.

All future assessments, except for administrative costs, will be suspended until there are improvements on the property. Staff has determined that the trigger point for beginning assessments should be at the time the City Council accepts the improvements in the subdivision, IE: when all subdivision improvements have been completed and turned over to the City for maintenance. Acceptance of subdivision improvements takes a City Council action.

Fiscal Impact:

Unlike the on-going fiscal impact of removing the assessments from our budget, the impacts associated with any reimbursement action taken tonight are one-time dollars. In anticipation of the City Council's approval of this item, funds have been included in the mid-year budget to cover the maximum possible reimbursements.

Staff believes that the assessments were levied in error and that a refund of the assessments paid in all four districts, less administrative costs and less funds owed to the City by the developers is necessary. The impact to the General Fund is therefore: $28,295.10 plus $31,847.71 less funds owed of $1,200.87 (Legacy Subdivision) and $6,362.60 (Euclid South) for a total of $52,579.34.

Recommendation:

Adopt Resolution No. 2011-012, A Resolution of the City Council of the City of Hughson Reimbursing Assessments for the Euclid North and Euclid South Lighting and Landscape Districts and Benefit Assessment Districts.

The amount of the first installment of assessments levied in FY 2008/2009 against the Euclid South Subdivision was $8,783.21 (see attached property tax notices). The City subsequently cut a check dated 3/27/2009 (copy attached) to JB Holdings LLC.

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Recommendation:

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CITY OF HUGHSON
CITY COUNCIL
RESOLUTION NO. 2011-012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUGHSON REIMBURSING ASSESSMENTS FOR THE EUCLID NORTH AND EUCLID SOUTH LIGHTING AND LANDSCAPE DISTRICTS AND BENEFIT ASSESSMENT DISTRICTS

WHEREAS, Lighting and Landscape Districts (LLD) and Benefit Assessment Districts (BAD) intended to benefit the Euclid South and Legacy (formerly Euclid North) Subdivisions were formed with concurrence of the developers of those subdivisions to assist in maintaining the improvements therein; and

WHEREAS, due to economic conditions which adversely affected the housing market, neither subdivision was built but maintenance costs were still assessed; and

WHEREAS, at its regularly scheduled meeting of January 26, 2009, the Hughson City Council approved a request to refund the first installment of assessments levied and previously paid in both the Legacy and Euclid South Subdivisions to maintain improvements in the two subdivisions; and

WHEREAS, although it was clearly the intent of the City Council at that meeting to suspend future assessments, excluding administrative fees, in both the Euclid North and Euclid South LLDs and BADs, future assessments were not suspended but have continued to be levied on the tax rolls; and

WHEREAS, the City Council does hereby find that the 2nd installment of assessments levied in the 2008/2009 tax year, both installments in the 2009/2010 tax year, and the both installments in the 2010/2011 tax year for both Euclid North and Euclid South LLDs and BADs were assessed in error and any of these assessments that show proof of payment should be refunded; and

WHEREAS, the refunds will be the amount of actual assessments paid, less administrative costs in the districts and less any outstanding funds owed to the City of Hughson by the developers/owners of the properties; and

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hughson does hereby direct the reimbursement of assessments levied in the Euclid North LLD and BAD, less administrative costs and previous funds owed, for a maximum total of $27,094.23; and

NOW THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Hughson does hereby direct the reimbursement of assessments levied

in the Euclid North LLD and BAD, less administrative cost and previous funds owed, for a maximum total of $25,485.11.

NOW THEREFORE, BE IT FURTHER RESOLVED that the parcel identified as APN 018-020-017 shall be annexed into the Euclid South LLD and BAD, as required by the conditions of approval for the Euclid South Tentative Subdivision Map, prior to recordation of the Final Map for that subdivision.

It is hereby certified that the foregoing Resolution No. 2011-XX was duly introduced and adopted by the City Council of the City of Hughson at its regular meeting held on this 14th day of February, 2011 by the following roll call votes: ( )

Ayes in favor: Councilmembers
Noes:
Absent:
Abstain:

Approved	Attested
_____	_____
Ramon Bawanan, Mayor	Michele P Winterbottom, MMC City Clerk