

Agenda Item No. \_\_\_\_\_

**City of Wichita  
City Council Meeting  
February 9, 1999**

**Agenda Report No.** \_\_\_\_\_

**TO:** Mayor and City Council Members

**SUBJECT:** Agreement to Respread Special Assessments. Oak Ridge 2nd Addition  
(District V)

**INITIATED BY:** Department of Public Works

**AGENDA:** Consent

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**Recommendation:** Approve the Agreement.

**Background:** The developers of Oak Ridge 2nd Addition have submitted an Agreement to respread special assessments within the Addition.

**Analysis:** The land was originally included in numerous improvement districts for a number of public improvement projects. The purpose of the Agreement is to respread special assessments on an equal share basis for each lot. Without the Agreement, the assessments will be spread on a square foot basis. The Agreements will equalize the assessments for each lot, making it easier for the developer to market the lots.

**Financial Considerations:** There is no agreement fee.

**Legal Considerations:** The Agreement has been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve the Agreement; and authorize the Mayor to sign.      C

AGREEMENT

BY AND BETWEEN

THE CITY OF WICHITA, KANSAS,  
Party of the First Part

and

Freedom Development, Inc., Hartwood Homes, Inc., Lifestyle Homes Group,  
Inc., Netco Custom Homes, Inc., Net Homes by Design, Inc., & D.J. Kelly  
Custom Homes, Inc.

Parties of the Second Part

WHEREAS, Party of the First Part has constructed certain municipal improvements in the South West Quarter, Section 33, Township 26 South, Range 1 West, Oak Ridge 2<sup>nd</sup> Addition, within the City Limits of the City of Wichita; and

WHEREAS, Parties of the Second Part are the landowners of all or part of the improvement district; and

WHEREAS, Parties of the Second Part desires that a reassessment be made to reflect an equitable distribution of assessments; and

WHEREAS, the Party of the First Part and Parties of the Second Part are both desirous of accomplishing such a reassessment.

NOW, THEREFORE, in consideration of the mutual covenant and promises herein contained, the parties agree as follows:

1. Oak Ridge 2<sup>nd</sup> Addition, Lots 1-32, Block 1, Lots 1-17, Block 3, Lots 1-13, Block 2 and Lots 1-30, Block 4

was part of the improvement district for the following City projects(s):

Paving 29<sup>th</sup> Street North from the west line of Topaz Circle to the west line of Pepper Ridge Project No. 472 82836

2, The Parties agree to make a reassessment for said project in the following manner:

That part of the special assessments that were spread to Lots 1-32, Block 1, Lots 1-17, Block 3, Lots 1-13, Block 2 and Lots 1-30, Block 4, Oak Ridge 2<sup>nd</sup> Addition should be reassessed to Lots 2-17, Block 3 and Lots 10-27, Block 4, Oak Ridge 2<sup>nd</sup> Addition. Each lot should be assessed an equal amount.

3. The Parties of the Second Parties are the owner of the property described in section one above and said Party of the Second Part hereby waives the notice and hearing requirements of K.S.A. 12-6a12 (b) with respect to the reassessment herein described.

4. The Parties of the Second Part further waives their right to appeal the special assessments for the above mentioned projects (including this described reassessment) and agrees that no suit to set aside said assessment shall be brought by him nor shall he in any other way bring an action to question the validity of the proceedings taken by the Party of the First Part in constructing this project and levying the special assessments therefor.

5. The Parties of the Second Part further agrees that he will indemnify the Party of the First Part against any and all costs, expenses, claims and judgements for which the Party of the First Part is held responsible or which are entered against the Party of the First Part arising out of or as a result of the reassessment herein described.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement the

\_\_\_\_\_ of \_\_\_\_\_, 19\_\_.

THE CITY OF WICHITA, KANSAS

Approved as to form:

Clay E. Reichenbaf  
Director of Law

BY \_\_\_\_\_

Mayor  
Party of the First Part

Attest:

\_\_\_\_\_  
City Clerk

FREEDOM DEVELOPMENT, INC.

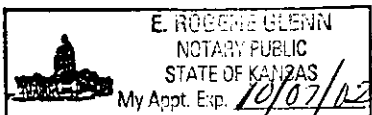
J.V. Van Allen

Party of the Second Part  
J.V. Van Allen, President for Lots  
1-32, Block 1, Lots 1-13, Block 2,  
Lots 1-8 and Lots 10-17, Block 3,  
Lots 1-20, 23-24, 26, 29-30, Block  
4

STATE OF KANSAS )  
                          ) ss:  
SEDGWICK COUNTY )

BE IT REMEMBERED, That on this 4th day of November,  
1998, before me, the undersigned, a Notary Public in and for the County and  
State aforesaid, came J.V. Van Allen, President of Freedom, Inc., personally  
known to me to be the same person who executed the within instrument of writing  
and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
seal, the day and year last above written.



E. Robene Glenn  
Notary Public

My Appointment Expires:  
10/07/02







# HINKLE ELKOURI

LAW FIRM L.L.C.

Reply to East Office  
J. Scott Pohl  
[spohl@hinklaw.com](mailto:spohl@hinklaw.com)

August 6, 1999

J.V. VanAllen  
1377 N. Clearwater Road  
Clearwater, Kansas 67026

Freedom Development, Inc.  
1377 N. Clearwater Road  
Clearwater, Kansas 67026

Dear Mr. VanAllen:

This firm has been retained by Will and Deb Phillips to represent them in possible litigation against yourself and your company, Freedom Development, Inc. I am assuming that you are aware of the situation concerning the downing of a fence located near the Phillips' residence located on N. Tyler Road. It is my understanding that you have had several conversations with Mr. Phillips concerning the fence and the location of a property line between the property owned by the Phillips and property which you recently purchased. The Phillips recently noticed that their fence was removed. In addition, I have been advised that excavation work has been commenced in the area where the fence was previously located. We are presuming that either yourself or someone at your direction removed the fence and conducted the excavation work. Prior to its removal, that fence has been in existence for more than fifteen years and was placed there by the Phillips. As a result, the Phillips claim ownership of all property up to the previously existing fence line.

If you or others on your behalf removed the fence, you had no authority or right to do so. The removal was intentional damage to the Phillips' personal property. In addition your excavation of the dirt constitutes a trespass on property owned by the Phillips. There is no doubt that you were aware of the ownership of the fence and also aware of the Phillips' claim to ownership of the property up to the fence line. It is my understanding that you have had several conversations with Mr. Phillips regarding the same.

The purpose of this letter is twofold. First, this letter is to give you the opportunity to resolve this dispute with the Phillips in the immediate future. As Mr. Phillips has indicated in the past, he stands willing and ready to work with you towards an amicable solution. However, in the event an amicable solution cannot be reached within the next ten (10) days, the second purpose of this letter is to advise you that a lawsuit will be commenced against you and Freedom Development, Inc., for damage to the fence, trespass, slander of title, and such other causes of action which may exist. In addition, because your actions appear to be intentional, after filing of the lawsuit and conducting discovery, we intend to file an action for punitive damages for the willful and intentional damage to the fence and the Phillips' property. The individual that did your excavating work will also be sued after the name of such individual is determined through discovery.

Mr. J.V. VanAllen

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August 6, 1999

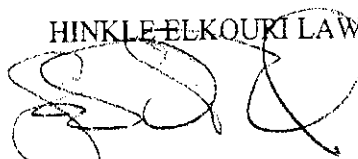
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If either yourself, your employees, or others working on your behalf did not remove the fence and/or conduct the excavating work, I would ask that you contact me to provide what information you have. If I do not receive a response or you do not contact me to discuss an amicable resolution, I will presume that you are the responsible party and that litigation is necessary

As you might well imagine, any lawsuit against yourself and Freedom Development, Inc., will tie up your ability to market the land to any prospective homeowners. Not only will that lawsuit concern your actions, but because it concerns title to real property, it will be impossible for you to give clear title to any individual purchasing a lot from you. Because of the substantial damage that will occur to you as well as to your ability to market the property and to your future construction on the property, I would suggest that you not delay and contact this office immediately to work out an amicable solution to the problem.

Sincerely,

HINKLE-ELKOURI LAW FIRM L.L.C.



J. Scott Pohl

JSP:cms

G:\DATA\WP\CMS\SP\philipsa.ltr.wpd

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\*OAK RIDGE SECOND --- FINAL PLAT

\*

2\*BOUNDARY

AREA = 1645198.0649 (ACRES = 37.7686)

POINT	BEARING	DISTANCE	NORTH COORDINATE	EAST COORDINATE
6			1704552.4896	1618970.7358
7	N 00 31 19.000 W	910.2116	1705462.6634	1618962.4442
17	N 89 57 30.000 E	1170.9989	1705463.5150	1620133.4428
18	N 00 31 19.000 W	75.0026	1705538.5145	1620132.7596
19	N 89 57 30.000 E	530.4119	1705538.9002	1620663.1714
16	S 14 18 52.050 E	621.5055	1704936.6904	1620816.8346
13	S 89 24 17.080 W	76.9491	1704935.8910	1620739.8897
14	S 00 35 42.920 E	365.0003	1704570.9104	1620743.6817
6	S 89 24 17.000 W	1773.0416	1704552.4896	1618970.7358

PRINTER

\*\* PRINTER HAS BEEN TURNED OFF

# **CITY OF WICHITA**

*Department of Public Works - Engineering Division  
Construction & Survey*

## **INTEROFFICE MEMORANDUM**

**DATE:** August 9, 1999  
**TO:** Larry Schaller  
**CC:** Jan Long  
**FROM:** Gary Janzen *gj*  
**RE:** Oakridge 2nd Add. Fence

During the sanitary sewer construction for this addition (Lat. 379, 468-82723), K.C. Excavating removed approximately 400' of fence along the north line of the plat that was encroaching 1-2' into Lots 7-12, Block 2. Contractor tried to deal with property owner prior to doing this, but got very little cooperation in doing so. Therefore, we decided that K.C. would remove the section of fence in question and place on owner's property, as per Standard Specifications. As you can see from the attached letter, we are now finding out that this may have not been the best decision? Property owner is claiming rights to all property inside fence since it has been there for more than 15 years (Imminent Domain?). In any event, the contractor/developer (one in the same here) is asking for our input on this before he proceeds any further. Van Allen talked to farmer who he bought ground from, sounds as if fence has been up only 4-5 years. Whether this is even an issue or not, need to know how and where to proceed from here. Please advise.

SUBDIVISION COMMITTEE  
METROPOLITAN AREA PLANNING COMMISSION

AGENDA ITEM NO. 4

March 6, 1997

**STAFF REPORT**  
**(Preliminary Plat)**

**CASE NUMBER:** S/D 97-17 - OAK RIDGE 2ND ADDITION

**OWNER/APPLICANT:** Freedom Development, Inc., 1377 N. Clearwater Rd., Clearwater, KS 67026;

**SURVEYOR/ENGINEER:** Mid Kansas Engineering Consultants, Inc., 411 N. Webb Road, Wichita, Ks 67206; 832-0213

**LOCATION:** North of 29TH Street North and East of Tyler.

**SITE SIZE:** 37.8 Acres

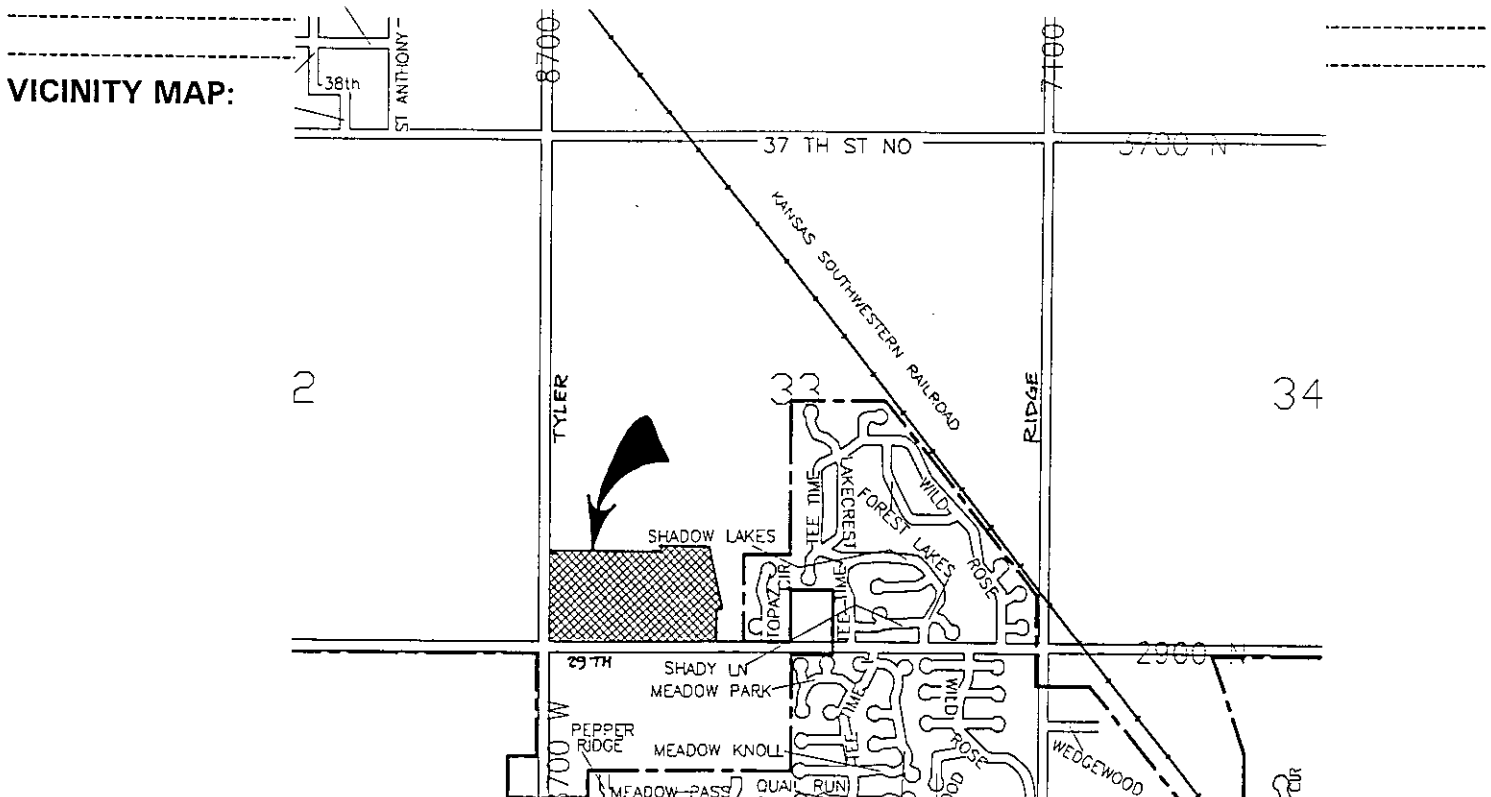
**NUMBER OF LOTS**

Residential:	90
Office:	
Commercial:	1
Industrial:	==
Total:	91

**MINIMUM LOT AREA:** 9800 square feet

**CURRENT ZONING:** "SF-20" and "LC"

**PROPOSED ZONING:** "SF-6", "LC", and "TF-3"



NOTE: Although under a different ownership, the site to the north of this Addition is also in the process of being platted and is on the same Subdivision Committee meeting date (3/6/97) for review. As was noted for this other Addition (Forest Lakes West), a portion of these two (2) plats appears to be overlapping (Lots 1 through 4, Block 3 of this Plat). Also, this site is in the County and annexation will be required which will allow for the lot sizes being platted. The southwest corner of this plat is presently zoned "LC" and while the intention is to retain some of that zoning for a moderate sized lot immediately at the Tyler and 29th Street North intersection, most of the "LC" area is now being shown as platted for conventional single-family or two-family development.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, this site shall have been annexed to Wichita. Upon annexation, the lot sizes, being platted will be acceptable.
- B. Also, prior to this plat being scheduled for City Council review, the applicant shall request a zone change to an appropriate residential classification (SF-6, TF-3, etc.) for those residential lots being platted in areas presently involving "LC" zoning (lots adjacent to Oak Ridge Court). If zoning is not changed, street right-of-way, paving, and other improvements would have to be based on "LC" zoning.
- C. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. This guarantee shall also provide for any needed off-site extensions or related improvements. Also, if necessary, the applicant shall provide off-site easements.
- D. The applicant shall guarantee the extension of City water to serve the lots being platted. This guarantee shall also provide for any needed off-site extensions or related improvements. Also, if necessary, the applicant shall provide off-site easements.
- E. The applicant shall guarantee the paving of the proposed interior streets. This guarantee shall also provide for sidewalks along outside of each non-cul-de-sac street including Pepper Ridge out to 29th Street North and north into the adjacent site (Forest Lakes West plat).
- F. Per policy, paving will need to be provided from Lakeridge to Pepper Ridge along 29th, and from 29th to Oak Ridge Court on Tyler. (The City and County have projects to pave Tyler south of 29th in 1997 or 1998.)
- G. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- H. On the final plat, complete access control shall be indicated for a distance of 100 feet from the southwest corner of Lot 1, Block 1 to both Tyler and 29th Street North. The one requested opening to each street from this lot shall be limited to this lot's remaining frontages to these streets.
- I. Complete access control shall also be indicated from Reserve D to 29th Street North. Access to this Reserve, both for maintenance and to make this Reserve useable to area residents, should be provided by an extension of the Reserve out to Pepper Ridge in the vicinity of Lots

8 and 9, Block 3.

- J. The final plat shall state in the plat's text the purposes of the proposed reserves as well as who is to own and maintain the reserves.
- K. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities. This covenant shall also provide for the lot/homeowners' association to maintain the "parking strip" located between this plat's south and west property lines and the driving surfaces for 29th Street North and Tyler.
- L. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by a method similar to special assessments.
- M. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- N. The City's Fire Department representative needs to comment on the acceptability of this plat's street names. Specifically, the following items are of concern:
- Shadow Lakes alignment in relationship to this street as is already platted in the Forest Lakes Addition and as is being proposed by the Forest Lakes West plat.
- Oak Ridge Court should be named a Circle or renamed as Tyler Court.
- Shady aligns with the street named Shady "Lane" on the Forest Lakes plat east of this site. That is, Lane appears to be part of the street's name and not just a suffix.
- The suffix "drive" should be deleted from High Point. The existing street name to the south does not use Drive and drive is now limited to access or frontage type roads.
- O. Prior to submitting the final plat, the applicant shall meet with Planning Department Land Use staff (Ray Ontiveros) to determine if any public dedications for park or use of open space areas (Reserves) should be provided by this plat.
- P. On the final plat, various lines either need to be eliminated or properly labelled. Specifically, a number of lots such as along the north line of Shadow Lakes show two dashed lines. One line is labeled a setback, while no explanation appears to be given for the second line. Also, various box type areas are shown between such Lots as 29 and 30, Block 4 but again are not labelled. If these areas are intended as easements, they should be indicated as such.

- Q. Based on the proposed street in the Forest Lakes West plat north of this Addition, the section of Pepper Ridge connecting these two Additions, only needs to be platted with a 58-foot right-of-way and not the 62-foot being shown.
- R. Requirements for a final plat (see pages 5-5 through 5-10, Part 4, Article 5 of the MAPC Subdivision Regulations).
- S. Prior to or at the time of submitting the final plat, the applicant shall submit a drainage plan to City Engineering for review and approval.
- T. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- U. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- V. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- W. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 30, Marquette, KS 67464 (913-546-2294) or Kansas Department of Wildlife and Parks, P. O. Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- X. The representatives from the utility companies should be prepared to comment on the need for utility easements to be platted on this property.
- Y. The representatives from **City Engineering** should be prepared to comment on the status of the applicant's drainage concept. Engineering also needs to indicate any minimum building pad elevation requirements for this site.