

Ordinance 92-2

An ordinance authorizing and ordering the construction and installation of public street and utility improvements within the East Ophir Improvement District, for payment of which special assessments shall hereafter be levied; determining the method of apportioning said assessments, among the owners of real property benefitted thereby; authorizing appropriate officers of the Town to execute a loan agreement and a promissory note with an acceptable lending institution to finance the cost of such improvements, and authorizing the Town Manager to award a contract for construction of such improvements to the lowest qualified bidder.

WHEREAS, the General Assembly of the Town of Ophir (the Town) has heretofore by ordinance and resolution created the East Ophir Improvement District, and

WHEREAS, the Town has expressed an intention to construct certain public improvements consisting of the grading of three streets, Ninth Street, Aurum Street and Porphory Street; the burial of electric cable, cable television and telephone utilities; extension of water main; installation of water laterals to each lot; construction of water storage tank which improvements are to be constructed within the East Ophir Improvement District as provided by Section 31-25-501, et seq., Colorado Revised Statutes, as amended, and

WHEREAS, the Town Clerk has caused notice containing the information required by Section 31-25-503(4) Colorado Revised Statutes as amended, to be published in *The Telluride Times Journal*, a newspaper of general circulation in the Town, in its issue of August 6, 1992 and to be mailed by First Class postage prepaid mail to all known owners of property to be assessed for the cost of the improvements;

WHEREAS, pursuant to Colorado Revised Statutes part 5 of Article 25 of Title 30, as amended, the General Assembly has held on August 25, 1992 a public hearing relating to the construction of the improvements within a special improvement district and affording all interested persons an opportunity to have complaints, protests, and objections heard and determined before final action thereon; and

WHEREAS, all other conditions precedent to the creation of the proposed special improvement district and the authorization of improvements therein have been fully performed and satisfied.

NOW THEREFORE, BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR, COLORADO, that

SECTION ONE

1. The Assembly finds that the Town Clerk has caused a Notice containing the information required by Section 31-25-503(4) C.R.S. as amended, to be published in *The Telluride Times Journal*, a newspaper of general circulation in the Town, in its issue of August 6, 1992, and to be mailed by first-class postage prepaid mail to all known property owners to be assessed for the cost of the Improvements.
2. That having held a public hearing on August 25, 1992 and having received no protests by the owners of property to be benefitted and constituting the bases of assessment as determined by the General Assembly, and having heard no valid complaints and objections made in accordance with Part 5 of Article 25 of Title 30, Colorado Revised Statutes, as amended, the General Assembly does hereby determine, that the project should proceed as it is necessary for the preservation of the public health, safety and welfare and is in the public interest.
3. That there is hereby created and established within the limits of the Town a special or local improvement district to be known and designated as "Town of Ophir, Colorado, East Ophir Special Improvement District," (the District) for the purpose of constructing the Improvements and of assessing the cost thereof against the properties specially benefitted thereby, which consist of the following real property:
All of Block 17, All of Block 18, and Lots 9, 10, Block 11, Town of Ophir.
4. That the map of the District attached hereto as Exhibit A and incorporated herein by reference, which map was previously filed with the Town Clerk, is hereby approved.
5. That the Revised Estimate of Cost, Improvements Description, and Proposed Schedule of Assessments, which estimate, description, and schedule is attached

hereto as Exhibit B and is incorporated herein by reference, and which was previously filed with the Town Clerk, are hereby approved. This revised estimate of cost shall not be binding upon the Town for purposes of levying assessments for the actual cost of the Improvements.

6. The General Assembly hereby preliminarily orders the adoption of preliminary plans and specifications for the construction of the Improvements which were prepared by Mesa Engineering and are dated June, 1992, and which are on file with the Town Clerk. Said plans and specifications are incorporated herein by this reference.

7. That the construction of the Improvements in and for the District is hereby authorized and ordered and shall proceed under the direction of the General Assembly in accordance with the plans, specifications, map, and estimates of cost heretofore prepared and filed with the Town Clerk and hereby approved by the General Assembly.

8. That the General Assembly hereby finds that the Improvements have been duly ordered after notice duly given and hearing duly held.

9. That the General Assembly has determined, and does hereby determine, that the Improvements will confer general benefits to the Town at large, and special benefits to the real or personal property within the District in an amount equal to or exceeding the estimated assessments. The General Assembly has determined, and does hereby determine, that assessments shall hereafter be levied against the properties specially benefitted by the Improvements as shown on the schedule of approximate assessments heretofore prepared and filed with the Town Clerk. Each legal building site within the District which is at least 5,000 square feet in size shall be benefitted in equal proportion.

10. That upon completion of the Improvements, or upon completion from time to time of any part thereof, and upon acceptance thereof by the General Assembly, or whenever the total cost of the Improvements, or of any part thereof, can be definitely ascertained, the General Assembly will cause to be prepared a statement of expenses showing the whole and actual cost of the Improvements, including an estimated amount of 2.5% (not to exceed 6%) additional, for subsequent costs of inspection, collection, and other incidentals, and also including capitalized interest on any loan proceeds obtained to the time the first installment of the assessment is made payable, and in said statement, apportioning said cost upon each lot or tract of land to be assessed for the same, which statement shall be filed in the office of the Town Clerk.

11. That upon receipt of said statement, the Town Clerk shall notify all known owners of the property to be assessed, by advertisement once in The Telluride Times-Journal, a newspaper of general circulation in the Town, and by certified or registered postage prepaid mail, at least fifteen days prior to the date of the hearing, that the Improvements have been completed and about to be accepted and that the assessment roll has been completed. The Notice to be so published and mailed shall be in substantially the following form:

N O T I C E

OF COMPLETION AND PROPOSED ACCEPTANCE OF IMPROVEMENTS IN AND FOR TOWN OF OPHIR, COLORADO, EAST OPHIR IMPROVEMENT DISTRICT, OF THE COMPLETION OF THE ASSESSMENT ROLL AND OF THE PROPOSED APPORTIONMENT OF THE COST OF THE IMPROVEMENTS, AND OF A PUBLIC HEARING WHEREIN COMPLAINTS AND OBJECTIONS PERTAINING THERETO SHALL BE HEARD.

All owners of real property within Town of Ophir, Colorado, East Ophir Improvement District which District includes all of Block 17, all of Block 18 and Lots 9 & 10, Block 11, Town of Ophir and all other persons, are hereby notified as follows:

1. That the improvements consisting of the construction of Porphory Street, Aurum Street and Ninth Street, burial of electric cable, television, telephone utilities, extension of water main to each lot, construction of water storage tank, especially benefitting the real property within the Town of Ophir, Colorado, have been constructed pursuant to the direction of the General Assembly and in accordance with the plans, specifications, maps, and estimates of cost theretofore prepared and filed with the Town Clerk.

2. That said improvements will be considered for acceptance by the Ophir General Assembly at a regular meeting thereof to be held at Town Hall on _____, the _____ day of _____, 1992.

3. That the whole and actual cost of said improvements by the General Assembly, including costs of inspection, collection and other incidentals and also including capitalized interest on the loan proceeds obtained to finance said improvements to the time the first installment of the assessment is made payable, is \$ _____, no part of which is to be paid by the Town.

4. That the assessment roll has been completed, and the share of said whole cost apportioned to each lot or trace of land within the district is as follows:

5. That any complaints or objections which may be made in writing by the property owners or any citizen to the General Assembly and filed with the Town Clerk in writing on or before the date of the hearing, will be heard and determined by the General Assembly at a regular meeting thereof to be held at Town Hall, Ophir, Colorado, on _____, the _____ day of _____, 1992, before the final passage of any ordinance assessing the cost of the improvements. At such time, the Council shall also determine the number, amounts, and times of payment of installments, the period of payment, the rate and entire assessment and the same shall also be set forth in the assessing ordinance.

DATED as of the _____ day of _____, 19____.

Town Clerk

Published in Telluride Times Journal

Publish on: _____

11. (Continued) That at the time specified in said Notice, or at some adjourned time, the General Assembly shall hear and determine all such complaints and objections, and may thereupon make such modifications and changes as may seem equitable and just, or may confirm the first apportionment, The General Assembly shall thereupon by ordinance assess the entire cost of the Improvements against the properties within the District.

12. That the proper Town officials are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance and to comply with the requirements of law.

13. That the General Assembly having heard no objections from the property owners in the district hereby ratifies the creation of the East Ophir Improvement District.

14. That all action heretofore taken by the General Assembly or other Town officials not inconsistent herewith directed toward the creation of the District and the construction of the Improvements.

SECTION TWO LOAN AGREEMENT AND PROMISSORY NOTE AUTHORIZED

The General Assembly finds and declares that the entering into of the loan agreement and the execution of a promissory note with the Bank of Telluride is necessary to promote the public health, safety and welfare, and is in the best interests of the Town of Ophir. Appropriate officers of the Town are hereby authorized on behalf of the Town to enter into a loan agreement with the Bank of Telluride, and to execute in connection therewith a promissory note with any necessary addendum pertaining to collection and qualification of the loan as a special, not general, obligation of the Town, in the maximum amount of \$120,000.00, at a maximum net effective interest rate of 8%, for a term of not more than 10 years, with no pre-payment penalty, to be repayable solely from, and to be secured by a pledge of assessments to be levied within the District, for the sole purpose of financing the costs of the District Improvements to be constructed, as set forth in Exhibit B hereto.

SECTION THREE SPECIAL FUNDS ESTABLISHED; BUDGET AMENDED

A. Construction Fund. The proceeds of the loan, excluding accrued interest and capitalized interest, shall be deposited into and there is hereby created the Town of Ophir, Colorado, East Ophir Improvement District, Special Assessment Construction Fund (the Construction Fund), and thereafter said proceeds shall be used only to pay or reimburse the Town, and its contractors and District agents, for the costs and expenses of acquiring, constructing and installing the Improvements. Subject to receipt of loan proceeds as authorized by Section 2, above, there is hereby appropriated the sum of \$120,000.00 in the Construction Fund for the construction of the Improvements and associated costs. In the event that less than all of the proceeds of the loan are expended to pay such costs and

expenses, any remaining sums shall be transferred upon completion of the Improvements to the Loan Repayment Fund and shall be used for the purpose of paying the principal of and interest on the loan. Accrued interest and capitalized interest shall be deposited into the Loan Repayment Fund and shall be applied for the payment of interest first due on the loan.

B. Loan Repayment Fund. The loan and the interest thereon shall be payable solely from, and there is hereby created, the Town of Ophir, Colorado, East Ophir Improvement District. Special Assessment Loan Repayment Fund (the Loan Repayment Fund), into which there shall initially be deposited accrued interest and capitalized interest on the loan and any proceeds of the loan remaining in the Construction Fund after the cost of the Improvements has been paid in full, and into which there shall thereafter be deposited all moneys collected on account of assessments to be levied against the property within the District an especially benefitted by the acquisition, construction and installation of the Improvements therein. The moneys in the Loan Repayment Fund shall be used for the purpose of paying the principal of and interest on the loan and for no other purpose whatsoever until the loan, both principal and interest, have been fully paid and discharged, and as security for such payment the Loan Repayment Fund is hereby exclusively pledged.

C. Surplus and Deficiency Fund. There is hereby created the surplus and deficiency fund which shall be funded with any surplus in the Loan Repayment Fund after payment of the loan. The loan together with bonds of other special improvement districts of the Town hereafter issued shall be additionally secured by funds deposited in the surplus and deficiency fund, the fund to consist of moneys remaining to the credit of any special improvement district hereafter created, the bond of which have been paid in full, both principal and interest. Whenever there is a deficiency in the Loan Repayment Fund for the payment of principal or interest on the loan, the deficiency shall be paid by transferring moneys from the Surplus and Deficiency Fund to the Loan Repayment Fund. In the event that such a deficiency cannot be so paid, the General Assembly, in consideration of general benefits conferred upon the Improvement District from the acquisition, construction and installation of the Improvements, may levy annual taxes without an election on all taxable property within the District at a rate to be determined by the General Assembly, or in lieu of such tax levies, annually transfer other available moneys of the Town, for the purpose of advancing moneys to maintain current payments of interest and equal annual payments of the principal amount of the loan. The proceeds of such taxes or other available moneys shall be placed in the Surplus and Deficiency Fund and disbursed only for the purposes specified herein. The obligations created by the payment provisions herein shall not be construed or held to make the loan a general obligation of the Town and the note holder shall have no claim on any general or other fund for the payment thereof, except as herein provided.

SECTION FOUR TAX MATTERS

The Town shall make no investment or other use of the proceeds of the loan at any time during the term thereof which, if such investment or other use had been reasonably expected on the date the note was issued, would have caused the note to be an "arbitrage bond" within the meaning of Section 103 or Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder.

The Town hereby designates the note as a "qualified -exempt obligation" under Section 265(b) of the Code.

On the date of issue of the note or in any event within the time prescribed by Section 149(e)(2) of the Code, the Town shall file Form 8038-G with respect to the note with the Internal Revenue Service Center in Philadelphia, Pennsylvania.

SECTION FIVE CONSTRUCTION CONTRACT AWARD

Subject to the receipt of funds pursuant to the loan agreement authorized by Section Two herein, the Manager is hereby authorized to award a contract for construction of the Improvements to the lowest qualified bidder, in accordance with the requirements of C.R.S. 31-25-516 and 31-25-518, as amended. The contract shall be awarded to the lowest reliable and responsible bidder, and shall not exceed the estimated cost of the Improvements as set forth in Exhibit B hereto plus five percent thereof, nor shall the contract exceed the total available loan proceeds obtained pursuant to Section Two, above.

SECTION SIX MISCELLANEOUS

1. All acts, orders, resolutions, ordinances, or parts thereof, in conflict with this Ordinance are hereby repealed, except that this repealer shall not be

construed so as to revive any act, order, resolution, or ordinance, or part thereof, heretofore repealed.

If any paragraph, clause, or provision of this Ordinance is judicially adjudged invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining paragraphs, clauses, or provisions hereof, the intention being that the various paragraphs, clauses, or provisions hereof are severable.

3. Any inconsistency between the provisions of this Ordinance and those of part 5 of Article 25 of Title 31, Colorado Revised Statutes, as amended, is specifically intended by the General Assembly. To the extent of any such inconsistency the provisions of this Ordinance shall be deemed made pursuant to the Home Rule Charter of the Town and shall supersede to the extent permitted by law the conflicting provisions of Part 5 of Article 25 of Title 31, Colorado Revised Statutes, as amended.

4. This ordinance is, and shall constitute, a legislative measure of the Town, and after the loan is obtained, this ordinance shall constitute a contract between Town and the Bank of Telluride as the note holder, and the ordinance shall thereupon be and remain irrevocable until the loan principal and the interest thereon shall have been fully paid.

INTRODUCED BEFORE THE OPHIR GENERAL ASSEMBLY, READ BY TITLE, AND REFERRED TO PUBLIC HEARING WITHOUT AMENDMENT this 4th day of August, 1992.

HEARD AND APPROVED AND ADOPTED BY THE OPHIR GENERAL ASSEMBLY this 25th day of August, 1992.

OWN)
(SEAL)

ATTEST:
Town Clerk

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APPROVED AS TO FORM:

Town Attorney

TOWN OF OPHIR, COLORADO

By:
Town Manager



Susanne Dorset

Richard D. ...

Paul ...