

**ORDINANCE 94-3  
TOWN OF OPHIR, COLORADO**

**AN ORDINANCE APPROVING THE WHOLE COST OF THE EAST OPHIR IMPROVEMENT DISTRICT IN THE TOWN OF OPHIR, COLORADO, APPROVING AND CONFIRMING THE APPORTIONMENT OF SAID COST ON EACH HOMESITE IN SAID DISTRICT; ASSESSING A SHARE OF SAID COST AGAINST EACH HOMESITE IN THE DISTRICT; AND PRESCRIBING A MANNER FOR THE COLLECTION AND PAYMENT OF SAID ASSESSMENTS.**

**WHEREAS**, by ordinance 92-2 adopted August 25th, 1992, the General Assembly of the Town of Ophir has created the East Ophir Improvement District, for the purpose of constructing certain public improvements as described in Ordinance 92-2;

**WHEREAS**, the whole cost of such improvements has been determined;

**WHEREAS**, an assessment roll has been prepared and a statement of the total cost of the improvements has been filed with the General Assembly and due notice of a public hearing on the assessment has been provided as required by Ordinance 92-2;

**WHEREAS**, the General Assembly has heard any and all objections to the assessment roll;

**WHEREAS**, from the statement made **and** filed with the General Assembly, the whole cost of the East Ophir Improvements amounts to \$180,000 (One Hundred and Eighty Thousand Dollars), which will be assessed entirely against the real property specially benefitted and include within the District;

**WHEREAS**, additional costs incurred for the completion of the East Ophir Improvement District were properly authorized by the district members and the General Assembly;

**WHEREAS**, the General Assembly has apportioned a share of the whole cost to each legal residential building site in the District, in accordance to the benefits to be derived by said property and in the proportions and amounts severally set forth in the assessment roll approved by the General Assembly;

**WHEREAS**, the General Assembly has determined to assess the cost of the improvements against those homesites and tracts of land and in the amounts as are more particularly set forth in the assessment roll certified to the General Assembly; and,

**WHEREAS**, it is in the public interest, and the interest of efficient public administration, to set forth an equitable fee for inclusion of future homesites into the East Ophir Improvement District,

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

**SECTION 1. CONFIRMATION OF ASSESSMENT ROLL**

The whole cost and apportionment as set forth in the assessment roll (attached as Exhibit 'A') is hereby approved and confirmed. The apportionment is hereby declared to be in accordance with the special benefits which the property in the District will receive by reason of the construction of the improvements. A share of the cost is hereby assessed to each tract of land in the District on the basis of each legal residential building site under the existing Town of Ophir zoning regulations. This method of apportionment is deemed reasonable because the dominant benefit of the improvements is to allow residential use of the properties.

**SECTION 2. PAYMENT OF ASSESSMENTS**

The assessments are due and payable to the Town Clerk within thirty days after the publication of this Ordinance without demand. Failure to pay the whole assessment within the thirty day period shall be deemed an election by the interested property owner to pay the assessment in installments, with interest as hereinafter provided, whether under disability or otherwise. Installment payments shall be payable at the office of the Town Clerk of the Town of Ophir, by 20 semi-annual payments, due and payable, on or before, the last day of April and the last day of August of each year until paid in full, with interest on the unpaid principal amount at an interest rate of 8% per annum, increasing no more than 2% each three year period, and not to exceed 14 1/2%. The East Ophir Improvement District Fund shall be created, shall be an interest bearing account, shall be used exclusively for capital expenditures for East Ophir Improvement District (including the payment of any and all loans for the East Ophir Improvement District loan), and shall be the only Fund which shall replace the 'Loan Repayment Fund' and the 'Surplus and Deficiency Fund' as created by Ordinance 92-2. All moneys collected on account of assessments levied against properties in the District, or by the payment of inclusion fees, shall be deposited into the East Ophir Improvement District Fund.

**SECTION 3. PENALTY FOR DEFAULT OR NON-PAYMENT**

Failure to pay any installment, whether of principal or interest, when due, shall cause the whole of the unpaid principal to become due and payable immediately. The whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of one percent (1%) per month, or fraction of a month, until the date of tax sale, as provided by law. At any time prior to the date of the tax sale, the owner may pay the amount of the all unpaid installments, with interest, at one percent (1%) per month, or fraction of a month, and all penalties accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not occurred. The owner of any property not in default as to any installments or payment may at any time pay the whole of the unpaid principal with accrued interest to the date of the next assessment installment payment date.

#### **SECTION 4. ASSESSMENT LIEN**

All assessments levied against the real property in the District, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, shall constitute, from the date of the final publication of this Ordinance, a perpetual lien in the several amounts assessed against each homesite, property, lot or tract of land. The lien shall have priority over all other liens except general tax liens, and shall be enforced in accordance with the laws of the State of Colorado.

#### **SECTION 5. NOTICE OF PAYMENT OF ASSESSMENTS**

The Town Clerk shall cause notice of assessments due to be published one time, in the Telluride Times-Journal, on the same day as the final publication of this Ordinance, and shall cause notice to be posted at the Ophir Town Hall on or before the date of publication. The notice shall set forth the place of payment and the time for the thirty day period to close.

#### **SECTION 6. FUTURE INCLUSIONS IN THE DISTRICT**

Future development in the East Ophir area may petition for inclusion in the East Ophir Improvement District. The cost for inclusion shall be \$5,000 (Five Thousand Dollars) per building site, as determined by the existing zoning or any development agreements with the Town of Ophir. The proceeds from the first twelve building sites approved for inclusion shall be applied to the outstanding balance of the East Ophir Improvement District loan in order to reduce the assessments per building site to \$6,000 (six thousand dollars) for the current assessment roll (Exhibit 'A'). In the event that the proceeds from the inclusion fee of any of the first twelve building sites exceeds the outstanding balance of the East Ophir Improvement District loan, the remaining proceeds shall be distributed equally among the assessed properties on the assessment roll (Exhibit 'A'). Any additional monies obtained from inclusion in the East Ophir Improvement District shall be deposited in the East Ophir Improvement District Fund. The fee, or fees, for inclusion shall be payable prior to tying into and extending the improvements from the existing East Ophir Improvement District. This inclusion fee is intended to require all homesites that enjoy the benefits of the East Ophir Improvement District to pay an equitable share and is deemed to ensure reasonable certainty, stability, and fairness in the use of moneys generated for the East Ophir Improvement District.

#### **SECTION 7. LIMITATION OF ACTIONS**

Any action brought challenging the validity of this Ordinance shall be commenced within thirty days after the effective date of this Ordinance or else shall be thereafter perpetually barred.

**SECTION 8. OFFICERS' AUTHORITY**

The officers of the Town of Ophir are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance.

**SECTION 9. RATIFICATION OF PAST ACTIONS**

All actions take by the Town of Ophir, or its officers, related to the creation of the East Ophir Improvement District, the construction and installment of any and all improvements, the authorization and execution of all loan agreements and promissory notes, and the levying of assessments for payment, are hereby ratified, approved and confirmed.

**SECTION 10. CONFLICTS WITH OTHER LAWS**

This Ordinance shall supersede any laws of the Town of Ophir or the State of Colorado that are in conflict with the provisions of this Ordinance. All acts, orders, resolutions, ordinances or parts thereof, taken by the Town and in conflict with this Ordinance, are hereby repealed, except that this repealer shall not be construed so as to revive any act, order, resolution, ordinance or part repealed.

**SECTION 11. SEVERABILITY**

That if any one or more sections or parts of this Ordinance shall be adjudged unenforceable or invalid, such judgement shall not affect, impair, or invalidate the remaining provisions of this Ordinance, it being the intention that the various provisions hereof are severable.

**SECOND READING OF THIS ORDINANCE HEARD, APPROVED AND ADOPTED BY THE OPHIR GENERAL ASSEMBLY this 22ND day of March, 1994.**

(Town Seal)

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Attest: Town Clerk

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Approved as to Form: Town Attorney

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Town of Ophir, by: Town Manager