



City of Kalama

Incorporated 1890



MEMORANDUM

Date: August 28, 2015

To: Mayor Pete Poulsen
Kalama City Council

From: Adam Smee, City Administrator
Coni McMaster, Clerk/Treasurer

Proposal: Mr. Carl McCrary has submitted a Latecomers Application for reimbursement of a portion of his costs for installation of a sewer main in the Ninth Street Right-of-Way. Staff has reviewed the codes and policies of the City, but finds conflict between the intent of the codes and the technical validity of the application under the code. Based on legal counsel's advice Staff is presenting the proposal to Council as the ultimate authority to approve or deny the application.

Background:

Applicant Carl McCrary owns property between China Garden and Date Street. During his tenure as the City of Kalama's Public Works Director, Mr. McCrary conveyed this real property to a Mr. Larsen while maintaining a lien or "equitable interest" in the property. Larson submitted a subdivision application to the City. Mr. Larson's subdivision application was approved by a direct subordinate reporting to Mr. McCrary without other oversight of that decision. The property was then repossessed by McCrary after Mr. McCrary retired from the City. However, the Larson Short Plat was later vacated by the Kalama City Council on April 16, 2014, under a settlement agreement negotiated between the City and Mr. McCrary.

In 2014 Mr. McCrary approached the City to construct a sewer main. The main was intended to serve the subject property owned by Mr. McCrary. The construction of this sewer infrastructure could also serve two other properties not associated with the vacated subdivision in the area but this proposed infrastructure is not necessarily required to provide service to the other properties. McCrary made unequivocal promises to both the Kalama School District Board (in order to obtain an easement to cross their property) and the City of Kalama to dedicate the sewer main to the City upon its completion. Permission to construct the sewer main to be placed in a City street was conditioned on the promise that McCrary would construct the main to City standards and dedicate the main to the City upon completion. The main was sited in City street, constructed by McCrary's contractor, inspected by City Public Works and found to be in compliance with City standards. The sewer infrastructure has been deemed acceptable and is ready for use as City infrastructure. Despite the final inspection, road repair, and availability for use, McCrary has stated the sewer infrastructure is not yet complete and therefore cannot be dedicated to the City. McCrary's contention is based on

(1) remaining balance due to his contractor of \$51.80 of \$13,051.80 for the total cost of construction, a debt he controls; and (2) the grass in the area has not been re-seeded.

Owners of a neighboring lot are in the process of building a home and developing their property, having received a building permit and paid for water and sewer hookups. It is in the City's best interest that this property be served by connecting to the new main built by Mr. McCrary, to avoid parallel sewer mains in the same right-of-way. This cannot be authorized because the main has not been dedicated to the City.

August 2015, Mr. McCrary has submitted an application for a Latecomers Agreement with the City. In a meeting between City Administrator Adam Smee, Clerk/Treasurer Coni McMaster, and Mr. McCrary the issues regarding the questionable application were pointed out. In an attempt to resolve the situation the City Administrator indicated the application would be put before the Council but there were no guarantees concerning the outcome of the application, if Mr. McCrary wanted to proceed. The City Administrator was clear there was no implied promise to endorse the application. The application fee of \$500 was paid and the application is being presented to the City Council.

Latecomers Application (LCA) – City Code and Policy

Per the City Code KMC 16.10.010 and its incorporated policies and procedures, a LCA is only authorized for sewer facilities by an applicant submitting certain required materials “with a short plat or preliminary plat applications.” Since the plat related to this property has been vacated under the settlement agreement, the lacks the authority to enter into a LCA. The policies require a detailed latecomer's application to be included with the plat applications or at the latest with construction drawings and plans and prior to the construction of the project. Construction of the sewer main in this application has been substantially complete for 8 months

RCW 35.91.020 authorizes contracts with private developers, to include the LCA application with requirements which are not present in the applications including:

1. The transfer to the City of the water or sewer facility, without cost to the municipality, upon acceptance by the municipality of the water and sewer facility. (RCW 35.91.020(1)(a)(iii)). The sewer line has not been dedicated to the City.
2. The applicant has not provided assurances that the City would take the property free of contract liens, nor do the documents allow a verification of contracts and costs necessary to establish latecomer contributions or other system charges it may deem reasonable in subsequent rate-making.
3. Under the RCW, the applicant is required to submit the total cost of the sewer facility to the City within the required time period of one hundred twenty (120) days after the completion of construction in order for the City to determine reimbursements by future users who would benefit from the main and did not contribute to the original cost of the main. The sewer line was inspected and approved by the City in January of 2015. The applicant asserts that the project is not complete based on (1) remaining invoice balance of \$51.80, and (2) the grass in the area has not been reseeded.

Possible Actions:

- 1. Accept the application and instruct Staff (1) request additional information from the applicant to make the application complete; (2) Review/negotiate reimbursement calculations with the applicant; (3) Place the item on a future agenda for a Public Hearing of the Council if requested by the affected property owners.**
- 2. Reject the application as invalid, not submitted within acceptable timeframe/proximity of construction and/or incomplete.**

As a final note: The outcome resulting from either possible action does result in the City acquiescing to, condoning nor participating in Mr. McCrary's private operation of the subject sewer infrastructure, nor does the City waive future demands for its removal. The City does not insure Mr. McCrary against any claims that may arise from the operation of his sewer main. We anticipate that Mr. McCrary will follow through with his commitment to convey the sewer system to the City immediately.