

ORDINANCE NO. 709

AN ORDINANCE CLOSING HEARING AND LEVYING ASSESSMENTS FOR PART OF THE COST FOR IMPROVING MIDWAY ROAD IN THE CITY OF ADDISON, TEXAS, WITHIN THE LIMITS AS OUTLINED IN DETAIL IN THE BODY OF THIS ORDINANCE; FIXING A CHARGE AND LIEN AGAINST THE PROPERTY ABUTTING THEREON AND AGAINST THE OWNER THEREOF FOR THE PAYMENT OF SUCH OWNERS SHARE OF SUCH IMPROVEMENT; PROVIDING FOR THE ISSUANCE OF ASSIGNABLE CERTIFICATES IN EVIDENCE OF SUCH OWNER'S SHARE AND PRESCRIBING THE FORM THEREOF; MAKING CERTAIN FINDINGS AND RATIFYING CERTAIN ACTIONS AND PROCEEDINGS HERETOFORE HAD IN CONNECTION WITH THE PROPOSED IMPROVEMENTS; ENACTING PROVISIONS INCIDENT AND RELATED TO THE SUBJECT; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Addison, Texas, has heretofore determined the necessity for the improvement of Midway Road in the City of Addison, Texas, in the manner in accordance to the specifications therefore which have previously been approved and adopted by the City Council as evidenced by an ordinance to the effect adopted on the 14th day of July, 1981, and

WHEREAS, a notice, fully executed by the City Secretary of the City of Addison, of the enactment of the above described ordinance was filed with the County Clerk of Dallas County, Texas, the County in which the said City of Addison is situated; and

WHEREAS, the City Council, after having advertised for bid in the manner required by law, authorized and approved the execution of a contract with Tiseo Construction Company (hereinafter referred to as "Contractor") for the construction of the aforesaid improvements, and

WHEREAS, this City Council has heretofore caused the engineer of the said

city to prepare and file his estimate of cost of such improvements and estimate of the amount per foot proposed to be assessed against the property abutting said street within the limits defined, and against the real and true owners thereof; and

WHEREAS, upon the filing of the said estimates, this Council approved the estimates of the engineer and set forth the estimates at length in an ordinance adopted on the 14th day of July, 1981, provided for a hearing to be held on the 25th day of August, 1981, at which times all interested property owners, their agents or attorneys were to appear and be heard in person or by counsel; and

WHEREAS, the notices of the hearing were published in the Suburban News, a newspaper of general circulation in and published in the City of Addison, at least three (3) times, the date of the first publication being at least twenty-one (21) days before the date set for each hearing, and additionally, the City Secretary of the City of Addison caused notice of said hearings to be given by mailing letters containing a copy of such notice to each known property owner to be assessed at his last known address, and such letters having been mailed a full fourteen days (14) prior to the dates set for such hearings; and

WHEREAS, at the time designated in said notices of hearing, the City Council of the City of Addison convened in session and all persons owning and claiming any property to be assessed for any interest herein were given an opportunity to be heard either in person or through an agent or an attorney, and all such persons were given an opportunity to contest any such assessment on account of the amount thereof, or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract with reference thereto or with reference to such improvements, or on account of any matter or thing not in the discretion of the governing body; and

WHEREAS, the City Council of the City of Addison, Texas, has heard all the parties who appeared and desired to testify, object or protest as to the special benefit and enhance value to accrue to said abutting property and the real and true owners thereof, as compared with the portion of the cost of constructing said improvements proposed to be assessed against said abutting property and the owners thereof, and has heard all parties appearing and offering testimony together with all objections and protests relative to such matters and relative to any errors, invalidities, or irregularities in any of the proceedings and contracts of said improvements, and has given a full and fair hearing to all parties making or desiring to make any such protest or objection or to offer testimony and the said Council has fully examined and considered all said evidence, matters and testimony and objections considered at said hearings, the Council of said city found and determined that:

1. All irregularities, invalidities, or deficiencies in the proceedings have been corrected and that all proceedings and contracts are proper and in accordance with law, and that the corrected and adjusted assessments rolls are in all respects valid and regular and in accordance with the directives of the city Council in reference to said improvements.
2. That the properties and each and every parcel of such property abutting Midway Road, to-wit:

Midway Road from Belt Line Road North to its intersection with Wright Brothers Drive within the City of Addison, excluding the West half of road from 225' South of the center line of Wiley Post Northward to the end of the project, which are to be improved, will be enhanced in value and specifically benefited by the construction of the aforesaid improvements in an amount in excess of the amount of the cost of such improvements proposed to be and hereafter assessed against each of the parcels of property abutting of said streets or portions thereof and the real and true owner thereof.

3. That the amount to be assessed against abutting property and the owners thereof may be apportioned among the parcels of abutting property and the owners thereof in accordance with the Front Foot Plan or Rule without injustice or inequality to any of such property or owners and further the Council finds that said plan or rule will produce substantial equality of benefits received in burdens imposed in view of the special benefits and enhance value to be received by such parcels

of property and the owners thereof and the equities of such owners;
now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ADDISON, TEXAS:

SECTION 1. Every recital, finding, and conclusion contained in the preamble of this ordinance is hereby brought forward, adopted and made a part of this ordinance to the same extent and with like effect as though again written at length under the ordaining clause.

SECTION 2. The said hearing granted to the real and true owners of the properties abutting said streets or portions thereof within the limits hereinabove specified, and to all person, firms, corporation and estates, owning or claiming same or any interest therein, shall be, and the same is hereby closed.

All protests and objections whether mentioned herein or not shall be in the same hereby over-ruled and denied.

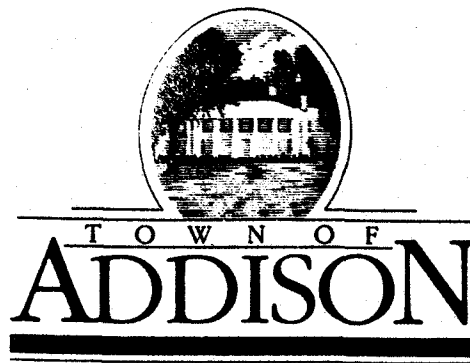
SECTION 3. The Front Foot Plan or Rule for assessing abutting properties and owners thereof is hereby adopted in connection with the improvements to be constructed, as described in the preamble of this ordinance.

SECTION 4. The City Council of the City of Addison, Texas, specifically finds and determines with reference to each and every parcel of property abutting upon Midway Road designated in the preamble of this ordinance and more particularly hereinafter described, that the enhancement in value to accrue to the said property and the real and true owners thereof by virtue of the construction of the improvements as herein above described, will be in excess of the amount of the cost of said improvements proposed to be and by the provisions of this ordinance herein assessed and levied against said abutting properties and the real and true owners thereof, and that the owners of the property abutting the said improvements will be fully compensated for the cost of said improvements

the enhancement of the values of the real estate and property affected by said improvements; and this Council further specifically finds that the apportionment of the costs of the said improvements and assessments herein made and assessed are just and equitable and produce substantial equality of benefits received and burdens imposed, and are in accordance with the laws of the State of Texas and said Council further finds that all proceedings and contracts heretofore had with reference to said improvements are in all respects regular, proper and valid and that all prerequisites to the fixing of the assessments liens against the said abutting properties and the personal liability of the real and true owners thereof, whether named or correctly named herein or not, have been in all things regularly had and performed in compliance with law and the proceedings of said City Council.

SECTION 5. Pursuant to the proceedings heretofore had and enacted by the City Council of the City of Addison with respect to said improvements, and under and by virtue of all the powers vested in the said city with respect to said improvements by the laws of the State of Texas, particularly the provisions of Chapter 106, Acts of the 40th Legislature of the State of Texas, First Called Session, as amended (codified by Vernon in Article 1105b, V.A.T.C.S.), there shall be and there is hereby levied, assessed and taxed against the respective parcels of property hereinafter described and abutting upon the said streets or portions thereof within the limits described herein and within the limits below defined and against the real and true owners of such properties whether such real and true owners be named or correctly named, or said properties be correctly described herein or not, the several sums of money hereinbelow mentioned and itemized opposite the description at respective parcels of said property, the assigned parcel number of Tax Assessor and Collector of the City of Addison which number with the supporting information on file with the City's Tax Assessor's

Office, which reference is made hereto, constitutes the description of said property, the number front feet for each, the several amounts assessed against the same and the real and true owners thereof, and the names of the apprent owners thereof, all as corrected and adjusted by the City Council, being as follows, to-wit:



MIDWAY ROAD NORTH ASSESSMENT ROLL

Property Description*	Property Owner and Address	Front Feet	Amount of Assessment
#1-20-0034	3-G Food Corp. 2940 Reward Lane Dallas, Texas 75220	162.20'	\$ 11,678.40
#1-20-0021	3-G Food Corp. 2940 Reward Lane Dallas, Texas 75220	205.75'	14,814.00
#1-20-0025	Addison Drive J/V %2230 Corp. 2230 Republic Bank Tower Dallas, Texas	301.36'	21,697.92
#1-20-0015	Paul Lewis 6126 Averil Way Dallas, Texas 75225	472.99	34,055.28
#1-20-0008	Houseman Properties, Inc. Frank B. Houseman, Pres. 400 North Akard Street Dallas, Texas 75201	300'	21,600.00
#1-20-0009	Addison-Midway Business Center Gregg Cole 3030 North Stemmons Dallas, Texas 75247	215.77'	15,535.44

*Property description refers to tax account number as shown on the official tax records of the City which records and description of the property included therein incorporated herein as though written in verbatim hereon.

Midway Road Assessment Roll
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#1-19-0007	Chili's Center Joint Venture %R E McElroy, Inc. 3609 Smith Barry Road #100 Arlington, Texas 76013	213.55'	\$ 15,375.60
#1-19-0001	General Mills P. O. Box 113 Minneapolis, Minnesota 55440	502.99'	36,215.28
#1-11-0020	Coca Cola P. O. Box 2008 Dallas, Texas 75221	473.00'	34,056.00
#1-11-0011	James D. Green P. O. Box 28537 Dallas, Texas 75228	280.0'	20,160.00
#1-11-0010	Maxine Barnett & Chas. Barnett, Jr. 7026 Dartbrook %Texas Federal Savings Dallas, Texas 75240 P. O. Box 12666 Dallas, Tx. 75225 160'		11,520.00
#1-11-0009	Addison Airport City of Addison P. O. Box 144 Addison, Texas 75001	10'	720.00
#1-11-0001	Forest Way Corp. %Jones Cox Mtg. Co. 2000 Fidelity Union Tower Dallas, Tx. 75201	270'	19,440.00
#1-10-0005	Carl L. Elsaesser 13611 Tanglewood Drive Dallas, Texas 75234	199.01'	14,328.72
#1-10-0004	Thermalloy %R.A. Busby & Company 13101 Preston Road #210 Dallas, Texas 75240	170.76'	12,294.72
#1-10-0003	Charles M. Pollan P. O. Box 186 Addison, Texas 75001	135.0'	9,720.00
#1-10-0002	Carrollton Development Route 1 Frisco, Texas 75034	145.0'	10,440.00

Midway Road North Assessment Roll
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#1-10-0001	J.D. & Norma Sue Gresham P. O. Box 1006 Addison, Texas 75001	135.0'	\$ 9,720.00
#1-09-0014	Gearhart Owen Ind. Inc. %Marvin F. Poer & Co. 13612 Midway Road, Suite 610 Dallas, Texas 75240	260'	18,720.00
#1-09-0013	Blanch K. & Raymond McKee 4205 Arcady Dallas, Texas 75205	125.0'	9,000.00
#1-09-0012	Milton N. Thompson 15605 Wright Bros. Drive P. O. Box 848 Addison, Texas 75001	115.0'	8,280.00
#1-09-0011	All Plastics Molding Co. P. O. Box 306 Addison, Texas 75001	145.0'	10,440.00

SECTION 6. Where more than one person, firm or corporation owns an interest in any of the property hereinabove described, each said person, firm or corporation shall be jointly liable only for the total assessment against such property.

SECTION 7. The several sums mentioned in Section 5. hereof which are assessed against said parcels of abutting property and the real and true owners thereof, whether the owners against the property abutting shall be and become due and payable in installments and with interest as above provided; however, any owner of such property shall have the right to pay off the entire amount of any such assessment, or any installment thereof before maturity by paying principal and accrued interest to date of said payment; and provided further that if default shall be made in the payment of any installment of principal or interest when due, then the entire amount of said assessment upon which such default is made, at the option of said Contractor, or its assigns, shall be and become immediately due and payable and shall be collectible, together with reasonable attorney's fees and all costs and expenses of collection, if incurred.

SECTION 8. The City of Addison, Texas, shall not in any manner be liable for the payment of any sums hereby validly assessed against any abutting property

and the real and true owner or owners thereof, but Contractor or its assigns, shall look to such property and the real and true owner or owners thereof, for payment of any sums validly assessed against said respective parcels of property. The city hereby covenants and agrees that upon default in the payment of any installments of principal or interest thereon, and/or the maturity of such certificates, however same may occur, the assessment lien against this property therein described with the personal liability and charge of the real and true owner thereof, whether named or correctly named therein or may not be enforced in accordance with the provisions of said certificate and the laws of the State of Texas pertaining thereto in any court having jurisdiction by Contractor, or its assigns, and further at the option of the upon request of said Contractor, or its assigns, the City of Addison will exercise its powers to enforce and collect this certificate by suit in its own name for the benefit of the legal holders of such certificate and to this end will take all actions required to enforce the lien against the property and the personal liability of the owner or owners thereof by suit or by sale of property for ad valorem city taxes and in such respect the City agrees that the necessary proceedings will be promptly instituted and carried to completion by it.

SECTION 9. For the purpose of evidencing said assessments, the liens securing same and several sums assessed against the said parcels of property, and the real and true owner or owners thereof, assignable certificates shall be issued by the City of Addison, to Contractor upon the completion and acceptance of said improvements, which certificates shall declare the amounts of said assessment and times and terms thereof, the rate of interest thereon, the date of the completion and the acceptance of the improvements of which the certificate is issued, and shall contain the name of the apparent owner or owners as accurately as possible, and the description of the property assessed by lot and block number

of front foot thereof, or such other description as may otherwise identify the same, and if the said property shall be owned by an estate or firm, then to so state the fact shall be sufficient, and no error or mistake in describing any such property or in giving the name of any owner or owners, or otherwise, shall in anywise invalidate or impair the assessment levied hereby or the certificate issued in evidence thereof.

The same certificate shall provide substantially that if default shall be made in the payment of any installment of principal or interest when due, then at the option of Contractor, or its assigns, or the holder thereof, the whole of said assessment evidenced thereby shall at once become due and payable and shall be collectible with reasonable attorney's fees and all expenses and costs of collection, if incurred; and said certificate shall set forth and evidence the personal liability of the real and true owners of such property, whether named or correctly named therein or not, and the lien upon such property, and that said lien is first and paramount hereon, superior to all other liens, titles and charges, except for state, county, school district and city ad valorem taxes, from and after the date said improvements were ordered by said City Council, and shall provide in effect, that if default shall be made in the payment thereof, the same may be enforced at the option of Contractor, or its assigns either by the sale of the property therein described in the manner provided for the collection of ad valorem city taxes, or by suit in any court having jurisdiction; shall recite in effect that all the proceedings with reference to making said improvements have been regularly had in compliance with the law in force with said city and proceedings at the City Council of said city, and that all prerequisites to the fixing of the assessment lien against the property and the personal liability of the real and true owner or owners thereof, evidenced by such certificates, have been regularly done and performed, which recitals shall

be evidence of all the matters and facts so recited, and no further proof thereof shall be required in any court.

SECTION 10. All amounts due to the Contractor or its assigns by reason of the installments on the certificates authorized to be issued by virtue of the provisions hereof, and all interests due to the Contractor or its assigns aforesaid, shall be payable at the office of the Finance Director of the City of Addison.

SECTION 11. That the form of such certificates shall be substantially as follows:

NUMBER

DOLLARS

CITY OF ADDISON

CERTIFICATE OF SPECIAL ASSESSMENT

For the Improvement of

Midway Road

Within Said City

ISSUED TO

TISEO CONSTRUCTION COMPANY

THIS IS TO CERTIFY: That by virtue of an ordinance of the City Council of the City of Addison, Texas, duly adopted on the 14th day of July, 1981, there was levied an assessment in the sum of _____ dollars against property situated in said city, fronting _____ ft. on Midway Road and described as follows:

That the said special assessment is payable to Contractor, or to assigns in eight (8) equal installments after the _____ day of _____, 1981, (the date that the improvements were completed in full in compliance with the terms of the contract between the city and Contractor and accepted by the City Council of the City of Addison) as follows: The first payment to be due and payable on or before 30 days after the day of completion of said improvements and

acceptance and continuing regularly and semi-annually thereafter until the remaining seven (7) installments are paid, together with interest on each installment from the date of acceptance until paid at the rate of 8% per annum, payable semi-annually, past due principal and interest to bear interest at the same rate per annum until paid. Said owners have the right to pay any installment before maturity with accrued interest to date of payment.

The said assessment was levied pursuant to proceedings of City Council including an ordinance adopted on the 14th day of July, 1981, ordering the improvement of Midway Road, notice of which was filed for record with the County Clerk of Dallas County, Texas, in the Deed of Trust Records of said County, and by virtue of an ordinance and other proceedings of said City Council providing by payment by the real and true owner or owners of said property, whether named or correctly named or not, of his or their pro-rata share of the cost of improving said street under the contract of said city and Contractor dated the 10th day of June, 1981.

That by said proceedings said assessment is made payable as aforesaid and, together with interest, all costs and expense of collection, and reasonable attorney's fees, if incurred, is declared to be a first and prior lien on said property, superior to all other liens, titles or charges except state, county, school district, and city ad valorem taxes, and personal liability in charge of the real and true owner or owners, whether named or correctly named herein or not, said lien and personal liability relating back to and becoming effective as of the date said improvements were ordered by the City Council of said City.

Should more than one person own an interest in the above described property on such date, each such person shall be jointly liable for the total assessment. That in accordance with the provisions of said ordinance it is hereby declared that if default shall be made and the payment of any installments

of principal or interest hereon when due, then, at the option of said Contractor, or other legal holder, this certificate shall at once be collectible with reasonable attorney's fees and all expenses and costs incident to collection, if incurred.

It is hereby recited that all proceedings with reference to the making of such improvements referred to in this certificate have been regularly had and in compliance with the law and that all rerequisites to the fixing of the assessment lien against the property described herein and the personal liability of the owner of owners thereof have been performed and these recitals shall be evidence of such matters and facts and no further proof thereof shall be required in any court.

That the sums evidenced hereby shall be aid to the Finance Director of said city, he shall issue his receipt therefore, which receipt shall be evidence of such payment on any demand for the same. When the full amount due hereon has been aid, said Contractor or other legal holder hereof, shall surrender this certificate to the Finance Director for owner of said property, and upon presentation thereof to said Finance Director a receipt in full for such assessment shall be issued.

That by the provisions of said ordinance and the law in force of said city under which said proceedings were had, upon default in payment of any installment of principal or interest hereon when due and/or the maturity of this certificate, however same may occur, the assessment lien against the property herein described and the personal liability and charge of the real and true owner or owners thereof, whether named or correctly named herein or not, may be enforced in accordance with the provisions of this certificate and the laws of the State of Texas, and any court having jurisdiction by Contractor, or its assigns and at the option of and upon request of said Contractor or its assigns, the City of Addison

will exercise its powers to enforce and collect this certificate by suit in its own name for the benefit of the legal holders of such certificate and to this end will take all action required to enforce the lien created against the property and the personal liability of the owner or owners thereof by suit or by sale of the property assessed in the manner provided by law for the sale of property ad valorum city taxes and in such respect the city agrees that the necessary proceedings will be properly instituted and carried to completion by it.

DONE AS OF THIS _____ day of _____, 1981, pursuant to authorization of the City Council of the City of Addison.

MAYOR

ATTEST:

CITY SECRETARY

SECTION 12. Each certificate shall also have an assignment thereon which will read substantially as follows:

FOR VALUE RECEIVED, Tiseo Construction Company does hereby assign the within certificate with the indebtedness, lien and remedies for their enforcement evidenced thereby, without recourse, to the City of Addison, Texas, or its assigns.

MAYOR

ATTEST:

CITY SECRETARY

SECTION 13. All such assessments levied are, and shall be a personal liability and charged against the real and true owner or owners of said abutting properties, notwithstanding such owner or owners may not be named or correctly named, and any irregularity in the name of the property owner, or the description of any property or the amount of any assessment, or in any other matter or thing shall not in anywise invalidate or impair any assessment levied hereby or any certificate issued, in any such mistake, or error, invalidity or irregularity, whether in such assessment or in the certificate issued in and any irregularity — in the name of the property owner, or the description of any property or the amount of any assessment, or in any other matter or thing shall not in anywise invalidate or impair any assessment levied hereby or any certificate issued and evidence thereof, may be, but it is not required to be, in order to be enforceable, corrected at any time by the City Council of the City of Addison, Texas.

The total amounts assessed against the respective parcels of property abutting improvements herein described and the real and true owner or owners thereof are the same, or less than, the estimates of said assessments prepared by the engineer and approved and adopted by said City Council, and are in accordance with the proceedings of said city relative to said improvements and assessments therefore, and with the terms, powers and provisions of said Chapter 106, of the Acts of the First Called Session of the 40th Legislature of the State of Texas, know as Article 111105b of Vernon's Annotated Civil Statutes of Texas, under

which terms, provisions and powers of said Acts said improvements and assessments were had and made by said City Council.

SECTION 14. That all actions had and taken by the City Council of the City of Addison in the passage and adoption of the various resolutions and ordinances in the relation to the improvements herein described for which assessments are levied against abutting properties and the real and true owners thereof by the provisions of this ordinance, and all actions of the various city officials pursuant to the directives of said Council (all as more fully described and detailed in the preamble of this ordinance) are hereby in all things ratified and confirmed. The action of the city officials in connection with the execution of the aforementioned contract with Contractor is specifically ratified and confirmed.

SECTION 15. If for any reasons any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgement of a court of competent jurisdiction, it shall not effect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance for it is the intent of the City Council that every section, paragraph, subdivision, clause, phrase, work or provision thereof be given full force and effect for its purpose.

SECTION 16. The fact Midway Road in the City of Addison is in bad condition and the improvement is urgently needed and that such improvement will be a benefit to the abutting property and the owners thereof, create an emergency and this ordinance shall have immediate effect.


DULY PASSED BY THE CITY COUNCIL OF THE CITY OF ADDISON, TEXAS on this the

8 day of September, 1981



MAYOR

ATTEST:



CITY SECRETARY