



17R-27

Introduce: 1-30-17

RESOLUTION NO. A- 90221

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the Wilderness Hills Commercial Center PUD S. 40th Street Directed Arterial

3 Street Impact Fee Agreement between the City of Lincoln and Lincoln Federal Bancorp,

4 Inc. to direct arterial street impact fees collected from development of properties within

5 the Wilderness Hills Commercial Center PUD to help fund the costs of reimbursing the

6 owners of the Wilderness Commons development or Lincoln Federal, as the owner of

7 the Wilderness Heights development, for the cost of constructing the South 40th Street

8 Impact Fee Improvements located south of Hohensee Drive, pursuant to the Wilderness

9 Commons Conditional Annexation and Zoning Agreement and/or the Wilderness

10 Heights Conditional Annexation and Zoning Agreement, is hereby approved and the

11 Mayor is authorized to execute the same on behalf of the City of Lincoln.

Introduced by:

AYES: Camp, Christensen, Eskridge,
 Fellers, Raybould; NAYS: None;
 ABSENT: Gaylor Baird, Lamm.

Approved as to Form & Legality:

 City Attorney

Approved this 9th day of Feb., 2017:

 Mayor

ADOPTED
FEB 6 2017
BY CITY COUNCIL

CITY OF LINCOLN REQUEST FORM

Submit one original to City Clerk

REQUEST FOR (please check one): ORDINANCE RESOLUTION

DESIRED DOCKET DATE: January 30, 2017

REQUEST MADE BY: Rick Peo

DEPARTMENT: Law Department

TO BE COMPLETED BY CITY CLERK	
BILL #:	17R-27
DATE:	1/20
INTRO:	1/30
P.H.:	2/6

EMERGENCY MEASURE REQUIRED: No Yes
IF EMERGENCY, GIVE REASON (See Art. 5, Sec. 2 of Charter):

DIRECTOR'S EST'D TIME/TESTIMONY, please check one:


0 - No Hearing (Consent Agenda) 1 - Short 2 - Average 3 - Long

REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION:

Approving the Wilderness Hills Commercial Center PUD S. 40th Street Directed Arterial Street Impact Fee Agreement between the City of Lincoln and Lincoln Federal Bancorp, Inc. to direct arterial street impact fees collected from development of properties within the Wilderness Hills Commercial Center PUD to help fund the costs of reimbursing the owners of the Wilderness Commons development or Lincoln Federal, as the owner of the Wilderness Heights development, for the cost of constructing the South 40th Street Impact Fee Improvements located south of Hohensee Drive, pursuant to the Wilderness Commons Conditional Annexation and Zoning Agreement and/or the Wilderness Heights Conditional Annexation and Zoning Agreement.

DOES REQUESTOR WISH TO REVIEW AND APPROVE THIS ORDINANCE PRIOR TO ITS INTRODUCTION?

DOES DOES NOT


DIRECTOR'S SIGNATURE

1-20-2017
DATE

TO BE USED BY THE FINANCE DEPARTMENT

BUDGET REVIEW:

DATE:

ACCOUNT NUMBER AND APPROPRIATE BALANCES:

DATE:

FUND AVAILABILITY APPROVED

DATE:

FINANCE DIRECTOR'S SIGNATURE

DATE

City Council Introduction: January 30, 2017

BILL NUMBER: 17R-27

Public Hearing: February 6, 2017

Date Factsheet Prepared: January 20, 2017

FACTSHEET

Instructions: If a question does not apply, just put "NA". Please try to keep it to **ONE** page only. **Submit one original!** with your Request Form, to City Clerk.

TITLE: Wilderness Hills Commercial Center PUD S. 40th Street Directed Arterial Street Impact Fee Agreement

BOARD/COMMITTEE:

APPLICANT: Rick Peo

RECOMMENDATION:

STAFF RECOMMENDATION:

OTHER DEPARTMENTS AFFECTED:

SPONSOR: Law Department

OPPONENTS:

REASON FOR LEGISLATION

Approving the Wilderness Hills Commercial Center PUD S. 40th Street Directed Arterial Street Impact Fee Agreement between the City of Lincoln and Lincoln Federal Bancorp, Inc. to direct arterial street impact fees collected from development of properties within the Wilderness Hills Commercial Center PUD to help fund the costs of reimbursing the owners of the Wilderness Commons development and/or Lincoln Federal, as the owner of the Wilderness Heights development, for the cost of constructing the South 40th Street Impact Fee Improvements located south of Hohensee Drive, pursuant to the Wilderness Commons Conditional Annexation and Zoning Agreement and/or the Wilderness Heights Conditional Annexation and Zoning Agreement.

DISCUSSION / FINDINGS OF FACT:

The City has previously agreed to reimburse the owners of the Wilderness Commons development and/or Lincoln Federal, as the owner of the Wilderness Heights development, for the cost to construct South 40th Street Impact Fee Facility Improvements located South of Hohensee Drive from impact fees collected from development within certain defined Impact Fee Reimbursement Properties and from other development within the same benefit district if the cost of reimbursement would exceed the estimated total impact fee amount of \$4,601,031 to be collected from the development within the Impact Fee Reimbursement Properties. The current estimated cost to construct the South 40th Arterial Street Impact Fee Facility Improvements is \$6,509,952. Therefore the City and Lincoln Federal have identified impact fees from the development of the properties within the Wilderness Hills Commercial Center PUD as the source of funds to be used to pay for reimbursement owed in excess of \$4,601,031.

POLICY OR PROGRAM CHANGE: Yes No

OPERATIONAL IMPACT ASSESSMENT: N/A

COST OF TOTAL PROJECT: \$6,509,952 (estimate)

RELATED ANNUAL OPERATING COSTS: N/A

SOURCE OF FUNDS: Arterial Street Impact Fees

CITY: 100%

NON CITY: Developer to construct, subject to reimbursement

FACTSHEET PREPARED BY: Rick Peo, Chief Assistant City Attorney

DATE: 1/20/2017

REVIEWED BY:

DATE:

**WILDERNESS HILLS COMMERCIAL CENTER PUD
S. 40TH STREET DIRECTED ARTERIAL STREET
IMPACT FEE AGREEMENT**

This Wilderness Hills Commercial Center PUD S. 40th Street Directed Arterial Street Impact Fee Agreement is made and entered into this 9th day of FEB., 2017, by and between Lincoln Federal Bancorp, Inc., a federal corporation ("Lincoln Federal") and the City of Lincoln, Nebraska, a municipal corporation ("City").

RECITALS

A. Lincoln Federal has requested the City to designate the approximately 44.82 acres of O-3 and B-2 land more particularly described and shown on Exhibit A hereto as a planned unit development district and to rezone that portion of the land shown on Exhibit A as O-3 to B-2. The 44.82 acres is owned by Lincoln Federal and hereinafter referred to as the Wilderness Hills Commercial Center PUD.

B. Lincoln Federal is also (1) the owner of a development of land known as Wilderness Heights, and (2) one of the owners of a development of land known as Wilderness Commons.

C. The development of Wilderness Heights is subject to Wilderness Heights Conditional Annexation and Zoning Agreement ("Wilderness Heights Agreement") between Lincoln Federal and the City. The development of Wilderness Commons is subject to the Wilderness Commons Conditional Annexation and Zoning Agreement ("Wilderness Commons Agreement") between Lincoln Federal and the other owners of Wilderness Commons (collectively the "Wilderness Commons Owners") and the City. Said Agreements were approved by Resolution No. A-85189 and Resolution No. A-85188 respectively, which were adopted by the City Council for the City of Lincoln on December 15, 2008.

D. On December 15, 2008, South 40th Street from Yankee Hill Road to Rokeby Road was and presently is a two lane rural section roadway. The Wilderness Heights Agreement requires Lincoln Federal to construct South 40th Street from Yankee Hill Road south to Prairie Wind Road, as an arterial street with four lanes plus turn lanes, then tapering back to the existing two lane rural roadway section past the first drainage structure, as shown on Exhibit C attached to the Wilderness Heights Agreement (the "South 40th Street Impact Fee Facility Improvements"). The Wilderness Commons Agreement requires the Wilderness Commons Owners to construct the same identical improvements.

E. In each Agreement the City agreed to reimburse the applicable owner or owners for the cost to construct the South 40th Street Impact Fee Facility Improvements without interest from Directed Arterial Street Impact Fees collected against the properties identified as unplatted Wilderness Hills, Wilderness Heights, and Wilderness Commons as shown on Exhibit D to each Agreement (collectively "Directed Impact Fee Reimbursement Properties"). The Directed Impact Fee Reimbursement Properties do not include the properties within the Wilderness Hills Commercial Center PUD.

F. In each Agreement, the City further agreed that, in the event the applicable owner's or owners' cost of the South 40th Street Impact Fee Facility Improvements exceeded the "Combined Arterial Street Impact Fee Amount" of \$4,601,031.00 for Wilderness Commons and Wilderness Heights as reflected on Exhibit F and G attached to each Agreement, the City would use its best efforts to reimburse the applicable owner or owners with interest for the excess cost from other Arterial Street Impact Fees collected from the applicable development or other developments within the same benefit district within eleven (11) years from the date the South 40th Street Impact Fee Arterial Street Improvements are substantively completed as determined by the City.

G. Finally, in each Agreement the City agreed that in the event the Wilderness Commons Owners, as owners of Wilderness Commons, and Lincoln Federal, as the owner of Wilderness Heights, jointly constructed the South 40th Street Impact Fee Facility Improvements pursuant to the 40th Street Paving Agreement between the Wilderness Commons Owners and Lincoln Federal (attached to each Agreement as Exhibit B) the City would reimburse the Wilderness Commons Owners, as the owners of Wilderness Commons, and Lincoln Federal, as the owner of Wilderness Heights, from directed impact fees collected from the Directed Impact Fee Reimbursement Properties and distribute said impact fees to Wilderness Commons Owners, as the owners of Wilderness Commons, and Lincoln Federal, as the owner of Wilderness Heights, as provided in paragraph 2, Impact Fees, of the 40th Street Paving Agreement.

H. The South 40th Street Impact Fee Improvements were not constructed in 2009 as contemplated by the parties in the 40th Street Paving Agreement and the date for commencement and completion when such Improvements might be constructed is unknown at this time.

I. Due to the delay in construction and the inflationary increase in the cost of construction for the South 40th Street Impact Fee Improvements, it is anticipated that the cost of construction will exceed the Combined Arterial Street Impact Fee amount of \$4,601,031.00. Therefore, Lincoln Federal has requested the City to direct, and the City is willing to direct, the arterial street impact fees collected from development of the properties within the Wilderness Hills Commercial Center PUD to help fund the costs of the 40th Street Impact Fee Improvements south of Hohensee Drive subject to the terms and conditions provided herein.

NOW THEREFORE, in consideration of the above Recitals and the mutual covenants below the parties agree as follows:

1. The City agrees from and after the date of this Agreement to direct all arterial street impact fees collected from development of the properties within the Wilderness Hills Commercial Center PUD to help fund the cost of reimbursing the Wilderness Commons Owners and/or Lincoln Federal, as the owner of Wilderness Heights, for the Wilderness Commons

Owners' and/or Lincoln Federal's cost to construct the South 40th Street Impact Fee Improvements located south of Hohensee Drive.

2. Lincoln Federal agrees that the aforementioned use of the directed impact fees from Wilderness Hills Commercial Center PUD does not violate the City's obligation to Lincoln Federal, in the Wilderness Heights Agreement, to use its best efforts to reimburse Lincoln Federal for its excess costs to construct the 40th Street Impact Fee Improvements north of Hohensee Drive from other Arterial Street Impact Fees collected from other development within the same benefit district.

3. Lincoln Federal further understands and agrees that this Agreement does not modify the required South 40th Street Impact Fee Facility Improvements required to be constructed pursuant to the Wilderness Commons and Wilderness Heights Agreements, nor advance the timing of the City's agreement to use its best efforts to reimburse the Wilderness Commons Owners, as owners of Wilderness Commons, and Lincoln Federal, as the owner of Wilderness Heights, for the excess cost to construct said Improvements from other Arterial Street Impact Fees collected within eleven (11) years from the date the improvements are substantively completed as determined by the City.

4. Notwithstanding the above, the parties agree and anticipate that the South 40th Street Impact Fee Improvements may be modified by mutual agreement between the Wilderness Commons Owners, as owners of Wilderness Commons, Lincoln Federal, as owner of Wilderness Heights, and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

Lincoln Federal Bancorp, Inc.,
a federal corporation

By: _____

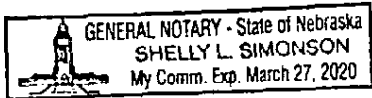
President

City of Lincoln, Nebraska
a municipal corporation

Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 25th day of January, 2017, by Leo J. Schumacher, President of Lincoln Federal Bancorp, Inc., a federal corporation.



Shelly L. Simonson
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 9th day of Feb., 2017, by Chris Beutler, Mayor of the City of Lincoln.



Teresa J. Meier
Notary Public