

Jo. 1979-42 regarding road and alley closures and 1979-41 regarding RSID 1979-1.
parties involved on Lincoln Sewer Study.

Board also met with

Commissioners signed claims.

RESOLUTION NO. 1979-41

*essentially resolution
laying & assessing*

RESOLUTION CREATING RURAL SPECIAL IMPROVEMENT DISTRICT NO. 1979-1 FUND AND PRESCRIBING THE COVENANTS OF THE COUNTY FOR THE SECURITY OF THE HOLDERS OF RURAL SPECIAL IMPROVEMENT DISTRICT NO. 1979-1 BONDS

BE IT RESOLVED by the Board of County Commissioners of Lewis and Clark County, Montana, as follows:

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01. Resolution of Intention to Create Rural Special Improvement District No. 1979-1. By resolution adopted May 21, 1979, this Board declared its intention to create Rural Special Improvement District No. 1979-1 (the District), for the purpose of making improvements within and for the special benefit of the District, having received a petition for creation of the District signed by at least 60% of the freeholders to be affected thereby. By the resolution, the Board determined the area to be included in the District to be a thickly populated district located outside of the boundaries of an incorporated city or town and that the public interest and convenience required the creation of the District as set forth in the petition. By resolution, the Board also designated the number of the District, described the boundaries thereof, named the engineers and attorneys for the District and stated the general character and an approximate estimate of the cost of the Improvements (the Improvements) to be made therein in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Part 21. By the resolution, the Board also declared its intention to cause the cost and expense of making the Improvements to be assessed against the properties included within the boundaries within the District and every freeholder owning real property within the District to be assessed with that part of the whole cost which the area of the freeholder's land in the District bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

1.02. Notice of Passage of Resolution of Intention. Notice of passage of the resolution of intention was given by publication for nine consecutive days in The Independent-Record, a daily newspaper published nearest to the place where the District was proposed to be created, posting at three public places within the boundaries of the District and mailing on the same day the notice was first published to every person, firm or corporation, or the agent of such person, firm or corporation owning real property within the District, listed in his name upon the last completed assessment roll for state, county and school district taxes at his last known place of residence. The published, posted and mailed notices described the general character of the Improvements, stated the estimated cost of the Improvement, designated the time when and the place where this Board would hear and pass upon all protests made against the making of the Improvements or the creation of the District, described the boundaries of the District, and referred to the resolution of intention, as being on file in the office of the County Clerk and Recorder.

1.03. Resolution Creating Rural Special Improvement District No. 1979-1. At the time and place specified in the notices hereinabove described, the Board met to hear, consider and pass upon all protests made against the making of the Improvements or the creation of the District, and, after consideration thereof, it was determined that insufficient protests against the making of the Improvements or creation of the District had been filed in the time and manner provided by law, and this Board did therefore by resolution adopted June 8, 1979, create the District and order the Improvements in accordance with the resolution of intention.

1.04. Construction Contract. By resolution adopted on June 8, 1979, this Board directed the County Clerk to publish a notice inviting proposals for the construction of the Improvements in the District. A notice inviting proposals for bids and refering to specifications on file at the office of the County Clerk and Recorder and the engineers was published twice in the Independent Record, a daily newspaper published and circulated nearest to the boundaries of the District and designated by the Board for this purpose. At the time and place specified in such notice bids for the Improvements were received in accordance with said notice and were publicly opened, examined and declared in open session. After referring the bids to the engineers for the District, it was determined that the lowest regular proposal for the furnishing of work and materials required for construction of the Improvements in accordance with the plans and specifications was that of Maronick Construction, Inc., whose bid was in the amount of \$1,046,552.50; a contract for the construction of the Improvements was therefore awarded to said bidder.

1.05. Cost, Assessments. It is presently estimated that the cost and expense connected with and incidental to the formation of the District, including costs of preparation of plans, specifications, maps, profiles, engineering, superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction contracts, and all other costs and expenses, will be \$1,291,670, which amount will be levied and assessed upon all property within the District on the basis described in the resolution of intention. The Board has jurisdiction and is required by law to levy and assess such amount, to collect such special assessments and credit the same to the Rural Special Improvement District No. 1979-1 Fund (the Fund) herein created for the District.

1.06. Sale of Rural Special Improvement District No. 1979-1 Bonds. By resolution adopted June 8, 1979, this Board authorized the issuance of the Bonds for the purpose of making the Improvements within the District as authorized by the resolution creating the District. After a public sale noticed and conducted in accordance with applicable statutory provisions, the Bonds in the aggregate principal amount of \$1,291,670 were sold to D. A. Davidson & Co., Incorporated of Great Falls, Montana, at an interest rate of 9.00% per annum on July 6, 1979, which sale is hereby ratified and confirmed.

1.07. Compliance with Constitution and Statutes. All acts, conditions and things required by the Constitution and laws of the State of Montana, including Montana Code Annotated, Title 7, Chapter 12, Part 21, in order to make the Bonds herein described valid and binding special obligations in accordance with their terms and in accordance with the terms of this resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as required.

Section 2. Form and Date of Bonds. The Bonds and the interest coupons appurtenant thereto shall be drawn in substantially the form set forth below, in accordance with Montana Code Annotated, Section 7-12-2170. The Bonds shall be dated as of August 1, 1979.

2.01. Form of Bonds. The Bonds shall be drawn in substantially the following form:
(See Resolution on file in office of the County Commissioners)

2.02. Form of Coupons. Interest on each Bond shall be represented by coupons attached hereto in substantially the following form:

No. _____ § _____

Unless the bond described below is called for earlier redemption, the County of Lewis and Clark, Montana, will pay to bearer, on the 1st day of January, 19____, at the office of the County Treasurer of Lewis and Clark County, Montana, the amount shown hereon in lawful money of the United States of America for the installment of interest then due on its Rural Special Improvement District No. 1979-1 Bond, dated August, 1979, No. _____

/s/ County Clerk /s/ Chairman, Board of County Commissioners

Section 3. Terms, Execution and Delivery.

3.01. Terms. For the purpose of paying the costs and expenses incurred and to be incurred in construction of the Improvements authorized to be constructed in Rural Special Improvement District No. 1979-1, and in anticipation of collection of special assessments to be levied therefor, and in accordance with public offering and contract of sale described in Section 1.06 hereof, the County of Lewis and Clark shall forth with issue and deliver to the purchaser its Rural Special Improvement District No. 1979-1 Bonds in the total principal amount of \$1,291,670, payable solely from the Fund. The bonds shall be dated as of August 1, 1979, and shall mature on January 1, 1994, and shall be 1,291 in number and numbered serially in order of their registration from 1 through 1,291, each in the denomination of \$1,000, except that bond No. 1 shall be in the denomination of \$1,670, payable to bearer. The interest on the Bonds shall be payable on January 1, 1980, and annually on January 1, in each year thereafter unless paid previous thereto. The principal of and interest on the Bonds shall be payable at the office of the County Treasurer, in Helena. The interest shall be paid by the County Treasurer from the Fund on presentation of the coupons belonging thereto when due, and any balance remaining in the Fund shall be applied to the payment of the principal and the redemption of the Bonds in the order of their registration. Whenever there is any balance in the Fund after paying the interest due on all Bonds drawn against it, the County Treasurer shall call in for payment outstanding Bonds in an amount which, together with the interest thereon to the date of redemption, will equal the amount of the Fund on that date. The date of redemption shall be fixed by the County Treasurer, who shall, in the manner prescribed by Montana Code Annotated, Section 7-12-2174, give notice by publication or, at the option of the County Treasurer, by written notice to the holder or holders of such bonds, if their addresses be known, of the numbers of the Bonds and the date on which payment will be made, which date shall be not less than ten days after the date of publication or service of notice. On the date so fixed interest shall cease.

3.02. Execution and Delivery. The Bonds shall be prepared under the direction of the County Clerk. The Bonds and the interest coupons appurtenant thereto shall be executed and authenticated on behalf of the County by the facsimile signatures of the Chairman of the Board and the County Clerk, and the County's corporate seal shall be affixed to each Bond. The Bonds and coupons appurtenant thereto shall then be registered in order of their serial numbers by the County Treasurer as of the 1st day of August, 1979, and shall then be delivered by the County Treasurer to the purchaser upon payment of the par value thereof and accrued interest from the registration date to the date of such delivery and payment. The purchaser shall not be obligated to see to the application of the purchase price, but the proceeds of the Bonds shall be credited by the County Treasurer forthwith to the Rural Special Improvement District No. 1979-1 Fund and used solely for the payment of the cost and expenses necessarily incurred in the completion of the Improvements heretofore ordered, except that the interest received shall be applied in payment of interest on the Bonds when due.

Section 4. Rural Special Improvement District No. 1979-1 Fund. There is hereby created and established a fund designated as the "Rural Special Improvement District No. 1979-1 Fund." The Fund shall be maintained by the County Treasurer on the books and records of the County, separate and apart from all other funds of the County. Within the Fund there shall be maintained separate accounts, designated as the "Bond Account" and "Interest Account," respectively.

Section 5. County Covenants. Lewis and Clark County, Montana, covenants and agrees with the holders from time to time of each of the Bonds that until all Bonds and interest thereon are fully paid:

5.01. Compliance with Covenants. The County will hold the Fund and the Rural Special Improvement District Revolving Fund created by Ordinance No. _____ (The Revolving Fund), as trust funds, separate and apart from all of its other funds, and the County, its officers and agents, will comply with all covenants and agreements contained in this Resolution.

5.02. Completion of Improvements. The County will do all acts and things necessary to assure the completion of the Improvements in the District in accordance with the plans and specifications and within the time therein provided, and will pay all costs thereof promptly as incurred and allowed, out of the Fund and within the amount of the bond proceeds appropriated thereto.

5.03. Assessments. The County will doo all acts and things necessary for the final and valid levy of special assessments upon all property within the boundaries of the District, in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States, in an aggregate principal amount not less than \$1,291,670. The special assessments shall be payable in annual installments of principal on or before November 30, in each of the years 19____ through 19____. Simple interest at the rate of 9.00% per annum shall be charged on the whole amount of each assessment remaining unpaid. The first partial payment of each assessment shall include interest on the entire assessment from the date of registration of the Bonds to January 1, 19____, and each subsequent partial payment shall include interest for one year on the unpaid balance of such special assessment. All installments of special assessments not paid in full on or before the date due shall become delinquent on that date. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may only be extinguished by payment of the assessment with all penalties, cost and interest as provided by law. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 5-18-309.

5.04. Re-assess and Re-levy. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the County and this Board, its officers and employees, will take all steps necessary to correct the same and to re-assess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will re-assess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Montana Code Annotated,

Section 7-12-2165. Any special assessment, or reassessment or re-levy shall, so far as practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

5.05. Rural Special Improvement District Revolving Fund. In connection with the public offering of the Bonds, this Board does hereby undertake and agree, pursuant to the provisions of Montana Code Annotated, Section 7-12-2183, to issue orders annually authorizing loans or advances from the from the Rural Special Improvement District Revolving Fund authorized by Ordinance No. _____, in amounts sufficient to make good any deficiency therein, to the extent that funds are available and to provide funds for the Revolving Fund by annually making such tax or loan from the General Fund, subject to the maximum limitations imposed by Montana Code Annotated, Section 7-12-2182.

5.06. Litigation. There is now no litigation threatened or pending questioning the validity or regularity of the creation of the District, the contract for construction of improvements therein, or the undertaking and agreement of the County to levy special assessments therefor and to make good any deficiency in the collection thereof through the levy of taxes for and the making of advances from the Revolving Fund, or the right and power of the County to issue the Bonds, or in any manner questioning the existence of any condition precedent to the exercise of the County's powers in these matters.

Section 6. Investment of Moneys on Deposit in Rural Special Improvement District No. 1979-1 Fund.

6.01. Covenant. The County covenants and agrees with the holders from time to time of the Bonds herein authorized that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become subject to taxation under the Internal Revenue Code of 1954, as amended (the Code), and regulations issued thereunder, as now existing or as hereafter amended and in effect at the time of such action.

6.02. Certification. The Chairman of this Board, County Clerk and the County Treasurer, being the officers of the County charged with the responsibility for issuing the Bonds, are authorized and directed to execute and deliver to the purchaser a certification in accordance with the provisions of Section 103(c) of the Code, as amended. Such certification shall state that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds as therein set forth, it is not expected that the proceeds of the Bonds will be used in such a manner that would cause the Bonds to be arbitrage bonds, and the certification shall further state that to the best of the knowledge and belief of the certifying officers there are no other facts, estimates or circumstances that would materially change such expectation.

Section 7. Authentication of Transcript. The County officers are hereby authorized and directed to furnish to the purchaser of the Bonds and to the attorneys approving the legality thereof certified copies of all proceedings relating to the issuance of the Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the County to issue the Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the County as to the truth of the statements purported to be shown thereby.

Section 8. Effective Date. This resolution shall be in full force and effect from and after its passage.

PASSED by the Board of County Commissioners, this 12th day of September, 1979.

/s/ John H. Wilkinson, Chairman
BOARD OF COUNTY COMMISSIONERS OF
LEWIS AND CLARK COUNTY

ATTEST: /s/ Helen Kovich
COUNTY CLERK AND RECORDER

RESOLUTION NO. 1979-42

RESOLUTION TO CLOSE AND VACATE ALLEY BETWEEN SUMMIT STREET AND GREEN STREET, ALLEY AT GREEN STREET RUNNING 710 FEET WEST, AND 100 FEET OF SUMMIT STREET

WHEREAS, a Petition has been filed with the Board of County Commissioners to close and vacate the west half or 160 feet of the alley between Summit Street and Green Street, dividing Block 6 of the Hotel Addition, the alley starting at Green Street and separating Block 17 of Seymer Park Addition and Block 3 of the Hotel Addition and running a total of 710 feet west, and that portion or 100 feet of Summit Street starting at Minnesota Avenue that separates Block 3 and Block 4 of the Hotel Addition; and

WHEREAS, said Petition was considered by the Lewis and Clark County Planning Board at its monthly meeting on July 10, 1979; and

WHEREAS, the Lewis and Clark County Planning Board has recommended that the Petition be granted; and

WHEREAS, the Board of County Commissioners conducted a public hearing on August 7, 1979 to consider the Petition; and

WHEREAS, no testimony in opposition to the requested closures was presented at the hearing; and

WHEREAS, the Board of County Commissioners has determined that the public interest would not be adversely affected by the requested closures;

NOW, THEREFORE, BE IT RESOLVED, that the west half or 160 feet of the alley between Summit Street and Green Street, dividing Block 6 of the Hotel Addition, the alley starting at Green Street and separating Block 17 of Seymer Park Addition and Block 3 of the Hotel Addition and running a total of 710 feet west and that portion or 100 feet of Summit Street starting at Minnesota Avenue that separates Block 3 and Block 4 of the Hotel Addition, be closed and vacated.

DATED this 12th day of September, 1979.

BOARD OF COUNTY COMMISSIONERS
LEWIS AND CLARK COUNTY