

PAYBACK AGREEMENTS¹

Chapter 35.91 RCW – the Municipal Water and Sewer Facilities Act – allows owners of real estate to contract for reimbursement of “actual”² costs incurred in extending public facilities to their property where other property owners could hook-up and take advantage of that extension (owners who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same). RCW 35.91.020.

The apportionment of costs may be based on lineal frontage, a square foot measurement or other methods (e.g., the zone and termini method – somewhat or a combination), so long as the division is intended to fairly reflect the special benefits received from the improvements. See *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 851 P.2d 662 (1993); *Sterling Realty Co. v. Bellevue*, 68 Wn.2d 760, 766, 415 P.2d 627 (1966).

The term of this payback obligation is up to fifteen years, but it may be extended under very limited circumstances (moratoria, phasing ordinances). Property owners who are subject to the reimbursement obligations under this act shall be notified by the contracting municipality of any such extension.

The fact that the municipality must apply the actual costs – even if they are (seem) excessive, that potentially puts the municipality in the dilemma of having to decide to assess the high costs to neighboring property owners or declining to enter into the payback agreement. In that regard, the statute does not mandate the city’s entering into such agreements, but based on *Stone v. Southwest Suburban Sewer Dist.*, if it does, it must use the developer’s actual costs.

¹These agreements are also known as “Late Comer’s Agreements,” Reimbursement Agreements” and Recapture Agreements.” The statutes (Chapter 35.91 RCW) do not specify one name or another, but the terms “Payback Agreement” and “Reimbursement Agreement” are used in *Stone v. Southwest Suburban Sewer Dist.*, 116 Wn. App. 434, 438, 65 P.3d 1230 (2003).

²*Stone v. Southwest Suburban Sewer Dist.*, (*supra*)