



MAYOR & COUNCIL COMMUNICATION

DATE: 7/06/2010
REGULAR
ITEM #: 9
MOTION

AGENDA ITEM: Whistling Valley Development, Phases 1, 2, and 3 – Request to extend the Development Completion Deadline of June 30, 2010

SUBMITTED BY: Ryan Stempski, Assistant City Engineer

THROUGH: Bruce Messelt, City Administrator

REVIEWED BY: Kyle Klatt, Planning Director
Jack Griffin, City Engineer
Dave Snyder, City Attorney

SUMMARY AND ACTION REQUESTED: The City Council is asked to consider an extension to complete the remaining work in Whistling Valley Development Phases 1, 2, and 3. The completion dates in the Development Agreements of all phases have passed. Due to recent economic times, the Developer has indicated that he has not been able to complete the improvements in accordance with the Development Agreement.

The Developer has recently met with Contractors and approached City Staff to schedule the remaining work. Staff recommends that the City Council move to approve the motion by undertaking the following action:

SUGGESTED: “Move to allow an extension to complete all remaining items in the MOTION: Whistling Valley Development, Phases 1, 2, and 3 in accordance with the attached Schedule of Remaining Work dated June 30, 2010; contingent upon receipt of a Letter of Credit in the amount of \$379,125 and in the form acceptable to the City Attorney. Failure by the Developer to meet each and any deadline noted in the Schedule of Remaining Work dated June 30, 2010, may be considered default of the Development Agreement and subject to all available remedies by the City.”

BACKGROUND INFORMATION: At the request of the Developer to address extenuating circumstances, City staff worked with the Developer of Whistling Valley Developments, Phases 1, 2, and 3 to identify all outstanding work items necessary to complete the development improvements, and identified a reasonable work schedule to complete the work. Subsequently, a time extension for completing the development improvements was approved by the City Council in accordance with the attached Schedule of Remaining Work, issued November 17, 2009, thereby extending the final completion date to June 30, 2010. At this time, the only item that has been addressed was the installation of 27 trees in Whistling Valley Phase II.

STAFF REPORT: At this time, the developer has failed to meet the approved completion schedule of June 30, 2010, for the remaining work in the Whistling Valley Development, Phases 1, 2, and 3. Staff has met with the Developer and the Developer has discussed additional circumstances leading to the delays. In addition, the Developer has been conducting inspections and meeting with his contractors to schedule the work. The Developer now proposes to complete all remaining development improvements in the Whistling Valley Development, Phases 1, 2, and 3 per the attached schedule, dated June 30, 2010 (see Attachment No. 2)

In accommodating this request, City Staff has requested that the current Financial Bonds issued for the Development Security, be replaced with a Letter of Credit in a form acceptable to the City Attorney, and in an amount sufficient to complete all remaining work. Attachment No. 3 provides a breakdown of the remaining items and associated costs. It is recommended that the extension request be contingent upon receipt of a Letter of Credit in the amount of \$375,125.

RECOMMENDATION: The Council at its discretion may approve another extension for the work to be completed. Based upon the above background information and staff report, it is recommended that the City Council move to approve the motion by undertaking the following action:

“Move to allow an extension to complete all remaining items in the Whistling Valley Development, Phases 1, 2, and 3 in accordance with the attached Schedule of Remaining Work dated June 30, 2010; contingent upon receipt of a Letter of Credit in the amount of \$379,125 and in the form acceptable to the City Attorney. Failure by the Developer to meet each and any deadline noted in the Schedule of Remaining Work dated June 30, 2010, may be considered default of the Development Agreement and subject to all available remedies by the City.”

Alternatively, the Council may table action at tonight’s meeting or decide to declare the Development in default, subjecting it to all the remedies outlined in the Development Agreements. The suggested motion to undertake the latter is as follows:

“Move to declare Whistling Valley Development Phases 1, 2, and 3 in default, and direct the City to seek all available remedies outlined in the Development Agreements.”

ATTACHMENTS: (3)

1. Previous Schedule of Remaining Work – Issued November 17, 2009
2. Proposed Schedule of Remaining Work dated June 30, 2010
3. Development Security Requirements – Cost Breakdown of Remaining Work, 6/29/2010

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item..... City Administrator
- Report/Presentation Planning Director/City Engineer
- Questions from Council to Staff..... Mayor Facilitates
- Call for Motion..... Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion Mayor Facilitates