



MAYOR & COUNCIL COMMUNICATION

DATE: April 21, 2015
CONSENT
ITEM # 7

AGENDA ITEM: Easton Village Developer's Agreement – Affirm Final Contract Language and Approve Potential Assignment of Agreement to OP4 Easton Village, LLC (Excelsior Group)

SUBMITTED BY: Kyle Klatt, Community Development Director

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Jack Griffin, City Engineer
Dave Synder, City Attorney
Nick Johnson, City Planner

SUGGESTED ORDER OF BUSINESS:

- Introduction of ItemCommunity Development Director
- Report/Presentation.....Community Development Director
- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECCOMENDER: The City Council approved a Development Agreement for Easton Village at its March 3, 2015. This approval was contingent upon final review and approval by the City Attorney, who has requested that the final document be brought back to the Council for final conformation. Staff is also recommending that the Council grant approval a potential assignment of the development contract to OP4 Easton Village, LLC (Excelsior Group) in advance of a potential sale of the Easton Village Phase 1 area to this development company.

FISCAL IMPACT: Direct Payments to Developer – None: there are no City payments for oversizing of utilities or for other reasons included in the agreement. Although the construction plans include oversizing of some infrastructure, the developer has previously agreed to absorb these costs as part of the City's 39th Street Sewer assessment project. Future financial impacts include maintenance of streets, trails, sanitary sewer mains, watermain and other public infrastructure, maintenance of storm water ponding areas (after three years), monthly lease payments for street light, and other public financial responsibilities typically associated with a new development.

The assignment of the agreement to another party does not alter any of the obligations, securities, cash payments, or other provisions of the agreement.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to affirm the final language to be included in the developer's agreement for Easton Village and approve a potential assignment of the agreement to OP4 Easton Village, LCC upon the finalization of an agreement to purchase the subject property from Easton Village, LLC (Tom Wolter). The agreement has gone through a final round of reviews by City Staff, the developer, and the City Attorney, and the final document is being presented to the City Council for final review. If this item is pulled from the consent agenda, the recommended motion to take action on the request is as follows:

“Move to affirm the final language to be included in the developer’s agreement for Easton Village and to approve a potential assignment of the agreement from Easton Village, LLC to OP4 Easton Village, LCC upon the finalization of an agreement to purchase the subject property”

LEGISLATIVE HISTORY/STAFF REPORT: The City Council has previously approved a developer's agreement for Easton Village contingent upon the City Attorney completing a final review of the document. The City Council was especially concerned that the provision in the agreement concerning development reimbursement for future railroad crossing improvements be reviewed with final input from the City Attorney before the agreement was executed. Since the Council's March 3, 2015 meeting, the developer has requested minor revisions to a few sections of the document, and Staff has suggested some minor changes as well. All changes since the document was conditionally approved by the City Council have been tracked in the attached document, and can be summarized as follows:

- Minor corrections as recommended by the City Engineer since the Council review of this item.
- Adjusted construction costs for Streets and Erosion Control as per the recommendation of the City Engineer.
- Section 29 concerning railroad crossing improvements and developer contributions for the future crossing improvements has been modified from the version presented to the City Council. The attached agreement includes revisions to change the fee from a REC-unit based fee to one that is now calculated based on an overall percentage of the costs for contributing parcels. A table has also been added to the agreement to document the calculations used to determine the share for all benefitting parcels. The new calculation resulted in a very small increase to the developer's required cash contribution for this item.
- Section 30 (E) has been revised at the request of the developer to allow a letter of credit to be used for the required temporary access road removal security. It also notes that the developer may elect to renew this security as part of future project phases.

- An additional provision has been added to the railroad crossing portion of the agreement (Section 29, Subpart C) that clarifies the procedure to be used in case the costs of the crossing exceeds the amount estimated in the agreement.
- The developer has provided a detailed cost estimate regarding the future work necessary to remove the temporary access road that resulted in a modest increase to the original estimate for this work.

Please note that the developer requested that a new provision be added to Section 22 to lock in the SAC and WAC charges at the present amount for future project phases within the development. This change is not recommended by Staff and has not been included as part of the final document.

All other terms and conditions of the agreement are unchanged from the version presented on march 3rd.

Since the previous Council discussion on this matter, the developer has indicated that he is working towards a potential sale of the first addition to another land development company as noted above. The attached letter from the Excelsior Group explains that Excelsior Group is planning to purchase the first phase of the project and would like to assume responsibility for all of the work specified in the agreement. Under the terms of the agreement, the developer has the right to request an assignment of his rights to another party. In order to facilitate a future land transfer to OP4 Easton Village, LLC, Staff is recommending that the City Council take formal action to grant the potential assignment to this company. This action does not change any of the developer's requirements under the agreement, it simply clarifies who the developer is that will be constructing the improvements and furnishing all required securities for the project.

BACKGROUND INFORMATION (SWOT):

Strengths: The developer's agreement has been drafted to guarantee that the improvements associated with Easton Village plans will installed in accordance with City specifications.

Execution of the developer's agreement and compliance with all conditions in the agreement will allow the developer to record the Final Plat.

Weaknesses: The City will assume responsibility for future maintenance of the public improvements.

Opportunities: The proposed improvements will provide for infrastructure connections to adjacent properties.

Threats: The City will need to provide construction observation throughout the course of the project (these costs will be covered under an Engineering Administration Escrow).

RECOMMENDATION: Based on the above Staff report, Staff is recommending that the City Council conform that the revisions to the developer's agreement for Easton Village (as documented in the updated agreement) are consistent with the City's conditional approval of the agreement at a previous meeting and to approve a potential assignment of the agreement to OP4

Easton Village, LCC (Excelsior Group) upon the finalization of an agreement to purchase the subject property from Easton Village, LLC (Tom Wolter). If this item is pulled from the consent agenda, the suggested motion to adopt the Staff recommendation is as follows:

“Move to affirm the final language to be included in the developer’s agreement for Easton Village and to approve a potential assignment of the agreement from Easton Village, LLC to OP4 Easton Village, LCC upon the finalization of an agreement to purchase the subject property”

ATTACHMENTS:

1. Letter from Excelsior Group – April 16, 2015
2. Easton Village Developer’s Agreement – Final Draft (with revisions tracked)