



MAYOR AND COUNCIL COMMUNICATION

DATE: 12/1/15

REGULAR

ITEM #: 9

MOTION

AGENDA ITEM: Request to decrease letter of credit for Robert Engstrom Company

SUBMITTED BY: Clark Schroeder

THROUGH: Clark Schroeder

REVIEWED BY: Jack Griffin

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item.....Staff
- Report/PresentationStaff
- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate..... Mayor Facilitates
- Call for Motion..... Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion Mayor Facilitates

PUBLIC POLICY STATEMENT POSSIBLE CHANGE IN DEVELOPER LETTER OF CREDIT POLICY

SUMMARY AND ACTION REQUESTED:

Staff has been approached by Robert Engstrom to allow a decrease in letter of credit for the Wildflower development in advance of any reduction that would otherwise be allowed through the current development agreement. This is not an atypical request by developers and is something which council could consider changing the policy. Instead of just addressing Mr. Engstrom's request it is appropriate for council to consider the overall policy and if any changes should be addressed.

BACKGROUND AND STAFF REPORT: This is a summary of Mr. Engstrom's request, which could apply to a number of different developers.

A letter of credit was given to the City of Lake Elmo in the amount of \$3,440,831 by the Robert Engstrom Companies for the Wildflower development to protect the city's interest in case the company faltered or failed to complete the infrastructure required to support the development. Of this amount \$1,711,104 was required to secure the watermain, sanitary sewer and storm sewer, and storm water pond structure installation.

Mr. Engstrom is requesting a reduction in the letter of credit in the amount of \$1,236,826.96; an amount Mr. Engstrom has determined to represent 100% of the sanitary sewer, watermain, and storm sewer for the phase 1 development. Based upon an initial security in the amount of 125% of the estimated costs, this reduction in letter of credit would leave \$309,206.72 related to the utilities for any warranty

corrections. The difference in the amount of letter of credit addition relates to different estimates of the cost of utility installation and different engineers. The current policy requires 25% of the initial security to be held through the warranty period.

Mr. Engstrom is requesting a reduction in the letter of credit in advance of any reduction that would otherwise be allowed through the current development agreement. The current development agreement requires not only the full installation of each infrastructure component, but also all testing and verification procedures to ensure the installation is constructed as planned (the quality control processes). The current development agreement therefore identifies various letter of credit reduction milestones that align with the completion of the quality control review processes for each infrastructure component. Mr. Engstrom, along with other developers, continue to request letter of credit reductions once the infrastructure component is installed in the field, but before the quality control review processes have been completed. They cite difficulties with the additional waiting time since they need to make payments to the contractors for the work installed.

Mr. Engstrom has not yet provided a record plan or an as built record for the city to verify the proper installation of the utilities, including the correct depth, correct grade, and at the correct location. It is not uncommon after a record plan is submitted for engineering to identify some corrections to be made. This would be the responsibility of the developer to correct. The only case in which a letter of credit would be utilized to correct errors would be if the developer failed to make them and the city was left completing the project on its own.

Given the frequency of the request, staff is looking for council direction as it relates to the processing of letter of credit reduction requests. If so directed by council, policy changes could be implemented to reduce the letters of credit upon the installation of the infrastructure component at 100% installed, but not verified. Since the city has not yet received a record plan or in some cases completed testing, it is hard for staff to give a recommended exact dollar amount to decrease the security. Staff is unable at this point to certify to the city the acceptance of the improvement.

However, the developers are asking, does the city need to retain 100% of the letter of credit until the completion of the verification processes? They believe the city has adequate security to address issues that may arise.

City staff, if so directed by council could, suggest policy changes which would allow partial decreases in letters of credit.

RECOMMENDATION:

Staff recommends the City Council ... take the following action / with the following motion:

Move to direct staff to propose changes to development agreements that would allow decreases in letters of credit.

ATTACHMENT(S):

Wildflower at Lake Elmo reduction request & Wildflower LOC utilities.