



MAYOR & COUNCIL COMMUNICATION

DATE: April 21, 2015
REGULAR
ITEM # 12

AGENDA ITEM: Boulder Ponds Planned Residential Subdivision – Developer’s Agreement

SUBMITTED BY: Nick M. Johnson, City Planner

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Jack Griffin, City Engineer
Dave Snyder, City Attorney
Kyle Klatt, Community Development Director
Stephen Mastey, Landscape Consultant

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: Staff is recommending that the City Council approve a developer’s agreement associated with the 1st phase of the Boulder Ponds planned residential development. The agreement has been drafted based on a model agreement previously reviewed by the Council and the agreement that was executed for other residential subdivisions.

FISCAL IMPACT: Direct Payments to Developer: The agreement includes sanitary sewer oversizing in the payment amount of \$20,633.55. This payment would be made out of the sanitary sewer fund to the developer once the City accepts all of the public improvements. In addition, the agreement includes a credit to the developer for the acquisition of necessary right-of-way from Bremer Bank for the 5th Street minor collector road. The credit amount is \$41,846, and is reflected as a reduction to the cash requirements paid to the City. Future financial impacts of the development include maintenance of streets, trails, sanitary sewer mains, watermains and other public infrastructure, maintenance of storm water ponding areas (after three years), maintenance of the landscaping in public areas, monthly lease payments for street lights (estimated at \$76.34 for 11 lights), and other public financial responsibilities typically associated with a new development.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to authorize execution of a developer's agreement related to the Boulder Ponds Final Plat. The attached agreement has been reviewed by the City Attorney, City Engineer, Community Development Director and the City's Landscape Consultant, and all recommend changes specific to the Boulder Ponds project have been incorporated into the document as drafted. This agreement must be executed before any construction activity, outside of the previously authorized grading work, may proceed on the site. The recommended motion to take action on the request is as follows:

“Move to adopt Resolution No. 2015-25, approving the developer's agreement for the Boulder Ponds planned residential development.”

LEGISLATIVE HISTORY/STAFF REPORT: One of the conditions included as part of the Planning Commission recommendation to the Council concerning the Boulder Ponds Final Plat specifies that the developer enter into a Developer's Agreement prior to the execution of the plat by City officials. Staff has drafted such an agreement consistent with the City's developer's agreement template, and this document is attached for consideration by the City Council. Please note that the document as drafted contains some modifications to the original template based on some of the unique aspects of the Boulder Ponds development. The key aspects of the agreement include the following components:

- That all improvements to be completed by October 31, 2016.
- That the developer provide a letter of credit in the amount of 125% of the total cost of the proposed improvements. The construction estimates provided have been reviewed by the City Engineer and found to be accurate. The necessary letter of credit to secure the construction activity and expenses will be \$3,610,725.87 for the 1st phase of the Boulder Ponds development.
- That the developer provide a cash deposit of \$435,893.46 for SAC and WAC charges, engineering administration, one year of street light operating costs, park land dedication fee, and other City fees.

Regarding City payments to the developer, there are two proposed actions of note in the development agreement:

- The first action is a payment related to the oversizing of sanitary sewer in phase 1 of the Boulder Ponds development. The developer has been directed by the City to oversize segments of sanitary sewer from 8-in pipe to 12-inch pipe in order to accommodate the City's broader sanitary sewer system. The oversizing payment amount had been reviewed by the City Engineer and is \$20,633.55. This payment would be made to the developer once all of the public improvements for the subdivision have been accepted by the City.

- The second action is a credit to the developer for the acquisition costs of public right-of-way related to the 5th Street minor collector road at the Bremer Bank and Stonegate Park pinch-point. In the northwest corner of the Boulder Ponds development, a pinch-point exists between the Bremer Bank financial services facility and Stonegate Park. This pinch-point has always presented a difficulty, as the City's planned minor collector road, 5th Street, must travel through the pinch-point in order to connect to the Inwood development and ultimately Inwood Avenue (CSAH 13). Due to this situation, public-right-of-way must be acquired from the Bremer Bank facility in order to accommodate the minor collector road. When discussing this situation with the developer, City staff presented multiple options to resolve the issue: 1) the City could acquire the necessary right-of-way for the collector road, or 2) the developer could acquire the necessary right-of-way and receive a credit from the City for doing so. Ultimately, the developer decided to acquire the right-of-way, as it was a time-sensitive solution needed to advance the development plans. In selecting this approach, there was an added benefit to the City that it reduced the City's administrative and legal costs needed to acquire the property from Bremer. Staff is recommending that the City provide the developer a credit as a reduction to the Cash requirements in the amount of the purchase price of the property (\$41,846). Given the properties' relationship to Stonegate Park, it makes sense from staff's perspective that the offset come out of the parkland dedication funds. To summarize, the developer acquired the necessary right-of-way for the 5th Street minor collector road outside of the developer's property, thereby facilitating the platting and construction of the collector road, resulting in a definite benefit to the City.

STRENGTHS, WEAKNESSES, OPPORTUNITIES, THREATS:

Strengths: The developer's agreement has been drafted to guarantee that the improvements associated with Boulder Ponds plans will be 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 Boulder Ponds Final Plat. In addition, approval of the Developers Agreement will allow the City to collect the necessary SAC and WAC fees to help finance the City's investments in the municipal sanitary sewer and watermain systems.

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

Opportunities: The proposed improvements include the extension of the 5th Street minor collector road, the transportation improvement needed to provide adequate public facilities for Stage 1 of the I-94 Corridor Planning Area.

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 approve the Developer's Agreement for Boulder Ponds and that the Council direct the Mayor and Staff to execute this document once the financial security and cash requirements have been received. The suggested motion to adopt the Staff recommendation is as follows:

“Move to adopt Resolution No. 2015-25, approving the developer’s agreement for the Boulder Ponds planned residential development.”

ATTACHMENTS:

1. Resolution No. 2015-25
2. Boulder Ponds Development Agreement