



## **MAYOR & COUNCIL COMMUNICATION**

**DATE:** June 2, 2015  
**REGULAR**  
**ITEM #** 10

**AGENDA ITEM:** Village Preserve 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  
Cathy Bendel, Finance Director

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### **SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item .....Community 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 1<sup>st</sup> phase of the Village Preserve single family residential subdivision. 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 watermain oversizing in the payment amount of \$30,430. This payment would be made out of the water enterprise fund to the developer once the City accepts all of the public improvements. Future financial impacts of the development include maintenance of streets, trails, sanitary sewer mains, watermain 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 \$69.40 for 10 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 Village Preserve Final Plat. The attached

agreement has been reviewed by the City Attorney, City Engineer, Community Development Director and the Finance Director, and all recommend changes specific to the Village Preserve project have been incorporated into the document as drafted. This agreement must be executed before any construction activity may proceed on the site. The recommended motion to take action on the request is as follows:

***“Move to adopt Resolution 2015-47, approving the developer’s agreement for the Village Preserve residential subdivision.”***

**LEGISLATIVE HISTORY/STAFF REPORT:** The Village Preserve Final Plat was approved by the City Council on May 5th, 2015 (Resolution No. 2015-34). One of the conditions of the Village Preserve Final Plat approval specifies that the developer enter into a Developer’s Agreement with the City prior to the execution of the plat by City officials. Staff has drafted such an agreement based on 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 Village Preserve 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 internal proposed improvements. The construction estimates provided have been reviewed by the City Engineer and found to be sufficient. The necessary letter of credit to secure the construction activity and expenses internal to the site will be \$2,507,460.00 for the 1<sup>st</sup> phase of the Village Preserve development.
- That the developer provide an additional letter of credit to secure shared improvements with the Wildflower at Lake Elmo planned residential development in the amount of 125% of the total cost of shared improvements. The necessary letter of credit to secure the shared improvements with Wildflower at Lake Elmo will be \$319,751.25.
- That the developer provide a cash deposit of \$468,607.47 for SAC and WAC charges, engineering administration, Village AUAR Fee, one year of street light operating costs, park land dedication fee, and other City fees. It is important to note that the portion of the cash necessary for parkland dedication is to be held in escrow under this agreement until the developer dedicates parkland east of Reid Park as directed by the Park Commission. Should the developer dedicated the land to the City prior to executing the Developers Agreement, the parkland dedication fee of \$130,044.67 would be subtracted from the necessary cash requirements.
- It should be noted that the Village Preserve residential subdivision will be served by the East Village Trunk Sewer. A large portion of this trunk system is complete with the completion of the 39<sup>th</sup> Street Project. However, the southern segment of the sewer from the Reid Park lift station to the rail road tracks still must be constructed. Three parties are

currently collaborating to complete this trunk sewer segment: Gonyea Companies, Robert Engstrom Companies and Easton Village, LLC. In order to ensure that this trunk sewer improvement is constructed prior to new homes being constructed, the developers agreement contains a provision (Section 28.A) that does not allow building permits to be issued until the East Trunk Sewer Project is under construction and scheduled to be completed.

- As a result of the developer's participation in the construction of the East Trunk Sanitary Sewer System, they are requesting that the Sewer Availability Charge (SAC) and Sewer Connection Charge for Village Preserve and surrounding developments served by the trunk sewer be locked in at the 2015 rates of \$3,000 per REC unit and \$1,000 per REC unit respectively. It should be noted that the existing properties north of the railroad tracks in the Village Area are being served by the East Village Trunk Sewer. Staff has run high-level estimates and determined that the East Village Trunk Sewer will save the City a sizeable portion of public money over the previous design. Therefore, Staff recommends that this is a reasonable request that can be accommodated. It should be noted that more often it is the case that SAC and Sewer Connection Fees are reduced as the system is built out, not increased.
- The developer has requested a modification to the reduction of security schedule. The modified schedule would allow for security to be released based on categories of public improvements, as opposed to more time-sensitive milestones of construction. For example, once the sewer and water utilities are constructed, tested and approved by the City, the developer would be eligible to receive 75% of the security amount back for those specifics improvements. Ultimately, the proposed reduction schedule operates on similar values or amounts of security that the City retains, but it allows for construction categories to be broken out separately for staged reductions in security. The reduction schedule has been negotiated between the developer and the City. As part of the proposed reduction schedule, there are four groups of improvements: 1) Grading, 2) Sewer and Water Utilities, 3) Streets and Storm Sewer (including sidewalks, trails, ponds and infiltration basins), and 4) Erosion Control, Street Lighting, Landscaping, Monuments and other miscellaneous items. Similar to the template reduction schedule, the final 25% of total security is withheld until final improvements are completed, including final wear-course, iron monuments installed, all record drawings provided to the City, and all punch list items completed. It should be noted that the warranty amount provided in the attached agreement is identical to the City's accepted template; 25% warranty.

Regarding City payments to the developer, there is one proposed action of note in the development agreement:

- The action is a payment to the developer related to the oversizing of watermain in phase 1 of the Village Preserve development. The developer has been directed by the City to oversize segments of watermain from 8-inch pipe to 12-inch pipe in order to accommodate operational improvements to the City's broader water system. The oversizing payment amount had been reviewed by the City Engineer and is \$30,430. This

payment would be made to the developer once all of the public improvements for the subdivision have been accepted by the City.

It should also be noted that the developer has submitted a letter requesting that the City consider increasing the number of permitted model homes from the template's maximum of two homes to a proposed maximum of six model homes. To date, the largest number of model homes that the City has accommodated in an approved development agreement is 5 model homes. The logic in previously allowing 5 model homes was to accommodate a development (Hammes Estates) that included a mix of custom builders, so that each builder could be allowed a model home. Based on the submitted letter, Gonyea Companies are planning to use a similar approach of multiple custom builders in the Village Preserve development. Therefore, the same logic that was applied previously could also be used in this case. However, staff will note that an increased number of model homes can present difficulties during the construction of the utilities and streets. If there are too many contractors present, conflicts can arise within these developments. In addition, the more model homes that are permitted, the greater the risk of an emergency or public safety situation occurring without fully completed streets. It is important that proper access be maintained for these sites. The attached agreement includes the standard template number of two model homes. Should the Council be amenable to the developer's request for additional model homes, the attached agreement can be amended to reflect this decision.

Finally, with regards to the amount of security, the developer has contacted City staff to report that Washington County has reduced the size and costs of the previously approved design for turn lanes on Lake Elmo Avenue (CSAH 17). This change in turn-lane design could result in a significant decrease in construction cost. The developer would like the City to be aware of this situation with the consideration that if the construction costs are significantly less, then the necessary security could conceivably be reduced to reflect the true cost of construction. This is not a situation that requires a decision at this time, but the developer would like the City to be aware of this change.

#### **STRENGTHS, WEAKNESSES, OPPORTUNITIES, THREATS:**

**Strengths:** The developer's agreement has been drafted to guarantee that the improvements associated with Village Preserve plans will be installed in accordance with City standards and specifications. Execution of the developer's agreement and compliance with all conditions in the agreement will allow the developer to record the Village Preserve Final Plat. Approval of the Developers Agreement will also 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. In addition, payment of the City's AUAR Fee assists the City in recovering the cost expended on the Village Alternative Urban Areawide Review (AUAR). Finally, moving the Village Preserve project forward provide greater surety that the East Village Trunk Sewer will be installed, which is a critical infrastructure component for the Village Area moving forward.

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

**Opportunities:** Approval of the developer's agreement will allow construction to proceed for a new single family residential subdivision in the Village Area, offering homes constructed by a mix of custom builders.

**Threats:** The greatest threat related to the Village Preserve project is that the private portion of the East Village Trunk Sewer is not yet completed. The proposed development agreement does provide security in the form of withholding building permits, including model homes, for the Village Preserve subdivision until the sewer project is underway and on schedule to be completed. In addition, 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 Village Preserve 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 2015-47, approving the developer's agreement for the Village Preserve residential subdivision.”***

**ATTACHMENTS:**

1. Resolution No. 2015-47
2. Village Preserve Development Agreement
3. Request for Additional Model Homes
4. Watermain Oversizing Map