



Date: April 17, 2012

To: Thomas J. Bonfield, City Manager
Through: Theodore L. Voorhees, Deputy City Manager
From: Marvin G. Williams, Director of Public Works
Subject: Response to Council and Citizens on the Dunwoody Failed Development

Executive Summary

This report is a response to questions asked by City Council Members at the work session dated March 22, 2012. This report also provides a response to the Residents of Dunwoody memo to Council dated March 29th, 2012 that Dunwoody should be granted special circumstances.

Recommendation

The Department of Public Works recommends that the City Council receive this report regarding the response to questions on the Dunwoody Development from City Council and residents of Dunwoody.

Background

Over the past three years, the Department of Public Works has been assisting failed and struggling developments, which include bankrupt and restructured developments, to assist in the completion of public and private infrastructure. Dunwoody is included in this group of developments, and the Public Works has made recommendation to Council regarding the completion of the infrastructure.

Dunwoody Subdivision is a twelve-lot subdivision located approximately 700 feet south of the intersection of Umstead Road and S. Riverdale Drive. The entrance road to the subdivision is Clover Hill Place. This subdivision was approved and construction of the roads and infrastructure began in 2003 and was undertaken by the development company, Riverdale Development, LLC (“Developer”). The Developer put a \$6,000 performance bond (“Bond”) in place to secure unfinished infrastructure prior to issuance of certificates of completion for houses in the subdivision. Unlike the City’s standard bond form, the Bond provided by the Developer contained a set time period during which claims could be made on the Bond. That time period expired on July 31, 2004. All houses in the subdivision were completed by the end of 2005. In February of 2006 Public Works delivered its first punch list for infrastructure items to be completed by the Developer. Repeated attempts since 2006 by Public Works to get the Developer to come back and complete the project have been unsuccessful. It appears the

Developer closed out the development company for the project, Riverdale Development, LLC, in 2007 and articles of dissolution were filed with the Secretary of State.

Staff in the Engineering Inspections Division continued to attempt to engage the Developer since 2006 and attempted to call the performance bond in late 2008 through the end of 2009. Public Works made unsuccessful attempts to call the bond on three separate occasions between 2010 and 2011. However, these attempts were unsuccessful since the Bond's claim period closed in 2004.

The critical elements needed to complete Dunwoody subdivision have been identified, and the estimated cost for repairs is \$21,000.00. The type of work contemplated includes repair to the existing street base, so that any potholes are patched and pavement failures repaired. The then sound structural base will be overlaid with the final layer of asphalt. This is a ribbon paved street so there are no curbs to be repaired. The road shoulders and ditches are currently serviceable and will not be addressed by the repair work. There is no sidewalk, nor one required. There are no storm control measures, nor were any required for this project.

Issues and Analysis

City Council March 22, 2012 Work Session questions:

During the City Council Work Session meeting dated March 22, 2012, City Council asked the following questions of the Public Works Department relating to the Dunwoody Situation. The questions and responses are as follows:

- 1) Are there any opportunities in the Public Works Department Budget to provide assistance in this situation?

The Public Works Department recommends continuing to provide project management services, negotiation with banks and sureties, communications with HOAs and residents, project specification and bidding, and contract management services to complete the infrastructure in failed developments. Beyond the recommended 10% financial contribution, the Department is not able to contribute significant funds to these projects due to competing interests and the potential for significant additional future failed developments.

- 2) What are other municipalities doing in terms of failed developments?

Other municipalities are taking multiple different measures to address failed developments within their jurisdictions. We have talked to local municipalities and also consulted some jurisdictions out of state as well. The typical measures employed include:

- a) Calling performance bonds and working with insurance companies to complete the work. Such negotiations, however, take time and the effectiveness of any final result depends upon the details of the security instrument, necessary repairs or work to be completed and the parties involved.
 - b) Only allowing cash securities in municipal escrow accounts for full infrastructure completion (water, sewer, storm, streets, stormwater facilities, etc).
 - c) Some municipalities with inadequate securities have let the property owners complete the infrastructure under their own power and when completed the municipalities have accepted the infrastructure for maintenance.
 - d) Other municipalities are working with new developers to purchase unfinished developments or work with (restructured developers) to complete the infrastructure and continue building. (Note that this is the City of Durham's primary methodology but it requires incomplete assets to sell in order for this to be a successful solution).
- 3) How can we make sure developers are working well and completing infrastructure?

The Public Works Department has issued a new written construction security policy for calculating construction securities for infrastructure and for release of building permits and certificates of compliance. Adherence to this policy will limit the financial risk the City of Durham and its citizens have been exposed to in the past. It increases the required security amounts, requires yearly review of those amounts, and forces completion of infrastructure in conjunction with release of building permits and certificates of compliance. (It should be noted that (no) policy can completely eliminate risk but we believe that this policy helps us manage the risk to an acceptable level while not substantially burdening the development community such that they cannot afford to do business locally.)

Response to Dunwoody Resident Memo:

1. Resident Question: Public Works is responsible for setting the dollar value of the construction security required for developments. The dollar value of that bond (\$6000) was not substantial enough to finish even a small portion of the street paving.
Answer: In this case, the amount identified in subject bond was determined over 8 years ago. It not known today whether \$6,000 was adequate to complete the streets in 2003. It is true, however, that the purpose of requiring a construction surety is to assure performance of work necessary to complete the required infrastructure.

2. Resident Question: Public Works was responsible for managing the construction security. They accepted a bond valid for one year (July 31, 2003 to July 31, 2004). The expiration date included in the bond was the responsibility of Public Works to catch and have removed.
Answer: Public Works acknowledges its failure to notice the claim period in the performance bond.

3. Resident Question: The developer quietly dissolved Trinity Builders and Riverdale Development in 2006. He changed his phone numbers and walked out on all of us...well before the economic downturn. Where was Public Works between 2006 and our notification in 2011? Where was the communication?
Answer: Public Works repeatedly requested that the Developer finish the street. The Developer indicated that it would finish the street. Once we heard the Developer was filing for bankruptcy, the City attempted to call the surety.

4. Resident Question: Clover Hill Place (the only street in the Dunwoody subdivision) was pledged to the City by Trinity Builders. In acceptance of this pledge, the streets had to be approved and accepted by the City before ownership would transfer to the City from Trinity Builders. The homeowners do not own Clover Hill Place any more than the City owns Clover Hill Place.
Answer: Clover Hill Place is an unfinished and unmaintained street, dedicated as public rights-of-way. Public Works is a department of the City that puts into place standards and specifications that must be met by developers prior to acceptance of infrastructure by the City. This street has not been completed and has not been accepted by the City Council.

5. Resident Question: At our meeting in June 2011, we told the Department of Public Works representatives that we would rather leave our road the way it had been than pay to have it finished. Some safety concerns were brought up (raised manhole covers) so instead of lowering the manholes, the Department of Public Works came out and tore up many parts of our road and patched it.
Answer: Public Works performed minimal work on Clover Hill to minimize safety issues with the street.

Alternatives

The City Council may choose to order the street repairs and assess 90% of the actual cost of the improvements. In doing so, the City Council may also choose to establish a hardship scenario to provide a reduced interest rate and longer payback period.

Instead of assessing the property owners 90% of the cost of improvements described above, the City Council may choose to assess the cost of the improvements less \$6,000, (i.e., the value of the expired construction security).

Financial Impacts

This Failed Development is similar in nature to the other six. The one outstanding issue is the loss of the \$6,000 construction security. Council may choose to incorporate various combinations of elements from the alternatives section. The construction security replacement value is \$6,000, and the 10% participation is \$2,100. The hardship scenario would allow a lower interest rate and longer payback period which would have a small financial impact for the amount of assessment being considered.

SBDE Summary

The SDBE Summary is not applicable to this report.