



Date: March 6, 2012

To: Thomas J. Bonfield, City Manager
Through: Theodore L. Voorhees, Deputy City Manager
From: Marvin G. Williams, Director of Public Works
Subject: Street Repairs on Dunwoody Subdivision (Clover Hill Place)

Executive Summary

Dunwoody Subdivision is a failed development with incomplete street infrastructure. It is recommended that the street infrastructure be completed by the City and the cost thereof assessed against the twelve abutting properties before the City accepts the right-of-way for City maintenance. In order to do that, it will be necessary for City Council to pass a Final Resolution Ordering the Making of Local Improvements after conducting a public hearing (in accordance with Section 78 of the Charter of the City of Durham). Pursuant to the Charter, each lot shall be assessed based on a per foot frontage rate. The Public Works Department proposes that the assessment rate be determined based on 90% of the actual cost of the project, with the City funding the remaining 10%. Funding is being requested through the FY13 CIP process. The Public Works Department also proposes that the assessment interest rate be set at prime, rather than the typical prime plus 4.25%, and that the pay period be set at ten years, rather than the typical eight years, with an option for each property owner to extend the pay period to fifteen years upon completion of a hardship application.

Recommendation

The Public Works Department recommends that City Council receive the report on the plan to make street repairs in Dunwoody Subdivision, said plan being the ordering of the work and to assess the abutting properties for the repairs.

Background

Over the past three years, the Department of Public Works has been managing failed and struggling developments, which include bankrupt and restructured developments, to ensure that the public and private infrastructure is completed. Dunwoody is included in this group of developments, and the City is ready to move forward with making repairs.

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 began construction of the

roads and infrastructure in 2003 under the development company Riverdale Development, LLC and a \$6,000 performance bond was put in place to secure the unfinished infrastructure. It was discovered at a later date that the performance bond contained an expiration date (apparently inserted by the surety company), which expiration date was not part of the city's standard bond forms. By 2005, all houses in the subdivision were completed. In February of 2006 Public Works delivered its first punch list of 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 were unsuccessful. The developer closed out the development company for the project, Riverdale Development, LLC, in 2007 and filed articles of dissolution 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. In 2010, the project was then added to the Failed and Struggling Development Project List after it was confirmed by the City Attorney's Office that the passing of the expiration date barred the City's recovery under the bond. Nonetheless, Public Works made unsuccessful attempts to call the bond on three separate occasions between 2010 and 2011.

As the streets have not been accepted for maintenance by the City, the Department of Public Works recommends that the public infrastructure for this failed development be completed by the City and that ninety percent of the cost thereof be assessed against abutting properties in accordance with Section 78 of the Charter of the City of Durham. Staff met with the property owners June 8, 2011, and will have met again the week of March 19 prior to this Work Session.

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

As a result of the economic downturn, there are several developments within the city limits of Durham that are in various states of incompleteness. The Dunwoody Subdivision is one of these. It has been determined that completion of the infrastructure requires primarily street repairs in this subdivision. City Council has determined that Public Works will coordinate these repairs and that ultimately the cost of repairs should be assessed against the properties within the subdivision that abut the repairs. In order to initiate the street repairs, City Council must first pass a Resolution Ordering the Making of Local Improvements (after a public hearing). After the work is completed and the actual costs are fully determined, City Council must prepare a preliminary assessment roll and then provide notice and opportunity

for public comment prior to confirmation of the assessment roll. If the assessment rate is based on ninety percent of the actual cost of the street repairs, the estimated assessment rate is \$11.13 per front foot. The frontages of the twelve affected properties range from 52.36 feet to 305.83 feet, resulting in estimated assessments ranging from \$582.77 to \$3,403.89. In order to lessen the annual payments for those owners who opt to finance the assessment, it is suggested that City Council extend the pay period and reduce the interest rate for this particular project.

Alternatives

- 1) City Council may choose to not order the making of the repairs, leaving it up to the property owners to coordinate and have the repairs made. (not recommended)
- 2) City Council may choose to have the street repairs made and not assess the abutting properties. (not recommended)
- 3) City Council may choose to order the street repairs and assess the actual cost of the improvements against the abutting properties at the standard interest rate of prime (as determined by the Wall Street Journal on the fourth Friday of May prior to the assessment) plus 4.25% with the standard pay period of eight years. (not recommended)
- 4) City Council may choose to order the street repairs and assess 90% of the actual cost of the improvements against the abutting properties at a reduced interest rate of prime (as determined by the Wall Street Journal on the fourth Friday of May prior to the assessment) with a pay period of ten years, and allow an option for each property owner to extend the pay period to fifteen years upon completion of a hardship application. (recommended)
- 5) City Council may choose to order the street repairs and assess some other percentage of the actual cost with other terms of payment. (not recommended)

Financial Impacts

The financial impacts are dependent on which alternative City Council chooses to implement for the making of the street repairs. The alternatives being:

- 1) That the City abstains from any involvement with the street repairs, resulting in no cost to the City, but the potential exists for further deterioration of the present infrastructure.
- 2) That the City absorbs the entire cost of approximately \$21,000.00.
- 3) That the City assesses the full cost of the project against the properties resulting in no cost to the City
- 4) That the City absorbs 10% of the cost and assesses 90% of the cost of the project against the properties, resulting in an approximately \$2,100.00 cost to the City.
- 5) That the City absorbs some other percentage of the cost.

SBDE Summary

The SBDE Summary is not applicable to this report.

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