



**Date:** April 2, 2013

**To:** Thomas J. Bonfield, City Manager

**Through:** W. Bowman Ferguson, Deputy City Manager

**From:** Marvin G. Williams, Director of Public Works

**Subject:** Completion of Street in Dunwoody Subdivision

### **Executive Summary**

The Dunwoody Subdivision is a Category 4 failed development where the original developer has failed to complete the street infrastructure. The purpose of this agenda item is to present options for Council's consideration on how to move forward with the completion of street infrastructure for this development

### **Recommendation**

The Public Works Department recommends that City Council adopts a resolution to direct Public Works to complete the street in Dunwoody Subdivision by assessment with a 10% City contribution.

### **Background**

Dunwoody Subdivision is a twelve-lot subdivision (Attachment A) located approximately 700 feet south of the intersection of Umstead Road and S. Riverdale Drive. The subdivision has one ribbon paved street. After the construction drawings were approved in 2003, Riverdale Development, LLC began the construction of this subdivision. A \$6,000 performance bond was put in place by the developer. The intent of the performance bond, at that time, was to establish a reasonable security measure to ensure compliance, not as a total project completion funding source. By 2005, all of the houses within the subdivision had been completed and occupied.

In February of 2006 Public Works delivered its final punch list of items to be completed to the developer. In July of 2006, Public Works received inquiries from residents on the status of the development and when the streets would be completed. Public Works responded erroneously to the resident inquiries that an active bond was in place. Public Works followed up with the developer to determine the status of the punch list items. Repeated attempts since 2006 by Public Works to get the developer to come back and complete the project were unsuccessful.

The developer closed out Riverdale Development, LLC in 2007 and filed articles of dissolution with the Secretary of State.

After learning of the dissolution of Riverdale Development, LLC, Public Works began the process of obtaining the funds from the performance bond in late 2008. From 2008 to 2010, Public

Works corresponded several times with the bonding company, Traveler's Insurance, in an attempt to receive the funds from the performance bond. In the spring of 2010, the project was added to the Failed and Struggling Development Program.

During a review of the Dunwoody file in 2010, Public Works discovered that an expiration date had been inserted into the bond language by the bonding company. This language allowed the bond to expire one year from the execution date (July 31, 2003) of the original bond. The standard performance bond language utilized by the City did not include expiration dates. After consulting with the City Attorney's Office, Public Works was unable to acquire funds from the bonding company and has no other options to pursue this money.

### **Issues and Analysis**

The critical elements needed to complete Dunwoody subdivision have been identified (as of October 2012). The type of work required to complete the street infrastructure includes: repair to the existing street base, utility manhole adjustments, and placement of the final layer of asphalt (Attachment B). The road shoulders and ditches are currently serviceable and will not be addressed by the repair work. There are no sidewalks or stormwater control measures required for this project.

The estimated cost for repairs listed above is \$21,000.00. This estimate was used to generate the assessment rates in the scenarios described below.

#### Scenario 1 – Per Lot Assessment

In this scenario each lot will be assessed an equal amount to complete the street. Based on the engineering estimate created by Public Works for the remaining work, each of the 12 lots would be assessed an amount of \$1,750. Public Works recommends that City Council allow the residents 5 years to pay the assessment balance to the City at a 0 percent interest rate.

Once the work has been completed the City will accept the street for maintenance.

#### Scenario 2 – Per Lot Assessment (less the 10% City contribution - \$2,100)

In this scenario, the 10% City contribution that has been discussed at previous Council meetings will be credited to the assessments. Based on the engineering estimate created by Public Works for the remaining work, each of the 12 lots would be assessed an amount of \$1,575. Public Works recommends that City Council allow the residents 5 years to pay the assessment balance to the City at a 0 percent interest rate.

Once the work has been completed the City will accept the street for maintenance.

#### Scenario 3 – Streets Completed by Residents

The residents would retain the services of a contractor to perform the necessary work to complete the street at their direct cost. Public Works would work with the contractor to ensure that all repairs and work are completed to City of Durham requirements.

Once the work has been completed to City requirements, the residents would petition the City to accept the street.

**Alternatives**

An alternative to the aforementioned scenarios is that the City will complete the street at no cost to the residents of Dunwoody.

**Financial Impact**

The Financial Impact of Scenario 2 to the City of Durham would be \$2,100.00. No financial impacts would be incurred by the City of Durham for Scenario 1 or Scenario 3.

If City Council chooses the alternative of the City completing the street infrastructure, the financial impact would be \$21,000.

**SDBE Summary**

The SDBE Summary section is not applicable for this update.