



CITY OF DURHAM | NORTH CAROLINA

Date: May 21, 2013

To: Thomas J. Bonfield, City Manager

Through: W. Bowman Ferguson, Deputy City Manager

From: Marvin G. Williams, Director of Public Works

Subject: Agenda Item – Public Hearing for Improvement

Street Paving on Clover Hill Place (Dunwoody Subdivision) – from South Riverdale Drive through the Cul-de-sac

Executive Summary

The City Council, at its meeting of May 6, 2013, directed the Administration to prepare an agenda item to hold a public hearing to consider the ordering of street paving on Clover Hill Place in the Dunwoody Subdivision. Dunwoody Subdivision is a failed development in need of street paving. It is being recommended that the public infrastructure be completed by the City and the cost thereof assessed against the abutting properties, less an \$ 8,100.00 contribution by the City. In order to do that, it is necessary for City Council to order the improvement in accordance with Section 78 of the Charter of the City of Durham.

Pursuant to the Resolution Authorizing the City Manager or Designee to Set Public Hearings and to Declare the Adoption of Resolutions of Intent (Resolution 9709), the City Manager set the public hearing on the proposed improvement to be held at 7:00 PM, June 17, 2013, in the Council Chamber of City Hall.

Recommendation

The Public Works Department recommends that City Council adopt a preliminary resolution for the proposed improvement, conduct a public hearing to consider ordering the improvement, and adopt a resolution ordering the improvement.

Upon completion of the work the abutting properties will be assessed for the cost of the project, less an \$ 8,100.00 contribution from the City, on a per lot basis. This per lot assessment will be approximately \$ 1,075.00. Public Works recommends that City Council allow the property owners to pay back this assessment in annual installments over a five (5) year period, interest free.

Background

Dunwoody Subdivision is a twelve-lot subdivision located approximately 700 feet south of the intersection of Umstead Road and South 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 was to establish a reasonable security measure to assure the developer's completion of the street. By 2005, all of the houses within the subdivision were completed and occupied.

In February of 2006 Public Works delivered its final punch list of items to be completed by the developer. In July 2006, Public Works received inquiries from residents on the status of the development and questions regarding the completion of the streets. 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 complete the street have been 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. The critical elements needed to complete Dunwoody subdivision have been identified, and the estimated cost for repairs is \$21,000.00.

As the construction security was not collected and 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 the cost thereof assessed against abutting properties in accordance with Section 78 of the Charter of the City of Durham.

Issues and Analysis

Section 78 of the Charter of the City of Durham dictates that a fixed time and place be set to hold a public hearing to determine whether the improvement shall be made. The public hearing for the subject improvement has been set for June 17, 2013.

Alternatives

There is not an alternative per the City Charter.

Financial Impacts

Holding a public hearing and ordering of the subject improvement will have no immediate financial impact, but these are necessary steps in the process of making improvements and assessing abutting properties for the improvements. Ultimately the City will be responsible for \$ 8,100.00 towards the cost of these improvements.

SBDE Summary

N/A

MGW/lca