



Date: April 16, 2014

To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Marvin G. Williams, Director of Public Works
Subject: CIP Ordinance Amendment – Bay Pointe Phase 3, Green Gardens Phase 2, and Windermere Ridge Failed Developments Reimbursement

Executive Summary

In 2010, Public Works collected the construction securities (\$145,000) of Bay Pointe Phase 3 and Green Gardens Phase 2 after the original developer left both subdivisions incomplete. Public Works has successfully facilitated an infrastructure agreement to complete the unfinished infrastructure in the Bay Pointe Phase 3 and Green Gardens Phase 2 subdivisions.

In 2010, Public Works collected the construction securities (\$70,000) of Windermere Ridge Subdivision after the developer left the first phase of the subdivision incomplete. Public Works has successfully facilitated an infrastructure agreement to complete the unfinished infrastructure in Phase 1 of the Windermere Ridge Subdivision.

The purpose of this memo is to request a General Capital Improvement Project Budget amendment to appropriate these funds through the City of Durham Failed and Struggling Development Capital Improvement Project account. This CIP Budget amendment would then allow the City of Durham to execute the infrastructure agreements and allow the City of Durham to provide payment of the funds to the new developers when the infrastructure is complete.

Recommendation

- 1) To adopt an ordinance amending the General Capital Improvement Project Ordinance #14464, and to authorize expenditure to Level Carolina Homes, LLC a maximum amount of \$145,000 obtained from the Bay Pointe Phase 3 and Green Gardens Phase 2 failed developments construction securities; and
- 2) To adopt an ordinance amending the General Capital Improvement Project Ordinance #14464, and to authorize expenditure to J & F Investments, LLC a maximum amount of \$70,000 obtained from the Windermere Ridge failed development construction securities.

Background

Bay Pointe Phase 3 and Green Gardens Phase 2:

Bay Pointe Phase 3 and Green Gardens Phase 2 Subdivisions are two Category IV Failed Developments located south of Martin Luther King Parkway and west of Fayetteville Road. The subdivisions are adjacent to each other and were constructed simultaneously by the same developer, Tucker Development, Inc. The original developer, Tucker Development, Inc., went bankrupt in 2009 prior to completing the street infrastructure in both subdivisions. In 2010 Public Works collected the construction securities for both subdivisions for a total amount of \$145,000.

At the time of the bankruptcy, Bay Pointe Phase 3 subdivision had built all lots, the streets had been accepted by the City, and Green Gardens Phase 2 subdivision had 18 vacant lots. The street infrastructure in both subdivisions was left unfinished and has deteriorated over time. The Green Gardens Phase 2 vacant lots were listed for sale by Sun Trust Bank. Public Works provided interested developers punch lists with all the improvements required to complete the subdivision and actively brought in developers in an attempt to facilitate a negotiation to complete the failed development infrastructure.

In 2013 a new developer, Level Carolina Homes, LLC, purchased the remaining lots in Green Gardens Phase 2. Public Works and the City Attorney's Office drafted a reimbursement agreement to refund Level Carolina Homes, LLC some of the cost of completing the street infrastructure in Bay Pointe Phase 3 and Green Gardens Phase 2. The maximum reimbursable amount is the \$145,000 of total construction securities collected.

Windermere Ridge Subdivision

Windermere Subdivision is a Category IV Failed Development located on the south side of Infinity Road approximately 1,800 ft east of the intersection of North Roxboro Rd and Infinity Rd. The project is a townhouse development with approximately 43 lots in Phase 1. The previous developer, Charles J. D'Aleo went bankrupt in 2011 prior to completing the street infrastructure for Phase 1 and the shared stormwater facility located on the parcel adjacent to Phase 1. The Public Works Department collected the securities for the street infrastructure (\$10,000) and the stormwater facility (\$60,000) for phase 1 of the project. After the bankruptcy, the property was foreclosed on by SouthBank.

Working with SouthBank and the neighboring developer (J & K Investments, LLC) the City of Durham has facilitated a solution to complete the stormwater facility and street infrastructure in Phase 1 of the Windermere Subdivision. This would allow the infrastructure to be completed at no cost to the residents and make the property more attractive to developers who wish to purchase the remaining townhome lots in Phase 1. The maximum reimbursable amount is the \$70,000 of total construction securities collected.

Issues/Analysis

To enable the reimbursement to Level Carolina Homes, LLC and J & F Investments, LLC the General Capital Improvement Project Ordinance must be amended.

Alternatives

1. Do not adopt an ordinance amending the CIP to allocate the funds obtained from the Bay Pointe Phase 3 and Green Gardens Phase 2 subdivision construction security. This would prevent Level Carolina Homes, LLC from completing the street infrastructure in the Bay Pointe Phase 3 subdivision development. The City would be responsible for completing the street infrastructure in Bay Pointe Phase 3 by other means, such as including it in a repaving contract. If Level Carolina Homes, LLC stops work at Green Gardens Phase 2, the residents would be responsible for the cost of completing the street infrastructure and applying to the City for street acceptance. This alternative is not recommended.
2. Do not adopt an ordinance amending the CIP to allocate the funds obtained from the Windermere Ridge Phase 1 subdivision construction securities. This would prevent J & F Investments, LLC from completing the street and stormwater infrastructure in Windermere Ridge Phase 1 subdivision failed development. The City would be responsible for completing the street infrastructure in Windermere Ridge by other means, such as including it in a repaving contract. If the street and stormwater infrastructure are not completed by J & F Investments, LLC, the residents would be responsible for the cost of completing the street and stormwater infrastructure and applying to the City for street acceptance. This alternative is not recommended.

Financial Impact

Funds are existing collected funds from construction securities issued by private developers and collected by the City of Durham Public Works Department. Funds are being appropriated through the General Capital Improvement Project so that the funds may be spent for the designated contract purposes.

The funding of these projects would not impact the City financially as the funds were collected from construction securities issued by private developers for the projects.

Bay Pointe Phase 3 and Green Gardens Phase 2):

GF Construction Deposits	3606-212402	\$ 145,000.00
TOTAL		\$ 145,000.00

Windemere Ridge Townhomes):

GF Construction Deposits	3606-212402	\$ 10,000.00
SW Construction Deposits	4300-212402	\$ 60,000.00
TOTAL		\$ 70,000.00

SDBE Summary

The SDBE Summary is not applicable to this item.