

COUNCIL ACTION FORM

SUBJECT: REQUEST TO DEFER EASTGATE SUBDIVISION ROAD WIDENING COSTS

BACKGROUND:

First National Bank owns 13 lots in the Eastgate Subdivision (Near East 13th Street and Dayton Avenue). A covenant on these 13 lots requires payment of \$141,000 to the City on a pro-rata basis upon the sale of each lot to cover the cost of constructing a northbound left turn lane from Dayton Avenue to Plymouth Drive. The amount outstanding for these improvements is \$132,720. In January, the City Council referred to staff a letter from First National Bank requesting that the City defer the collection of this amount, allowing the bank to sell the property to a developer. The fees would then come due upon the development of the individual lots.

A development agreement was originally approved in 1998 with Eastgate Development, Inc. The development agreement outlined the obligation of the developer to reimburse the City for the construction of a turn lane on Dayton Avenue within 30 days of the completion of the improvement. However, at the time, there was no proposed timeframe for when the turn lane would be constructed.

In 2000, the developer entered bankruptcy proceedings. It appears from previous staff reports and court documents that the City, concerned about the ability of the developer to meet its improvement obligations, approved a covenant outlining revised responsibilities of the developer. The covenant was approved by the bankruptcy trustee, and allowed several pending lot sales to occur as a method to pay the developer's creditors, including the City.

The covenant modified the obligation for the developer to pay the road widening costs. Instead of requiring reimbursement upon the completion of the project, the covenant requires payment for the road widening costs upon the sale or transfer of each lot.

ROAD STATUS:

It appears that increased turning traffic along Dayton was a concern at the time the development was initially proposed. However, the project was not listed in the Long-Range Transportation Plan (LRTP) until the draft 2040 LRTP was proposed earlier this year. The project is proposed as a medium priority, mid-term implementation project to install turn lanes at various points along Dayton between E 13th Street and Riverside

Road. The LRTP notes indicate that the expectation continues for these improvements to be partially developer-funded.

MODIFICATION OF COVENANT AND DEVELOPMENT AGREEMENT:

City staff has reviewed the bankruptcy proceedings to determine if the road widening costs were affected by a bankruptcy order, which would supersede any agreement between the developer and the City. Given the dates of the various documents, City staff is reasonably certain the road widening payment arrangement was not affected by the bankruptcy proceeding since the payment arrangement came later. Therefore, the development agreement and covenant remain the only two documents governing the payment for these improvements. **The City Council has the ability to modify the covenant and development agreement to address First National Bank's request.**

Both documents could be amended to permit the property to change hands, with the financial obligation becoming payable upon the approval of a site plan for any one of the 13 lots. However, if this action is taken, it should be made contingent on the First National Bank selling all the lots to a single developer. If the lots are sold by First National Bank piecemeal, City staff believes the per lot payment should be imposed.

City staff recommends that if the City Council proceeds with modifying the covenant and development agreement to defer the obligation to pay for the road widening, the specific construction cost should be removed and replaced with language indicating the cost will be established at the time of the site plan approval. This would allow the road construction cost to be more fully recouped by the City, rather than the cost as estimated 17 years ago.

An additional benefit to modifying the covenant is that the original covenant is binding only until February 2022. A revised covenant would be effective for an additional 21 years from the date of revision.

ALTERNATIVES:

1. Direct staff to prepare a modification to the development agreement and covenant for this subdivision with First National Bank, permitting the sale of all 13 lots to a developer, with the financial obligation becoming payable upon approval of a site plan for any of the 13 lots. The dollar amount would be established at the time of the site plan submittal.
2. Direct staff to modify the development agreement and covenant to release First National Bank and any future property owner from the obligation to pay for the road widening.

3. Deny the request, which would require First National Bank to pay the City the costs originally agreed upon in the covenant at the time of sale.

MANAGER'S RECOMMENDED ACTION:

The draft 2040 Long-Range Transportation Plan continues to see a need for turning lanes to be developed along this road. However, the road project has not been designed, and is not needed so long as these lots remain undeveloped. Modifying the agreement in a manner that allows the City to collect the actual amount of construction is in the City's interest, because it reduces the funding shortfall that may occur from proceeding with 17-year old construction cost estimates.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby directing staff to prepare a modification to the development agreement and covenant for this subdivision with First National Bank, permitting the sale of all 13 lots to a developer, with the financial obligation becoming payable upon approval of a site plan for any of the 13 lots. The dollar amount would be established at the time of the site plan submittal.