

## COUNCIL ACTION FORM

**SUBJECT: REQUEST FROM UTHE DEVELOPMENT COMPANY, LLC TO AMEND DEVELOPMENT AGREEMENT REGARDING NORTHRIDGE HEIGHTS**

### **BACKGROUND:**

The City Council referred the attached letter from Chuck Winkleblack to staff requesting that the agreement between the City and the Uthe Development Company, LLC regarding occupancy requirement for Northridge Heights, 12<sup>th</sup> Addition be amended to allow for the opening of a new grocery store and car wash.

The original agreement related to the development of the Uthe Farm was approved back in November 2000. In this agreement, the developer is required, among other things, to construct two street lanes on the north side of Bloomington Road from the east line of the Union Pacific Railroad tracks to George Washington Carver no later than one year after the construction of 375 dwelling units in the subdivision.

It should be remembered that originally Northridge Heights was planned to be totally a residential subdivision. After the subdivision was rezoned to allow commercial uses, a new agreement had to be finalized to new guidance as to how off-site improvements, including the widening of Bloomington Road, would be handled. Therefore, in June 2008 an agreement for public improvements was approved by the City Council allowing the City to withhold occupancy permits for any improvements made within Northridge Heights, 12<sup>th</sup> Addition until the off-site improvements specified in the November 2000 agreement were completed.

Historically, commitments made by developers through contracts with the City are secured with bonds or letters of credit. In this case, the developer is required to provide financial security prior to the completion of the public improvements required of them in the original agreement, except for the work that would occur within the Union Pacific Railroad (UPRR) crossing. Timing of the railroad crossing work will be determined by the UPRR.

According to the UPRR rules, only their employees can do work to establish or extend a grade crossing. Because the City did not have a solid estimate for the cost of the work from the UPRR and we were concerned that the subdivision might be built out all at once causing the immediate need for widening Bloomington Road, the authority to withhold occupancy permits was selected as the method for securing the promise to widen the railroad crossing. This approach was selected in lieu of requiring financial security.

## **ALTERNATIVES:**

1. The City Council can facilitate the request from the Uthe Development Company, LLC by amending the Agreement For Public Improvements dated June 23, 2008 to exclude Lots 2 and 4 of the Northridge Heights Subdivision, 12<sup>th</sup> Addition from the requirement that occupancy not be allowed until the off-site improvements have been completed.

This option will allow the grocery store and car wash to open and still retain the technique for withholding occupancy for future uses in the subdivision until the railroad crossing work is complete.

2. The City Council can facilitate the request from the Uthe Development Company, LLC to allow the opening of the grocery store and car wash by amending the Agreement For Public Improvements dated June 23, 2008 to allow for occupancy on Lots 2 and 4, but require a bond or letter of credit equal to the amount that the UPRR has estimated for the railroad crossing work be issued to the City.

3. The City Council can deny the request from the Uthe Development Company, LLC to amend the Agreement For Public Improvements dated June 23, 2008 to allow for the opening of the grocery store and car wash before all public improvements are constructed.

## **MANAGER'S RECOMMENDED ACTION:**

The Developer has informed the City that the new grocery store and car wash will be ready to open within in the near future. While the City has contracted with the UPRR for the work to be completed with the understanding that the Developer will pay the bills directly, there is no indication that the UPRR will complete the work in advance of the planned openings of these two businesses.

Since the City has obtained a letter of credit for all of the other outstanding public improvements to be completed and has determined that the traffic from the opening of the two businesses can be accommodated by the existing two lanes of Bloomington Road, it is possible to accommodate the request of the Developer. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 amending the Agreement For Public Improvements dated June 23, 2008 to exclude Lots 2 and 4 of the Northridge Heights Subdivision, 12<sup>th</sup> Addition from the requirement that occupancy not be allowed until the off-site improvements have been completed.

Even with this amendment, the City will be able to withhold occupancy for the other improvements in the subdivision, such as the new apartments, until off-site improvements have been completed.