

ITEM #: 35  
DATE: 05-28-24  
DEPT: P&H

**COUNCIL ACTION FORM**

**SUBJECT: REQUEST TO INCREASE THE MAXIMUM REIMBURSEMENT AMOUNT FOR INFRASTRUCTURE COSTS, INCREASE THE SALES PRICE CAP FOR CERTAIN LOTS, AND WAIVE SPECULATIVE BUILDING CONSTRUCTION PENALTY PAYMENT FOR THE NORTH DAYTON INDUSTRIAL SUBDIVISION**

**BACKGROUND:**

The Developer of the North Dayton Avenue Subdivision, Dayton Avenue Development, LLC, represented by Chuck Winkleblack, is requesting that City Council support an amendment to the TIF Development Agreement to address increased development costs and to waive a penalty payment. (See Attachment A) The Development Agreement was approved by City Council in 2023 as part of an effort to incentivize the creation of small size lots for small business development in Ames. The Development Agreement specified, among other things, the number and size of lots, requirement to build speculative buildings, reimbursement through TIF for specified infrastructure costs up to \$2,968,264 for items listed in the agreement, and a land sales price cap.

The general framework of the agreement built upon previous TIF development agreements for the South Bell area, with the main difference being a TIF rebate to the developer rather than the City using TIF. The basis for the cost exhibit (See Attachment A) in the original agreement was the direct expenses of infrastructure construction, without design services. The agreement specifies that only the items in the exhibit would be eligible for the TIF incentive.

The developer has completed the construction of the subdivision improvements and provided invoices to City staff to review in preparation of making their first TIF reimbursement request this year. The developer identified increased costs of infrastructure as one of the basis of the request. **Additionally, the developer is requesting to include costs relating to professional services and other items that were previously determined to not be eligible and were in the cost exhibit of the original Development Agreement. The developer is now requesting that the TIF reimbursement cap in the Development Agreement be increased and to change the list of eligible expenses to increase the reimbursement amount by \$305,938.58. (See Attachment B for Developers Request)**

**REQUEST FOR REIMBURSEMENT:**

Staff has provided a breakdown of costs the developer has submitted as part of their request. The breakdown shows the costs separated out based upon the costs that are eligible as directly related to the exhibit included with the original agreement as well as the costs not related to infrastructure that were not part of the original Development Agreement.

**1. Infrastructure Cost Overruns related to Exhibit in the Development Agreement- \$151,687.05**

These are costs directly related to paving, water, electric, sewer improvements. etc. The total expense of these items exceeded the original estimate provided by the developer.

## **2. Development related costs for infrastructure not in the exhibit- \$66,867.95**

This category includes costs that City Council did not originally agree to for the development of the subdivision. These would be professional services items identified by the Developer such as engineering, inspections, soil testing and Bailey Avenue mobilization which were explicitly excluded from the cost exhibit breakdown in the agreement.

## **3. New costs being claimed for Development Not Related to infrastructure- \$87,383.58**

The developer has requested additional development costs be included in the agreement related to general development issues, such as a nearby cemetery preservation, wetland mitigation bank issues, SHPPO review and Bolton & Menk non-infrastructure design services. Staff does not find these costs to be related to infrastructure. The development agreement did not identify any general development costs as an eligible expense.

**Staff supports the costs related to Item #1 (an additional \$151,687.05) that are directly related to infrastructure construction for a total of TIF reimbursement cap of \$3,119,951.05. However, if City Council decides to approve the request for original infrastructure costs increases (#1) plus the other two new categories (Items #2, #3) of costs, it would raise the total reimbursement amount to \$3,274,202.40 (+\$305,938.58).**

### **SALES PRICE:**

The Developer is also requesting that the future \$22,000 cost of constructing private stormwater piping on the western boundary of the site to address concerns of Isaac Walton be able to be recouped with the sale of Lot 2. To recoup this extra cost, the developer wants the land sales price cap to allow for \$22,000 dollars to be added to the total sales price that is calculated per acre. The current price cap through July 1, 2024 is \$108,900. The per acre cost can increase each year after July 1st by \$5,445. **Staff is supportive of allowing the developer to change the sales price cap for Lot 2 due to the unique stormwater cost to collect and addition \$22,000 more than the required per acre cost.**

### **FIRST SPECULATIVE BUILDING PENALTY:**

A third matter has arisen related to the developer's completion of the first speculative building on a small lot. The developer was granted an extension in 2023 to complete the first building by May 1, 2025, to a shell condition. Staff visited the site and noted that the shell was not completed as agreed to. **Per the agreement, the developer is required to pay the City a \$15,000 penalty fee for its delay. The developer requests (Attachment C) City Council waive the penalty as he believes the building is nearing completion to a shell condition. Staff supports deferring the penalty if the building is in fact completed within the next 30 days per the specifications of the agreement.**

### **ALTERNATIVES:**

1. City Council can direct staff to prepare an amendment to the Development Agreement to:
  - a. Increase maximum TIF reimbursement by \$151,687.05 related to Category #1 for the eligible construction costs listed on the exhibit in the Development Agreement, bringing the total reimbursement to \$3,119,951.05
  - b. Amend the agreement to include a one-time \$22,000 sales price increase for Lot 2, in addition to the allowed per acre cost, and
  - c. Direct staff to not proceed with collection of the \$15,000 penalty if the building is completed by June 28th.

2. City Council can approve an amendment to the Development Agreement based on the request of the Developer to add professional services and other related costs for either or both of Categories 2 and 3 and agree to the land sale price change as well as deferring the penalty collection as described in Alternative 1.
3. City Council can approve an amendment to the Development Agreement for only the land sale price change and and/or not charging a penalty for failure to complete the spec building as previously agreed to.
4. City Council can choose to not amend the agreement.

**CITY MANAGER'S RECOMMENDED ACTION:**

**After review of the Developers request and eligible costs in the original Development Agreement, staff supports including an amendment for the first category of costs relating to public infrastructure of subdivision in the amount of \$151,687.05 and a total TIF reimbursement cap of \$3,119,951.05. In staffs view, allowing other costs such as professional services, environmental testing and other engineering costs related to the general development is not keeping with the original intent of the agreement. Certain costs were intentionally not included related to design services and miscellanies development costs based upon our prior history with TIF agreements. Staff also supports the increase sales price for Lot 2 and the temporary delay in collecting the penalty amount. Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1.**

**ATTACHMENT(S):**

- [Attachment A- North Dayton Industrial Development Agreement.pdf](#)
- [Attachment B- Dayton Avenue Development Request Letter.pdf](#)
- [Attachment C- Developer Email.pdf](#)