

ITEM #: 32
DATE: 09-10-24
DEPT: P&H

COUNCIL ACTION FORM

SUBJECT: ACCEPTANCE OF FIRST SPECULATIVE BUILDING IN NORTH DAYTON TIF DISTRICT WITH NO PENALTY FOR DELAYED COMPLETION&NBSP;

BACKGROUND:

The City entered in a development agreement in October 2022 for the North Dayton TIF Subdivision that provided for a development incentive of a Tax Increment Financing (TIF) rebate to the developer of certain public improvements costs, not to exceed \$3,119,951.05. The developer's obligations within the agreement were to develop the site with a combination of large and small lots, install infrastructure, and to construct speculative buildings of at least 10,000 square feet on a defined timeline upon small lots owned by the developer. The concept of building speculative buildings was part of the original RFP for the site as an economic development tool. The prior South Bell TIF development also included requirements to building speculative buildings.

At the time development agreement was prepared the phrase "shell condition" was added to the speculative building requirement to clarify that fully completed building with tenant improvements was not expected in order to meet the development agreement requirements. Staff had discussed with the developer the condition of buildings in South Bell and agreed that a finished shell of a building that was ready for a prospective tenant to finish out the interior was acceptable and had been the practice for South Bell. The practice was to complete the full exterior of the building and to include site improvements for parking, loading, and landscaping.

The First Speculative Building was initially required to be completed approximately 13 months after approval of the development agreement in November 2023. However, due to delays in the developer receiving a federal permit for filling a wetland, the City Council agreed to extend the deadline to May 1, 2024. Staff notified the developer in May that the building was not complete on time and was subject to a \$15,000 penalty per the requirements of the agreement. The building had incomplete siding, no openings were filled, and no-site improvements were complete at the time. **As part of broader request, the developer asked for an extension in May with no payment of a penalty and Council granted the request with an extension to June 28th.**

On July 2nd the developer contacted staff with a picture of the building asking that it be considered a completed shell in accordance with the agreement. See attachment for building condition pictures. Staff initially indicated they had concerns that it did not meet the requirements. Upon further review of the development agreement, building conditions, prior South Bell Speculative buildings, and consultation with Inspections staff regarding building permit; the Planning Director determined the building was not a completed building to a shell condition and sent a letter notifying the developer of their noncompliance on August 9th and an invoice for the \$15,000 penalty. **Staff's determination was based upon that fact that on July 2nd the openings had not been filled and the building was not a weather tight completed building.** Staff determined the site improvements were not required per the language of the agreement that referenced only a building condition.

The developer subsequently reached out to staff to discuss the building condition after receiving the letter noting that the building now had the openings filled and the remaining siding in place by the

beginning of August, approximately one month after the deadline. He indicated he had been working with prospective tenants for the building and considering changes to the building's loading area garage door to meet their needs. **Ultimately, he questioned staff's determination that the building was not a complete building to a shell condition on July 2nd because it had a roof and partially completed walls.**

He is hoping that the Council agrees that a penalty is not required based upon the condition of the building on July 2nd and that it is now a completed shell with siding, windows, and doors consistent with the minimum expectations of the agreement. Furthermore, the developer agrees that any future required speculative building will be, at a minimum, a weather tight building.

Per the terms of the agreement, a second building is required to be completed within 18 months of the first building being no longer being speculative, which may or may not result in construction of another speculative building.

ALTERNATIVES:

1. Direct staff to cancel the issuance of \$15,000 penalty for the first speculative building and accept the Developer's building as a complete shell building at this time, and for staff to verify that future construction of required speculative buildings be weather tight with completed windows, doors, garage doors, siding and roofing consistent with an approved site development plan for the building.
2. Direct staff to continue to with collection of the \$15,000 penalty for noncompliance of constructing a complete building to a shell condition by June 28, 2024.

CITY MANAGER'S RECOMMENDED ACTION:

Speculative building construction was one of the inducements to the City to provide a financial incentive for economic development for this subdivision. The developer had previously requested extension of speculative building construction deadlines, with the most recent extension until June 28th. During the extension, the developer did not discuss the condition with staff and had not indicated their expected level completeness as less than a completed building. **The developer believes that since he had started the building, he was working in good faith to complete it on a timeline similar to the stated June 28th deadline by fully completing the shell by the beginning of August.**

Although the staff disagrees with the developer that the building was complete on July 2 in accordance with the development agreement, staff agrees that in its current condition the intent of requirement is now met. Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1. and direct staff to cancel the issuance of \$15,000 penalty for the first speculative building and accept the Developer's building as a complete shell building at this time, and for staff to verify that any future construction of required speculative buildings be weather tight with completed windows, doors, garage doors, siding and roofing consistent with an approved site development plan for the building.

ATTACHMENT(S):

Bailey Speculative Building.pdf