

Meeting Date: 01/12/2021

By: Tim Gladhill, Community Development

Information

Title:

Adopt Resolution #21-021 Approving REVISED Sanitary Sewer Maintenance and Rain Garden Agreement for River Walk Village; Case of N & D Management, LLC

Purpose/Background:

The purpose of this case is to review a request by N & D Management Management, LLC to request an additional revision to the Council Approved Sanitary Sewer and Rain Garden Maintenance Agreement for River Walk Village. The Developer has accepted the maintenance obligations as approved by City Council. However, the Developer requested removal of the inspection requirement and frequency. After meeting with Public Works and Engineering Staff, City Staff is comfortable with this provision change.

A material change is requested by the is how the Agreement is signed and where the agreement is recorded. Instead of being recorded against individual properties after signed by the current owner (and passed down with each subsequent Buyer), the Agreement is proposed to be executed by the HOA (currently the same as Builder - Price Custom Homes) and recorded against HOA Property (not individual lots). In exchange, the HOA documents that are recorded against each individual property will be revised to reflect the existence of the Agreement. While not ideal, it is acceptable and has been reviewed by the City Attorney.

Please note that Staff was put in a difficult situation with a recent transaction. The Council approved an Agreement that the Developer continued to dispute after approval. Staff was aware that a closing was to occur in the near future and had repeatedly asked if this agreement had been disclosed and reminded the Developer that the agreement needed to be recorded against individual properties. The Developer did not disclose the agreement and asked Staff to quickly revise the day of closing. The Buyer ultimately contacted City Staff and Staff was able to close the loop and allow the closing to occur. Unfortunately, this materially changed the structure of the agreement. Staff believes the City's liability is still covered as outlined above.

This was a unique project and this process would not be followed in the future. Design Standards are being updated to eliminate this type of design as an option in the future. Moving forward, even if time is of the essence, projects will not be allowed to move forward until maintenance agreements such as this are executed and recorded.

The original case text begins below.

When the River Walk Village project was approved, the sanitary sewer plans included a small, private forcemain. due to the . The forcemain was necessary because the topography of the site did not allow wastewater to gravity flow to connect with the existing sanitary sewer. This forcemain is much smaller (2-inch diameter) than the City's existing forcemains, so approval was contingent upon maintenance by the individual homeowners/HOA. The City does not have the appropriate equipment to remove any blockages from the small diameter pipe. The intent of this compromise was for the homeowners to be responsible for regular maintenance of the line.

Additionally, the Developer proposed a rain garden to meet the requirements of the Lower Rum River Watershed Management Organization. A requirement of that was also to enter into a maintenance agreement. Both obligations have been included in a single agreement.

Notification:

Notification is not required.

Observations/Alternatives:

Alternatives:

1. Adopt Agreement as drafted
2. Do not approve the revision and require that the Developer record the originally approved agreement against individual properties

Funding Source:

The Applicant is responsible for all costs associated with processing the request.

Recommendation:

Staff recommends approval of the revised agreement.

Action:

Motion to adopt Resolution #20-265 approving revised version of Maintenance Agreement.

Attachments

Site Plan

REVISED Maintenance Agreement

Resolution #21-021

Form Review

Inbox	Reviewed By	Date
Bruce Westby	Bruce Westby	01/07/2021 12:47 PM
Kurt Ulrich	Kurt Ulrich	01/07/2021 04:04 PM
Form Started By: Tim Gladhill		Started On: 01/05/2021 07:41 PM
Final Approval Date: 01/07/2021		