



City of Norman, OK

Municipal Building Council
Chambers
201 West Gray Street
Norman, OK 73069

Text File

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Title

PARTIAL REFUND OF THE OWNER'S OBLIGATION AND THE RETURN OF CASH SURETY IN THE AMOUNT OF \$33,487.98 FOR DEFERRED CONSTRUCTION OF PAVING IMPROVEMENTS IN CONNECTION WITH EASTRIDGE ADDITION, SECTION 17.

body

BACKGROUND: City Subdivision Regulations require a land developer to bear the cost of street improvements that primarily benefit the developed tract [19-101(D)]. Street improvements are normally required to be accomplished prior to filing a final plat [19-313]. City Code prohibits the issuance of a building permit in a new development until the public improvements have been accomplished [19-501(B); 19-504]. However, under City policy, in certain circumstances, a building permit may be issued before completion of required street improvements by collecting the cost of the improvement ("deferral fees"), and then deferring the construction of the improvement to a more appropriate date.

Deferral fees are commonly collected by the City for widening of arterial roads to avoid "gap paving". The term "gap paving" refers to the widening of an arterial road typically from two lanes to four lanes one subdivision at a time. Because land is sometimes subdivided by developers randomly along an arterial roadway, gaps in the road widening can occur. Gap paving also leads to inconsistent pavement cross sections and under-designed storm drainage systems. For these reasons, city staff encourages the deferral of road widening adjacent to new subdivisions in an effort to aggregate the local funds necessary to widen longer sections of arterial roads at one time. Another advantage of deferral fees is that they can be used to provide the local match for 80/20 grants of federal transportation funds. Securing additional federal transportation funds for a project reduces the share of required local funding that often results in a refund of a portion of developer deferral fees.

The City's policy regarding deferral fees is contained in Chapter 19, Section 19-602B of the City Code of Ordinances, entitled "Subdivision Regulations, Deferral of Public Improvements." This provision has been part of City Code since October 26, 1976. Under 19-602(B)(4) the deferral fees are paid by the developer in cash or a certificate of deposit, are separately accounted for and can be spent for no other purpose than for the deferred improvement [19-602(B)(5)]. After the initial payment of estimated deferral fees, once the improvement is completed, the actual cost of the developer's share of the improvement is then calculated. If the initial estimated deferral payment is less than the actual developer share, then an additional developer payment is required. If the initial estimated deferral payment exceeds the developer share, then a refund of the excess deferral fees is returned to the developer upon written request of the payor [19-602 (B)(4)(a)&(b)].

City staff has received requests for refunds of previously paid road widening deferral fees on three city arterial street projects. Two different developers and six (6) separate subdivision plats are involved in this request. Public Works and Legal staff have coordinated closely with Mr. Harold Heiple and his clients to arrive at the current proposal for partial refunds of deferral fees paid to the City between 1999 and 2009.

The attached table represents the deferral fees previously paid for Eastridge Addition, Section 17, and Eastridge Addition, Section 21.

(Please refer to Attachment A for Table and Attachment B2 for map)

DISCUSSION:

24th Avenue SE, Lindsey Street to SH-9

The Developer's request for refund of deferral fees on this project is prompted by the recent close-out of this 2005 Bond Project which was constructed in 2008. This project involved the widening from two lanes to four lanes of approximately one mile of 24th Avenue SE. The two subdivision plats were Eastridge Addition, Sections 17 and 21 as shown on the attached map. The deferral fee required with the filing of the final plats was \$127,037.70 based on the estimated developer's share of roadway improvement costs. After a project involving federal funds is completed, an audit is required by ODOT who administers the federal transportation funds. The final audit was completed with the final invoice being paid in November 2011.

The total final cost of the 24th Avenue SE Project was \$3,722,496.62 of which \$748,221.82 (20.1%) was paid from local funds. The local share of the construction costs equates to \$55.33 per front foot of adjacent property. Eastridge Addition, Section 17, contains 876.25 front feet of property for a total project share of \$48,486.12. Eastridge Addition, Section 21, contains 424.46 front feet of property for a total project share of \$23,486.93. The total refund due to the developer is \$127,037.70 (deferral fee paid) - \$71,973.05 (actual local share) = **\$55,064.65**.

Alameda Avenue, Andover Drive to ½ mile east of 24th Avenue East

The Developer has requested a refund of deferral fees on this project. This project involved the widening from two lanes to four lanes of approximately one mile of Alameda Avenue. The subdivision plat was Royal Oaks Addition, Sections 6. The deferral fee required with the filing of the final plat was \$67,666.50, based on the estimated developer's share of roadway improvement costs. The project was complete in 2006. Since this involved federal funding administered through ODOT, a final audit of the project was required. The final audit was completed with the final invoice being paid in August of 2010.

The total final cost of the Alameda Avenue Project was \$3,638,821, of which \$726,470 (20.0%) was paid from local funds. The local share of the construction costs equates to \$47.67 per front foot of adjacent property. Royal Oaks Addition, Section 6, contains 600 front feet of property for a total project share of \$28,604.80. The total refund due to the developer is \$67,666.50 (deferral fee paid) - \$28,604.80 (actual local share) = **\$39,061.70**.

Rock Creek Road Project, 12th Avenue NW to Stubbeman Avenue
12th Avenue NW Project north of Rock Creek Road

The Developers' requests for refund of deferral fees on these projects focuses on roadway improvement deferral fees and intersection signalization fees on Rock Creek Road and 12th Avenue NW.

Rock Creek Road is currently a 4-lane arterial road with 44 feet of pavement width. This roadway was widened with the assistance of State-funded Industrial Access Grant. In 1976, the City adopted revised Engineering Design Criteria for all public improvements which includes new arterial streets, requiring a width of 52 feet. The deferral fees paid by Trailwoods Addition in 2005 and 2009 and Forest Lumber Addition in 2006 represented the widening of the north side of Rock Creek Road by four additional feet in the future.

In 2005 a traffic impact analysis (TIA) conducted by the developer of Trailwoods Addition at that time established the future need to install traffic signals at two intersections: (1) Rock Creek Road and Trailwoods Drive; and (2) Rock Creek Road and 12th Avenue NW (see attached drawing). Traffic impact fees were assessed to these subdivisions for the intersection improvements. When the traffic signals are installed at the two intersections, Rock Creek Road will be widened from four lanes to five lanes in order to provide a left turn lane in both directions at both intersections. Although Rock Creek Road is already a four lane roadway, when the two intersections are widened to the City's current standard street width, two short sections of Rock Creek Road will remain at the substandard 44-foot width. City staff and the developer's representatives recognize this point and agreed that future widening of Rock Creek Road to current roadway standards is both appropriate and desirable. In addition, it is recognized that the City has applied for federal transportation grant funding for this Rock Creek Road Project to be constructed in 2016. Federal standards will require the City to meet its own design criteria for the width of the entire roadway.

As City staff and the developer representative worked through these issues, new information became available and two errors were discovered in the previous assessment of deferral fees. First, updated project estimates for Rock Creek Road indicate that the road widening costs for these three subdivision

plats will be less than anticipated, reducing the deferral fees from \$130,126.20 to \$80,442.40 or 38% which yields a prorata refund for each subdivision. Secondly, an error was made by the City in 2006 involving the land parcel owned by Forest Lumber at the NE corner of Rock Creek Road and 12th Avenue NW. A final plat for this corner parcel was never brought forward by the owner, yet the City collected a deferral fee for the parcel when the current Forest Lumber site was developed. Therefore, a partial refund of the Forest Lumber deferral fees for the unplatted corner lot is now appropriate. If that corner lot, currently unplatted, is platted before the intersection and Rock Creek Road improvements are constructed, the development will be subject to traffic impact fees of \$15,558.25. Finally, it has been discovered that Forest Lumber did not pay the required traffic impact fees in the amount of \$45,854 in 2006 when the land was platted upon which the current Forest Lumber facility was built. Both the City and the applicant share responsibility for this oversight. The Developer agrees this oversight should be corrected at this time, so these fees for the previously platted lot should be "collected" by withholding a portion at deferral fees for road widening of the unplatted corner property that is to be refunded as previously discussed.

The final summary of fees is shown on **Attachment A**. If the requests for partial refunds are approved, then Staff will work with the developers to make sure appropriate amounts are released to the original depositors, and that appropriate amounts remain on deposit with the City for the future road widening road widening and signalization projects on Rock Creek that are anticipated to be complete by 2016. Under the City subdivision regulations, deferral fees can normally only be retained for a maximum of ten (10) years. The Developers in this case, acknowledging their desire to have the road widened to current City standards, have agreed that the City will have until November 30, 2017, to move forward with widening Rock Creek Road before they will consider asking for additional release of these deferral fees.

It should also be noted that if the City is successful in securing additional federal funds for the Rock Creek widening and signalization projects, then it is possible additional pro rata rebates of developer fees could occur similar to what was outlined in the other projects included in this item, or a more recent refund to developers for traffic impact fees associated with signalization of Tecumseh Road west of I-35 in which federal funds were secured for those projects.

RECOMMENDATION: It is recommended that the following partial refunds of road widening deferral (development) fees be issued to the original depositor. The total deferral fees paid have remained on deposit with the City in Account No. 010-0000-229.24-15.