



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: GID-1314-151**

**File ID:** GID-1314-151      **Type:** Development, Deferrals and Variances      **Status:** Consent Item

**Version:** 1      **Reference:** Item No. 16      **In Control:** City Council

**Department:** Public Works Department      **Cost:** \$66,793.60      **File Created:** 06/13/2014

**File Name:** Royal Oaks deferral refund request Section 7      **Final Action:**

**Title:** REFUND OF THE OWNER'S OBLIGATION AND THE RETURN OF CASH SURETY IN THE AMOUNT OF \$66,793.60 FOR DEFERRED CONSTRUCTION OF PAVING IMPROVEMENTS IN CONNECTION WITH ROYAL OAKS ADDITION, SECTION 7.

**Notes:** ACTION NEEDED: Motion to approve or reject the refund of the owner's obligation and return of cash surety for deferred construction of paving improvements in connection with Royal Oaks Addition, Section 7; and, if approved, direct the return of the cash surety in the amount of \$66,793.60 to the developer.

ACTION TAKEN: \_\_\_\_\_

**Agenda Date:** 08/12/2014

**Agenda Number:** 16

**Attachments:** Text File Return of Cash Surety.pdf, Royal Oaks Deferments, Letter from Royal Oaks rep 2-14-2013

**Project Manager:** Jeff Bryant, City Attorney

**Entered by:** jeff.bryant@normanok.gov

**Effective Date:**

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	06/24/2014	Withdrawn				
	<b>Action Text:</b>	Withdrawn					

### Text of Legislative File GID-1314-151

Body

**BACKGROUND:** City Subdivision Regulations require a land developer to bear the cost of street improvements that primarily benefit the developed tract [City Code, Section 19-101(D)]. Street improvements are normally required to be accomplished prior to filing a final plat [Section 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 and 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 may result 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 received requests for refunds of previously paid road widening deferral fees from Royal Oaks Subdivision, Section 7, 8 and 9 in connection with roadway improvements on 24th Avenue Northeast that would have been required due to these subdivisions. This request is being brought forward for Council’s consideration at this time.

**DISCUSSION:** The letter from the Developer’s representative requesting a refund is attached to this item. The request was prompted by recognition that the ten year deferral period of the estimated construction costs for the associated public improvements of Royal Oaks Section 7 placed on deposit with the City on August 13, 2002 had expired on August 13, 2012. The ten year deferral period for the Royal Oaks Section 8 & Section 9 public improvement deferred construction costs were also set to expire within a year of the date of the request.

Because the voter approved Roadway Improvement Bond Election of August 28, 2012 included widening of 24th Ave NE from Lindsey to Robinson Street, the developer also believed the entire amount of the deferral deposit for all three sections should be refunded, believing the funding for the entire 24th Ave widening project would be sufficient when considering anticipated Federal funding and local share funding from voter approved bond proceeds. There was a disagreement regarding whether a full refund of deferral fees was required under the City Ordinance or whether Council retained some discretion in that regard. Because of the threat of litigation on this issue, Council discussed the matter in Executive Session on June 10, 2014.

Based on Council feedback and further discussion with the Developer’s representative, the proposal before Council in this item is as follows: 1) immediate refund of the Section 7 deferral funds in the amount of \$66,793.60 (from account number 010-0000-229.24-11 - Deposit / Site Improvement Cash); 2) retention by the City of the deferral funds currently on deposit with the City for Section 8 and 9 which total \$100,185 until such time as the 24th Avenue Bond Project is completed, including completion of the final audit from the Oklahoma Department of Transportation; 3) after completion of the Project and audit, then the City and the Developer will discuss an appropriate refund, if any, of the retained deferral funds for Section 8 and 9.

It has been discussed and anticipated that these deferral funds will be handled just like those considered for the Eastridge Addition, Section 21 in relation to the completion of the 24th Ave widening project from Highway 9 to Lindsey that was partially refunded in 2012. Similar to Eastridge, the City anticipated calculating a “local share” cost for the 24th Ave NE widening Bond Project from Lindsey to Robinson to determine a “local share” cost per linear foot of the project. Then the linear feet associated with the Royal Oaks Sections 8 & 9 will be applied to the linear foot “local share” cost to determine if any refund of the remaining deferral fees will be due at that time.

**RECOMMENDATION.** Based on the above discussion, and feedback from the Council in its Executive Session of June 10, 2014 and July 22, 2014, Staff recommends the deferral funds for Royal Oaks Section 7 be refunded at this time, and that the deferral funds on deposit with the City for Royal Oaks Section 8 & 9 be

retained by the City pending completion of the 24th Ave NE Bond Project and associated ODOT final audit. Staff will be available to answer questions or provide additional information as needed.