



Meeting: Village Board
Meeting Date: 12/10/12
Agenda Item: 6c

Mission Statement
Delivering quality services in a courteous, cost-effective and efficient manner.

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: Burt R. McIntyre, President
Village Board of Trustees

REVIEWED BY:

REPORT FROM: Michael J Kaster, PE, Director of Engineering

AGENDA ITEMS: Review and Take Action on a Development Agreement for Public Improvements between the Village of Howard and Garot Land Development, LLC and Keith Garot for the Five Pointes Condominium Project.

POLICY ISSUE

1. Should the Village Board approve the Development Agreement?

BACKGROUND INFORMATION

Keith Garot of Landmark Real Estate has requested that the Village install sanitary sewer improvements required to serve a 32 unit condo development on Shawano Avenue. The Village Board approved the preliminary resolution declaring the intent to assess properties along the project for the utility extension project.

Mr. Garot is also seeking building permits to begin full construction of the first of the 8 unit condominiums. This would allow the building construction to be completed around the same time as the utility construction. Staff feels that prior to issuance of full building permits, a developer's agreement and letter of credit should be in place to ensure upfront payment of the special assessments on Mr. Garot's property. This would avoid the possible situation of having a building completed with no utility service provided.

The attached development agreement states the requirements of both the Village of Howard and Garot Land Development, LLC for the utility extension project. The Village is seeking a \$70,000 Irrevocable Standby Letter of Credit which, based on project estimates, is the approximate amount of the total special assessment that would be levied against the property. Mr. Garot has financing in place for the project and is currently in the process of obtaining the required letter of credit.

PRIOR ACTION/REVIEW

- The Village Board approved the PDD for the proposed condo development on 10/22/2012.
- The Village Board approved Preliminary Resolution 2012-22 on 11/12/2012.

FINANCIAL INFORMATION

FISCAL IMPACT:

- | | |
|------------------------------|--|
| 1. Is There A Fiscal Impact? | <u>Yes</u> |
| 2. Is it Currently Budgeted? | <u>Yes</u> |
| 3. If Budgeted, Which Line? | Enterprise &
<u>Capital Improvement Funds</u> |
| 4. Amount | <u>\$175,000</u> |

RECOMMENDED ACTION

- b) Village staff recommends that the Village Board approve the Developer’s Agreement contingent upon receipt of required letter of credit and attorney review.

If the Village Board were in favor of this policy action, the following motion may be made:

“Motion to approve the “Development Agreement between the Village of Howard and Garot Land Development LLC for the Five Pointes Condominium” contingent upon receipt of required letter of credit and attorney review.

POLICY ALTERNATIVE(S)

The Village Board could take the following actions:

- Approve the Development Agreement
- Deny the Development Agreement and decide how to proceed
- Table the Development Agreement and request additional information

ATTACHED INFORMATION

- I. Development Agreement
- II. Condominium Site Plan



DEVELOPMENT AGREEMENT

This Development Agreement made and entered into, by and between the Village of Howard, Wisconsin, a municipal corporation; hereinafter referred to as the “Village”, and Garot Land Development, LLC, (hereinafter called the “Developer”).

WHEREAS, pursuant to the Village of Howard Special Assessment Policy for public improvements and Chapter 46, Subdivision and Platting, Municipal Code of the Village of Howard, a developer/owner/subdivider requesting public improvements and/or CSM/Plat approval from the Village of Howard shall escrow sufficient funds prior to construction of public improvements to pay one hundred percent (100%) of the construction costs for such improvements including but not limited to engineering, inspection, testing, legal and administration.

WHEREAS, the developer/owner/subdivider herein has requested that the Village of Howard install and construct certain public improvements that will benefit Developer’s property; and

WHEREAS, the Village of Howard proposes to design, develop contract specifications, bid, and award contracts for approximately 1100 lineal feet of sanitary sewer, and water and sewer laterals along Greenfield Ave. & Shawano Ave. subject to Developer depositing funds to finance the project.

WHEREAS, the Village and Developer desire to set forth their understanding of the terms and conditions of the Development Agreement in writing.

NOW, THEREFORE, in consideration of the promises and mutual obligations of the parties hereto, each of them does covenant and agree with the other as follows:

The Village of Howard has estimated the utility construction cost including engineering & contingency, for the Developer’s portion of the project at \$70,000.00.

The Developer shall establish an Irrevocable Standby Letter of Credit with Pioneer Credit Union in the amount of \$ 70,000.00 valid through November 1, 2013 and both parties shall sign the Escrow Instructions attached hereto to be then submitted to the escrow agent.

The purpose of the Irrevocable Line-of-Credit is to guarantee payment by the Developer to the Village for the payment of those costs for public improvements as the same will become due and owing as provided for in the project contract.

Developer represents and warrants that he or she has reviewed the estimate for the project and further authorizes and consents to the Village awarding a contract subject to the terms and conditions therein.

The Village does not represent or warrant or assume responsibility for assuring that the bid amount from the project contract will be sufficient to complete construction. Developer acknowledges and understands that the final project costs may differ from the contract price by reason of unforeseen conditions and change orders. Developer agrees that additional monies will be escrowed or paid to the Village to cover costs in excess of the bid contract price for the project. If the failure to deposit additional funds results in insufficient funds to complete construction as changed, the Village at its election may suspend work under the contract or proceed with the work and any outstanding balance shall be assessed against the property until paid in full.

Upon establishment of the Irrevocable Line-of-Credit by Developer and completion of this Agreement the Village shall design, bid, award and construct the project in 2013.

Any extra change, allowance or other construction work ordered by the Village, which changes the bid, will be documented with a written change order. A copy of all such signed change orders and change orders mandated by the contract documents will be sent to the Developer.

All project/contract bills submitted by the Village for payment will be due and payable within ten (10) days from date of the bill. If any bill, or portion thereof, continues unpaid for more than ten (10) days, following the date such payment is due, Developer shall pay to Village a finance charge of 1.5% per month on the past due balance.

The Village shall release Developer's Irrevocable Line-of-Credit upon receipt of funds to cover payment of contractor's final payment request under the project contract.

INSTRUCTIONS

TO: Pioneer Credit Union

The undersigned herewith submits escrow instruction, which constitute a portion of an agreement existing between the Developer and the Village of Howard.

Developer herewith has established an Irrevocable Standby Letter of Credit in the amount of \$ 70,000.00 Dollars.

You are hereby authorized to disburse from the Irrevocable Standby Letter of Credit for The account of Keith Garot, Garot Land Development, LLC to the Village of Howard from the above mentioned monies at such times as directed to do so by the Village of Howard Clerk, Christopher Haltom. Said disbursement is necessary to meet progress payments to contractors or sub-contractors on said project.

Pioneer Credit Union shall not be liable for any error in judgment or for any act done or omitted by it in good faith, or for any thing which it may in good faith do or refrain from doing in connection herewith. No liability will be incurred by said agent if, in the event of any dispute or question as to the construction of these directions, it acts in accordance with the opinion of its legal counsel.

Pioneer Credit Union is authorized to act on any document believed by it to be genuine and to be signed by the proper party or parties, and will incur no liability in so acting.

Pioneer Credit Union will be compensated for its services under these escrow instructions by separate agreement with the Developer.

