

City of Scottsbluff, Nebraska

Monday, February 1, 2016

Regular Meeting

Item Subdiv.1

Council to consider a Developer's Agreement for Lots 1 & 2, Block 10, Five Oaks Subdivision and authorize the Mayor to execute the agreement.

Staff Contact: Annie Folck, City Planner

Agenda Statement

Item No.

For meeting of: Feb 1, 2016

AGENDA TITLE: Developer's Agreement –Lots 1 & 2, Tr. B&C, Blk. 10, Five Oaks Subdivision, situated in the NW ¼ of Section 14, T22N, R55W of the 6th P.M., Scotts Bluff County, Nebraska.

SUBMITTED BY DEPARTMENT/ORGANIZATION: Development Services

PRESENTATION BY:

SUMMARY EXPLANATION: The applicant(s), C and T Holdings, represented by Baker and Associates, have requested approval of a final plat of Lots 1 & 2, Tracts B & C, Block 10, Five Oaks Subdivision. Municipal code requires that if there are any improvements shown on the final plat that have not yet been constructed, the property owners must submit a developer's agreement. This agreement states that the property owners will be responsible for constructing the improvements.

The unfinished improvements necessary to serve the two lots being platted include completion of the half street on Ave G, the extension of sewer lines from 42nd Street and 40th Street (see exhibit included in agreement), and the extension of a waterline extending from 40th Street to 42nd Street to provide fire protection for Lot 2.

The agreement states that the street in front of each lot will be completed before a building permit may be issued for that lot. The sewer line must also be extended to each lot before it can be built upon. Lot 1 can be served by the existing waterline on 42nd street, but the waterline from 40th to 42nd must be completed before Lot 2 can be developed. These improvements and timelines are all outlined in the attached agreement, which has been reviewed by the City's legal counsel.

BOARD/COMMISSION RECOMMENDATION:

STAFF RECOMMENDATION: Approve developer's agreement for filing at the Register of Deeds

EXHIBITS

Resolution Ordinance Contract X Minutes Plan/Map

Other (specify) _____

NOTIFICATION LIST: Yes X No Further Instructions C&T Holdings, Bill Trumbull 1310 Circle Drive, Scottsbluff, NE 69361

APPROVAL FOR SUBMITTAL: _____
City Manager

CONTRACT FOR PUBLIC IMPROVEMENTS

This Contract is made on February 1, 2016, between City of Scottsbluff, Nebraska, a Municipal Corporation (the "City") and Zachary Owen and Karyn Owen, Trustees of the Zachary and Karyn Owen Family Trust (the "Owner").

Recitals:

a. Owen has entered into a contract to purchase the following described real estate, as it will be described once the final plat (the "Plat") is approved by the City (the "Real Estate"):

Lots 1 & 2, Block 10, Five Oaks Subdivision to the City of Scottsbluff,
Scotts Bluff County, Nebraska.

The Plat is made a part of this Contract by reference.

b. The Plat provides for Avenue G to be located along the east boundary of Lots 1 & 2, and 40th Street to be located along the south boundary of Lot 2.

c. Certain improvements which are required by the Scottsbluff Municipal Code to be constructed by the Owners have not been constructed. The parties desire to memorialize their agreement with respect to the construction of these improvements (collectively, the "Improvements"). For that purpose, the Owners desire to bind themselves and their successors in interest to construct the Improvements in accordance with the Scottsbluff Municipal Code as provided for in this Contract.

Agreements:

1. Avenue G is currently a half street adjoining the platted lots to the east of the Real Estate. With respect to Avenue G:

a. For any development of Lot 1, the Owners shall cause the remaining portion of Avenue G which adjoins Lot 1 as shown on the Plat to be constructed.

b. For any development of Lot 2, the Owners shall cause the remaining portion of Avenue G which adjoins Lot 2 as shown on the Plat to be constructed.

Avenue G shall be constructed according the attached "Typical Street Cross Section – Avenue G".

2. 40th Street has not yet been constructed to the west of the southeast corner of Lot 2. In the event that the owners of the property to the west of the Real Estate (to include property currently owned by C&T Holdings on the south side of the proposed 40th Street), either construct or are required to construct 40th Street from Highway 71 to the east, then:

a. the Owners acknowledge that 40th Street will also be constructed along the south side of Lot 2. The cost of the north half of 40th Street as it adjoins Lot 2 shall be the responsibility of the Owners; and

b. the Owners shall complete any portion of Avenue G, which has not yet been constructed, for which the Owners are responsible

3. The water line that serves Lot 1 shall connect to the City water line that runs along 42nd Street. There is also an existing water line that runs in the vicinity of 40th Street. At such time as Lot 2 is developed, a water line shall either be run along or under Avenue G so that the water lines running along 40th Street and 42nd Street are connected. The water line which serves Lot 2 shall connect to this water line.

4. Sewer connections for each lot shall be made by extending the existing City sewer mains as shown on the attached documents entitled "Connection to Existing Sanitary Sewer" – 40th Street and Avenue G and 42nd Street and Avenue G.

5. The Owners understand that a building permit will not be issued for construction on the Real Estate until an agreement has been signed with a contractor for the construction of the Improvements as required for each lot. No occupancy permit shall be issued for any buildings constructed in the Real Estate until the Improvements are completed.

6. The location, size and layout of the Improvements shall be as provided for in the Plat. The actual construction of the Improvements shall be according to (i) plans and specifications approved by the City, which approval will not be unreasonably withheld, and (ii) all ordinances and codes adopted by the City, as in effect at the time that the Improvements are constructed. The Improvements shall become the property of the City immediately upon acceptance of the Improvements by the City Council. If constructed by the Owners (and not by the City), the Improvements shall be warranted for a period of one year from the date of the acceptance of the Improvements.

7. The Owners agree that the Improvements shall either be paid for by the Owners at the time of completion of each of the Improvements. As an alternative, the Owner may request that the City construct all or certain of the Improvements and that a special improvement district be created to construct each of the types of Improvements, where the Improvements may be included in such a district, subject to the City agreeing to create such a district.

8. Should the Owners fail to construct the Improvements, as agreed to in this Contract, the City may do so. The Owners shall reimburse the City for all costs expended by the City in constructing the Improvements. If so constructed by the City, the City may at its option, assess all or any part of the unreimbursed cost of the Improvements against the properties benefitted by the Improvements. When any installment of special assessments is unpaid for a period of 6 months after the same is delinquent, the City may mail written notice to the Owners of that fact and demand that the Owners pay such installment. If the Owners fail to do so within 30 days after such notice is mailed, the City may proceed by appropriate action to enforce the Owners' liability as described in this paragraph. In any such action the City shall not be limited to the

installments which are currently due but shall be entitled to collect the entire cost of the improvements, plus interest, less sums previously paid. Any forbearance by the City to exercise any right granted to it in this Contract shall not be considered a waiver of the City's rights. Any notice under this paragraph shall be deemed properly sent if sent by certified U.S. mail, postage prepaid, to the Owners at the following addresses:

Zachary Owen and Karyn Owen,
Trustees of the Zachary and Karyn Owen Family Trust
3017 Primrose Drive
Scottsbluff, NE 69361

9. To secure the Owners' liability, the Owners agree to provide security consistent with the policies established by the City. Prior to commencing the construction of the Improvements, the Owners shall present an estimate of the cost of the Improvements to the City. The parties understand that this will be an estimate only and that the actual cost of the Improvements may differ from the estimate. The security furnished by the Owners will be in the amount of the actual cost of the Improvements. It is contemplated that the Owners will enter into a contract for the construction of the Improvements. The actual cost of the Improvements will be determined by the provisions of such contract. If the security furnished by the Owner is a bond or letter of credit, the bond or letter of credit shall provide that upon demand by the City, the City shall be paid all sums which the City is entitled to collect from the Owners under this agreement. If the sums collected by the City under the bond or letter of credit are not sufficient to satisfy the Owners' liability to the City, the Owners will remain liable for the balance. The City may, at its option, assess all or any part of the amounts owed for the Improvements and not covered by the bond or letter of credit and not paid for by Owners.

10. The Owners, for themselves and on behalf of all future grantees and owners, covenant and agree to participate in and not object to the creation of any special improvement districts that may be subsequently created, as provided for in this Contract, to construct and improve the Improvements. It is the intent of the Owners that this paragraph bind all future grantees, heirs and owners and that this covenant and contract runs with the land as it touches and concerns the Real Estate. The Owners further agree that all future transfers or conveyances of lots within the Real Estate shall be subject to and conditioned upon a provision in the deed or conveying document that the grantee or new owner will participate in and not object to the creation of any special improvement districts that may be subsequently created to construct the Improvements. This paragraph and the covenants in it will not be deemed a waiver of the Owners', grantee's or lot owner's right to contest the extent to which it is benefitted by such special improvement district, or to contest the amount of any assessments levied against the Owners', grantee's or lot owner's property.

11. This contract shall run with the land and shall bind, in addition to the parties, the successors and assigns of the respective parties.

12. The parties agree to execute a Memorandum of Contract suitable for filing in the Office of the Register of Deeds of Scotts Bluff County, Nebraska, to give notice of the fact that this

Contract has been executed. The Owners shall reimburse the City for the costs of filing this Memorandum of Contract.

13. Zachary Owen and Karyn Owen sign this Contract for the purpose of agreeing individually to its terms.

City of Scottsbluff, Nebraska

By _____
Mayor

Attest:

City Clerk

Zachary Owen, as Trustee of the
Zachary and Karyn Owen Family Trust

Karyn Owen, as Trustee of the
Zachary and Karyn Owen Family Trust

Zachary Owen, Individually

Karyn Owen, Individually