

City of Scottsbluff, Nebraska

Monday, December 1, 2014

Regular Meeting

Item Reports2

Council to consider a Developers Agreement for Premier Estates Subdivision and authorize the Mayor to execute the agreement.

Staff Contact: Annie Folck, City Planner

Agenda Statement

Item No.

For meeting of: December 1, 2014

AGENDA TITLE: Developers Agreement/Contract, Premier Estates, Lots 1-9, Block 1, and Lots 1-3, Block 2, situated in the East half of the SW ¼ of Section 3, T22N, R55W of the 6th P.M., Scotts Bluff County, Nebraska.

SUBMITTED BY DEPARTMENT/ORGANIZATION: Development Services Department

PRESENTATION BY:

SUMMARY EXPLANATION: Council may authorize the Mayor to execute a contract that guarantees the improvements that will be installed as part of the Premier Estates development which includes Lots 1-9, Block 1, and Lots 1-3, Block 2, situated in the East half of the SW ¼ of Section 3, T22N, R55W of the 6th P.M., Scotts Bluff County, Nebraska.

BOARD/COMMISSION RECOMMENDATION: N/A

1. **STAFF RECOMMENDATION:** Staff recommends the contract follow the standard template that the City typically uses, along with amended language that allows for improvements to be made to the development in the future as per City Code section 21-1-27. **PLEASE NOTE:** Attached are two versions of a developer's agreement. The first is the agreement that staff is recommending the City require of the developer based on the review of our engineering and legal consultants. The second is the agreement that the developer has submitted for approval. This agreement does not meet the requirements of our code (see attached memo from legal consultants). Also attached is the engineering review of the proposed development, which advises that if we waive certain requirements for a development, it should be with the stipulation that property owners cannot contest future improvement districts in the event the property is ever annexed and included within the Corporate Limits.

EXHIBITS

Resolution ☐ Ordinance ☐ Contract ☒ Minutes ☐ Plan/Map ☐

Other (specify) ☒ Engineering and legal reviews

NOTIFICATION LIST: Yes ☐ No ☐ Further Instructions ☐

APPROVAL FOR SUBMITTAL: _____
City Manager

Rev 3/1/99CClerk

CONTRACT FOR PUBLIC IMPROVEMENTS

This contract is made this _____ day of _____, 20__, between **City of Scottsbluff, Nebraska**, a Municipal Corporation, hereafter called "**City**", and _____ [the owner or developer] hereafter called Owner.

RECITALS

1. [Owner or developer] owns real estate described as follows:

[Description]

This real estate will hereafter be called [short name for property, i.e., the Smith tract]

2. Certain improvements in the area which are required by the Scottsbluff Municipal Code to be constructed by the property owner have not been constructed. The parties desire to memorialize their agreement with respect to the construction of these improvements. For that purpose, Owner desires to bind itself and its successors in interest to construct the improvements in accordance with the Scottsbluff Municipal Code as hereinafter provided.

AGREEMENTS OF THE PARTIES

In consideration of the mutual promises of the parties, it is agreed as follows:

3. By _____ [date]_____ Owner shall cause to be constructed, all in accordance with the plans and specifications to be approved by the City, which approval will not be unreasonably withheld, the following:

[describe improvements]

The parties recite their understanding that the quantities described above may change when the final plans and specifications are approved. The cost of these improvements shall be paid by the Owner.

4. All improvements described in this agreement shall be constructed in accordance with plans and specifications approved by the City and in accordance with all ordinances and codes adopted by the City. All the improvements shall become the property of the City immediately upon acceptance of the improvements by the City Council. Owner warrants such improvements for a period of one year from the date of the acceptance of the improvements.

5. Should Owner fail to construct the improvements, the City may do so. Owner

shall reimburse the City for all costs expended by the City in constructing such improvements. All improvements described in this agreement shall be constructed in accordance with plans and specifications approved by the City and in accordance with all ordinances and codes adopted 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 six (6) months after the same is delinquent, the City may mail written notice to Owner of that fact and demand that Owner pay such installment. If Owner fails to do so within thirty (30) days after such notice is mailed, the City may proceed by appropriate action to enforce Owner's 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 Owner at the following address:

[owner address]

6. To secure Owner=s liability, Owner agrees to provide security consistent with the policies established by the City. The estimated cost of the improvements contemplated by Owner are agreed to be \$_____. The parties recite their understanding that this is an estimate only and that the actual cost of the improvements may differ from the estimate. The security furnished by Owner will be in the amount of the actual cost of the improvements. It is contemplated that Owner 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 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 Owner under this agreement. If the sums collected by the City under the bond or letter of credit are not sufficient to satisfy Owner=s liability to the City, Owner will remain liable for the balance. The City may, at its option, assess all or any part of the amounts owed for the improvements described in paragraph 3 hereof and not covered by the bond or letter of credit and not paid for by Owner.

7. Owner, for itself and on behalf of all future grantees and owners, covenants and agrees to participate in and not object to the creation of any special improvement districts that may be subsequently created to construct and improve _____. It is the intent of Owner 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 development of _____. Owner further agrees that all future transfers or conveyances of lots within _____ 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 and improve _____. This paragraph and the covenants herein will not be deemed a waiver of Owner=s, 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 Owner=s, grantee's or lot owner's property.

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

9. 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. Owner shall reimburse the City for the costs of filing this Memorandum of Contract.

IN WITNESS WHEREOF, the parties have set their hands the day and year first herein written.

CITY OF SCOTTSBLUFF, NEBRASKA

y_____

Mayor

Dated_____

Attest:

City Clerk

Owner

Seal

By_____
(Title)

Dated_____

MEMORANDUM

To: Planning and Development
Date: November 24, 2014
Subject: Premier Estates Contract for Public Improvements

The proposed Contract for Public Improvements dated November 17, 2014 ("Contract") between the City of Scottsbluff and Paul Reed Construction & Supply, Inc. ("PRC") has been reviewed. To begin with the Scottsbluff Municipal Code provisions set forth in Chapter 21-1-10 and 21-1-11 require this, and all, subdivision to comply with Article 1 of Chapter 21 because it is within two miles of Scottsbluff's corporate limits. The public improvements subject to the Contract are a gravel roadway and storm water detention dikes as set forth in paragraph 1.1. An additional request to waive the requirements of sections 21-1-36; 21-1-37; 21-1-38 and 21-1-39 as set forth in Exhibit "A" relate to infrastructure, including sidewalks, water and sewer requirements listed in Article 1.

A gravel roadway without sidewalks does not meet the requirement found at 21-1-27 through 21-1-34 and 21-1-36. Those sections require paved streets and sidewalks in all subdivisions submitted for City approval that are within the zoning jurisdiction of the City. There is an exception which is found in 21-1-34. The exception provides the City Planner may waive the requirement for paved streets and improvements for areas outside of city limits, if in the judgment of the City Planner, the density of the population and the volume of traffic are sufficiently low that gravel streets are appropriate. It is our understanding the City Planner has not waived the requirement because of the location and density. With no waiver in place, Article 2 requirements are mandatory and the Contract does not comply with the City's Municipal Code.

CONTRACT FOR PUBLIC IMPROVEMENTS

This contract is made this 17th day of November, 2014, between **City of Scottsbluff, Nebraska**, a Municipal Corporation, hereafter called "**City**", and **PAUL REED CONSTRUCTION & SUPPLY, INC.**, hereafter called **PRC**.

RECITALS

Whereas, **PRC** developing real estate described as follows:

LOTS 1-9, BLOCK 1 AND LOTS 1-3, BLOCK 2, PREMIER ESTATES, A SUBDIVISION OF A PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6th PRINCIPAL MERIDIAN, SCOTTS BLUFF COUNTY, NEBRASKA

This real estate will hereafter be called **PREMIER ESTATES**

Whereas, certain improvements in the area which are required by the Scottsbluff Municipal Code to be constructed by the property owner have not been constructed. The parties desire to memorialize their agreement with respect to the construction of these improvements. For that purpose, **PRC** desires to bind itself and its successors in interest to construct the improvements that are listed in Paragraph 1 in accordance with the Scottsbluff Municipal Code as hereinafter provided. **PRC** desires to get a variance from the Scottsbluff Municipal Code allowing **PRC** to proceed without binding **PRC** and its successors in interest to construct other improvement as described on Exhibit "A" attached hereto.

AGREEMENTS OF THE PARTIES

In consideration of the mutual promises of the parties, it is agreed as follows:

1. By May 1st, 2014 **PRC** shall cause to be constructed, all in accordance with the plans and specifications to be approved by the City, which approval will not be unreasonably withheld, the following:

1. Approximately 2,800 linear feet of a 28 foot wide graveled roadway centered in a 52 foot wide Right-Of Way with a 12 foot wide roadside ditch on each side.
2. Storm water detention dikes to detain approximately 1 acre-feet of storm water runoff.

The parties recite their understanding that the quantities described above may change when the final plans and specifications are approved.

2. All improvements described in paragraph 1 of this agreement shall be constructed in accordance with plans and specifications approved by the City and in accordance with all ordinances and codes adopted by the City. PRC warrants such improvements for a period of one year from the date of the acceptance of the improvements.

3. Should PRC fail to construct the improvements described in paragraph 1 of this agreement, the City may construct the improvements. PRC shall reimburse the City for all costs expended by the City in constructing such improvements. The City may at its option, assess all or any part of the unreimbursed cost of the improvements against the properties benefited by the improvements. When any installment of special assessments is unpaid for a period of six (6) months after the same is delinquent, the City may mail written notice to PRC of that fact and demand that PRC pay such installment. If PRC fails to do so within thirty (30) days after such notice is mailed, the City may proceed by appropriate action to enforce PRC's 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 PRC at the following address:

PAUL REED CONSTRUCTION & SUPPLY, INC.
2970 N. 10th STREET
GERING, NE 69341

4. To secure PRC's liability, PRC agrees to provide security consistent with the policies established by the City. The estimated cost of the improvements described in paragraph 1 of this agreement contemplated by PRC are agreed to be \$30,000. The parties recite their understanding that this is an estimate only and that the actual cost of the improvements may differ from the estimate. The security furnished by PRC will be in the amount of the actual cost of the improvements. It is contemplated that PRC will enter into a contract for the construction of the improvements. The provisions of such contract will determine the actual cost of the improvements. If the security furnished by PRC 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 PRC under this agreement. If the sums collected by the City under the bond or letter of credit are not sufficient to satisfy PRC's liability to the City, PRC will remain liable for the balance. The City may, at its option, assess all or any part of the amounts owed for the improvements described in paragraph 1 hereof and not covered by the bond or letter of credit and not paid for by PRC.

5. PRC is hereby granted a variance from the Scottsbluff Municipal Code requiring the construction of the improvements attached in Exhibit "A".

6. This agreement shall bind, in addition to the parties, the successors and assigns of the respective parties.

7. 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. PRC shall reimburse the City for the costs of filing this Memorandum of Contract.

IN WITNESS WHEREOF, the parties have set their hands the day and year first herein written.

CITY OF SCOTTSBLUFF, NEBRASKA


By _____
Mayor

Dated _____

Attest:

City Clerk

PAUL REED CONSTRUCTION & SUPPLY, INC.

By  _____
Adam Reed
(Vice-President)

Dated 11/24/2014

EXHIBIT “A”

To Contract for Public Improvements

- A. Paved streets and sidewalks within Right-Of-Ways
- B. City sanitary sewer within Utility Easements or Right-Of-Ways
- C. City water within Utility Easements or Right-Of-Ways
- D. City storm water sewer within Utility Easements or Right-Of-Ways

**Planning Commission Minutes
Regular Scheduled Meeting
November 10, 2014
Scottsbluff, Nebraska**

The Planning Commission of the City of Scottsbluff, Nebraska met in a regular scheduled meeting on Monday, November 10, 2014, 6:00 p.m. in the City Hall Council Chambers, 2525 Circle Drive, Scottsbluff, Nebraska. A notice of the meeting had been published in the Star-Herald, a newspaper of general circulation in the City, on October 31, 2014. The notice stated the date, hour and place of the meeting, that the meeting would be open to the public, that anyone with a disability desiring reasonable accommodation to attend the Planning Commission meeting should contact the Development Services Department, and that an agenda of the meeting kept continuously current was available for public inspection at Development Services Department office; provided, the City Planning Commission could modify the agenda at the meeting if the business was determined that an emergency so required. A similar notice, together with a copy of the agenda, also had been delivered to each Planning Commission member. An agenda kept continuously current was available for public inspection at the office of the Development Services Department at all times from publication to the time of the meeting.

ITEM 1: Chairman, Becky Estrada called the meeting to order. Roll call consisted of the following members: Anita Chadwick, Henry Huber, Angie Aguallo, Jim Zitterkopf, and Becky Estrada. Absent: Dana Weber, Mark Westphal, David Gompert, and Callan Wayman. City officials present: Annie Folck, City Planner, and Gary Batt, Code Administrator II.

ITEM 2: Chairman Estrada informed all those present of the Nebraska Open Meetings Act and that a copy of such is posted on the bulletin board in the back area of the City Council Chamber, for those interested parties.

ITEM 3: Acknowledgment of any changes in the agenda: None.

ITEM 4: Business not on agenda: None

ITEM 5: Citizens with items not scheduled on regular agenda: None

ITEM 6: The minutes of October 13, 2014 were reviewed and approved. A motion was made to accept the minutes by Huber, and seconded by Chadwick. "YEAS": Zitterkopf, Aguallo, Chadwick, and Estrada. "NAYS": None. ABSTAIN: Huber. ABSENT: Gompert, Wayman, Westphal, and Weber. Motion carried.

ITEM 7A: The Planning Commission opened a public hearing to review a request for a special permit submitted by Lady of Guadalupe Church. The request is for a 65' radio tower and supporting equipment, to be located at 1131 East 8th Street. The property is zoned Residential and towers are a permitted use within Residential districts with the approval of a special use permit through the Planning Commission. There is a vacant building on the lot that was previously used for boxing. The communication facility will generally fit in with the community oriented facilities that the church offers in this neighborhood. The tower will be fenced with 6' chain link fence with two strand barbed wire.

Lee Trautman was present to represent Our Lady of Guadalupe Church. He stated that because the building on the lot has not been in use for several years, the Church became interested in leasing it to the radio station. Huber asked if this tower would help improve coverage. Trautman stated that this is actually going to be serving a new radio station for Valley Catholic Radio to help support its education mission.

Conclusion: A motion was made by Zitterkopf and seconded by Huber to approve the special use permit to allow a 65' radio tower and supporting equipment at 1131 East 8th Street "YEAS": Huber, Chadwick, Zitterkopf, Aguallo, and Estrada. "NAYS": None. ABSTAIN: None. ABSENT: Wayman, Gompert, Weber, and Westphal. Motion carried.

ITEM 7B: The Planning Commission opened a public hearing for a request from applicant(s) Paul Reed Construction, representing property owners Judson and Susan Martin for a final plat of Lot 1-9, Block 1, and Lots 1-

3, Block 2, Premier Estates, situated in the East half of the SW ¼ of Section 3, T22N, R55W of the 6th P.M., Scotts Bluff County, Nebraska. This area includes twelve lots which are approximately a little over three acres each. The property owners have recently re-zoned the property from Agricultural to R-1B, Rural Residential. These parcels are located north west of the Scottsbluff Country Club and is in the City's extraterritorial zoning jurisdiction. Access onto the parcels will be from County Road H (56th St.), a private road serving the twelve proposed lots.

Staff and the City Consultants have reviewed the final plat. The plat meets the requirements for right of way widths and easements, curves and tangents, and drainage requirements for the development. However, staff and legal and engineering consultants have concerns about this development because the developer is not planning on making improvements to the development that would be necessary for the development to eventually become annexed into the City. Section 21-1-27 of the City's code, addressing subdivision improvements, states "The provisions of this Article shall apply also to subdivisions hereafter platted that are within two (2) miles of, but are not proposed to be annexed to, the corporate limits of the City; and every such subdivisions shall be so laid out and platted that, if it subsequently is annexed to the City, the improvements referred to in this Article may be constructed in the subdivision in accordance with the requirements in those sections. Such improvements shall be constructed by the person proposing the subdivision at his or her own expense." Engineering and legal consultants have advised that if the development is allowed to go forward without these improvements, it should be under the condition that the developer's agreement contain language that would create a covenant preventing future lot owners in the development from protesting the creation of improvement districts if and when the City grows out in that area and the development is annexed.

Adam Reed, representing Paul Reed Construction, stated that he does not have a problem with the possibility of the City annexing the subdivision in the future, but that any improvements necessary to do so should be done at the City's cost, not the property owners. He stated that to require the developer or the property owner to agree to such a provision would be too much of a risk, and they would not be able to sell the lots. He believes that because they have provided rights-of-way and easements for future improvements, they are meeting the requirement that the plat allows for these improvements to be made in the future. The houses that would be built would be very high-end, with values ranging from \$500,000 to \$1,000,000. The lots would be served by wells and septic, and Reed stated that the property owners would have no interest in connecting to City utilities.

Aguallo stated that this situation would be similar to areas around Cheyenne where large lots were developed with no city utilities, which has effectively stopped Cheyenne from being able to grow around these areas. Zitterkopf stated that he could see both sides of the issue. Huber asked if this issue needed to be voted on in order to proceed with the final plat. Folck stated that staff was advising that the final plat be recommended with the condition that the developer's agreement contain language that allow for the creation of improvement districts in the future, but that the final plat could also be approved without such a condition. Aguallo stated that this is a topic that should be discussed more in the future, and Estrada requested that it be put on the agenda for the next Planning Commission meeting. Huber stated that the developer's agreement was an issue that would have to go before Council anyway, and that it would be best to vote only on the final plat.

Conclusion: A motion was made by Huber and seconded by Chadwick to approve the final plat of Lots 1-9, Block 1, and Lots 1-3, Block 2, situated in the East half of the SW ¼ of Section 3, T22N, R55W of the 6th P.M., Scotts Bluff County, Nebraska. **"YEAS":** Huber, Chadwick, Zitterkopf, Aguallo, and Estrada. **"NAYS":** None. **ABSTAIN:** None. **ABSENT:** Gompert, Wayman, Weber, and Westphal. Motion carried.

ITEM 8. Unfinished Business: None

There being no further business, a motion to adjourn was made by Gompert and seconded by Aguallo. The meeting was adjourned at 6:58 p.m. **"YEAS":** Huber, Chadwick, Zitterkopf, Aguallo, and Estrada. **"NAYS":** None. **ABSTAIN:** None. **ABSENT:** Gompert, Wayman, Weber, and Westphal. Motion carried.

Becky Estrada, Chairperson

111 Attest: _____
112 Annie Folck

November 6, 2014

Annie Urdiales
Scottsbluff Development Services
2525 Circle Drive
Scottsbluff, Nebraska 69361

RE: Premier Estates
Final Plat
Scottsbluff, Nebraska

Annie:

Per your request, we have reviewed the above referenced final plat. We wish to make the following comments:

1. Block 1; Lot 9 – We are concerned that this particular lot may be unusable. As this sits in the county and the intent is to use private wells and septic systems, there may not be enough space to build improvements and have separation for a well and two septic locations without crossing the KN Easement. More info is necessary on this lot.
2. The drainage report should be stamped by Shane prior to filing.
3. Easements should be labeled as Easements for Future utilities.
4. A request for variance from the City of Scottsbluff Development standards should accompany this plat. Considerations should be made that the stipulation of future property owners can not contest future improvement districts as directed by council in the event the property is ever annexed and included within the Corporate Limits.

This review should be construed as a review for general conformance of City Ordinance and not a construction quality assurance review for construction purposes. If you have any questions, please feel free to call.

FOR THE FIRM OF
M.C. SCHAFF & ASSOCIATES, INC.

David Schaff, P.E.

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