



CITY of NOVI CITY COUNCIL

Agenda Item G
May 23, 2016

SUBJECT: Approval of a Hold Harmless Agreement with Meadowbrook Townhomes Condominium Association to authorize the release of performance guarantees deposited by the original developer to the Association to fund incomplete site work, including roads.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BTC RA*
Community Development

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

City staff and the City Attorney have been working with the Homeowners Associations for Tollgate Ravines and Meadowbrook Townhomes along with their attorneys toward completion of the road repairs and installation of the final course of asphalt along three proposed public streets: Brownstone Drive, Hemingway Drive and Holmes Drive. Completion of the work would allow the City to accept the roads as public as was proposed on the approved site plans for Tollgate Ravines, Meadowbrook Townhomes, and Brownstones at the Vistas.

The original developer of Meadowbrook Townhomes, FRAM, has refused to participate in the completion of the roads and has denied any remaining interest in the project. For the reasons stated in the attached letter from the City Attorney, staff has been working with the Associations to identify the project costs and they have decided to seek a petition from the unit owners in each development to initiate a special assessment district, which will fund the road repairs and completion.

As part of these discussions, the Meadowbrook Townhomes Association has requested that the City release any remaining performance guarantees and/or bonds that the City has in place for site improvements for the Meadowbrook Townhomes development so that the Association can apply those funds toward decreasing the Association's share of the SAD cost. The City is holding approximately \$206,000 in performance guarantees that may be released and applied toward road repairs and completion. In order to facilitate the release to the Association, the City Attorney has prepared the attached Agreement for signature by the Community Development Director, who has authority under Chapter 26.5 to release financial guarantees. According to the agreement, the Association agrees to indemnify the City against any third parties making claims for the performance guarantee, which is unlikely according to the City Attorney for the reasons explained in the attached letter.

Staff will continue to meet with the Associations regarding the creation of a special assessment district. The cost to complete the roads is currently estimated to be in the neighborhood of \$1,000,000.

RECOMMENDED ACTION: Approval of a Hold Harmless Agreement with Meadowbrook Townhomes Condominium Association to authorize the release of performance guarantees deposited by the original developer to the Association to fund incomplete site work, including roads.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Burke				
Council Member Casey				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

Potential Special Assessment District for Roads

Hemingway, Holmes and Brownstone



Map Author: Coburn
 Date: 12/28/15
 Project:
 Version #:

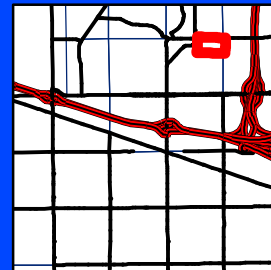
Amended By:
 Date:
 Department:

MAP INTERPRETATION NOTICE

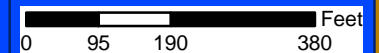
Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

Map Legend

- Parcels to be Assessed
- Streets to be Dedicated
- Brownstones at the Vistas
- Manchester
- Meadowbrook Townhomes
- Tollgate Ravines
- Tollgate Woods III



City of Novi
 Engineering Division
 Department of Public Services
 26300 Lee BeGole Drive
 Novi, MI 48375
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March 22, 2016

Via Email and First Class Mail

Tina Glenn
Assistant City Treasurer
City of Novi
45175 10 Mile Rd.
Novi, MI 48375

Re: Meadowbrook Townhomes - Release of Bond Funds

Dear Ms. Glenn:

As you know, our firm represents Meadowbrook Townhomes Association (the "Association"). The Association is responsible for the administration of Meadowbrook Townhomes (the "Condominium"), including the general common elements located therein.

It is our understanding that the City is holding certain bond funds that were deposited by the Developers of the Condominium. Based upon our review of the documents provided pursuant to our FOIA request and as discussed at the March 14, 2016 meeting with the City and Association, it is our understanding that there is \$151,790.21 in completion bond funds being held by the City to ensure completion of certain elements in the Condominium. We have also been informed that there may be approximately \$54,000.00 in additional site improvement bond funds being held by the City.

As you know the developer has abandoned the Condominium project even though construction of the common elements for which the developer is responsible are incomplete. Certain roadways within the Condominium which were planned and intended to be dedicated to the City weren't completed. Because they have not been dedicated, the roadways within the Condominium remain general common elements for which the Association is responsible. Because the City is holding the referenced bond funds to ensure completion of these common elements, the Association claims an interest in these funds as it is, by default, the party that must complete these items.

In order to ensure the completion and dedication of the roadways, we hereby request that the City release to the Association all bond funds related to the Condominium. The Association will utilize these funds to help pay for the cost to complete these roadways.

Your consideration in this matter is appreciated and we look forward to your response.

Very truly yours,
MAKOWER ABBATE GUERRA
WEGNER VOLLMER PLLC



Evan M. Alexander

cc: Meadowbrook Townhomes Association
Brian Coburn, Engineering Senior Manager
Beth Saarela, Assistant City Attorney

46953-00003



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May 16, 2016

Brian Coburn, Engineering Manager
City of Novi
Public Services
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

Re: Meadowbrook Townhomes Performance Guarantees – Hold Harmless Agreement

Dear Mr. Coburn:

As you know, last year the City was contacted by counsel representing the Meadowbrook Townhomes Association seeking the completion of repairs and installation of the final wearing course for proposed public streets serving the Meadowbrook Townhomes development and the adjacent Brownstones at the Vistas and Tollgate Ravines developments. City staff been working with our office and the Homeowners' Associations for Meadowbrook Townhomes and Tollgate Ravines, and their attorneys on a solution to financing the completion of the road repairs and installation of the wearing course as necessary to accept the roads as public.

As you also know, FRAM, the Developer of the Meadowbrook Townhomes Association, has refused to participate in the completion of the roads and has denied any remaining interest in the project. FRAM's representative asserts that any remaining interest and/or obligations for the development would be in FRAM's Canadian affiliate. The Meadowbrook Townhomes Association indicates it previously investigated legal action against the Canadian affiliate and determined that any such legal action would be cost prohibitive. FRAM's representative provided no definitive proof regarding the identity of the Canadian affiliate or its purported interest in the Meadowbrook Townhomes Development.

As an alternative to either the City or the Association pursuing action against FRAM or the unidentified Canadian entity, the Association has agreed to seek a petition from the unit owners within the Meadowbrook Townhomes Association to initiate a special assessment district for the road repairs and completion. (Tollgate Ravines has also tentatively agreed to petition for an SAD). In connection with the financing of the repairs, the Meadowbrook Townhomes Association has requested that the City release any remaining performance guarantees and/or bonds that the

City has in place for site improvements for the Meadowbrook Townhomes Development so that the Association can apply those funds to decreasing the Association's share of the total SAD cost.

The City has approximately \$55,000 in bonds, and approximately \$151,000 in performance guarantees that may be released and applied toward road repairs and completion. City staff has inspected all other site improvements required by the site plan and has found them to be substantially in compliance with the final approved plans.

As with previous developments in which the ownership of bonds and/or performance guarantees has been unclear, we have prepared the enclosed Hold Harmless letter pursuant to which the Meadowbrook Townhomes Association will agree to indemnify the City against any third parties making claims for the bonds and/or performance guarantees. We believe that it would be unlikely that any Canadian entity (or FRAM locally) would pursue the funds due to the potential for even greater financial liability for the roads.

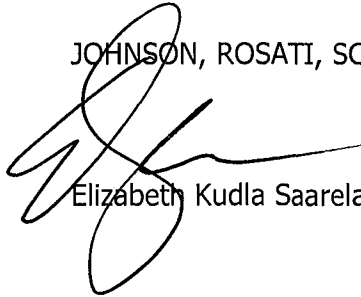
Subject to the Meadowbrook Townhomes Association signing the enclosed Hold Harmless letter and submitting it to the City, we see no legal impediment to releasing the bonds and performance guarantees to the Association for use in connection with completion of road repairs and the final wearing course.

The last estimate for the cost of completing the roads ranged from \$510,000 to \$1,050,000 depending on whether the roads can be rehabilitated or whether complete replacement is warranted.

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Elizabeth Kudla Saarela

EKS

Enclosures

- C: Maryanne Cornelius, Clerk (w/Enclosures)
- Pete Auger, City Manager (w/Enclosures)
- Victor Cardenas, Assistant City Manager (w/Enclosures)
- Charles Boulard, Community Development Director (w/Enclosures)
- Rob Hayes, Public Services Director (w/Enclosures)
- Sarah Marchioni, Building Permit Coordinator (w/Enclosures)
- Steve Guerra, Esquire (w/Enclosures)
- Evan Alexander, Esquire (w/Enclosures)
- Thomas R. Schultz, Esquire (w/Enclosures)

May 16, 2016

City of Novi
Community Development
45175 Ten Mile Road
Novi, Michigan 48375

Re: ***Meadowbrook Townhomes - Performance Guarantees***

Dear Mr. Boulard:

The site plan for the Meadowbrook Townhomes Development (the "Development"), an attached condominium development, was approved by City Council in conjunction with its approval of the Consent Order amending the Vistas Planned Unit Development, on December 7, 1998. The Consent Order is dated January 27, 1999, and is recorded at Liber 19623, Page 063, Oakland County Records. The Consent Order acts as preliminary site plan approval of the Development. The Consent Order authorizes the property owner, Sandstone Associates Limited Partnership, and its successors, to construct the Development in accordance with the plans attached and incorporated into the Consent Order. FRAM Building Group ("Developer"), is successor owner of the Development and received final site plan approval from the City on June 13, 2000. Prior to construction, in accordance with applicable ordinances, Developer, through its affiliate, Novi Meadowbrook, L.P., posted performance guarantees for site improvements, for the development. \$ 151,790.21 of the original performance guarantee remains in escrow with the City after authorized reductions for completion ("Performance Guarantees"). In addition, Developer posted site restoration bonds, \$55,000 of which remain in escrow with the City after reductions previously authorized by the City. The Performance Guarantees were posted for the overall development with landscape and incomplete site work Performance Guarantees being posted on a per-building basis.

Subsequent to completion of construction of all proposed buildings within the Development, Developer failed to request final inspections of the site improvements that were completed in connection with each individual building. However, the City has inspected, and is aware that Developer has failed to complete its portion of the installation of the roadways serving the Development, including all required repairs to the base course of paving and related improvements for adjacent streets, including Brownstone, Hemingway, Holmes (the "Roadways").

FRAM Building Group, through its authorized representative, Doug Stratton, has responded verbally to the City's notices requiring completion of the Roadways, and has indicated that FRAM will not complete or participate in completion and reconstruction of the roadway improvements, indicating that the remaining interest in the Development is now owned by FRAM's Canadian affiliate.

The Meadowbrook Townhomes Homeowners Association (the "HOA") has acknowledged its willingness to work with the City toward completion of the Roadways and other site improvements which may remain incomplete as required by the Consent Order. In connection with the repair and reconstruction of the Roadways, the HOA has requested that the City release all remaining Performance Guarantees and Site Restoration Bonds to the HOA to enable the HOA to complete the necessary site improvements, including, but not limited to the Roadways.

The City has inspected the Development and has concluded that, except for the Roadways, all site improvements have been completed and the Performance Guarantees may be released to the HOA, on the condition that the HOA undertake the following actions:

1. The HOA indemnify and hold harmless the City against any and all claims by third parties as to ownership of the Performance Guarantees and Site Restoration Bonds; and,
2. The HOA participate in any SAD or other financial arrangement for completion of the Roadways.

Based on and subject to all of the above, the City will release Site Restoration Bonds in the amount of approximately \$55,000, and Performance Guarantees in the amount of \$ 151,790.21 to the HOA subject to the HOA's agreement hereby to indemnify and hold harmless the City with respect to any claims that any persons or entities are entitled to the Performance Guarantees and/or Site Restoration Bonds. Subject to the City's agreement to release the Performance Guarantees and Site Restoration Bonds for use in connection with the repair, reconstruction, and/or completion of the Roadways, as necessary, as determined by the City in accordance with inspections, the HOA, agrees to indemnify and save harmless the City from and against any and all damages, losses, claims, suits, costs or other expense which the City may suffer, sustain or be subject to by other persons or parties, including, but not limited to FRAM Building Group, or Novi Meadowbrook, L.P., or their affiliates, claiming entitlement to the Performance Guaranty or Site Restoration funds.

ACKNOWLEDGEMENT

Meadowbrook Townhomes Association,
a Michigan nonprofit corporation,

The City of Novi,

Charles Boulard,
Community Development Director

By _____ Its: _____

By _____ Its: _____