



MEMO TO: Mayor Vandernail and the Board of Trustees
FROM: Ed Cannon, Town Manager
DATE: July 6, 2022
SUBJECT: US40 Sewer Bore

MATTER BEFORE BOARD:

Approve Construction Guarantee Agreement with Grand Park Development for US40 Sewer Crossing Public Improvement

BACKGROUND:

Grand Park Development is currently boring under US40 to install a sewer main to provide added capacity for the Alpenglow subdivision and future developments in the Grand Park PDD. The construction plans were approved by Fraser staff on March 14, 2022, and Grand Park secured all required permits from CDOT.

The US40 sewer crossing was a condition identified in Planning Commission Resolution 2022-03-01 and was to be included in the Subdivision Improvement Agreement (SIA) for Alpenglow. Grand Park has not resubmitted a response to the conditions of the PC Resolution, and the matter has not come to the Fraser Board of Trustees. However, Grand Park is proceeding with the sewer crossing. This Construction Guarantee Agreement ("Agreement") takes the place of the SIA.

The Agreement is similar in form to a SIA in that it specifies the conditions of the public improvement construction and outlines responsibilities, inspections, warranties, acceptance, and remedies in the event of a default by the developer. The only difference is that a Construction Guarantee Agreement is not tied to a specific subdivision. Specific guidance for the use of a Construction Guarantee Agreement is provided in Town Code Chapter 19.

FINANCIAL CONSIDERATION

Typically, a SIA or Construction Guarantee Agreement requires surety equaling the total estimated cost of the improvement plus 25%. On April 4th, 2022, PW Director Russell Pennington notified Grand Park Development that the sewer bore would need to be part of a SIA with required surety. Unfortunately, Russell resigned shortly thereafter, construction cost estimates were not provided by Grand Park Development, and a SIA was never developed.

Construction of the sewer crossing began on Friday, June 24th. The Fraser Finance Director was serving as acting Town Manager at the time and issued a stop work order because there was no agreement for the project as required by Town Code. On Monday, I allowed construction to continue and instructed Town Attorney Kent Whitmer to prepare a Construction Guarantee Agreement to ensure the Town is protected and to allow for inspections and acceptance of the public infrastructure dedication upon completion.

Since the project is already under construction, the Agreement does not call for surety but allows for remedies in the event of default as specified in Chapter 19 of the Town Code Chapter 19. The remedies provision in the Agreement serves the same purpose of surety in the event of default by the developer.

Construction is on-going and is expected to end late July.

RECOMMENDATION:

Approve Construction Guarantee Agreement

Attachments:

PC Resolution 2022-03-01

April 4, 2022 letter from Russell Pennington to Grand Park development