

RESOLUTION NO. 2842

A RESOLUTION OF THE CITY OF WILSONVILLE REVISING THE TEMPLATE FOR A DEVELOPMENT AND ANNEXATION AGREEMENT FOR FROG POND WEST DEVELOPMENT AND AMENDING RESOLUTION NO. 2649.

WHEREAS, the City adopted the Frog Pond West Master Plan (“Master Plan”) on July 17, 2017 through Ordinance No. 806; and

WHEREAS, consistent with the Infrastructure Funding Plan of the Master Plan, the City established a Frog Pond West Infrastructure Supplemental Fee (“Infrastructure Supplemental Fee”) and the Boeckman Bridge Transportation Mitigation Fee (“Boeckman Bridge Fee”) on August 7, 2017 through Resolution No. 2649; and

WHEREAS, the City also approved, in Resolution No. 2649, a general template for a Development and Annexation Agreement (“Development Agreement”) to obligate development within Frog Pond West to pay the Infrastructure Supplemental Fee and the Boeckman Bridge Fee, as applicable; and

WHEREAS, a developer that is constructing within Frog Pond West has requested the general template of the Development Agreement be revised to provide for release of the restrictive covenant waiving right of remonstrance for formation of local improvement district (“LID Waiver”), which LID Waiver is generally required for all development within the City; and

WHEREAS, the developer has requested the release of the LID Waiver in light of the developer’s obligation to pay the Infrastructure Supplemental Fee and Boeckman Bridge Fee in accordance with the Development Agreement; and

WHEREAS, the proposed revised Development Agreement, attached hereto as **Exhibit A**, will condition the release of the LID Waiver for a specific parcel upon the payment of the Infrastructure Supplemental Fee and Boeckman Bridge Fee and will require the developer or property owner to pay all costs and fees associated with the City’s release of the LID Waiver.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council incorporates and adopts the above recitals as if fully set forth herein.
2. The City Council hereby amends Resolution No. 2649 and adopts the revised general template of the Development Agreement, which is in substantial form to **Exhibit A**

attached hereto and which may be further refined by the City Attorney prior to execution with a particular Frog Pond West developer.

3. The City Council authorizes the City Manager to execute amendments to existing Development Agreements governing development within Frog Pond West to allow for the release of any LID Waivers, consistent with the revisions to the general template of the Development Agreement (**Exhibit A**).
4. Additionally, if a developer does not elect to remove the LID from a lot for which the Infrastructure Supplemental Fee and the Boeckman Bridge Fee has been paid to the City, the lot owner may elect to do so at the lot owner's sole cost, in accordance to the terms as provided to the developer in the Development Agreement.
5. This Resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 5th day of October, 2020, and filed with the Wilsonville City Recorder this date.

DocuSigned by:

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 TIM KNAPP, MAYOR

ATTEST:

DocuSigned by:

 E781DE10276B498

 Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Yes
Councilor Linville	Yes

Exhibit:

- A. Revised Development and Annexation Agreement

**DEVELOPMENT AND ANNEXATION AGREEMENT BETWEEN
[DEVELOPER] AND
THE CITY OF WILSONVILLE, OREGON**

This Development and Annexation Agreement (“Agreement”) is entered into by and between the **City of Wilsonville**, an Oregon municipal corporation (“City”), and **[Developer]**, a(n) _____ [state] _____ [corporation/limited liability company, etc.] (“Developer”). The effective date of this Agreement is the _____ day of _____, 20__ (“Effective Date”). The City and Developer may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. Developer proposes to construct residential housing within the area commonly referred to as Frog Pond West, which residential housing to be constructed by Developer is depicted on the map attached hereto and incorporated herein as **Exhibit A** (“Developer Property”). A map of the entire area of Frog Pond West is depicted on the map attached hereto and incorporated herein as **Exhibit B** (“Frog Pond West”).
- B. Developer presented to the City a proposed site plan for development of the Developer Property, as depicted in **Exhibit C** (“Proposed Development”) attached hereto and incorporated herein. The Proposed Development includes, but is not limited to, the following improvements: *[state any key infrastructure improvements and oversizing to be done by Developer]*. Developer accepts all responsibility of the Proposed Development as amended and approved by the City.
- C. The Infrastructure Funding Plan (“Funding Plan”), a component of the Frog Pond West Master Plan (“Master Plan”), identifies four (4) off-site infrastructure projects: (1) Memorial Park pump station; (2) Boeckman Creek sanitary sewer trunk line; (3) west side water reservoir; and (4) Boeckman Bridge, which will be west of Frog Pond West over Boeckman Creek (“Boeckman Bridge”). These four (4) off-site infrastructure projects serve the broader City community, will be constructed by the City, and are funded through City system development charges (“SDC”), with possible contributions from other sources. In particular, Boeckman Bridge may be paid partially through a Boeckman Bridge transportation mitigation fee discussed herein in **Section IV** (“Boeckman Bridge Fee”). Developer will be responsible for paying the Boeckman Bridge Fee, to the extent required, at issuance of building permit.
- D. The Funding Plan also identifies four (4) on-site infrastructure projects: (1) local streets and sidewalks; (2) sanitary sewer lines; (3) water lines; and (4) stormwater management (“Developer Improvements”). Unless expressly identified otherwise herein, the construction and cost of these four (4) Developer Improvements are the responsibility of developers within Frog Pond West.
- E. The Funding Plan lists five (5) Master Plan infrastructure projects, which are the focus of the Funding Plan. These Master Plan infrastructure projects are: (1) the north side of SW Boeckman Road adjacent to Frog Pond West, including sanitary sewer (“Boeckman Road”); (2) the west side of SW Stafford Road adjacent to Frog Pond West, including sanitary sewer and water (“Stafford Road”); (3) the Neighborhood Park within Frog Pond West

("Neighborhood Park"); (4) the Trailhead Park in the western area of Frog Pond West ("Trailhead Park"); and (5) the Boeckman Trail along the west edge of Frog Pond West ("Boeckman Trail").

- F. Trailhead Park and Boeckman Trail are accounted for in the Parks SDCs and are included in the Parks and Recreation Master Plan. These regional park facilities will be constructed by the City unless otherwise stated herein.
- G. Under current City policy, the cost and construction of part of Boeckman Road, part of Stafford Road, and Neighborhood Park ("Unfunded Projects") are the responsibility of developers within Frog Pond West. Attached hereto and incorporated herein as **Exhibit D** is a depiction of the "local portion" of Boeckman Road (which similarly applies for Stafford Road) that is the responsibility of the adjacent developer to construct under current City policy.
- H. Due to the size and expense of these three (3) Unfunded Projects and the multiple property ownerships within Frog Pond West, the City will take responsibility for constructing the Unfunded Projects and acquiring land as needed for the Neighborhood Park. Developer is responsible for paying system development charges (SDCs) and an additional infrastructure supplemental fee provided in **Section IV** ("Infrastructure Supplemental Fee") at issuance of building permit in exchange for the City taking responsibility for constructing the Unfunded Projects.
- I. The City and Developer have agreed that this allocation for the work between the City and Developer is fair and equitable and is a proportional allocation between benefit to the public and benefit to Developer's development.
- J. Developer will be solely responsible for all up-front costs associated with Developer's particular Developer Improvements as described in **Section III** below.

AGREEMENT

In consideration of the foregoing Recitals, and incorporating all of the above Recitals by reference in this Agreement as if fully set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all of the above-named Parties agree as follows:

I. NEW DEVELOPMENT

Developer intends to construct residential development [*and other ancillary amenities*] within Frog Pond West. Developer's Proposed Development has been approved by the City's Development Review Board, and Developer is currently refining construction plans to be submitted in the permitting processes required by the City for residential development. Developer will pay all fees required by the City for such residential development, including the Infrastructure Supplemental Fee and the Boeckman Bridge Fee described herein (collectively referred to as "Frog Pond West Fees"), in order to obtain the appropriate permits to move forward with Developer's Proposed Development ("Development Approval").

II. CITY'S IMPROVEMENTS (City Obligations)

In consideration for Developer paying certain additional fees described in **Section IV**, the City agrees to construct the Unfunded Projects and to acquire certain real property necessary for development of the Neighborhood Park. The City retains sole and absolute discretion regarding the means, manner, timing, materials, phasing, and all other aspects of acquisition and construction of the Unfunded Projects. Developer agrees to cooperate with the City with regard to the City's construction of the Unfunded Projects, including, but not limited to, providing access to project sites, allowing tie-in to existing and future infrastructure, and coordinating Developer Improvements with construction of the Unfunded Projects. The City may also elect, in its sole and absolute discretion, to assign its responsibility to construct any of the Unfunded Projects.

III. DEVELOPER'S IMPROVEMENTS (Developer Obligations)

Section 3.1 – Description of Developer Improvements

Developer agrees to perform the Developer Improvements, as provided in the Proposed Development (**Exhibit C**), which Developer Improvements are generally described as follows:

[Describe specific improvements to be performed by Developer.]

Section 3.2 – Developer Improvement Costs

[The foregoing Developer Improvements shall be constructed by Developer at Developer's sole expense. The foregoing Developer Improvements must be completed, inspected by the City, and deemed complete by the City before the City will issue any temporary occupancy permits to Developer, assuming Development Approval.]

-OR-

The foregoing Developer Improvements shall be constructed by Developer at Developer's sole expense, except Developer will receive SDC credit or reimbursement relating to _____ [including some potential soft costs]. The foregoing Developer Improvements must be completed, inspected by the City, and deemed complete by the City before the City will issue any temporary occupancy permits to Developer, assuming Development Approval.]

Section 3.3 – Reimbursement of Expense

If Developer is entitled to SDC credit or reimbursement pursuant to **Section 3.2**, Developer must submit a request for SDC credit or reimbursement to the City within ninety (90) days of written acceptance of the improvements by the City. A cover page invoice with Developer's letterhead shall accompany the request for SDC credits or reimbursement. Developer must submit sufficient documentation for specific costs related to construction of such improvements and in a format acceptable by the City. Developer shall also submit a signed letter of completion certifying payment in full to all subcontractors and suppliers. If Developer fails to submit an acceptable request for SDC credit or reimbursement within ninety (90) days from

the City's letter of acceptance issuance date, Developer forfeits its right to receive the SDC credit or reimbursement unless the Parties agree in writing.

The City will pay the reimbursement within thirty (30) days of receiving the approved final construction costs request documents for reimbursement, provided there is mutual agreement on any true-up charges. If there is a disagreement on any or all of the true-up charges, that true-up sum(s) may be withheld until such time as any such disagreement is resolved, with that sum(s) being paid within seven (7) days of resolution.

Section 3.4 – Developer Bonds

Prior to commencement of construction of the infrastructure set forth in this Agreement, Developer must provide to the City performance and payment bonds, satisfactory to the City. Prior to commencement of construction, Developer shall also cause the City to be named as an additional insured on the applicable contractor's insurance policy for the construction of the respective infrastructure provided for in this Agreement, in amounts and coverages reasonably satisfactory to the City.

Section 3.5 – Developer Compliance with Frog Pond West Master Plan and City Code

Developer agrees to adhere to the purpose, terms, conditions, guidance, regulations, and requirements contained in the Frog Pond West Master Plan and related Wilsonville Code. Developer is further obligated to act in good faith and pursuant to the City of Wilsonville Public Works Standards in providing access to infrastructure for other development within Frog Pond West. Developer will not prohibit, block, or otherwise impede another developer's ability to access and tie into infrastructure within Frog Pond West. If the City determines, in its sole and absolute discretion, that Developer is engaging in conduct or behavior to prevent, inhibit, or otherwise deter other development from accessing or tying into infrastructure within Frog Pond West, the City may withhold occupancy permits, building permits that are in process, future building permits, and SDC credits or reimbursements unless and until Developer allows other development to access the infrastructure within Frog Pond West.

IV. ADDITIONAL FEES

Section 4.1 – Infrastructure Supplemental Fee

In addition to SDCs required to be paid, Developer will pay an Infrastructure Supplemental Fee of \$ _____ per single-family home, as adjusted pursuant to City Resolution No. _____, at issuance of each building permit. If Developer constructs duplexes, the Infrastructure Supplemental Fee is required for each of the two units within the duplex. Developer is not required to pay the Infrastructure Supplemental Fee for any accessory dwelling units, which are defined in Wilsonville Code 4.001.

Section 4.2 – Boeckman Bridge Fee

Developer will also pay the Boeckman Bridge Fee of \$ _____ per single-family home, as adjusted pursuant to City Resolution No. _____, for the construction of Boeckman Bridge, which costs are not funded through other sources such as urban renewal or SDCs. The

Boeckman Bridge Fee must be paid at issuance of each building permit. If Developer constructs duplexes, the Boeckman Bridge Fee is required for each of the two units within the duplex. Developer is not required to pay the Boeckman Bridge Fee for any accessory dwelling units, which are defined in Wilsonville Code 4.001.

Section 4.3 – Release of Restrictive Covenant Waiving Right of Remonstrance for Formation of Local Improvement District

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Upon payment of the Infrastructure Supplemental Fee and the Boeckman Bridge Fee (if applicable) for a specific parcel, Developer may request the City release the Restrictive Covenant Waiving Right of Remonstrance for Formation of Local Improvement District (“Waiver of Remonstrance”) that has been recorded against the parcel. The City shall agree to the release of the Waiver of Remonstrance upon the City’s determination that Developer has complied with the requirements of this section for release. Developer is responsible for providing a legal description for the specific parcel and paying any and all costs and fees, including recording fees, incurred by the City to release the Waiver of Remonstrance.

V. DISPUTE RESOLUTION

Section 5.1 – Dispute of Frog Pond West Fees

5.1.1 If Developer disputes the City’s adjustment of either of the Frog Pond West Fees, Developer must submit a letter of appeal (“Appeal Letter”) no later than ten (10) calendar days after the date of issuance of each building permit addressed to the City’s Community Development Director and the City’s Finance Director. Developer cannot appeal the base Frog Pond West Fees of \$_____ (Infrastructure Supplemental Fee) and \$_____ (Boeckman Bridge Fee) listed in **Sections 4.1 and 4.2** above. The Appeal Letter contesting the adjusted amount must include the following information:

- 5.1.1.1 The name of the Developer;
- 5.1.1.2 The location of the parcel;
- 5.1.1.3 The amount of the adjustment that Developer disputes; and
- 5.1.1.4 Reasons why Developer disputes the adjustment.

If Developer fails to provide any of the above-listed information in the Appeal Letter within the allowed ten (10) day period, the Community Development Director will send a letter dismissing the appeal for failure to comply with this Section.

5.1.2 Upon receipt of an Appeal Letter submitted in compliance with **Section 5.1.1**, the Community Development Director and Finance Director will review the Appeal Letter, will obtain and review any City information regarding the disputed adjustment, and may ask for additional information from the Developer. No later than thirty (30) calendar days after the date of the Appeal Letter, the Community Development Director and Finance Director will issue an opinion of the Community Development Director and Finance Director (“Directors’ Opinion”) regarding whether Developer is entitled to a refund of any portion of the adjusted amount.

5.13 If Developer disputes the Directors' Opinion, then Developer may submit a notice of appeal ("Appeal Notice") no later than fourteen (14) calendar days after the date of the Directors' Opinion to the City Manager to have the matter reviewed by the City Council. The Appeal Notice must include the information listed in **Section 5.1.1.1 through 5.1.1.4** as well as following information:

5.1.3.1 Reasons why Developer disputes the findings in the Directors' Opinion.

If Developer fails to provide any of the above-listed information in the Appeal Notice within the fourteen (14) day period, the City Manager will send a letter dismissing the appeal for failure to comply with this Section.

5.14 Upon receipt of an Appeal Notice submitted in compliance with **Section 5.1.3**, the Community Development Director and Finance Director may supplement their Directors' Opinion with additional information ("Directors' Supplement") to be reviewed by the City Council, which Directors' Supplement must be submitted to the City Manager no later than fourteen (14) calendar days after the Appeal Notice. The City Council will review the entire record and may, in its sole discretion, request oral testimony. Such review must be held no later than thirty (30) calendar days after the Directors' Supplement or no later than forty-five (45) calendar days after the Appeal Notice if no Directors' Supplement is provided. City Council will issue a decision ("Council Decision") at the review meeting or at later meeting if the City Council decides to continue the review to obtain additional information from the Developer and/or the City.

5.15 If Developer disputes the Council Decision, Developer will have a statutory right to a writ of review to Clackamas County Circuit Court pursuant to Oregon Revised Statutes 34.010 through 34.100.

Section 5.2 – All Other Disputes

5.21 **Mediation.** All disputes arising out of this Agreement, other than disputes subject to **Section 5.1** above, shall first be submitted to mediation. Any Party desiring mediation shall provide the other Party with a written notice (the "Request to Mediate"), which shall set forth the nature of the dispute. The Parties shall in good faith cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the Parties, in the Parties' sole discretion, within twenty (20) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon in writing by the Parties, any Party may make demand for arbitration pursuant to the following paragraph.

5.22 **Arbitration or Litigation.** Any dispute arising under **Section 5.2.1** of this Agreement which is not resolved through mediation, upon mutual agreement of the Parties may be submitted to arbitration, to be conducted in Wilsonville, Oregon before a single arbitrator selected by mutual agreement of the Parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the Parties are unable to mutually agree upon and select an arbitrator within twenty (20) days, then

any Party may file an action in Clackamas County Circuit Court in lieu of arbitration and there will be no obligation to arbitrate unless otherwise required by Oregon law. If arbitrated, judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

523 Equitable Remedies. Even if the parties undergo mediation or arbitration, the City may still request immediate equitable remedies of either specific performance or injunctive relief to occur while mediation or arbitration is pending or ongoing. The parties will otherwise agree to abate the court case pending completion of the mediation or arbitration.

VI. RECORDING

This Agreement runs with Developer's land that is subject to this Agreement as identified in Exhibit A. Either this Agreement or a memorandum of this Agreement will be recorded by the City with the Clackamas County Recorder's Office for all real property subject to this Agreement.

VII. MISCELLANEOUS PROVISIONS

Section 7.1 – Further Assurances

Each Party will cooperate and perform such acts and things reasonably necessary in connection with the performance of its obligations hereunder, in good faith to carry out the intent of the Parties hereto. Developer understands and agrees that no occupancy permit will be granted for the Proposed Development until the Developer Improvements have been completed and approved by the City as meeting the requirements set forth herein.

Section 7.2 – Modification or Amendment

No amendment, change, or modification of this Agreement will be valid unless in writing and signed by the Parties hereto.

Section 7.3 – Relationship

Nothing herein may be construed to create an agency relationship or a partnership or joint venture between the Parties.

Section 7.4 – Maintenance

Developer is responsible for maintenance of the Developer Improvements as provided in the 2015 City of Wilsonville Public Works Standards, Section 101.8.18 *Maintenance and Warranty*, and any amendments thereto. Developer remains responsible for submitting a maintenance bond, per Public Works Standards, to the City for all of its required Developer Improvements within the public right-of-way or public easements. If Developer fails to maintain the Developer Improvements during the applicable period, the City may do so and make a claim on the bond and directly against Developer. Any work required to be performed by the City will bear interest at a rate of twelve percent (12%) per annum.

Section 7.5 – Burden and Benefit

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

Section 7.6 – No Continuing Waiver

The waiver of any Party of any breach of this Agreement will not operate or be construed to be a waiver of any subsequent breach.

Section 7.7 – Applicable Law

This Agreement shall be governed by and construed under the laws of the State of Oregon. Jurisdiction is in Clackamas County, Oregon.

Section 7.8 – Legal Fees

If any Party commences legal proceedings, including arbitration or bankruptcy, for any relief against any other Party arising out of or related to this Agreement, or the breach thereof, the losing Party shall pay the prevailing Party’s legal costs and expenses, including, but not limited to, arbitration costs, reasonable attorney fees, and expert witness fees, as determined by the court or the arbitrator at the trial level or on any appeal.

Section 7.9 – Time of Essence

Time is expressly declared to be of the essence of this Agreement.

Section 7.10 – Notices

All notices, demands, consents, approvals, and other communications which are required or desired to be given by any Party to each other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States Mail at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three (3) days after mailing by United States Mail, or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City: City of Wilsonville
Attn: _____, City Attorney
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Developer: [Developer]
Attn: _____
[Street Address]
[City, State, Zip Code]

Section 7.11 – Rights Cumulative

All rights, remedies, powers, and privileges conferred under this Agreement on the Parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

Section 7.12 – Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Section 7.13 – No Third-Party Beneficiaries and No Assignment

None of the duties and obligations of any Party under this Agreement shall in any way or in any manner be deemed to create any rights in any person or entity other than the Parties hereto or their respective heirs, successors, and assigns. Developer may not assign its rights under this Developer Agreement without the prior express written consent of the City.

Section 7.14 – Representations and Warranties

Each Party signing on behalf of Developer and the City hereby warrants actual authority to bind their respective Party. The Parties signing below also hereby warrant that entry into this Agreement and the enforcement of its terms will not violate any loan covenants or other agreements pertaining to any of the land or improvements impacted hereby.

Section 7.15 – Legal Review

All of the Parties to this Agreement hereby affirm that they have been represented in the negotiation hereof by their own independent legal counsel who have reviewed this Agreement and advised their respective client concerning the same. Therefore, it shall be interpreted accordingly and shall not be construed against the drafter.

IN WITNESS WHEREOF, the Parties have hereunto set their hands as of the day and year first written above.

[DEVELOPER],
a[n] _____ [LLC /corporation]

CITY OF WILSONVILLE,
a municipal corporation

By: _____
Print Name: _____
As Its: _____

By: _____
Bryan Cosgrove
As Its: City Manager

APPROVED AS TO FORM:

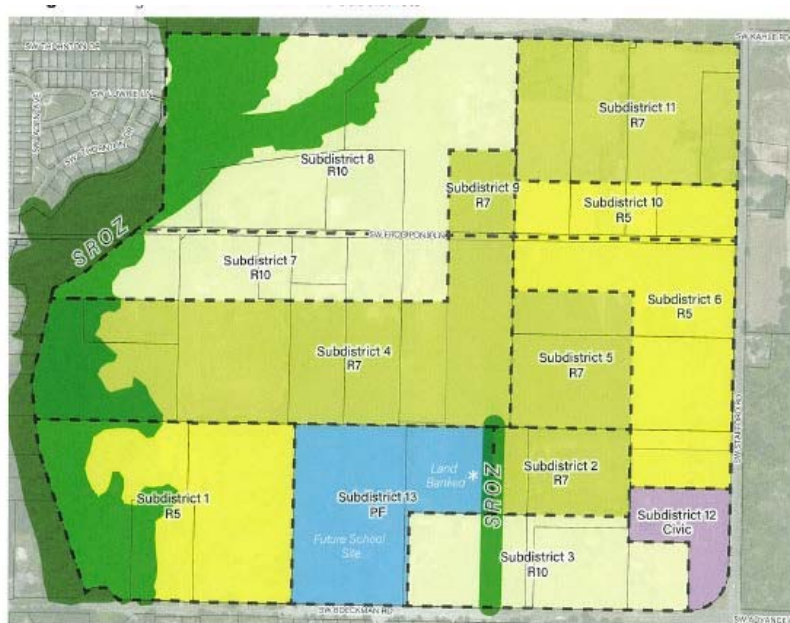
_____, City Attorney

EXHIBIT A
Map of Developer Property

[To be inserted]

EXHIBIT B

Map of Frog Pond West



0 250 500 Feet

- | | | | |
|---|-------------------------------|---|---|
|  | R5 - Small Lot Single Family |  | Public Facilities |
|  | R7 - Medium Lot Single Family |  | Civic |
|  | R10 - Large Lot Single Family |  | Significant Resources Overlay Zone (SROZ) |

* Land banked for school facilities, a neighborhood park, and/or residential use.

EXHIBIT C
Proposed Development

[To be inserted]

EXHIBIT D

Illustration of “Local Portion” of Boeckman Road (Applicable for Stafford Road)

