

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	June 3, 2019
Action Requested:	Adoption of a Resolution
Presenter:	John Blair, City Attorney
Staff Contacts:	Lisa A. Robertson, Chief Deputy City Attorney
Title:	Resolution Expressing Conditions For City Council's Acceptance of Streets within the Sunrise PUD into the Public Street System

Background:

In 2009 the Charlottesville City Council approved the Sunrise Planned Unit Development (“PUD”). The streets proposed by Habitat, acting through an LLC (Sunrise Park, LLC, the “Developer”) within the PUD Development Plan were narrower than the standard width, included on-street parking lanes to satisfy the required number of parking spaces for the units within the development, and proposed pervious paving materials within the parking lanes. These three design features conflicted with the City’s parking requirements and standard public street specifications; therefore, the streets were not to be dedicated for public use.¹ The PUD Development Plan included the following statement: *“Nothing in the PUD Development Plan will be interpreted to prohibit the design team from working with the City Engineer to modify the City’s street standards to allow internal streets to be dedicated for public use.”*

The City’s street standards have not been modified since 2009. (Notwithstanding the statement within the 2009 PUD Ordinance, the Engineer cannot do that himself; modification of the City’s standards and design specifications must be done via a Council update of the City’s Standards and Design Manual, which has been pending for some time). Notwithstanding this: Habitat now is asking the City to accept the constructed streets into the City’s public street system, so that the City will be financially and otherwise responsible for maintenance, repair and replacement of all of the street improvements, including the permeable paving within the on-street parking areas.

Discussion:

Legally the City is not required to accept any street into its public street system, or to maintain street improvements, even after the street has been officially dedicated for public use. Unless and until the City officially accepts the improvements for public maintenance, the City is not financially responsible for the costs of construction, maintenance/repair, or replacement. On the other hand: despite the fact that the streets don’t meet City design standards, City staff approved the subdivision and site plans for the Sunrise PUD as presented, and City Council may determine that there are now

¹ We note, however, that private streets are not authorized under the city’s zoning and subdivision ordinances for any type of development other than a townhouse development.

appropriate reasons for accepting the streets into the public system for maintenance despite the fact that they don't meet City standards.

This situation is further complicated by the following facts:

- (i) Habitat and City NDS staff informally agreed several years ago that, as a means to satisfy Habitat's responsibilities under state regulations for stormwater management, a "pilot project" would be implemented, under which, if Habitat utilized permeable paving materials within on-street parking areas, they could claim credit for purposes of their stormwater compliance and the City would later agree to accept the pavement and maintain it. To our knowledge, City personnel did not undertake analysis, in conjunction with Public Works, of the costs associated with ongoing, perpetual maintenance of the permeable paving. Ongoing maintenance will be necessary in order for the larger development area to remain compliant with state stormwater regulations in the future. (In other words: the City won't be able to replace the permeable paving with regular asphalt or concrete).
- (ii) Construction activities within the Sunrise PUD have not yet been completed, so Habitat's state stormwater permit cannot yet be closed out. Originally, Habitat was to have been the land disturber/developer of all of the land within the PUD, and the permeable pavement was supposed to be installed only AFTER all construction activity was completed. However, Habitat installed the pavement out of sequence (after it finished its own construction activities, but before all construction has been completed) and then transferred vacant Lot 15 within the PUD to a private company for development.

The permeable pavement is easily damaged and clogged by dirt and sediment. Because Habitat's Stormwater Management Plan did not contemplate early construction of the permeable paving (prior to completion of construction on Lot 15), Habitat's E&S Bond was not set at an amount that would protect the pavement during construction activities taking place post-installation of the pavement. As you will note in this Resolution, City staff are requiring a supplemental E&S Bond in relation to the development of Lot 15, and the developer who will be conducting the construction activities on Lot 15 has reviewed the Resolution and has agreed to post that supplemental bond.

- (iii) Because this permeable paving is a stormwater management feature, what staff should have done when the "Pilot Program" was agreed to was put the details of the program into writing and specify what level of effectiveness would need to be achieved prior to acceptance into the public street system. No prior metrics were discussed or agreed to. The City Engineer has reviewed the existing condition of the permeable paving with a representative of Habitat, and the language in Paragraph (6) of the Resolution will allow for these issues to be worked through with Habitat prior to your consideration of a future resolution transferring ownership of the Right-of-Way and responsibility for maintenance of all improvements (including the pavement). We would anticipate that future resolution coming back to you within 30-60 days after you establish conditions of acceptance within this agenda item.

Alignment with City Council's Vision and Strategic Plan:

This street closing application supports Council's Vision for **Quality Housing Opportunities for All: Our neighborhoods retain a core historic fabric while offering housing that is affordable and attainable for people of all income levels, racial backgrounds, life stages, and abilities.** It also is consistent with the Strategic Plan, Goal 1.3 (Increase Affordable Housing Options).

Community Engagement:

None. (None required by law as to this issue).

Budgetary Impact:

There will be some impact on the Public Works budget (within one or more of its divisions) as a result of adding responsibility for maintenance, repair and replacement of the permeable paving following acceptance by the City, but no analysis of this has been done by staff. Staff is generally aware that this type of paving material is expensive to clean and replace, and requires more frequent attention. However, as noted previously, NDS staff agreed to allow the use of this type of material as a "Pilot Project" years ago. (Since the original PUD approval did not contemplate public streets, it is unclear as to whether or not staff's agreement to the "Pilot Project" was with the understanding that the maintenance of the pavement would at some point be a public responsibility).

Recommendation:

City NDS staff does not deny the "Pilot Program" agreement, and therefore does not oppose the proposed Resolution.

Alternatives:

City Council can choose to deny the Resolution, or to approve the Resolution with revisions.

Attachments:

Proposed Resolution

RESOLUTION
ACCEPTING RESPONSIBILITY FOR MAINTENANCE OF CERTAIN
STORMWATER MANAGEMENT FACILITIES WITHIN THE SUNRISE PLANNED
UNIT DEVELOPMENT

WHEREAS, in 2009 the Charlottesville City Council approved the Sunrise Planned Unit Development (“PUD”). Streets proposed by Sunrise Park LLC within the PUD Development Plan were narrower than the standard width, included on-street parking lanes to provide the required number of parking spaces for the units within the development, and proposed pervious paving materials within the parking lanes; these three design features conflicted with the City’s parking requirements and standard public street specifications. The PUD Development Plan included the following statement: “Nothing in the PUD Development Plan will be interpreted to prohibit the design team from working with the City Engineer to modify the City’s street standards to allow internal streets to be dedicated for public use.”

WHEREAS, the City’s Subdivision Agent granted final approval for a subdivision plat which dedicated the streets within the Sunrise PUD for public use, and that Subdivision Plat was recorded in the City’s land records several years ago. However, recordation of a subdivision plat does not create any obligation upon the City to pay for any paving, improvements or construction, and the City has not, to date, accepted the improved (paved) PUD streets into the City’s public street system for maintenance.

WHEREAS, under the ordinances, standards and specifications in effect as of the date this Resolution is adopted, the streets within the Sunrise PUD do not meet public street standards; however, Sunrise Park LLC is now asking the City to accept the constructed streets into the public street system for maintenance; and

WHEREAS, state law required the PUD Development to be constructed in accordance with a Stormwater Management Plan approved in accordance with state and local laws, which require provision of facilities for management and treatment of the quantity and quality of stormwater. Following completion of the development, all such stormwater management facilities must be maintained by the owners of land within the development. Sunrise Park LLC obtained approval of a Stormwater Management Plan which identified the permeable pavement within the PUD street parking lanes as one of the stormwater management facilities to be permanently maintained by a responsible party—generally, the owner(s) of land within the development.

WHEREAS, the City’s Water Protection Ordinance requires that, in the event a person desires to cede or transfer responsibility for maintenance, repair and replacement of a stormwater management facility to the City, that person and the City must enter into a written contract, and prior to execution of that contract, the City Council must, by resolution, accept the responsibility proposed to be ceded or transferred; the purpose of this resolution is to set forth the terms under which City Council will accept responsibility for maintenance of the pervious paving within the street right of way proposed to be transferred.

WHEREAS, this Charlottesville City Council is willing to accept responsibility for maintenance of the pervious pavement within the parking lanes and sidewalks within the Sunrise PUD, but only if: **(i)** Sunrise Park LLC remains bound to complete the entire PUD Development in accordance with the approved stormwater management plan for the PUD, **(ii)** the City is held harmless from all impacts of construction activities within uncompleted portions of the PUD on the permeable pavement, within a written indemnification agreement satisfactory to the City Attorney, and **(iii)** following a formal offer dedicating the streets and sidewalks within the Sunrise PUD right-of-way for public use, the City accepts the streets and sidewalks and title is transferred to the City of Charlottesville;

NOW THEREFORE, BE IT RESOLVED by the Charlottesville City Council that it will accept responsibility for maintenance, repair and replacement of the permeable pavement

within the parking lanes and sidewalks of the right-of-way within the Sunrise PUD Development, effective on the date on which all of the following conditions have been satisfied:

1. All erosion and sediment control (E&S) plans, and any agreement-in-lieu-of-a plan, required pursuant to Chapter 10 of the City Code for construction activities within Phase 4 of the Stormwater Management Plan (Lot 15 as designated within the site plan for the PUD Development), shall include measures specifically designed to protect the permeable pavement from damage, silt, sedimentation, oil/ petroleum spills, hazardous materials spills, and other reasonably foreseeable impacts of construction activities.

2. The Stormwater Management Plan and/or the Stormwater Pollution Prevention Plan for the Sunrise PUD shall be modified or amended, as may be necessary: **(i)** to reflect the fact that the permeable pavement has been installed prior to completion of all construction activities within the Sunrise PUD and to correctly identify the numbered phases of construction activity, **and (ii)** to reflect any change in legal responsibility for completion of all requirements of the Stormwater Management Plan, the Stormwater Pollution Prevention Plan, or Virginia State Construction General Permit coverage, so that at no time will there be any lapse in coverage under the Construction General Permit and there will at all times be and remain a person that is legally responsible for compliance with and completion of all requirements of the Stormwater Management Plan or the Stormwater Pollution Prevention Plan for the Sunrise PUD. The City shall not be required to approve any final release of stormwater management or erosion and sediment control bonds posted by Sunrise Park LLC in accordance with VSMP/ VESCP regulations, until a Notice of Termination of construction general permit coverage has been approved in accordance with state regulations and city ordinances.

3. The City shall be provided with a supplemental E&S bond, in the form of a cash bond or letter of credit (“Supplemental Bond”) in an amount deemed by the City Engineer to be sufficient to cover the cost of repairing, replacing and/or cleaning the permeable pavement in the event that the protective measures are insufficient under any circumstances, or otherwise fail, in whole or in part, prior to final completion of all requirements of the Erosion and Sediment Control Plan for the Sunrise PUD (“Final Completion”). The Supplemental Bond shall be provided by the person (including, without limitation, any corporation or limited liability company) who is permitted to conduct land disturbing activity within Lot 15 of the PUD Development.

- a. If the E &S measures are insufficient under any circumstances, or otherwise fail, in whole or in part, to protect the permeable pavement, then the City shall have the right, following reasonable written notice to the land disturber, to repair or replace the damage or clean the permeable pavement, as may be necessary, at the sole expense of the land disturber. Funds from the Supplemental Bond shall be released to the City upon request to pay the cost thereof. Thereafter, the Land Disturber shall immediately replenish the line of credit, so that the full amount of funds required to be posted as the Supplemental Bond will remain available to the City for subsequent use prior to Final Completion.
- b. No action by the City to replace, repair or clean the permeable pavement prior to Final Completion shall preclude the City from taking any action(s) to enforce the

requirements of the E&S Plan, or the Stormwater Management Plan for the Sunrise PUD.

4. Sunrise Park LLC and the permitted land disturber engaging in construction activities within Lot 15 of the Sunrise PUD shall each execute a written agreement satisfactory to the City Attorney, indemnifying and holding the City of Charlottesville harmless from and against all claims, contributions and responsibilities, financial or otherwise, for maintenance, operation or repair of any stormwater management facility(ies) within the Sunrise PUD (other than the permeable pavement within the on-street parking lanes and sidewalks, following City Council's acceptance of the Sunrise PUD streets and sidewalks into the public system for maintenance).

5. Sunrise Park LLC shall prepare a formal offer of dedication of the land within the boundaries of the platted right-of-way within the Sunrise PUD to the City. The formal offer of dedication shall be in a form approved by the City Attorney, and shall be accompanied by a deed and plat suitable for recordation within the City's land records which can be recorded in the land records of the Circuit Court and will transfer clear title to the City, as indicated by a title report and binding title commitment issued by a title company satisfactory to the City Attorney.

6. Within 90 days prior to the date of any City Council meeting at which Council will be requested to authorize the City Attorney to accept conveyance of title to the land and improvements located within the Rights of Way of the Sunrise PUD, the City Engineer shall verify in writing that the permeable paving within the street right-of-way proposed to be dedicated for public use and conveyed to the City has been permanently installed and is functioning to a level of effectiveness mutually agreed to by the Engineer and Sunrise Park LLC.

BE IT FURTHER RESOLVED THAT, when all of the conditions referenced above within this Resolution have been satisfied, Sunrise Park, LLC may submit a written request to the City Attorney's Office for a certification of compliance. Following certification of compliance by the City Attorney, the City Manager is authorized to place on a City Council agenda a resolution authorizing the City Attorney to accept conveyance of title to the streets and sidewalks within the Sunrise PUD, and a resolution accepting the improved streets and sidewalks within the Sunrise PUD into the City's public system for maintenance.