



AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommend approval of a Resolution Declaring Default and Authorizing the Mayor to Demand Payment Under a Letter of Credit-Artesian Springs Subdivision
Presenter:	Christopher Tiedt

Please check appropriate box:

	Government Operations		Government Services
X	Planning & Development (8/13/2012)		City Council

Estimated Cost:	\$95,402.75	Budgeted:	YES		NO	X
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If NO, please explain how item will be funded:

Letter of Credit value = \$80,000.00. Approximate estimated cost of improvements =\$95,402.75

Executive Summary:

Since 2009, staff has been actively pursuing completion of remaining public improvements in all incomplete subdivisions within St. Charles, in an effort to ensure the safety and comfort of our residents. Artesian Springs is the final subdivision remaining. Over the past three years, staff has expended a significant amount of time and effort to work cooperatively with the developer, Mr. Brummel, to complete remaining improvements, including completion of roads and maintenance repairs of existing infrastructure.

Discussion of this item was tabled at the 9/19/2011 Government Operation Committee meeting. The item was then removed from the agenda at the 10/17/2011 Government Operations Committee meeting and a time extension to complete the remaining improvements was granted to June 1, 2012 based on receipt of an increase in the value of the letter of credit. To date, a third party evaluation on the condition of the existing streets within this subdivision was performed by Engineering Enterprises, Inc. and they have identified that the existing pavement is severely deteriorated and is exhibiting signs of multiple distresses. No work has been contracted or completed and we yet have had no commitment from the developer.

In order for the City to proceed with completing the public streets, storm sewer punchlists and installation of remaining sidewalk within the subdivision, we are seeking Council’s authorization to secure the necessary funding. A preliminary estimate of the cost of the aforementioned public improvements is \$95,402.75.00. The City holds a Letter of Credit for \$80,000.00 issued by The State Bank of Geneva.

It is staff’s recommendation to have the City complete the public streets, storm sewer punchlists and install the sidewalk on the vacant lots at this time and that the remaining improvements, such as parkway trees, resolution of water punchlists, and final lot grading of the vacant lots be completed at a later date when homes are constructed on the vacant lots.

Attachments: *(please list)*

- Resolution Declaring Default and Authorizing the Mayor to Demand Payment under a Letter of Credit-Artesian Springs Subdivision
- Certificate of the Director of Public Works
- Itemized list of all remaining improvements
- Approximate timeline of events to this point

Recommendation / Suggested Action *(briefly explain):*

Staff recommends approval of Resolution and authorization to proceed with the default notice and to draw funds, to be placed in an escrow account for use by the City to complete the public streets, storm sewer punchlists and installation of remaining sidewalk in the Artesian Springs Subdivision.

For office use only:

Agenda Item Number: 3a

City of St. Charles, Illinois
Resolution No. _____

**A Resolution Declaring Default and Authorizing the Mayor to Demand
Payment Under a Letter of Credit-Artesian Springs Subdivision**

**Presented & Passed by the
City Council on _____**

WHEREAS, the City of St. Charles approved the final plat of subdivision entitled "Artesian Springs", and had the same recorded in the recorder of Deeds Office, Kane County, Illinois, on October 25, 2001, as Document No. 2001K111969; and

WHEREAS, pursuant to a Developer's Undertaking (the "Agreement") Brummel Construction (the "Developer") was required to complete the required Land Improvements by July 1, 2001 (the "Completion Date"); and

WHEREAS, as required by the Agreement, the Developer has provided Irrevocable Standby Letter of Credit No. 260209, dated February 26, 2009, as amended, from The State Bank of Geneva in order to secure completion of the Land Improvements; and

WHEREAS, the Developer has failed to satisfactorily complete the work of the installation and construction and/or maintenance of the required Land Improvements by the Completion Date, said date being at least six (6) months prior to the expiration of the above-referenced Letter of Credit; and

WHEREAS, City staff has made numerous contacts and met with the Developer on numerous occasions regarding said failure, both prior to, and after, the Completion Date and without progress; and,

WHEREAS, the City finds and determines that the Developer's continued failure to construct and/or maintain the Land Improvements or otherwise respond to the City's demands constitutes a default of the Agreement; and,

WHEREAS, the City further finds and determines that the public interest requires that the City construct or cause the construction of the Land Improvements; and,

WHEREAS, the City further finds and determines that it is necessary to draw on the Letter of Credit to pay for the construction and/or maintenance of the Land Improvements, all in accordance with the Agreement and Letter of Credit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois that the Mayor and the Director of Public Works are hereby authorized and directed to demand payment pursuant to the Agreement and Letter of Credit and to take such other and further actions as may be necessary in connection there with.

Presented to the City Council of the City of St. Charles, Illinois this 3rd day of August, 2012.

Passed by the City Council of the City of St. Charles, Illinois this 3rd day of August, 2012.

Approved by the Mayor of the City of St. Charles, Illinois this 3rd day of August, 2012.

Donald P. DeWitte, Mayor

ATTEST:

CITY CLERK

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

CERTIFICATE OF THE DIRECTOR OF PUBLIC WORKS

RE: Artesian Springs Subdivision – Irrevocable Letter of Credit #260209

I, Mark Koenen, Director of Public Works, the undersigned, do hereby find that all Land Improvements have not been completed by the Developer or Owner at least 6 months prior to the expiration of the above-referenced letter of credit for the afore-mentioned subdivision.

Mark Koenen
Director of Public Works
City of St. Charles

SUBSCRIBED and SWORN to before me
This _____ day of _____, 2012.

Notary Public

**Artesian Springs
Public Improvements
RFP**

**Engineer's
Estimate**

Item #	Description	Unit	Estimated Engr. Quantity	Unit Price	Item Cost
1	Sidewalk Removal and Replacement (6" thick)	SF	650	\$ 6.50	\$4,225.00
2	Curb removal and replacement	LF	104	\$ 35.00	\$3,640.00
3	Hot-mix Asphalt Binder Removal (2")	SY	4100	\$ 4.00	\$16,400.00
4	Base Repairs (4" BAM removal and Replacement)	SY	20	\$ 42.00	\$840.00
5	Hot-Mix Asphalt Binder Course IL 19.0 N50	Ton	500	\$ 71.00	\$35,500.00
6	Hot-Mix Asphalt Surface Course Mix C N50	Ton	400	\$ 75.00	\$30,000.00
7	Prime Coat / Tack Coat	GAL	2391	\$ 0.25	\$597.75
Totals-					\$91,202.75
Alternate Items					
8 10	Sewer Punchlist	LS	1	\$ 4,200.00	\$4,200.00
Totals-					\$4,200.00
GRAND TOTAL					\$95,402.75

DATE	ACTION/COMMENTS
10/7/09	Development Improvement Letter Form B Sent.
1/11/10	Request sent to bank to extend expiration date of current LOC held on file for Artesian Springs Subdivision
2/26/10	Met with Irv to discuss completion of subdivision
3/15/10	LOC extension to March 16, 2011 received by bank
3/17/10	Letter from Irv Brummel received stating all improvements will be completed hopefully in 2010 or by 2012
5/25/10	Response letter sent to Irv Brummel requesting improvements be completed by 9/17/2010
9/28/10	Letter sent to Irv Brummel giving time extension to complete improvements to June 1, 2011
12/20/10	Request sent to bank to extend expiration date of current LOC held on file for Artesian Springs Subdivision
2/1/11	LOC extension to March 16, 2012 received from bank
4/12/11	Telephone call put in to Irv Brummel to ask status of contract and completing improvements
6/9/11	Letter sent to Irv following telephone conversation about June 1, 2011 completion deadline in which nothing has been done and giving new deadline for LOC increase by 7/15/2011 for extension of time to complete improvements
7/7/11	Letter sent to Irv Brummel with Brummel Construction confirming telephone conversation discussing remaining improvements and 7/15/2011 deadline to increase LOC
7/11/11	Telephone call with Irv to request immediate maintenance of storm structure where rings have failed and sink hole has begun to form and discuss completion of improvements as requested in 7/7/2011 letter.
7/12/11	Letter sent to Irv Brummel with Brummel Construction confirming telephone conversation discussing remaining improvements and 7/15/2011 deadline to increase LOC for extension
7/26/11	Nothing heard back from Irv Brummel and begin to initiate process to pull LOC to complete improvements. Also checked sink hole in field. It was filled in with cold patch.
8/1/11	Irv contacted left voicemail to call him back, but I was out of office all week. Voicemail message indicated so.
8/8/11	Returned Irv's call. Irv indicated that he was obtaining pricing from contractors to put final surface on roads.
8/12/11	Contacted Irv to let him know that City was going to be discussing pulling Artesian Springs LOC to complete improvements at 9-12-11 P&D Council Committee mtg.
8/26/11	Faxed Executive Summary to Mr. Brummel and notified him presentation date has been changed to Gov. Ops 9-19-11 Committee Agenda due to scheduling conflict.
9/7/11	Called and left Mr. Brummel message to confirm receipt of fax identifying change in date for presentation to 9-19-11 and indicated in voicemail that if we received LOC increase previously requested before meeting we could pull this item off agenda and would extend deadline to next year.
9/19/11	Staff requested for continuation of item to 10/17/2011 meeting. Continuation requested based on discussions with Mr. Brummel to increase LOC value in return for time extension to June 1, 2012.
10/14/11	Received LOC increase to \$80,000.00 from Geneva State Bank
10/17/11	Item to declare default on the Artesian Springs LOC removed from agenda.
11/30/11	City sends time extension request on existing LOC to extend expiration date from 3/16/2012 to 3/16/2013.

- 12/3/11 LOC time extension received from Geneva State Bank by City with extension only to 8/26/2012.
- 4/25/12 Spoke with Irv about completing improvements in Artesian Springs by 6/1. He was looking into it and was going to get back to me.
- 5/4/12 Irv contact me and meeting scheduled for following week
- 5/9/12 Met Irv Brummel to discuss replacement of binder and remaining improvements. Mr. Brummel felt binder did not need to be replaced. Discussion ensued after this meeting and it was decided that an independent 3rd party inspection of binder was to be done to evaluate condition.
- 6/28/12 Received pavement inspection report from EEI indicating that binder does need to be replaced.
- 7/5/12 Rita Tungare sent copy of EEI report and letter to Mr. Brummel requesting he proceed immediately to complete the remaining improvements and identified a deadline of July 20, 2012
- 7/17/12 Mr. Brummel called me to inform me that he got the letter from Rita Tungare and is having a hard time getting any contractors to call him back. I indicated that we would initiate the process to secure funds from the LOC on the 8/13 P&D meeting if nothing received by 7/20, but if we received signed contracts to complete the work and a schedule prior to that meeting we would remove the item from the agenda.