

## Legislation Text

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**CC MEETING: July 26, 2016**

**DATE:** July 19, 2016

**TO:** Leonard Martin, City Manager

**FROM:** Cesar J. Molina, Jr., P.E., Director of Engineering

Discuss **Escrow Disbursement For Parks At Raiford.**

**BACKGROUND:**

In December 2013, the city and Arcadia entered into a development agreement. Upon sale of the property to Arcadia, an escrow account was established in the amount of \$1 million for restoration of the tributary at the east end of the project along with landscaping treatment and a bridge connection to Cemetery Hill Road. The city and Arcadia collaborated on the best approach to address these issues. Due to increased construction costs and anticipated permitting challenges with the Corps, the city and Arcadia agreed that the best course of action would be to split the tributary restoration and bridge construction into two separate projects. Staff recommended that the city manage the tributary restoration and that Arcadia manage the park/amenities and bridge. On December 15, 2014 the Re-Development Sub-Committee confirmed this course of action. Bill Gietema, representing Arcadia Realty, was in attendance.

On January 20, 2015 staff briefed Council on the split project proposal. Arcadia estimated a cost of \$770,000 to construct the bridge and related park improvements. Staff estimated that the cost of the tributary work would be \$900,000. Staff recommended that the balance of the escrow -\$230,000 - be redirected to the tributary work being done by the city. Council agreed to this proposal. On April 30, 2015, I sent a follow up email to Bill Gietema summarizing the council decision.

As the project has progressed Arcadia is now seeking reimbursement from the escrow for the full \$1 million. Bill Gietema claims he would never have supported the split project arrangement if he had known that the \$230,000 would be taken from the escrow account. However, if the project is not split, then Arcadia is responsible for the on the north south tributary. Arcadia has delivered the bridge (except the railings) and most of the park amenities and has submitted a project budget for \$1,008,942. They are now seeking the \$230,000 from the escrow account. The project cost summary is attached. The column 'contract amount' references Arcadia's cost. The project elements covered within the \$230,000 amount are itemized as the "tributary park".

Marc Guy and I have informed Arcadia that we cannot release the \$230,000 from the escrow without Council approval, regardless of any disagreement over Council's intent or recollection of events. Arcadia has, however, invested considerable amounts of additional funding that benefit the public portions of the project. The total additional investment made by Arcadia is \$617,000 along with the sacrifice of one developable lot with a market value (according to Arcadia) of \$110,000 to support the channel restoration. This investment is outside of the area addressed by the park/amenities or bridge projects. According to Bill Gietema this investment would

not have been made if he had known that \$230,000 from the escrow would be unavailable. A summary of Arcadia's additional investment is attached.

In addition, Scott Whitaker had agreed in concept to rebate the park fees-in-lieu-of-dedication to Arcadia to assist in the park development. The amount is \$51,600. However, this was conditioned upon having the parks playground equipment approved by Scott prior to it being purchased which was never done. Bill has indicated that he is willing to forego that rebate if the funds can be allocated to the escrow account with a corresponding amount extracted from the escrow agreement to help pay for the city's tributary work.

On July 19, Christopher Orr sent an email to Scott Whitaker requesting that they be reimbursed the \$51,600 for bridge railing and sidewalks (trails) along the tributary area. No action has been taken on this request until staff receives further direction from city council.

#### Possible Actions

1. City maintains previous position and only reimburses Arcadia up to \$770,000 for their work.
2. City agrees to reimburse Arcadia \$1,000,000 per the original development agreement but not the \$51,600 rebate of the Parks Pro Rate fee.
3. Any other combination that Council chooses.

#### **STAFF RECOMMENDATION/ACTION DESIRED:**

Staff will brief council to gain direction on this proposed change to the development agreement with Arcadia Realty Corporation.