



## Twin Falls Development Impact Fee Advisory Committee & Improvement Reimbursement Commission Minutes

Thursday, November 29, 2018, 12:00 PM

203 Main Ave E  
Twin Falls, ID 83301

**Members:** Gerald Martens, Nathan Bishop, Chad DeBie, Andrew DiPietro, Jennifer Jensen, Susan Petruzzelli, Colby Ricks

**Council Liaison:** Chris Talkington

### 1) Confirmation of Quorum/Call Meeting to Order

Chairman DeBie called the meeting to order at 12:05 PM and confirmed a quorum was present. Commissioner Martens recused himself and stepped down to audience.

**Members Present:** Martens, DeBie, DiPietro, Petruzzelli, Ricks

**Staff Present:** Spendlove, Vitek, Nope, Race, Humble, Wonderlich, Fehringer, O'Connor, Strickland, Ebersole

### 2) Improvement Reimbursement Items

#### a) Broadmoor Subdivision Reimbursement Request

##### **Staff Presentation:**

Assistant Engineer Troy Vitek presented the Broadmoor Subdivision Reimbursement Request.

##### **Background:**

Broadmoor subdivision received its preliminary plat approval on July 10, 2007 as a whole subdivision. On October 27, 2015 the final plat was recorded which included both north and south portions as shown on the attached final plat document. Part of the requirement to receive approval to record the final plat is to demonstrate that the subdivision can receive water, sewer, PI, storm drainage, parks requirement, and roadway development to support subdividing. The original developer submitted a full set of construction plans that met the requirements. At time of construction the Perrine Point pressure irrigation station was not developed as originally proposed and a new location was proposed to hook into an existing station known as the Riverhawk PI station. This change was required by the City to meet City Code section 7-8-4 (E) that reads “ (E) Notwithstanding the foregoing, the use of the city's potable water supply as the primary source of irrigation water in all new developments shall be prohibited. For purposes of this subsection, the term "new development" means any new subdivision or ZDA, or any development of any parcel of land of two (2) acres or larger that is not part of a subdivision or ZDA. (Ord. 3082, 12-8-2014)”. On February 1, 2016 a proposed plan of the offsite PI extension was delivered to the City and eventually approved. On March 4, 2016 the construction plans were approved for the entire Subdivision and later on June 22, 2016 a revised

phasing construction plan was approved for everything south of Ridgeway Drive (Jade Portion).

Subsequent to the approval of the Final Plat of the Broadmoor Subdivision, the original developer (Rusmor) sold to Gerald Martens the northerly portion of the Broadmoor Subdivision, and later sold the remaining southerly portion of the Broadmoor Subdivision to Jade Development. Gerald Martens began development of the northerly portion of the Broadmoor Subdivision and extended pressure irrigation distribution south to the southerly portion of Broadmoor Subdivision. Gerald Martens is the “initial developer” as defined in the Improvement Reimbursement Resolution. See page 2 of the Resolution, attached.

The Improvement Reimbursement Resolution was passed to allow compensation for water distribution system, waste water collection system, transportation system, pressure irrigation pump stations, PI distribution systems, and Twin Falls Canal Company water delivery system, made by an initial developer to be compensated by a subsequent developer who benefits from the improvement. The resolution details how those reimbursements are to be made and responsibilities. No provisions are included in this resolution with regards to parks or storm water retention since the design of those improvements are meant to be only for the subdivision and not benefiting adjacent properties.

Broadmoor Subdivision has constructed an offsite Pressure irrigation distribution system that serves both the north and south developments. This meets the requirements of the reimbursement resolution PI section. See pages 17-21 of the Resolution. It is the duty of the Improvement Reimbursement Commission to determine proper compensation, in the manner described in the Resolution. The City will enter the information into the City GIS database. The applicant for a connection permit, final plat approval, acceptance of any improvement, or any certificate of occupancy that desires to connect to existing public improvements eligible for reimbursement, shall make application to the Engineering Department to determine the Reimbursement obligation related to those improvements. The applicant can pay the required reimbursements and provide a receipt of proper compensation to the Commission or request the Commission reevaluate the required reimbursement by appealing the reimbursement amount and providing additional information to the Commission to make a new determination of proper compensation. The Commission reserves the right to request additional documentation of proper compensation. The Initial Developer will be given a reasonable time and opportunity to respond to the appeal before the hearing, and to appear and defend the determination at the hearing.

If the initial developer and subsequent developer agree on the proper compensation, the subsequent developer may file a notarized and agreed amount between the initial developer who installed the existing system and the subsequent developer or property

owner who desires to connect to the existing system. The amount may be based upon any agreed portion of the cost, such as frontage, acreage or number of lots, but shall not exceed the total cost of the system.

City staff has communicated with the initial developer and the subsequent developer and is aware of the fact that there is dispute between the parties as to whether or not proper compensation for the eligible improvement has already been satisfied in the terms of a Purchase and Sale Agreement. Neither the Commission nor the City Staff is in a position to make a legal determination as to the meaning and legal effect of the Purchase and Sale Agreement. The issue of whether or not proper compensation has already been made is for another forum and should not be a relevant subject for the Commission's determination.

The Commission can accept the application as presented, deny the application or accept the application with changes. A motion with a majority vote is required for execution.

Staff has verified the boundary of the Payback and agrees that the Pressurized Irrigation distribution system improvements meet the requirements of the resolution and are eligible for reimbursement. The storm water retention improvements and Park Area are not in meeting with the Resolution and recommended not to be included with this reimbursement request. A third party reviewer has attached a letter that indicates they have reviewed the items, quantities and associated costs to meet the intent of the reimbursement resolution. (Letters included in staff report)

Staff recommends approval of the June 7, 2018 reimbursement request for Pressurized Irrigation Improvements totaling \$65,625.00 with a 15% markup available per the resolution for an additional \$9,843.75 for a total of \$75,468.75 with staff recommendations, as presented.

**Commission Questions/Comments:**

- Commissioner Petruzelli asked about recommendation of approval of the reimbursement and what is the amount is staff is asking Commission to approve.
- Assistant Engineer Vitek responded that staff is recommending only approving the Pressurized Irrigation Improvements portion today, as the rest of the reimbursement request is not part of the resolution. He reviewed resolution for commission. The recommended reimbursement was determined by number of lots.
- Chairman DeBie asked if the internal pipes are not being included because that is required by each developer for their subdivisions and are any of the Pressurized Irrigation pipes oversized to accommodate more than the developers portion of the subdivision.
- Assistant Engineer Vitek stated that the internal pipes are standard size and are not eligible for reimbursement and not included in the reimbursement request.

**Applicant Presentation:**

Dave Thibault, EHM Engineers, representing Gerald Martens presented the applicant's improvement reimbursement request.

Broadmoor subdivision has 249 lots, northern portion has 131 lots and southern portion has 118 lots. The determination for reimbursement was broken down by number of lots. There is a Pressurized Irrigation request that is eligible for payback under the Payback ordinance. There is a pressurized irrigation extension on North College Road (collector street) to Riverhawk Irrigation Pump Station that was not part of original plan. The extension was necessary because the city failed to perform as contractually obligated in its role in the construction of the Perrine Pump substation and this was completed by the developer. A storm water retention facility was also constructed at the north east corner of the park. The retention facility stores water for all of the lots of the subdivision. The facility is over sized to accommodate the entire subdivision and this should be taken into consideration for reimbursement. The retention pond size is included in request.

The park in the subdivision is effectively sized for entire subdivision. This oversized improvement is included in the improvement reimbursement request. The Parks In Lieu contribution has been satisfied with addition of this park. This waives Parks in Lieu obligation from Jade Development because the park built on the northern section accommodates both the north and south sections of the subdivision.

Mr. Thibault read the definition of Improvement Statute. EHM Engineers has consulted with Brad Wills on the intent of the code and resolution. Mr. Wills has provided a letter to the Committee. His understood position is that the eligible required improvements for the public should be eligible for payback and a cooperative effort where Mr. Martens has developed the park, the retention, and paid for 100% of the pressurized irrigation line for the entire development should be eligible for reimbursement.

His request is that the \$184,302.73 + 15% addition for engineering and inspection cost for a total of \$211,948.14. This amount will be split among the lots of the subdivision, with Mr. Martens being responsible for \$111,484.72 for the northern portion (131 lots) and Jade Development being responsible for \$100,463.42 for the southern portion (118 lots) of the development.

**Jade Development presentation:**

Lynette Davis, attorney for Jade Development, reviewed the applicant's obligation in requesting an improvement reimbursement and the reimbursement process.

She stated the application submitted by the developer must identify all improvements for reimbursement with receipted costs, the estimated boundaries affected by the improvements, and other documentation required by the commission. She stated there is also a section that requires complete explanation with documentation and calculations.

Ms. Davis stated that the City Engineer is required to verify the cities acceptance, develop staff report for commission review, and review the third party's review of application. The Commission's duty is to verify that the information is correct and main purpose of the commission's review is to decide if request is fair and equitable to the subsequent developer.

Ms. Davis went on to explain there are five reasons to deny the application or delay to ask for further information. First, there is not enough sufficient information to make a decision. The application nor the staff report does not include the acceptance of the storm water system or

pressurized irrigation improvements. This needs to be done in a timely manner (within 90 days of the city accepting the system).

She stated Gerald Martens should not be identified as the initial developer as represented in staff report. Rusmoor is the original developer of the Broadmoor subdivision. In the sales and purchase agreements, who is responsible for certain improvement is spelled out, making Jade Development the initial developer for some improvements. She stated it is incorrect to identify either party as initial or subsequent, that Gerald Martens and Jade Development should be considered co-developers in this instance.

Chairman De Bie asked if Jade Development brought in water, sewer or power as co-developer that was brought in from south portion to benefit northern portion.

Scott Allen came to podium to address commission. He stated that the subdivision was approved as one development with one developer, so all of the utilities were going to be installed originally by one developer. In the interim, it was split and sold off to two developers with the south development dependent on the north development for pressurized irrigation, water retention and some sewer. An additional agreement was put together by both developers, so that both sections could be built simultaneously.

Ms. Davis stated Jade Construction was required to construct the road that separates north and south division. The need for more information is necessary due to the errors in the third party reviewer's letter. There is no representation that she reviewed receipts or the resolution to confirm the systems were eligible for reimbursement.

Ms. Davis went over the language of the resolution and the definition of improvements. The systems were specifically identified that are subject to reimbursement. She referred to an application by Northern Passage reviewed by the commission in April 2018, along with the detailed cost information provided with that application.

Ms. Davis stated that Jade Development was not given a breakdown on how the costs for reimbursement were calculated. There is no letter of acceptance by the city included in this application for reimbursement submitted by Mr. Martens. The staff report states that it is the commission responsibility to determine proper compensation. It states that the compensation should be fair and equitable to subsequent developer.

**IFC Comments/Questions:**

- Chairman DeBie asked where in the resolution the information Ms. Davis is addressing is.
- Ms. Davis read the sentence on page 2 of the resolution that she is referring to.
- Commissioner DiPietro asked about taking the amount recommended by the City and divide by the 118 lots of the southern portion, would that be a fair and equitable decision.
- Ms. Davis stated that there is not enough information to determine if this is fair. She stated that in the sales agreement there is one system for the complete subdivision and

Mr. Martens was responsible for bringing in services for the northern portion and ten feet on to the southern portion and he has already been compensated in the reduction of the purchase price on the sales agreement.

- Commissioner Petruzelli stated that the commission is responsible to the city's reimbursement program and who invested that money, and what should be reimbursed.
- Ms. Davis stated that their position is that Jade Development paid a premium price for their lots of the subdivision because they did not have to bring services to their section of the development. The position is that Gerald Martens has already been compensated by the sales discount he got when he purchased the lots for the northern section.
- Commissioner Petruzelli stated Mr. Martens was not compensated through the city's reimbursement program.
- Ms. Davis argued that this resolution doesn't say that if someone spends money they are entitled to reimbursement, but it must be fair and equitable. The commission needs to determine whether the applicant is entitled to the reimbursement, and to determine if it is fair and equitable to pass that cost along to subsequent developers.
- Chairman DeBie asked for date for the sales agreement.
- Ms. Davis stated Mr. Martens bought northern portion from Rusmoor, LLC September 11, 2015, with a discount to purchase price to install systems for entire subdivision. The southern portion of subdivision was sold to Jade Development with understanding that included those services brought within ten feet of his properties to tap into as co-developers of one subdivision.
- Scott Allen presented the purchase agreement.
- Commissioner DiPietro asked where it shows in purchase agreement that the price is based on services brought to property.
- Ms. Davis stated that Exhibit F shows that the declaration of the seller states that in the negotiation, Mr. Martens received a significant discount to bring those services to the subdivision. This is stated in Section 10 (page 3) of the real estate purchase and sale agreement.
- Commissioner Petruzelli asked if the concern is that Mr. Martens is being reimbursed at all.
- Ms. Davis stated he is double dipping due to discount on purchase price and now wants to be paid on it again.
- Commissioner Petruzelli asked if her client wants to apply for reimbursement.
- Ms. Davis states that the agreement does not state specifically that Mr. Martens is getting discount purchase price because of the services that will need to be provided, but Joe Russell spells it out in his declaration.
- Commissioner DiPietro asked how this got to reimbursement stage if no one entitled to reimbursement at this point.
- Ms. Davis stated her client believes Mr. Martens is seeking something reimbursement that he is not entitled to.
- Commissioner Ricks asked City Attorney Wonderlich where they are to look for intent of the sales agreement and who is entitled to reimbursement.
- City Attorney Wonderlich stated that the committee is in no position to make the determination of the intention of sales agreement.

In closing, Ms. Davis stated that who is entitled to reimbursement should be decided in

court and then brought back to committee to approve reimbursement application. She is asking the committee to have parties work it out or come back with court order on the entitlement of reimbursement. The five reasons her client does not believe the commission can decide on this reimbursement application are 1) There is no information in the acceptance included in the application, 2) there is no determination whether the application was timely made or eligible for reimbursement, 3) the application incorrectly identifies Gerald Martens as the initial developer, and no factual support to make that determination, 4) the third party reviewer's report is inaccurate, and 5) there is no identification of Jade Development being implicated in this process as required in the application. Ms. Davis stated the commission's job is to decide whether this is fair and equitable and it can't be fair and equitable if Gerald Martens is not entitled to reimbursement.

- Chairman DeBie asked staff if the third party reviewer is verifying the dollar amount, is it commission's job to determine if this was reviewed properly and does the commission question that dollar amount.
- Assistant Engineer Vitek stated the application that Mr. Wills submitted was clear and that we are reliant on the third party reviewer assessment. He reviewed the staff's recommendation for the reimbursement amount.
- Chairman DeBie asked to find in the resolution the explanation to not include the rest of request for reimbursement.
- Assistant Engineer Vitek that parks and storm water retention are not stated in resolution as items for reimbursement and was not included in the staff report recommendation. He stated subdivision was considered as a whole and storm water and the park was developed as a whole for the subdivision. The park has not been accepted yet, and that is another reason as to not recommending it as part of this reimbursement.

### **Applicant Rebuttal:**

Mr. Thibault stated the application for reimbursement was necessary due to the time threshold to make an application based on the time of acceptance. He has copy of the acceptance of pressurized irrigation system by the city.

The third party reviewer was supplied receipts and have been verified. They can be provided to committee and is consistent with application.

In regards to the question of Mr. Martens as initial developer, the resolution stated the person who installs improvements must make an application for reimbursement as the initial developer. (Page 1 of resolution). Rusmoor did not initiate improvements, so ceased to be a developer. This project was designed and approved to be phased development, developed from north end to south end and was approved to be developed out of phasing sequence. Mr. Martens has cooperated for the construction and paid for improvements. Improvements have been accepted and Mr. Martens would like to be reimbursed at this time.

Mr. Thibault asked to commission to approve the application that Mr. Martens has prepared, for reimbursement on the improvements of the development.

### **Jade Development Rebuttal:**

Ms. Davis addressed that the letter of acceptance of the pressurized irrigation system that Mr. Thibault referred as being dated yesterday. Therefore, the application for reimbursement was prepared prematurely.

She stated Rusmoor contracted with Mr. Martens to develop improvements when he sold the northern portion to the subdivision. She read the initial developer definition in the resolution as someone who funds or constructs improvements in the ordinary course of business. She pointed out that Jade Development did construct an improvement by putting in divider road between northern and southern section. There is no initial developer here because both developers have constructed improvements to the subdivision.

### **Commission Questions/Comments:**

- Chairman DeBie asked where it is stated initial is not defined in this definition. He stated that Mr. Martens had to be there first for Jade Development to develop their portion of development.
- Ms. Davis stated the biggest problem is that the resolution is not designed to address this situation, a single development with co-developers.
- Commissioner Petruzelli asked if street improvement is reimbursed.
- Assistant Engineer Vitek stated that if there is a benefit to another developer, there can be a request for street improvement.
- Chairman De Bie asked if other developer benefited from the storm water retention and parks.
- Assistant Engineer Vitek stated that it is not covered in the resolution and is not approved yet.
- Commissioner Ricks asked about letter that was signed yesterday for approval.
- Assistant Engineer Vitek stated it is for pressurized irrigation. Pressurized irrigation is under city's jurisdiction. The normal practice is to wait until the whole subdivision is completed and issuing one approval letter. The park is not completed yet, so there is not a complete approval letter.
- Commissioner Petruzelli asked if it is normal for developer to apply for portion of reimbursement.
- Assistant Engineer Vitek stated that this is a normal process.
- Commissioner Petruzelli asked what city's protocol is for application is not complete.
- Assistant Engineer Vitek stated that the application would have brought forward if city staff felt it was incomplete.
- Commissioner Petruzelli asked what city's process is if committee does not want to address this right now.
- Assistant Engineer Vitek stated that applicant is allowed to submit application and committee is required to hear the request and make recommendation.
- Commissioner Petruzelli asked if city is okay with reimbursement for pressurized irrigation to Mr. Martens.
- Assistant Engineer Vitek stated that the city does not reimburse any monies that it would be reimbursed by the other developer of the subdivision. The City is not involved

in reimbursement transaction. A Letter of Satisfaction is submitted to city once reimbursement transaction has taken place.

- Brad Wills disclosed that he was involved in the design of subdivision, but he has no financial ties to either party. He is addressing commission as citizen. He stated the resolution was written as a mechanism to help each other as development takes place. There are developments that butt up against each other with two developers and the one who constructs an improvement for the development and payback is provided for improvements. It can be either developer. The initial developer is the first one who installs infrastructure for subdivision.
- Developments are done in phases, and letters of approval are written by phase. Reimbursement is done piece meal. The divider road in question does not have benefit to northern part of development. There is no access to the road by the back of the northern portion. No utilities come from that area. He believes the road was included as part of southern part of development.
- Commissioner Petruzelli asked if there have been other subdivisions like this with the storm water retention set up on one section of the development.
- Mr. Wills stated that this is unusual, and there are instances where there are multiple developers doing improvements for a subdivision and it is worked out financially between developers.
- Ms. Davis addressed the reference the item that was removed from the third party's review. Jade Development has not seen that and is another reason for more information needed before a decision of reimbursement can be made. If this is approved without additional information, the effect is that Jade Development shuts down until the reimbursement is paid. Construction will stop until the reimbursement is resolved and paid.

**Break - until 2:09 p.m.**

**Commission Questions/Comments:**

- Commissioner DiPietro asked with the committee meeting only twice a year, is there a part of the process with the City to review the application to bring before the committee.
- City Attorney Wonderlich stated the city has a professional engineering staff putting together the presentation for the commission to understand, but it is the commission's right to ask questions or get clarification to get a complete understanding of the request.
- Commissioner DiPietro asked if it is the committee's responsibility to review purchase agreements or is it their responsibility to decide if a reimbursement is warranted.
- City Attorney Wonderlich stated that the commission should look at the cost of the improvements and the proper and equitable compensation for such improvements.
- Commissioner Ricks asked if there is any impact that the letter of acceptance was signed yesterday and the application being submitted early.
- City Attorney Wonderlich stated the application may have been submitted prematurely, but that does not disqualify the reimbursement request.
- Assistant Engineer Vitek stated that staff recommendation is for reimbursement of \$75,468.75 for the pressurized irrigation system and would be equally distributed for cost between the 249 lots of the whole subdivision. Mr. Martens is responsible for 52.6% of costs and Jade Development would be responsible for 47.4% of costs.

**Discussion Followed**

**Motion:**

Commissioner DiPietro made a motion to approve the reimbursement for the pressurized irrigation system, with staff recommendations. Commissioner Ricks seconded.

**Unanimously Approved**

**3) Consent Calendar**

- a) Approval of minutes from the following meeting: 10-25-18  
Commissioner Ricks made a motion to approve the consent calendar, as presented.  
Commissioner DiPietro seconded the motion.

**Unanimously Approved**

**4) Upcoming Meeting(s)**

- a) April 18, 2019

**5) Adjournment**

Meeting adjourned at 2:42 p.m.

Kelli Ebersole, Administrative Assistant