

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: DEVELOPMENT SERVICES / PLANNING DIVISION

AGENDA DATE: October 28, 2008

CONTACT PERSON/PHONE: KAREEM DALLO, P.E., 541-4425

DISTRICT(S) AFFECTED: 5

CITY CLERK DEPT.
08 OCT 20 AM 11:20

SUBJECT:

APPROVE a resolution / ordinance to allow Developer to enter existing ponding area, upgrade existing structures and provide the City a permanent Access Easement to the pond through the retail shopping center, at 3660 George Dieter,.

RESOLUTION – CONSENT AGENDA

That the City Manager be authorized to sign an agreement by and between the City of El Paso and S&DF Properties, LLC to allow access to Lot 30, Block 6, Esper Subdivision Replat for the purpose of completing the construction of the drainage structure and that the City Manager be authorized to accept on behalf of the City a permanent access easement to the Ponding area. There is no cost to the City.

BACKGROUND / DISCUSSION:

Agreement to allow S& DF Properties, LLC to drain to adjacent ponding area, as per Conceptual Master Drainage Plan for subdivision and provide the City access to Pond.

PRIOR COUNCIL ACTION:

Yes, similar resolution and agreement, for Hueco Commercial Unit 4, Lowes, Council Agenda, September 23, 2008

AMOUNT AND SOURCE OF FUNDING:

\$0.00 cost to City as per agreement

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) Lupe Cuellar, Assistant City Attorney **FINANCE:** (if required) NA

DEPARTMENT HEAD: Victor Q. Torres, Development Services Director
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

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RESOLUTION

WHEREAS, the Developer, S&DF Properties, LLC is developing 3660 GEORGE DIETER, (legal description MONTANA & DIETER COMMERCIAL PARK, SW PT OF 2 (124.45 FT ON W, 299.55 FT ON N, 128.21 FT ON E, and 314.49 FT ON S)) in the City of El Paso, El Paso County, Texas; and

WHEREAS, Lot 30, Block 6, Esper Subdivision Replat A, is a pond (existing ponding area) and is immediately adjacent to the south of the proposed retail shopping Center, as more fully shown on the Building and Grading Plans of retail shopping center, Permit Numbers BLD07-11147 & GRA07-00591, attached hereto as Exhibit A; and

WHEREAS, the Developer intends to construct the drainage conveyance structure within the Pond so that it will be a part of Esper Subdivision Replat A Pond, to combine the existing and proposed discharge points into a single structure; and

WHEREAS, the Developer intends to provide the City of El Paso a permanent Access Easement through the retail shopping center, property at 3660 George Dieter, to the ponding area, Lot 30, Block 6, Esper Subdivision Replat A; and

WHEREAS, the Developer has requested permission to enter dedicated pond, Lot 30, Block 6, Esper Subdivision Replat for the purpose of completing the construction of the drainage structure; and

WHEREAS, the City agrees that in consideration for use and entry of the pond, the improvements will further enhance the drainage in the area, provide the City of El Paso a permanent access easement to the pond through the retail shopping center, and is in the best interest of the City.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an Agreement by and between the City of El Paso and S&DF Properties, LLC to allow access to Lot 30, Block 6, Esper Subdivision Replat for the purpose of completing the construction of the drainage structure and that the City Manager be authorized to accept on behalf of the City a permanent access easement to the Ponding area. There is no cost to the City.

ADOPTED this ____ day of _____, 2008.

THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

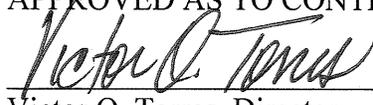
Richarda Duffy Momsen
City Clerk

SIGNATURES CONTINUE ON NEXT PAGE

APPROVED AS TO FORM:


Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:


Victor Q. Torres, Director
Development Services Department

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The Developer shall construct all improvements to the Esper Subdivision Replat A Pond as detailed on Exhibit "A", and as further depicted on the Grading and Drainage improvement plans already submitted to the City. The Developer further agrees that it shall be solely responsible for payment of construction costs arising from the construction of required improvements to the Pond, except as provided herein. The developer shall provide the City of El Paso a permanent access easement to the Esper Subdivision Replat A Pond through the Retail Shopping Center. Access easement and metes and bounds is included in Exhibit "B."

The Developer shall comply with all applicable federal, state and local law including all City ordinances, codes and regulations. Failure to do so in any manner shall constitute a material breach of this Agreement. In addition, the Developer shall obtain all permits and inspections required by the City and be responsible for any costs associated with obtaining such permits and inspections. A schedule shall be submitted to the Development Services Department as to when work will be completed under this Agreement upon execution of this Agreement. Schedule of work is to be submitted to the Development Services Department no later than 21 days after execution of this agreement but under no circumstances shall the work, as identified in Exhibit "A", be completed no later than ninety days from the date this Agreement is approved by Council.

The Developer agrees to furnish the City with a copy of each written agreement entered into with a contractor or consultant retained to provide labor, materials or services relating to the construction on the Esper Subdivision Replat A Pond. All of the books and records related to the construction on the Esper Subdivision Replat A Pond shall be available for inspection by the City upon request. Any work performed by a contractor or consultant of the Developer will not, under any circumstances, relieve the Developer of its responsibilities and obligations under this Agreement. All work performed by the Developer or its agent shall be done in a good and workmanlike manner satisfactory to the City. Any contractor or consultant hired by the Developer shall have sufficient skills and experience to properly perform the work described in the City's specifications and shall provide adequate supervision to assure competent performance of the work.

The Developer shall submit detailed plans to the Development Services Department for approval, with copy to the Street Department. Approval by the City shall not be unreasonably withheld. Failure to submit, obtain the approval, or distribute the approved plan as herein provided shall result in an automatic termination of this Agreement.

2. TERM

This Agreement shall automatically terminate after the construction of the improvements to the Esper Subdivision Replat A Pond is completed, and the Development Services Department has inspected the Esper Subdivision Replat A Pond to assure that City specifications have been met. If the Development Services Department determines that the City's specifications have not been met, the Developer shall be responsible for any necessary corrections and alterations and all costs associated with any necessary corrections and alterations. The City shall not be responsible nor participate in any costs accrued in such instance. In addition, the Developer agrees to give a warranty on its work in accordance with the requirements of the Municipal Code.

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3. COSTS

The Developer will bear all costs and expenses of the construction of the drainage conveyance structure, access gate, and access to the Esper Subdivision Replat A Pond.

4. INDEMNITY, RELEASE, AND INSURANCE

The Developer agrees to indemnify and hold the City harmless against any and all claims, demands, damages, costs and expenses, including, but not limited to, investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the construction of the improvements to the Esper Subdivision Replat A Pond, as herein defined more specifically, including, but not limited to, claims and liens from subcontractors, bonding companies, employees or other individuals, for obligations arising from the contract, or from any breach on the part of the Developer of the terms of this agreement, or from any damage to property or injury to person(s) arising from or allegedly arising from the Developer's work under this Agreement.

The Developer further agrees, with the express authority of any other entity or individual in privity with the Developer, now or in the past, that it shall release and forever discharge the City, its agents, employees, representatives, attorneys, and administrators from all claims, liens, demands, damages, actions, causes of action or suits in equity, of any kind or nature, accruing, whether known or unknown on this date, for or because of any matter or thing done, omitted, or suffered to be done or omitted in any way directly or indirectly arising from the construction of the improvements to the Pond, including but not limited to, attorney's fees, costs of preparing a claim or other costs.

The provisions of this section shall survive the expiration or early termination of this agreement. The Developer's obligations under this section shall continue in perpetuity.

The Developer shall provide public liability insurance for personal injuries and death growing out of any one (1) accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one (1) accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one (1) accident or other cause. These amounts are not a limitation upon the Developer's agreement to indemnify and hold the City harmless.

The Developer shall procure said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insureds. The Developer shall file a copy of the policy or certificate of insurance with the City Clerk, the Engineering Department, and the City Attorney's Office. A certificate of the insurance shall be placed on file upon approval of this agreement by the City Council of the City of El Paso.

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5. NOTICES

All notices, communications and reports under this Agreement shall be either hand-delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

City: City Manager
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

Copy to: Development Services Department
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

Developer: Stephen Forti
12468 Angie Bombach
El Paso, Texas 79936
PO BOX 12033
El Paso, Texas 79913-0033

6. CUMULATIVE RIGHTS

All remedies, either under this Agreement or at law or in equity or otherwise available to a party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination.

7. GOVERNING LAW

All questions concerning the validity, operation, and interpretation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

8. INTERPRETATION

This Agreement shall be deemed to have been jointly prepared by all parties hereto, and no ambiguity herein shall be construed for or against any party based upon the identity of the author of this Agreement or any portion hereof.

9. ASSIGNMENT

The Developer shall have the right to assign its rights and obligations in this Agreement. In the event that the Developer does assign its rights under this Agreement, the assignee shall

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CITY CLERK DEPT.

execute an assignment agreeing that it will be responsible for all of the obligations of Developer, a copy of which shall be sent to the City.

10. RELATIONSHIP

It is expressly understood and agreed by and between the parties that the Developer is not an officer, agent or employee of the City and is not subject to the direct or continuous supervision and control of the City. The City and the Developer hereby acknowledge and agree that the City has not formed, and is not forming with the Developer or any other party, a partnership, joint venture, or any other similar entity by entering into this Agreement; and this Agreement is not intended to and shall not be construed, to create any such entity or relationship.

11. ENTIRE AGREEMENT

This Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. This Agreement may not be modified except by an instrument in writing signed by both parties.

12. AUTHORIZED SIGNATURE

The person executing this Agreement on behalf of the Developer warrants to the City that the Developer is a duly authorized and existing Texas corporation, that the Developer is qualified to do business in the State of Texas, that Developer has full right and authority to enter into this Agreement, and that every person signing on behalf of the Developer is authorized to do so.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

CITY OF EL PASO

Joyce Wilson, City Manager

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Victor Q. Torres, Director
Development Services Department

DEVELOPER: S&DF PROPERTIES, LLC

by Stephen Forti
Title OWNER

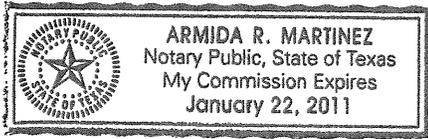
ACKNOWLEDGEMENTS ON FOLLOWING PAGE

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THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 17th day of October, 2008, by Stephen Forti as the Owner of S&DF Properties LLC.

SEAL:



Armida R. Martinez
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ___ day of _____, 2008, by Joyce Wilson, as City Manager for the City of El Paso, Texas, on behalf of said City.

SEAL:

NOTARY PUBLIC, STATE OF TEXAS

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Right of Entry Agreement

Exhibit "A"
GRA08-07-00591 drawings

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#39273 v1 - construction agreement/pond/forti
Document Author: LCUE



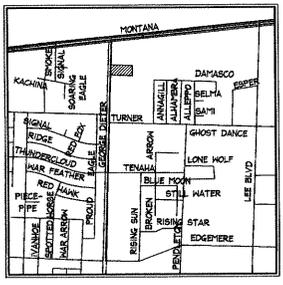
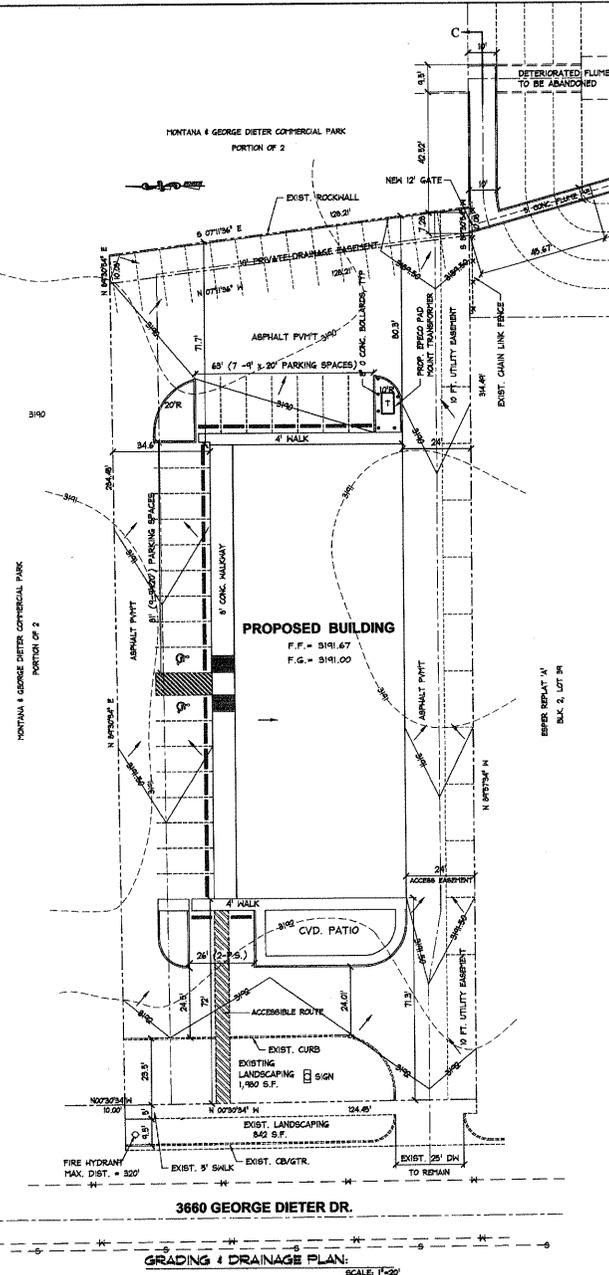
LEGAL DESCRIPTION:
MONTANA and DIETER COMMERCIAL PARK
LOT 2, BLOCK 1
COUNTY OF EL PASO, EL PASO, TEXAS

GRADING & DRAINAGE FOR:
PROPOSED RETAIL CENTER
ADDRESS: 3660 GEORGE DIETER DRIVE
EL PASO, TEXAS

PARKING LOT # DETAILS

Date: FEBRUARY, 2008
Scale: As Noted
Project No.: CBO216-07
Sheet No.: C-1

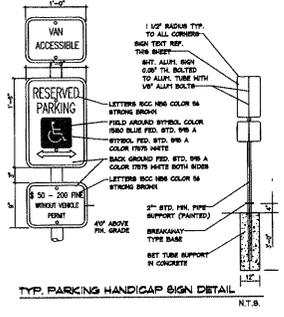
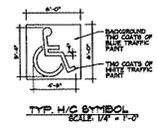
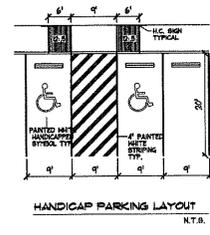
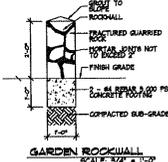
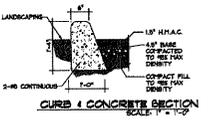
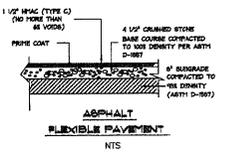
GRA07-00591



LOCATION PLAN: SCALE: 1"=400'

- NOTES: (APPLICABLE TO DRIVEWAYS AND PARKING AREAS)
- BASE TO BE COMPACTED TO 100% DENSITY (ASTM D-1557).
 - SUBGRADE TO BE COMPACTED TO 98% DENSITY (ASTM D-1557).
 - FINISH COAT SHALL CONSIST OF CATIONIC ASPHALT EMULSION SLOW SETTING TYPE S, GRADE C68-H, APPLIED AT THE RATE OF 0.25 TO 0.30 GALLONS PER SQUARE YARD.
 - SUBGRADE UNDER CURBS MUST BE FORMED AND COMPACTED AS SHOWN OR EXCESS CUT MUST BE BACKFILLED WITH CONCRETE.
 - H.M.A.C. SHALL CONFORM TO ITEM 340 (HOT MIX ASPHALTIC CONC. PAVEMENT), TYPE B, GRADE 1 OF THE 1998 STANDARD SPECIFICATIONS FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAYS, STREETS, AND BRIDGES BY TxDOT.
 - FLEXIBLE BASE COURSE SHALL CONFORM TO ITEM 247 (FLEXIBLE BASE), TYPE B, GRADE 1 OF THE 1998 STANDARD SPECIFICATIONS FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAYS, STREETS, AND BRIDGES BY TxDOT.
 - CONC. TO BE RCC AIR ENTRAINED (EX 413) WITH MAXIMUM SLUMP OF 3" WITH MIN. COMPRESSIVE STRENGTH OF 3000 PSI AT 28 DAYS.

PAVEMENT DETAILS



SUMMARY:

13	PARKING SPACES
1	H.N.C.P. PARKING SPACES
14	TOTAL PARKING SPACES

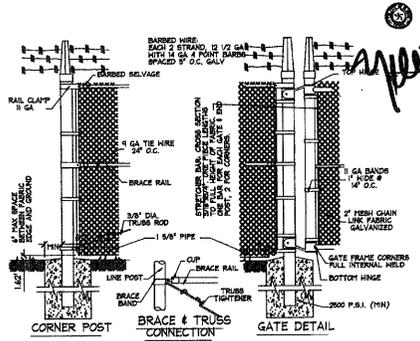
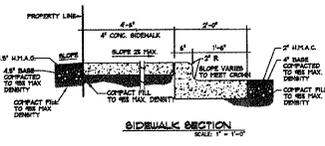
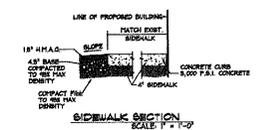
LEGAL DESCRIPTION:
MONTANA and DIETER COMMERCIAL PARK
LOT 2, BLOCK 1
COUNTY OF EL PASO, EL PASO, TEXAS

DRAINAGE CALCULATIONS:

Q = C.I.A. C = 0.25
 A = 0.8870
 Tc = 15 MIN.
 1.25 YEAR + 5
 Q exp. = 3.11 CFS

BENCHMARK:
CITY MONUMENT @ INTERSECTION OF
GEORGE DIETER & TENAHA
ELEVATION: 3990.87 CITY DATUM

NOTES:
THIS PROPERTY LIES WITHIN ZONE "C" AS DESIGNATED BY THE F.I.A. FLOOD INSURANCE RATE MAP CITY OF EL PASO, DATED OCTOBER 15, 1982. COMMUNITY No. 460214, PANEL NUMBER C039 B



DEVELOPMENT SERVICES DEPARTMENT
 SITE PLAN REVIEW
 REVIEWED FOR GRADING ONLY
 DATE: 2/13/08
 BY: [Signature]

CITY CLERK DEPT.
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Right of Entry Agreement

Exhibit "B"
Metes & Bounds for Access Easement and drawing

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#39273 v1 - construction agreement/pond/forti
Document Author: LCUE

3660 GEORGE DIETER DRIVE, ACCESS AND DRAINAGE EASEMENT.

PARCEL #1: METES AND BOUNDS DESCRIPTION OF TWENTY (20.00') FEET ACCESS AND DRAINAGE EASEMENT OUT OF THE SOUTHWEST PORTION OF LOT 2, BLOCK 1, MONTANA AND DIETER COMMERCIAL PARK, AND BEING MORE DESCRIBED AS FOLLOWS;

FROM A CITY MONUMENT LOCATED AT THE INTERSECTION OF GEORGE DIETER DRIVE AND TENAHA STREET.

THENCE A BEARING OF NORTH 00°33'00" WEST ALONG THE CENTERLINE OF GEORGE DIETER DRIVE A DISTANCE OF 2,150' TO A POINT.

THENCE A BEARING OF NORTH 89°27'00" EAST A DISTANCE OF 60.00' TO THE TRUE POINT OF BEGINNING OF THIS PARCEL OF LAND.

THENCE SOUTH 89°57'34" EAST ALONG THE SOUTHERLY COMMON LINE A DISTANCE OF 314.40' TO THE CORNER.

THENCE NORTH 07°11'36" WEST ALONG THE EASTERLY COMMON LINE A DISTANCE OF 128.21' TO THE CORNER.

THENCE SOUTH 89°30'542" WEST A DISTANCE OF 20.14' TO A POINT.

THENCE SOUTH 07°11'36" EAST A DISTANCE OF 107.86' TO A POINT.

THENCE NORTH 89°57'34" WEST TO A POINT ON THE WESTERLY COMMON LINE OF LOT AND R.O.W. OF GEORGE DIETER DRIVE A DISTANCE OF 292.00'.

THENCE SOUTH 00°33'00" EAST ALONG THE EASTERLINE R.O.W. OF GEORGE DIETER DRIVE A DISTANCE OF 20' TO THE TRUE POINT OF BEGINNING OF THIS PARCEL OF LAND.

SAID PARCEL OF LAND CONTAINS 8425.57 SQ. FT., OR 0.1934 Acres, MORE OR LESS.

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CITY CLERK DEPT.

STATE OF TEXAS REGISTERED
BENJAMIN DORADO
PROFESSIONAL LAND SURVEYOR
03.26.08

