

STAFF REPORT

Date: Tuesday, March 28, 2017
To: Bryan H. Montgomery, City Manager
From: Kevin Rohani, P.E. Public Works Director/City Engineer
SUBJECT: Approve a Deferred Improvement Agreement at 180 Carol Lane for Evelyn M. Batze

Approved and Forwarded to City Council:


Bryan H. Montgomery, City Manager

Background and Analysis

The property owner, Evelyn M. Batze, is applying for a building permit for a secondary dwelling unit for the property at 180 Carol Lane. The property fronts Carol Lane east of Main Street. Carol Lane is a two lane roadway that connects Main Street to Fairhaven Way.

The property is Lot 12 of the Diane Park subdivision recorded in 1949. There is no curb, gutter, sidewalk or storm drain along this section of Carol Lane. The property is located midway between the fully improved sections of Carol Lane. Constructing the frontage improvements at this property would require utility pole relocations and storm drain improvements beyond the property frontage. The City Engineer has determined that the frontage improvements can be deferred at this time.

Approval of the Deferred Improvement Agreement is being requested in order to proceed with the building permit approval for the secondary dwelling unit as allowed by City Ordinance Number 10-01.

Fiscal Impact

There is no fiscal impact associated with this action.

Recommendation

Staff recommends that the City Council Adopt the Resolution authorizing the City Manager to execute the Deferred Improvement Agreement.

Attachments

- 1) Resolution
- 2) Deferred Improvement Agreement

RESOLUTION NO. __-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING A DEFERRED IMPROVEMENT AGREEMENT AT 180 CAROL LANE FOR EVELYN M. BATZE

WHEREAS, the developer, Evelyn M. Batze, is requesting approval of a building permit for a secondary dwelling unit for the property at 180 Carol Lane; and

WHEREAS, City Ordinance Number 10-01 allows the developer to execute a deferred improvement agreement in-lieu of constructing improvements prior to issuance of the building permit; and,

WHEREAS, upon review of the existing roadway conditions of Carol Lane, the City Engineer has determined that the frontage improvements can be deferred for 180 Carol Lane at this time; and,

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the City Council of the City of Oakley that the Deferred Improvement Agreement is hereby approved.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 28th of March, 2017 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

APPROVED:

Sue Higgins, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

Recording Requested by:

City Engineer
City of Oakley
3231 Main Street
Oakley, CA 94561

When Recorded Mail To:

City Engineer
City of Oakley
3231 Main Street
Oakley, CA 94561

A.P.N. 037-131-004

Space above this line for Recorder's Use

**DEFERRED IMPROVEMENT AGREEMENT BETWEEN
THE CITY OF OAKLEY AND
EVELYN M. BATZE
FOR 180 CAROL LANE (APN 037-131-004)**

This agreement is made and entered into this 28th day of March, 2017, by and between the City of Oakley, a municipal corporation ("CITY") and Evelyn M. Batze ("DEVELOPER").

RECITALS

A. DEVELOPER is the owner of certain real property located within the City of Oakley, County of Contra Costa, at (180 Carol Lane), and more particularly described in Exhibit A (legal description), attached hereto and incorporated herein ("Property"). A map showing the location of the Property is attached as Exhibit B (plat map).

B. DEVELOPER wishes to make improvements to the Property for the construction of a secondary dwelling unit ("Proposed Project") and has applied to CITY for a building permit to construct the Proposed Project. City Ordinance Number 10-01 require that DEVELOPER construct specified public frontage improvements as conditions of approval for the building permit application.

C. City Ordinance Number 10-01 allows DEVELOPER to execute a deferred improvement agreement in-lieu of constructing improvements prior to issuance of the building permit.

D. DEVELOPER has requested, and CITY has agreed, to defer DEVELOPER's obligation to make certain improvements listed below. By entering into this Agreement, DEVELOPER remains obligated to make such improvements, but in accordance with the period of time set forth herein.

AGREEMENT

1. Recitals

The foregoing Recitals are true and correct and are made a part hereof.

2. Improvements to be Constructed

DEVELOPER shall construct all improvements required as conditions of approving the requested building permit for the Property. The improvements deferred by this Agreement are described as follows:

Construct the frontage of Carol Lane along southerly boundary of parcel, to a City public road standard, with 20-feet of pavement for the half width of roadway, 5 feet wide of concrete sidewalk, curb and gutter. The DEVELOPER shall provide the necessary longitudinal and transverse drainage and conforms to existing improvements. The face of curb shall be located 20 feet from the ultimate centerline of Carol Lane and any conforms to existing improvements must take place outside of the limits of the project.

The current estimated cost of constructing the required improvements is \$17,050.00.

All such improvements shall be constructed in accordance with the CITY'S design standards and ordinances or as may be approved in writing by the City Engineer. Upon completion Developer shall furnish CITY with a complete and reproducible set of final as-built plans, including any authorized modifications.

In addition to the frontage improvements, DEVELOPER shall remove all structures and utilities related to any structures from within the ultimate right of way and applicable setbacks at DEVELOPER's sole expense. This task shall be completed concurrently to the frontage improvement requirements.

3. Completion Time

Notwithstanding the requirement that all required improvements be constructed prior to occupancy of the Project, DEVELOPER shall commence construction of the improvements described below within ninety days of written notice from CITY and shall complete construction no later than one-hundred-and-eighty days thereafter. CITY contemplates that notice would be sent if a larger roadway project adjacent to subject property were to commence. DEVELOPER shall submit improvement plans, prepared by a registered civil engineer, to the City Engineer and pay all applicable fees. Developer agrees to cooperate with other property owners, the City, and other public agencies to provide the improvements set forth herein as part of a joint cooperative plan, including the formation of a local improvement district, if this method is feasible to secure the installation and construction of the improvements. Time is of the essence in this agreement.

4. Security

Concurrently with the submission of the plans required by this Agreement to the City Engineer, DEVELOPER shall furnish CITY with the following security in the forms specified in Government Code sections 66499.1 and 66499.2 or in a form satisfactory to the City Attorney if different from said Government Code forms:

- a. Faithful Performance. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to one hundred percent (100%) of the estimate set forth in Section 2 and sufficient to assure CITY that the improvements will be satisfactorily completed.
- b. Labor and Materials. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to one-hundred per cent (100%) of the estimate set forth in Section 2 and sufficient to assure CITY that DEVELOPER'S contractors, subcontractors, and other persons furnishing labor, materials, or equipment shall be paid therefore.
- c. If required by CITY, a cash deposit, corporate surety bond, or instrument of credit sufficient to assure CITY that the surface water

drainage of the subdivision shall not interfere with the use of neighboring property, including public streets and highways.

CITY shall be the sole indemnitee named on any instrument required by this Agreement. Any instrument or deposit required herein shall conform to the provisions of Chapter 5 of the Subdivision Map Act.

5. Insurance Required

Prior to the commencement of work under this Agreement, DEVELOPER shall obtain or cause to be obtained and filed with the CITY, all insurance required by CITY as set forth in its standard insurance requirements at the time such work is to commence, and such insurance must be approved by the Administrative Services Director of CITY, or his designee, as to form, amount and carrier. Prior to the commencement of work under this Agreement, DEVELOPER, at its own cost and expense, shall also procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the DEVELOPER and its agents, representatives, employees, and subcontractors. DEVELOPER shall provide proof satisfactory to CITY of such insurance that meets the requirements of this Agreement and under forms and amounts of insurance satisfactory in all respects to the CITY. DEVELOPER shall maintain in full force and effect the insurance coverage in the forms and amounts specified by the CITY throughout the term of the work to be completed, and until final completion and acceptance of the work by the CITY. DEVELOPER shall not allow any work to commence until DEVELOPER has obtained all insurance required and has provided evidence thereof to CITY.

a. **Variation** The City may approve a variation in the insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

1. **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, DEVELOPER shall provide written notice to City at DEVELOPER's earliest possible opportunity and in no case later than five days after DEVELOPER is notified of the change in coverage.

2. Failure to Maintain Insurance.

- i. Throughout the term of the work to be completed, and until final completion and acceptance of the work by CITY, DEVELOPER shall maintain in full force and effect insurance coverage in the forms and amounts specified by CITY. If, at any time during the performance of the work to be completed, DEVELOPER fails to maintain any item of required insurance in full force and effect, DEVELOPER shall immediately discontinue all work under this Agreement and CITY will withhold all Contract Payments due or that become due until notice is received by CITY that such insurance has been restored in full force and effect and that the premiums therefore have been paid for a period satisfactory to the City Manager.

3. Workers' Compensation and Employers Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, employees and volunteers for losses arising from work performed by the DEVELOPER for the CITY.

4. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

- a. **Acceptability of Insurers.** Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- b. **Verification of Coverage.** DEVELOPER shall furnish CITY with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each

insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

- c. **Subcontractors.** DEVELOPER and/or DEVELOPER's general contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

6. Work Performance and Guarantee

Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, DEVELOPER guarantees all work executed by DEVELOPER and/or DEVELOPER's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to CITY as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one (1) year after initial acceptance of the entire work by CITY. DEVELOPER shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one-year guarantee period without expense or charge of any nature whatsoever to CITY. DEVELOPER further covenants and agrees that when defects in design, workmanship and materials actually appear during the one-year guarantee period, and have been corrected, the guarantee period shall automatically be extended for an additional year to insure that such defects have actually been corrected.

In the event the DEVELOPER shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, CITY shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and DEVELOPER shall pay to CITY on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the

foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, CITY shall have the right to immediately repair, or cause to be repaired, such defect, and DEVELOPER shall pay to CITY on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either temporary or permanent repairs that may be required, as determined in the sole discretion and judgment of CITY.

If CITY, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, DEVELOPER shall pay, in addition to actual costs and expenses of such repair or work, fifty percent (50%) of such costs and expenses for overhead and interest at the maximum rate of interest permitted by law accruing thirty (30) days from the date of billing for such work or repairs.

7. Inspection of the Work

DEVELOPER shall guarantee free access to CITY through its City Engineer and his designated representative for the safe and convenient inspection of the work throughout its construction. Said CITY representative shall have the authority to reject all materials and workmanship which are not in accordance with the plans and specifications, and all such materials and or work shall be removed promptly by DEVELOPER and replaced to the satisfaction of CITY without any expense to CITY in strict accordance with the improvement plans and specifications.

8. Agreement Assignment

This Agreement shall not be assigned by DEVELOPER without the written consent of CITY which consent shall not be unreasonably withheld.

9. Abandonment of Work

Neither DEVELOPER nor any of DEVELOPER's agents or contractors are or shall be considered to be agents of CITY in connection with the performance of DEVELOPER's obligations under this Agreement.

If DEVELOPER refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if DEVELOPER should be adjudged as bankrupt, or should make a general assignment for the benefit of DEVELOPER's creditors, or if a receiver should be appointed, or if DEVELOPER, or any of DEVELOPER's

contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the CITY, through its City Engineer, may serve written notice on DEVELOPER and DEVELOPER's surety or holder of other security of breach of this Agreement, or of any portion, thereof, and default of DEVELOPER.

In the event of any such notice of breach of this Agreement, DEVELOPER's surety shall have the duty to take over and complete the improvements herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give CITY written notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to CITY of such election, CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of DEVELOPER and DEVELOPER's surety shall be liable to CITY for any damages and/or reasonable and documented excess costs occasioned by CITY thereby; and, in such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to DEVELOPER as may be on the site of the work and necessary therefor.

10. Use of Streets or Improvements

At all times prior to the final acceptance of the work by CITY, the use of any or all streets and improvements within the work to be performed under this Agreement shall be at the sole and exclusive risk of DEVELOPER. The issuance of any building permit by CITY for the Proposed Project shall not be construed in any manner to constitute a partial or final acceptance or approval of any or all such improvements by CITY. DEVELOPER agrees that CITY'S Building Official may withhold the issuance of building or occupancy permits when the work or its progress may substantially and/or detrimentally affect public health and safety.

11. Safety Devices

DEVELOPER shall provide and maintain such guards, watchmen, fences, barriers, regulatory signs, warning lights, and other safety devices adjacent to and on the site as may be necessary to prevent accidents to the public and damage to the Property. DEVELOPER shall furnish, place, and maintain such lights as may be necessary for illuminating the said fences, barriers, signs, and other safety devices. At the end of all work to be performed under this Agreement, all fences, barriers, regulatory signs, warning lights, and other safety

devices (except such safety items as may be shown on the plans and included in the items of work) shall be removed from site of the work by the DEVELOPER, and the entire site left clean and orderly.

12. Acceptance of Work

Upon notice of the completion of all work and the delivery of a set of final as-built plans to CITY by DEVELOPER, CITY through its City Engineer or his designated representative, shall examine the work without delay, and, if found to be in accordance with said plans and specifications and this Agreement, shall recommend acceptance of the work to the City Council. The City Council may accept the improvements by the adoption of a resolution, and the City Engineer shall notify DEVELOPER or his designated agents of such acceptance.

13. Patent and Copyright Costs

In the event that said plans and specifications require the use of any material, process or publication which is subject to a duly registered patent or copyright, DEVELOPER shall be liable for, and shall indemnify CITY from any fees, costs or litigation expenses, including attorneys' fees and court costs, which may result from the use of said patented or copyrighted material, process or publication.

14. Alterations in Plans and Specifications

Any alteration or alterations made in the plans and specifications which are a part of this Agreement or any provision of this Agreement shall not operate to release any surety or sureties from liability on any bond or bonds required by the Agreement and made a part hereof, and consent to make such alterations is hereby given, and the sureties to said bonds hereby waive the provisions of Section 2819 of the Civil Code of the State of California.

15. Liability

- a. DEVELOPER Primarily Liable. DEVELOPER hereby warrants that the design and construction of the improvements will not adversely affect any portion of adjacent properties and that all work will be performed in a proper manner. DEVELOPER agrees to indemnify, defend, release, and hold harmless CITY, and each of its elective and appointive boards, commissions, officers, agents and employees, from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action of every kind, nature and description, directly or indirectly arising from an act or

omission of DEVELOPER, its employees, agents, or independent contractors in connection with DEVELOPER'S actions and obligations hereunder; provided as follows:

1. That CITY does not, and shall not, waive any rights against DEVELOPER which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by CITY, or the deposit with CITY by DEVELOPER, of any of the insurance policies described in Section 4 hereof.
 2. That the aforesaid hold harmless agreement by DEVELOPER shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not CITY has prepared, supplied, or approved of plans and/or specifications for the subdivision, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.
- b. Design Defect. If, in the opinion of the CITY, a design defect in the work of the improvements becomes apparent during the course of construction, or within one (1) year following acceptance by the CITY of the improvements, and said design defect, in the opinion of the CITY, may substantially impair the public health and safety, DEVELOPER shall, upon order by the CITY, correct said design defect at his sole cost and expense, and the sureties under the Faithful Performance and Labor and Materials Bonds shall be liable to the CITY for the corrective work required.
- c. Litigation Expenses. In the event that legal action is instituted by either party to this Agreement, and said action seeks damages for breach of this Agreement or seeks to specifically enforce the terms of this Agreement, and, in the event judgment is entered in said action, the prevailing party shall be entitled to recover its attorneys' fees and court costs. If CITY is the prevailing party, CITY shall also be entitled to recover its attorney's fees and costs in any action against DEVELOPER's surety on the bonds provided under Section 3.

16. Recordation

This Agreement shall be recorded in the office of the County Recorder of Contra Costa County.

17. Notices

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to CITY shall be addressed as follows:

City Manager and City Engineer
City of Oakley
3231 Main Street
Oakley, CA 94561

Notices required to be given to DEVELOPER shall be addressed as follows:

Evelyn M. Batze
180 Carol Lane
Oakley, CA 94561

Any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate at Oakley, California, the day and year first above written.

CITY OF OAKLEY

DEVELOPER

By: _____
Bryan H. Montgomery, City Manager

By: Evelyn M Batze
Evelyn M. Batze, Owner

ATTEST:

Libby Vreonis, City Clerk

APPROVED AS TO FORM:

Derek P. Cole, City Attorney

CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Contra Costa)

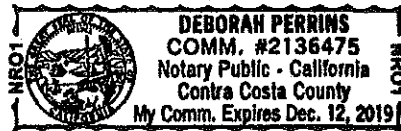
On March 2, 2017 before me, DEBORAH PERRINS,
(here insert name and title of the officer)

personally appeared EVELYN SATZE

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Deborah Perrins

(Seal)

Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of DEFERMENT AGREEMENT WITH CITY OF OAKLEY containing 14 pages, and dated N/A.

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) _____
Title(s)
- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: _____

representing: _____
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information	
Method of Signer Identification	
Proved to me on the basis of satisfactory evidence: <input type="radio"/> form(s) of identification <input type="radio"/> credible witness(es)	
Notarial event is detailed in notary journal on: Page # _____ Entry # _____	
Notary contact: <u>DEB PERRINS</u>	
Other	
<input type="checkbox"/> Additional Signer(s)	<input type="checkbox"/> Signer(s) Thumbprint(s)
<input type="checkbox"/> _____	

EXHIBIT A
LEGAL DESCRIPTION

LEGAL DESCRIPTION

Real property in the City of Oakley, County of Contra Costa, State of California, described as follows:

LOT 12, MAP OF DIANE PARK, FILED MAY 26, 1949, BOOK 37 OF MAPS, PAGE 36, CONTRA COSTA COUNTY RECORDS.

APN: **037-131-004-6**

EXHIBIT B

PLAT

