

October 5, 2015

## **CITY COUNCIL STUDY SESSION ITEM**

### **SUBJECT**

Update on the Wasatch Superblock and the Connector Road requirement.

### **STAFF CONTACTS**

Catherine Drews, Legal Planner 452-6134  
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### **POLICY ISSUES**

Should the City require completion of the mid-block pedestrian and vehicular connection between 106<sup>th</sup> and 108<sup>th</sup> Avenues NE within the Wasatch Superblock, as mandated by Ordinance No. 5625 and pursue all legal remedies to ensure that Wasatch fulfills its obligations?

### **DIRECTION NEEDED FROM COUNCIL**

☒ Action  
☐ Discussion  
☒ Information

Provide staff with direction as to steps to ensure timely construction of the Connector Road.

### **BACKGROUND/ANAYSIS**

In 2004, Wasatch Management & Development LLC (Wasatch) applied for Design Review approval for development of the northwest corner of the "Wasatch Superblock," bounded by NE 10<sup>th</sup> Street on the north, NE 8<sup>th</sup> Street on the south, 106<sup>th</sup> Avenue NE on the west, and 108<sup>th</sup> Avenue NE on the east. The submitted proposal was for two 20-story residential towers. The remainder of the block was still in conceptual design for future redevelopment to include additional residential and commercial towers.

Subsequently, in 2005, Wasatch initiated the process to request vacation of NE 9<sup>th</sup> Street, a cul-de-sac within the Superblock (Attachment 1). The street vacation was subsequently abandoned in favor of a plat vacation. The plat vacation process allowed for a determination of the value of public benefits to be received through the transaction, rather than a simple appraisal of the street to be vacated. A package of public benefits was offered by Wasatch in exchange for the plat vacation, including enhanced landscaping and wider sidewalks than typically required for the project under review at that time, and future construction of a proposed east-west Connector Road. The Council determined that the mid-block Connector Road proposed in the Superblock Master Plan, with a 36-foot-wide public, non-exclusive

ingress and egress easement, provided superior pedestrian and vehicular access and fairly compensated for the removal of NE 9<sup>th</sup> Street.

Based on Wasatch's requests and the City's determination of public benefits, the Council approved the plat vacation in 2005, with a number of conditions. One of those conditions required Wasatch to record a public access easement for the future Connector Road, with a contractual obligation to complete that Road by September 28, 2015.

Since the time of plat vacation, a number of projects have been completed on the Superblock (see Attachment 2). Because these projects were undertaken on portions of the Superblock sold by Wasatch to other developers, and because they were all adequately served by other transportation facilities, the Connector Road was retained as an obligation of Wasatch and not completed with this development. Completion of the Road remains an obligation of Wasatch under the terms of the plat vacation. (See Attachment 3 for map showing portions of the Road remaining to be built).

On November 6, 2014, Michael Nielson, representing Wasatch, transmitted a letter to the Development Services Department requesting consideration for an extension to the deadline to complete construction of the Connector Road (Attachment 4) until September 30, 2022, citing the impacts of the financial downturn on the real estate market.

City staff have engaged in prolonged negotiations with Wasatch to find a mutually agreeable solution for the provision of the Connector Road. Wasatch rejected the City's most recent proposal and as a result has failed to comply with the requirement that the Connector Road be constructed by September 28, 2015. Wasatch has, however, made a proposal which the City believes may be acceptable provided the parties can reach agreement on the details.

The terms of the Covenant Regarding Public Easement executed by the parties provides that a non-breaching party is entitled to bring any action deemed appropriate including an action the legal remedy of specific performance, meaning that where one party to the agreement is in default on an obligation, the other party can file suit to request that a court require that the obligation be performed. In addition, the Covenant provides that if Wasatch breaches, the City is entitled to withhold approval of pending permit applications or is entitled to issue a stop work order on any pending development by Wasatch.

In light of the current state of negotiations between the two parties, staff is recommending allowing an additional limited time to reach an agreement requiring Wasatch to construct the Road. If the City and Wasatch are unable to come to terms, staff will return to discuss other available legal options to ensure the Road is constructed.

## **OPTIONS**

1. Direct staff to continue to attempt to complete negotiations for a resolution by no later than December 31, 2015, and if the parties do not reach an agreement, return for a discussion of available options to pursue other legally available remedies.
2. Provide alternative direction to staff.

## **RECOMMENDATION**

Option 1.

## **MOTION**

Direct staff to continue to attempt to complete negotiations for a resolution by no later than December 31, 2015, and if the parties do not reach an agreement, return for a discussion of available options to pursue other legally available remedies.

## **ATTACHMENTS**

1. Wasatch Superblock and Connector Road, 2005
2. Wasatch Superblock
3. Wasatch Superblock and Connector Road, 2014
4. Letter from Mike Nielson, CFO, Wasatch Commercial Management, Inc.