

Board of Public Works and Safety

Agenda Item

Cover Sheet

MEETING DATE: December 17, 2024

- Consent Agenda Item
- New Item for Discussion
- Previously Discussed Item
- Miscellaneous

ITEM #: 1

INITIATED BY: Jonathan Hughes

- Information Attached
- Bring Paperwork from Previous Meeting
- Verbal
- No Paperwork at Time of Packets

PARK IMPACT FEE CREDIT AGREEMENT

**CITY OF NOBLESVILLE, INDIANA AND EPCON HAZEL DELL, LLC
(Courtyards of Hazel Dell)**

THIS PARK IMPACT FEE CREDIT AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2024, by and between the City of Noblesville, Indiana (the “City”) and EC New Vision Indiana, LLC, (“Developer”), as follows:

WHEREAS, pursuant to Indiana Code § 36-7-4-1300 *et seq.*, the City adopted Amended Ordinance No. 13-04-24 (the “Ordinance”) which replaced Ordinance 21-05-19 effective November 1, 2024, establishing park impact fees that are assessed for new developments (“PIFs”); and

WHEREAS, in exchange for paying the fee, the City can provide credits for those fees in exchange for park improvements made by a developer;

WHEREAS, the Developer is the purchaser of property described generally as the following parcels: 10-10-03-00-00-043.000, 10-10-03-00-00-041.000, and 10-10-03-00-00-040.000, and which is more particularly described and depicted in the attached Exhibit A, attached hereto and incorporated herein by reference (the “Real Estate”); and

WHEREAS, the Developer is developing a development on the south side of the Midland Trace Trail (the “Park”) just east of Hazel Dell to be known as The Courtyards of Hazel Dell (the “Development”);

WHEREAS, in order to assist the City in improving its park system and infrastructure, as part of the Development, Developer desires to construct and dedicate to the City and the City desires to accept certain improvements and additions to the Park to be determined by the City and the Developer, including trail connectivity, and addition of one (1) acre +/- of land for Park (the general location of the proposed park land is generally depicted in the area outlined in orange on the attached Exhibit B, which is incorporated herein by reference) (the “Park”); and

WHEREAS, based on engineer cost projection estimates and land appraisal estimates for the Park, it is anticipated that the Developer will incur costs no greater than Four Hundred Thousand and no/100 Dollars (\$400,000.00) to construct and dedicate the Park (including land value) (the “Park Costs”);

WHEREAS, pursuant to the Ordinance, the total anticipated PIF as a result of the Development is Four Hundred Fifty Three Thousand Four Hundred Twenty Four and no/100 Dollars (\$453,424.00); and

WHEREAS, pursuant to Ind. Code § 36-7-4-1335, in consideration for Developer causing the Development to be constructed and the dedication of the Park to the City, the City desires to issue the Developer certain park impact fee credits (“PIF Credits”) in an amount not to exceed

Four Hundred Thousand and no/100 Dollars (\$400,000.00), consistent with the terms and conditions of this Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF NOBLESVILLE, HAMILTON COUNTY, INDIANA, AS FOLLOWS:

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Incorporation of Recitals. The representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as if fully set forth herein.

2. Obligation of the Developer. The Developer shall construct the Development and the Park as shown in Exhibit B, attached hereto and incorporated herein by reference. Prior to construction of the Park, the Developer shall submit plans and specifications for the City's review and approval in writing. Following the City's approval, the Developer shall construct and install the Park and any improvements therein according to the City-approved plans. The Developer shall be responsible for obtaining all applicable easements, permits, approvals, and consents as may be necessary or appropriate for the construction of the Park. The Developer shall ensure that the Park is located within right-of-way, easements, or fee simple dedications approved by the City. Following completion of construction, subject to the City's acceptance of the same, the Developer will dedicate the Park to the City by Bill of Sale and/or land dedication in a form reasonably required by the City, free and clear of all liens and encumbrances, all at Developer's sole cost and expense. Notwithstanding anything stated in this Agreement to the contrary, the Real Estate shall be subject to a deed restriction limiting the use of the real estate on which the park sits to that of a passive public park. Developer will cause that property to be surveyed and platted as a separate parcel and the deed restriction shall be included in such plat. Prior to the transfer of the Park to the City and during any construction, the Developer shall provide an adequate opportunity for the City to conduct inspections of the Park at the City's own cost and expense, and the Developer shall correct any deficiencies identified by the City in the City's reasonable discretion. The City shall not be required to accept the Park until any defects are completed in accordance with the City's direction. Moreover, if the Park is not constructed to the City's direction the City shall not be required to provide any Park Impact Fee Credit until such time as the Park is brought into compliance with the City's direction. In the event the Park is not constructed to the City's desire, then the Developer shall pay the Park Impact Fees which would otherwise be credited hereby.

3. Construction of the Park. The Developer will commence construction of the Park by no later than November 30, 2025 ("Commencement Date") and the Park must be substantially completed and ready for use no later than April 30, 2026. Developer is responsible for the relocation of all utilities, if any, required for the Development and/or Park. For the avoidance of any doubt, if the Developer or its assignee fails to develop the Development and/or Park within the time frame's set forth in this Agreement, then the PIF Credits provided herein shall be null and void. Prior to beginning construction of the Park, the Developer must provide the City with certification that the City is an

additional named insured on a policy insuring the City against any and all claims for personal injury, property damage, or liability arising from construction of the Park, in amounts and with a surety reasonably acceptable to the City. The Developer shall further indemnify and hold harmless the City against any and all such claims; and indemnify the City for all reasonable costs, including but not limited to reasonable attorneys' fees, incurred by the City as a result of any and all such claims. In no event shall the City be obligated to pay any portion of the cost of the Development or the Park, except for issuing the PIF Credits set forth herein.

4. Amendment to the Park. In the event that field conditions, location of utilities, unsuitable soils, schedule, weather or development of the Park cause for a re-design or field changes to the Park, the Developer shall propose such change(s), in writing, to the City Parks Director for her review. The City Parks Director is not required to make any changes she deems would negatively impact the quality of the work or would generally be unacceptable on any other City infrastructure. Any changes or amendments to the Park which are accepted by the City must be confirmed in a writing by the City.

5. PIFs. Pursuant to the Ordinance, the total anticipated PIFs as a result of the Development/Park Improvements is Four Hundred Fifty Three Thousand Four Hundred Twenty Four and no/100 Dollars (\$453,424.00).

6. PIF Credits. Upon the City's acceptance of the transfer of the Park from the Developer to the City, the City will issue the Developer the PIF Credits to Developer in an amount not to exceed Four Hundred Thousand and no/100 Dollars (\$400,-000.00). The PIF Credits shall be applied to building permits issued within the Development up to the total credited amount, which will offset the PIFs that would otherwise be due upon issuance of building permits.

7. Limitation of Obligation. The obligation of the City to accept the Park is subject to passing inspection and testing per the City's ordinances and Noblesville Construction Standards. Nothing herein shall be construed as a duty of the City to pay the reimbursement obligation from any source.

8. Development/Park Dissolution. Should the Development and/or Park not be constructed within the time frame stated in this Agreement, the City, through its Board of Public Works and Safety, may pursue completion of the Project by any remedy permitted by law.

9. Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To Developer:

EC New Vision Indiana, LLC
Robyn Crawford, Regional President
500 Stonehenge Parkway,
Dublin, Ohio 43017
Email: rcrawford@epconcommunities.com

With copies to:

CHURCH CHURCH HITTLE + ANTRIM
Attn: Matthew S. Skelton
Two North Ninth Street
Noblesville, Indiana 46060
Email: mskelton@cchalaw.com

To the City:

City of Noblesville, Indiana
Attn: Mayor
16 South 10th Street
Noblesville, IN 46060

With copies to:

City Attorney
16 South 10th Street
Noblesville, IN 46060

10. Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

11. Dispute Resolution. In the event there is any dispute between the parties concerning the terms of this Agreement, said dispute shall first be considered by five (5) persons consisting of a representative of the Developer, the attorney designated by the Developer, a member of the City Council designated by the City's Board of Public Works, the City Park's Director and the City Attorney. In the event there is no resolution of the dispute by said group, the issue shall be submitted to mediation pursuant to the Indiana Rules of Alternative Dispute Resolution prior to the initiation of litigation by either party.

12. Indiana Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana.

13. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

14. Assignment. The rights and obligations contained in this Agreement may not be assigned by Developer without the consent of the City.

15. No Third-Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

16. Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the City has approved or ratified this Agreement as required by law.

[Signature pages to follow]

APPROVED this _____ day of _____, 2024

Title: _____

Printed: _____

Title: _____

All of which is approved by the Board of Public Works and Safety of the City of Noblesville

this _____ day of _____, 2024.

JACK MARTIN, PRESIDENT

JOHN DITSLEAR, MEMBER

LAURIE DYER, MEMBER

ROBERT J. ELMER, MEMBER

RICK L. TAYLOR, MEMBER

ATTEST:

EVELYN L. LEES, CLERK
CITY OF NOBLESVILLE, INDIANA
4781819.1

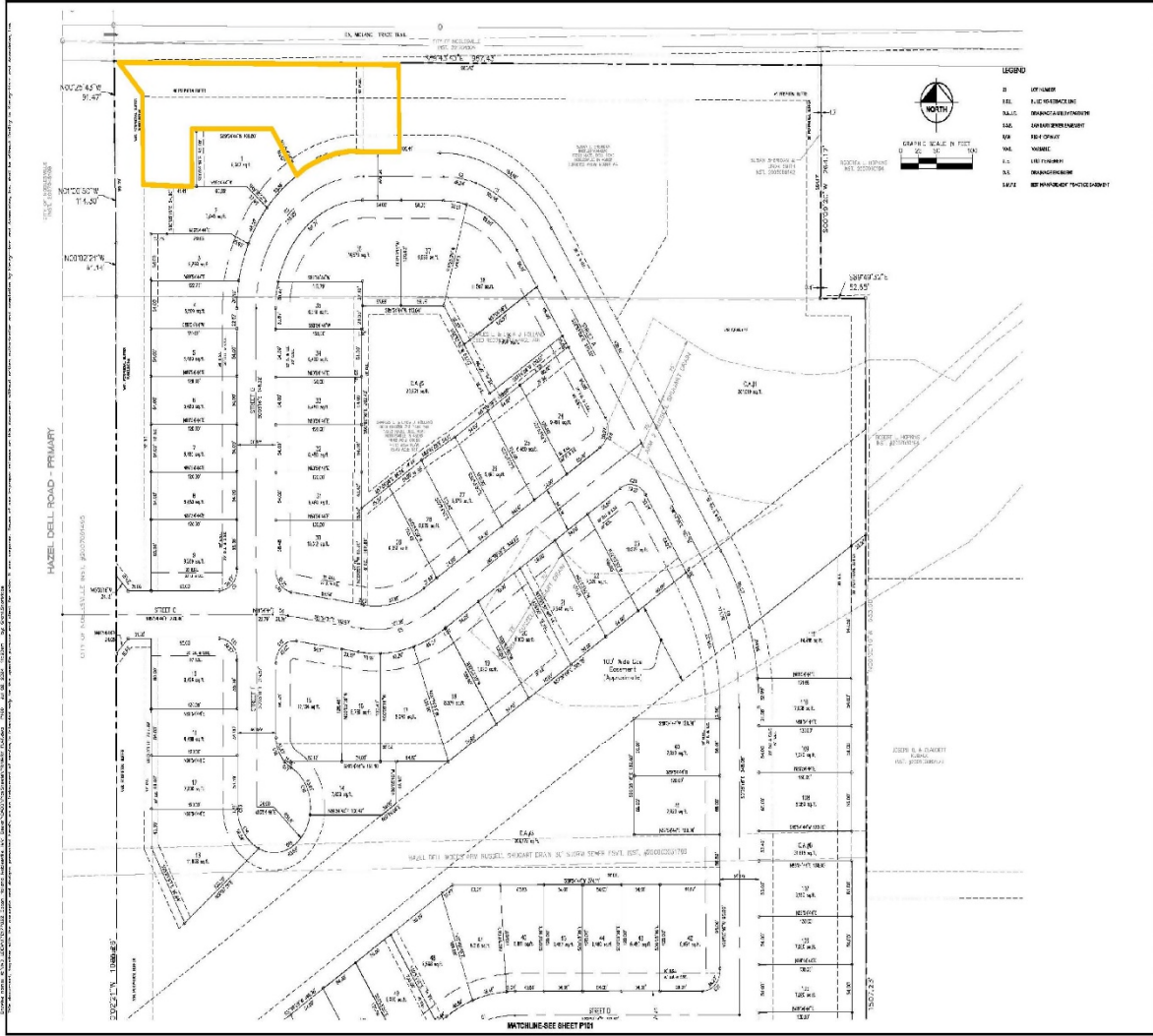
Exhibit A
Real Estate

**LAND DESCRIPTION OF
OVERALL COMBO PARCELS**

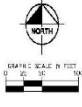
A PART OF THE NORTHWEST AND SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 18 NORTH, RANGE 4 EAST, HAMILTON COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING ON THE WEST LINE OF SAID SECTION AT THE CENTER OF THE TRACKS OF MIDLAND RAILROAD AS NOW LOCATED BEING MARKED BY A HAMILTON COUNTY CONTROL POINT; THENCE SOUTH 00 DEGREES 02 MINUTES 11 SECONDS EAST FOR A DISTANCE OF 22.44 FEET (20' RECORD); THENCE SOUTH 89 DEGREES 43 MINUTES 43 SECONDS EAST FOR A DISTANCE OF 72.56 FEET TO THE EAST RIGHT OF WAY OF HAZEL DELL ROAD ALSO BEING THE POINT OF BEGINNING; THENCE ALONG THE SOUTH LINE OF A TRACT OF LAND IN INSTRUMENT #201704304 AS RECORDED IN HAMILTON COUNTY SOUTH 89 DEGREES 43 MINUTES 43 SECONDS EAST FOR A DISTANCE OF 987.37 FEET TO THE NORTHEAST CORNER OF A TRACT OF LAND IN INSTRUMENT #2005066142; THENCE ALONG THE EAST LINE OF SAID TRACT OF LAND SOUTH 00 DEGREES 10 MINUTES 09 SECONDS WEST FOR A DISTANCE OF 264.24 FEET TO THE NORTH LINE OF A TRACT OF LAND IN BOOK 312, PAGE 746; THENCE ALONG SAID NORTH LINE SOUTH 89 DEGREES 52 MINUTES 57 SECONDS EAST FOR A DISTANCE OF 62.77 FEET TO THE NORTHEAST CORNER THEREOF; THENCE GENERALLY ALONG A FARM FENCE SOUTH 00 DEGREES 05 MINUTES 16 SECONDS EAST FOR A DISTANCE OF 1507.23 FEET; THENCE GENERALLY ALONG A FARM FENCE SOUTH 88 DEGREES 42 MINUTES 17 SECONDS WEST FOR A DISTANCE OF 595.77 FEET; THENCE CONTINUING ALONG SAID FENCE SOUTH 89 DEGREES 14 MINUTES 19 SECONDS WEST FOR A DISTANCE OF 442.54 FEET TO THE EAST RIGHT OF WAY OF HAZEL DELL ROAD AS RECORDED IN INSTRUMENTS #2007061495 AND #2007048109; THENCE ALONG SAID EAST RIGHT OF WAY LINE FOR THE FOLLOWING 4 (FOUR) COURSES 1) NORTH 02 DEGREES 16 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 57.71 FEET; 2) ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 9925.00 FEET AND AN ARC LENGTH OF 385.90 FEET AND SUBTENDED BY A LONG CHORD BEARING OF NORTH 01 DEGREES 09 MINUTES 10 SECONDS WEST AND A DISTANCE OF 385.88 FEET; 3) NORTH 00 DEGREES 02 MINUTES 21 SECONDS WEST FOR A DISTANCE OF 1085.26 FEET; 4) NORTH 00 DEGREES 35 MINUTES 24 SECONDS WEST FOR A DISTANCE OF 266.91 FEET TO THE POINT OF BEGINNING. CONTAINING 42.500 ACRES OF LAND, MORE OR LESS.

Exhibit B
Park



- LEGEND**
- II OFF-ROAD
 - III EASEMENT
 - IV FINANCIAL EASEMENT
 - V EASEMENT
 - VI EASEMENT
 - VII EASEMENT
 - VIII EASEMENT
 - IX EASEMENT
 - X EASEMENT
 - XI EASEMENT
 - XII EASEMENT
 - XIII EASEMENT
 - XIV EASEMENT
 - XV EASEMENT
 - XVI EASEMENT
 - XVII EASEMENT
 - XVIII EASEMENT
 - XIX EASEMENT
 - XX EASEMENT
 - XXI EASEMENT
 - XXII EASEMENT
 - XXIII EASEMENT
 - XXIV EASEMENT
 - XXV EASEMENT
 - XXVI EASEMENT
 - XXVII EASEMENT
 - XXVIII EASEMENT
 - XXIX EASEMENT
 - XXX EASEMENT



	PROJECT NO. 15-0000000000 SHEET NO. P100 DATE 12/15/2015
	PROJECT NAME COURTYARDS OF HAZEL DELL PRIMARY PLAT
	DRAWN BY DATE 12/15/2015
PRIMARY PLAT	CHECKED BY DATE 12/15/2015
COURTYARDS OF HAZEL DELL PRIMARY PLAT	DESIGNED BY DATE 12/15/2015
P100	PROJECT LOCATION HAZEL DELL ROAD, CITY OF HAZEL DELL, MISSOURI