



Board of Supervisors Memorandum

July 1, 2014

**Update on Star Valley Requirements and Recommended Process
for Initiating the County's Option to Re-Plat**

Background

On June 3, 2014, the Board of Supervisors directed staff provide a report on July 1, 2014, on Star Valley infrastructure requirements, including the status of Camino Verde, and a recommended process for initiating the County's option to re-plat a subdivision based on a developer's default on the terms of an assurance agreement.

The Star Valley Specific Plan, which was approved in 1987, contained requirements for the developer to obtain approval of a transportation improvement financing plan and a transportation system implementation plan. During the master block plat process, a traffic impact study was performed, which along with the conditions of rezoning for the approved Specific Plan, became the basis for a transportation improvement financing and implementation plan that was agreed to by the developer in October 2002. Among the agreed to improvements was construction of Camino Verde from the northern boundary of the project to Valencia Road and the installation of traffic signals at key intersections including Valencia and Wade Road.

Subsequent to approval of the master block plat, further platting of Blocks 2, 10, 13, 15 and 18 and construction of roadway improvements to serve those lots occurred. Based on completion of improvements to serve these blocks, lots within the blocks were released for sale to home-buying consumers. Another nine (9) blocks were sold in a bulk sale to the Pasqua Yaqui Tribe and released from the assurances. Thirteen other blocks have not been re-subdivided and are currently held in assurance trust. Blocks 4, 7 and 8 have been further subdivided into lots and are currently in default of the assurance agreement since improvements for the blocks have not been completed within the required timeframe and the blocks were transferred to a new trust without approval of the County. Likewise, the Camino Verde roadway and Wade Road signalization improvements required by the transportation improvement financing and implementation plan have not been completed by the developer.

The developer has repeatedly rejected his obligation to complete these required improvements despite having agreed to the transportation improvement financing and implementation plan in 2002, and has resisted multiple County requests to facilitate a resolution for construction of the improvements. In order to address traffic safety concerns associated with the single point of access into the Star Valley development, which were compounded by the Star Valley developer's sale of nearby land to a charter school and his refusal to construct the required Camino Verde roadway and Wade Road signalization improvements, Pima County installed a temporary traffic signal at the intersection of Wade

The Honorable Chair and Members, Pima County Board of Supervisors
**Re: Update on Star Valley Requirements and Recommended Process for Initiating the
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Road and Valencia and has completed the design for Camino Verde. Construction of the developer-obligated Camino Verde improvements is immediately warranted alleviate safety concerns and significant traffic delays occurring because of the single entrance to this large development.

Recommendation

Based on the information in the attached reports from Development Services and the Department of Transportation, the following actions are recommended to the Board of Supervisors for consideration at its July 1, 2014 meeting:

1. Approval of proposed Board of Supervisors Policy F.53.4, Subdivision Assurance Agreements – Time Extension, Substitute Assurance and Re-Platting.
2. Direct staff to initiate the re-platting process for Star Valley as outlined in the proposed Policy, and conduct a review of other subdivisions with assurance defaults to determine appropriate actions to remedy.
3. Direct staff to complete the actions necessary for the County to advance construction of Camino Verde to resolve traffic safety concerns related to the Star Valley developer's failure to construct this developer-obligated infrastructure.

Direct staff to take all actions necessary to secure reimbursement from the Star Valley developer for all expenses related to Camino Verde construction and traffic signal installation at Valencia and Wade Roads.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C.H. Huckelberry for".

C.H. Huckelberry
County Administrator

CHH/dr – June 26, 2014

Attachments



DATE: June 25, 2014

TO: C. H. Huckelberry, County Administrator

FROM: Carmine DeBonis Jr., Development Services Director 

SUBJECT: **Requested Update on Star Valley Requirements and Recommended Process for Initiating the County's Option to Re-Plat**

On Tuesday, June 3, 2014, the Board of Supervisors directed staff to return on July 1st with a report on Star Valley requirements and recommendations regarding a process for initiating the County's option to re-plat.

General Background

In the 1950 and 1960's, land in Arizona was split into subdivision lots and sold without roads, water, sewer, or other utilities or amenities. Promises were often made to buyers, many who lived out of state, to entice them into owning "a piece of paradise" for their retirement. Some lots were sold to multiple buyers; other subdivisions were never started. In Pima County, we have present day examples in the New Tucson and Diamond Bell Ranch subdivisions.

In response to land fraud cases and consumer complaints, Arizona adopted assurance provisions into the land subdivision statutes. This form of consumer protection requires a developer of subdivisions to post acceptable assurances to cover the installation of necessary infrastructure and authorizes counties to implement such measures. The form of assurances can include certified funds, certificate of deposit, surety bond or letter of credit from an accredited institution to cover the cost of construction, or placement of the title to the subdivision into a third party trust agreement and withholding the release of lots until required improvements are completed.

Of these forms of assurances, developers in unincorporated Pima County primarily utilize the third party trust agreement, which is also the form preferred by the County due to difficulties experienced collecting bonds and making sure the posted funds are adequate after passage of time and associated increases in construction costs.

An assurance agreement is signed at the time of plat approval and submitted with the plat for approval by the Board of Supervisors and subsequent recording. Per Pima County Zoning Code (18.69.070), the assurance agreement outlines the procedure for the release of subdivision blocks and lots. The agreement also contains a condition authorizing Pima County to re-plat the

subdivision should developer not complete the required improvements or otherwise fail to comply with the obligations of the agreement.

Star Valley Assurance Agreements

USH/SVA Star Valley LLC and SVA Corporation submitted an assurance agreement with Title Guaranty Agency as the trustee. The agreement was recorded with the master block plat on November 7, 2002. As a master planned community, blocks were released to subsequent developers to plat with new assurance agreements, as on-site and off-site infrastructure improvements were completed. Blocks 2, 10, 13, 15 and 18 have been released for sale to homebuyers.

The timeframe for certain remaining on-site and off-site improvements were phased with development and in accordance with the master traffic study and the transportation improvement financing and implementation plan. In 2006, a new assurance agreement with USH/SVA Star Valley, LLC was submitted with the subdivision plat for Block 4, Lots 1-572. In 2007, Block 7, Lots 240-507 and Block 8, Lots 1-239 also recorded a new agreement with the subdivision plat and the same parties.

In 2008, Mr. Cesare requested to sell nine (9) blocks of Star Valley to the Pascua Yaqui Tribe (Blocks 20, 22, 23, 24, 26, 27, 28, 29 and 30). He also advised Pima County that Title Guaranty Agency was no longer in business and he wished to assign Blocks 1, 3, 5, 6, 9, 11, 12, 14, 16, 17, 19, 21 and 25 to Stewart Title. The nine (9) blocks being sold to the Tribe were released from trust and a new assurance agreements with Stewart Title were presented to the Board of Supervisors for approval covering the remaining the blocks in Star Valley.

Blocks 4, 7 and 8 were not included in the new agreements. These blocks were conveyed to a new Stewart Title trust without permission of the County and without a new assurance agreement, which is a default of the previously approved agreement as well as a violation of state law and public reporting requirements. Additionally, the improvements required under the previous assurance agreement for these lots were not completed within the four (4) year timeframe, which constitutes a default of the terms of the agreement. Absent completed improvements and accurate assurances, the lots in these blocks could potentially be susceptible to conveyance to unsuspecting homebuyers without infrastructure improvements.

Infrastructure Requirements for Star Valley

The Star Valley Specific Plan was approved by the Board of Supervisors in 1987. The Specific Plan included a transportation circulation concept plan and preliminary street phasing plan. The adopted rezoning ordinance contained conditions related to the transportation improvements. Specifically, rezoning condition 11.D required approval of a transportation improvement financing plan and a transportation system implementation plan.

In February 2002, a Traffic Impact Analysis (TIA) was submitted with the Star Valley Master Block Plat which provided specific transportation detail beyond the conceptual/preliminary

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exhibits of the Specific Plan. The information included in the TIA formed the basis of the required transportation improvement financing and implementation plan. The transportation improvement financing and implementation plan was agreed to by the developer in October 2002. Included in this plan was phased construction of Wade, Camino Verde, Los Reales, Viviana and Yedra roadways and signalization for key intersections.

Accordingly, the transportation improvement financing and implementation plan (derived from the Master TIA), the Star Valley Master Block Plat and the associated assurance agreements for construction of subdivision improvements collectively reflect the obligations of the master developer. A subsequent addendum to the Master TIA for Star Valley Blocks 4, 7 and 8 further identified needed transportation improvements.

Since approval of the Master Block Plat, five blocks have been re-platted and over 1,500 lots have been released for sale. Roughly, 1,300 building permits have been issued for single-family homes. All of the homes within these subdivisions rely on access via Wade Road, the only constructed roadway into the master development. Three additional Blocks (4, 7 and 8) have been re-platted into 1,079 lots which have not been released. Another nine Blocks were released from the Master Block Plat and sold to the Pasqua Yaqui Nation.

Despite agreeing to the transportation improvement financing and implementation plan, the master developer has repeatedly disputed any obligation to construct the required improvements. On this basis, we do not plan to release further blocks or lots for sale until the master developer commits to complete specific improvements contained in the transportation improvement financing and implementation plan and the TIA addendum for Blocks 4, 7 and 8, which include installation of the Wade Road traffic signal, construction of Camino Verde from the Specific Plan boundary to Valencia Road, and the possible widening of Wade Road to four lanes.

To address traffic safety concerns associated with a single point of access into Star Valley, which were compounded by the Star Valley developer's sale of nearby land to a charter school, Pima County installed a temporary traffic signal at the intersection of Wade Road and Valencia and has completed the design for Camino Verde. Construction of the developer-obligated Camino Verde improvements is currently warranted due to safety concerns and significant traffic delays occurring because of the single entrance to this large development.

Proposed Process for Default on Assurances

Non-performing subdivisions dot the Arizona landscape as a result of the Great Recession that began around 2006. Much like the 1960's, when lots were subdivided and sold without guarantees of infrastructure, jurisdictions are facing challenges related to incomplete subdivision improvements even with assurances. Bankruptcy, tax liens and forfeiture can compromise a jurisdiction's ability to enforce the assurances intended to protect homebuyers.

In Cochise County, two subdivisions were vacated and re-platted by the Board of Supervisors primarily because of the tax liens. As taxes on lots go unpaid, the lots can generate tax liens

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individually and eventually be sold through tax lien proceedings, thereby violating the assurance agreements and related development conditions and ordinances. Cochise County re-platted the subdivisions to the original blocks to prevent such fragmented individual ownership of lots.

The Lincoln Institute of Land Policy published a report in 2014 titled *Arrested Developments, Combating Zombie Subdivisions and Other Excess Entitlements*, that includes other instances of subdivision related difficulties. The report addresses the following entitlement issues:

- Distressed subdivisions where the developer is facing financial issues completing infrastructure.
- Premature subdivision plats with no market demand for the entitlements and no improvements.
- Obsolete subdivisions which are incomplete and no longer meet safety standards.
- Zombie subdivisions where development began but was left unfinished.
- Paper subdivision plats that have no development activity or improvements.

The report notes that when more than one individual takes ownership of lots in these subdivisions, the issues become more difficult to resolve and the legal process becomes more complex. The report spotlights the Town of Maricopa, as well as Marana, as examples of jurisdictions battling difficult subdivision issues. To avoid escalating difficulties in Pima County, the establishment of a process for re-platting and consideration of re-platting for projects in default of the terms of the assurance agreement is necessary before lots are inadvertently transferred to unsuspecting individuals.

A preliminary review of subdivision plats in Pima County revealed that there are presently 67 subdivisions where the 4 year construction timeframe has expired. Of the 67 projects, 25 require offsite road improvements beyond a street connection to an existing roadway. There are 59 projects of the 67 beyond the 4 year construction timeframe where no lots have been released from the trust for sale to consumers, including 21 of the 25 projects where offsite improvements are required.

Of the projects requiring offsite improvements where partial lot releases have occurred, the Star Valley development is the only project with a currently confirmed default of the assurance agreement where the developer is disputing its obligation to construct the required improvements. As such, re-platting of Blocks 4, 7 and 8 of the Star Valley development in accordance with the approved assurance agreement is warranted. Further analysis of each of the other projects beyond the 4 year construction time frame will be conducted to determine what actions may be required to remedy the default and whether those projects should be considered for re-plat.

As directed by the Board, staff has developed a process for re-platting in the form of the attached proposed Board of Supervisors Policy. The Policy as presented for Board consideration reflects

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the existing assurance authorization contained in Chapter 18.69 of the Pima County Zoning Code and the County assurance agreements. The Policy also establishes steps for initiation of the County's option to re-plat.

Recommendations

Based on the above, the following actions are recommended to the Board of Supervisors for consideration at its July 1, 2014 meeting:

1. Approval of proposed Board of Supervisors Policy F.53.4, Subdivision Assurance Agreements – Time Extension, Substitute Assurance and Re-Platting.
2. Direct staff to initiate the re-platting process for Star Valley as outlined in the proposed Policy, and conduct a review of other subdivisions with assurance defaults to determine appropriate actions to remedy.
3. Direct staff to complete the actions necessary for the County to advance construction of Camino Verde to resolve traffic safety concerns related to the Star Valley developer's failure to construct this developer-obligated infrastructure.
4. Direct staff to take all actions necessary to secure reimbursement from the Star Valley developer for all expenses related to Camino Verde construction and traffic signal installation at Valencia and Wade Roads.

Attachment: Proposed Board of Supervisors Policy F.53.4, Subdivision Assurance Agreements – Time Extension, Substitute Assurance and Re-Platting

c: John M. Bernal, Deputy County Administrator – Public Works

PIMA COUNTY, ARIZONA BOARD OF SUPERVISORS POLICY

Subject: Subdivision Assurance Agreements - Time Extension, Substitute Assurance and Re-Platting

**Policy
Number**

F 53.4

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Purpose

The Pima County Board of Supervisors regulates the subdivision of lands with the goal of ensuring public safety, the provision of necessary infrastructure and adherence to adopted County regulations. The Board has adopted regulations to ensure the completion of improvements through the posting of assurances by the development entity in order to protect home-buying consumers. The assurance agreement contains a four (4) year time frame to complete the improvements. This policy addresses the appropriate course of action for extending or renewing an assurance agreement, determining when updates are needed based on changing conditions and re-platting a subdivision based on a default of the assurance agreement.

Background

State law requires an assurance with each subdivision plat that ensures completion of subdivision improvements. Per ARS §11-821.C the assurances can take many forms and guarantee that the lots will not be sold to unsuspecting buyers without necessary infrastructure. Although Pima County Code 18.69.070 allows various forms of assurances such as bonds, letters of credit or cash, the most common form of assurance is the placement of title to the subdivision into a third-party trust. Pima County issues authorization to release lots after the improvements have been inspected and approved.

The assurance agreement specifies a date by which the improvements shall be completed, which is four (4) years from the date of the agreement. The time limit enables the County to assess whether conditions or standards have changed that would substantially impact the plat configuration and potentially warrant a change to the subdivision plat. If not in default, the developer may request a time extension or other substitute assurance agreement. If in default, the County has the option to re-plat the subdivision or, in some cases, the option to re-confirm compliance of the subdivision with current regulations and conditions.

Since 2006, the period referred to as the Great Recession, several subdivision plats and master block plats exist where improvements have not been completed and the construction timeframe in the assurance agreement has expired. In many instances the failure to construct improvements within the timeframe does not present an immediate problem since none of the subdivision lots have been released from the assurance trust for sale to consumers and the surrounding conditions have not changed. However, in partially constructed developments where some lots have been released and sold prior to completion of all infrastructure, as well as in older subdivisions with outdated traffic and hydrology studies or delinquent taxes that could result in lots being conveyed out of the assurance trust without necessary infrastructure, it is in the best interest of the County to consider exercising its option to re-plat.

Policy

A. For agreements that are not in default: Prior to the County authorizing a time extension or other substitute assurance agreement, the following shall occur:

1. Developer initiated time extension or substitute assurance requests shall be submitted in writing to the Development Services Department for consideration.
2. Development Services shall consult with the Department of Transportation, Regional Flood Control District and Regional Wastewater Reclamation Department.

3. The departments shall provide recommendations to the Development Services Director or designee on whether a time extension or other substitute assurance agreement should be granted. Department recommendations should consider the following criteria:
 - a. Status of required on-site and off-site improvements and prospective completion date for unfinished improvements.
 - b. Change in surrounding conditions or adopted codes that warrant an updated traffic study, drainage study, capacity allocation evaluation or other similar documentation updates.
 - c. Presence of tax liens on the subdivision lots or blocks.
 - d. Adherence to conditions of the assurance agreement, rezoning, development agreement or other code or ordinance.
 - e. Effect that required improvements have on the overall required infrastructure, previously released lots and remaining unreleased lots.
4. Upon receipt of department recommendations, a time extension or other substitute assurance agreement may be granted, with appropriate conditions as warranted, by authority of the County Administrator in accordance with Resolution 1986-03 which is hereby delegated to the Development Services Director.
5. Upon receipt of a department recommendation against a time extension or other substitute assurance agreement, the property owner may revise the plat per Section C below.

B. For agreements that are in default: The Development Services Director or designee may, at his sole discretion, initiate the County's option to re-plat or allow the property owner to cure the default per Section C below.

Upon consideration of the criteria in Section A.3 with the Department of Transportation, Regional Flood Control District and Regional Wastewater Reclamation Department, the Development Services Director or designee may initiate the County's option to re-plat as follows:

1. Send notice of default and intent to re-plat by certified letter to the last known address of the owner of the parcels, developer and trustee on the assurance agreement. The letter will provide notice to the owner that the County will initiate its option to re-plat by sending a resolution to Board of Supervisors for consideration no sooner than 30 days from the date of the letter.
2. Following the 30 days, the Board of Supervisors will consider a resolution directing staff to commence the re-plat process. All costs incurred by the County in re-platting will be the responsibility of the property owner.
3. If so directed, staff will utilize an appropriately registered or licensed engineer/surveyor to prepare the re-plat. The re-plat may eliminate lot lines, roadways and common areas. The re-plat may retain regulated floodplains, hillside development designations, natural open space, easements and other regulatory features that are a condition of development. Upon staff concurrence with the prepared re-plat, the plat will be forwarded to the Board of Supervisors for consideration. The Assessor's office and Treasurer's office will be notified to facilitate property tax assessment and collection.

4. If approved, the plat will be recorded along with the Board of Supervisor's resolution. The property owner will be notified and will be invoiced for the costs to re-plat.

C. If required per Section A or B above, the property owner shall submit evidence to Pima County Development Services that the prior approved plat complies with current regulations, under current site conditions. Development Services shall consult with the Department of Transportation, Regional Flood Control District and Regional Wastewater Reclamation Department. If upon receipt of department recommendations, the Development Services Director or designee determines, in his sole discretion, that the approved plat complies, a time extension or substitute assurance agreement may be granted, with appropriate conditions as warranted, in accordance with Section A.4. If upon receipt of department recommendations, the Development Services Director or designee determines, in his sole discretion, that the approved plat does not comply, the property owner shall submit revisions to the plat for County review and approval, along with applicable fees and new assurances.

D. If the property owner elects to cure the default under new agreements acceptable to Pima County that will fulfill the developer's obligation and ensure performance, the County may at its discretion cease the re-platting process.



MEMORANDUM

DATE: June 26, 2014

TO: C.H. Huckelberry, County Administrator

FROM: Priscilla S. Cornelio, P.E., Director, Transportation *PC*

SUBJECT: Camino Verde – Brightwater Way to Valencia Road

This memorandum provides information on the status of the Camino Verde roadway connection project between Brightwater Way and Valencia Road, which will provide a secondary access to the Star Valley Development. At this time, the current access into this development is limited to Wade Road, approximately ½ mile to the west of Camino Verde.

As you are aware, the completion of the extension of Camino Verde to Valencia is the obligation of the master developer for this area. And the master developer has, to date, refused to complete the Camino Verde extension as required by transportation improvement financing plan and a transportation system implementation plan mandated by the adopted rezoning ordinance for the area. At the time of adoption, the plans specifically rejected the master developer's request to use development impact fees or to allow development impact fee credit for construction of the Camino Verde extension. However, in response to numerous comments and feedback the department has received, PCDOT was requested to develop the design and contract documents in preparation of future construction, and in anticipating of the funding responsibilities being reconciled.

Summary

The plans have been finalized and construction activities could be initiated as early as September/October 2014 with an expected duration of approximately 3-4 months. As an alternative, the portion containing the intersection improvements can be separated from the rest of the project and advanced in order to avoid significant costs and schedule impacts to the Valencia project. However, the benefits of the completed roadway would not be achieved until the full connection is made, which is dependent on an agreement with the developer for their financial responsibility to the project.

Traffic Issues

Although there are no actual traffic counts specific to Camino Verde, the volumes associated with Wade Road that were collected as part of the RTA funded project on Valencia, from Wade

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Road to Mark Road, can be used as an indication of the volume coming out of the Star Valley area. The Traffic Engineering Study for Valencia Road (July 2011), identified significant traffic flow along Wade Road (Star Valley access) traveling northbound and then eastbound onto Valencia in the morning (AM peak hour 363 vph). This situation is reversed in the evening with the primary flow being westbound on Valencia and turning southbound at Wade (PM peak hour 473 vph). The study also identified that the Valencia/Wade intersection warranted a traffic signal, which was installed by PCDOT in August 2012. The master developer was required to share the cost of this signal with Pima County. However, the master developer was non-responsive when contacted about the need for the signal. Instead, Pima County installed this signal in advance of the main roadway project in response to numerous requests from the residents regarding congestion and backups, and was subsequently confirmed with direction from the BOS. While Pima County has informed the master developer of his obligation to contribute to the cost of the final signal, the master developer was again non-responsive.

While the addition of the traffic signal at the Valencia/Wade intersection provided some measure of interim relief, the completion of the Academy Del Sol Charter School during the summer of 2013 has resulted in further increase in traffic volumes along Wade Road, thus highlighting the need for a second connection at Camino Verde.

Safety/Accessibility

Over the past few years, safety/accessibility has been a primary concern for the residents in this area, in which they have continually highlighted the need for a second access connection in and out of Star Valley. In the event that Wade road is closed due to an accident or inclement weather, there is no other way for the residents to access their homes, or for first responders to render emergency aid or assistance. These concerns have been voiced over the last couple of years, specifically during a project open house in December 2012, in which several individuals voiced their concern about the timing of construction as well as the need for a secondary access into the Star Valley area. In addition, in May 2013, another meeting was held at Ryan Airfield with local residents, and once again they expressed their concerns regarding additional access into the area, along with several other concerns about their overall development.

The completion of Camino Verde would address these accessibility concerns, as well as provide an alternative route during the construction/widening of Valencia Road between Wade Road and Mark Road, which is anticipated to commence later this fall once the project plans are approved by ADOT and FHWA.

Cost and Funding

The cost for the construction phase of the Camino Verde roadway project is estimated to be approximately \$1.2M, with an overall total project cost estimated to be approximately \$1.6M (including contingency).

As of this time, Development Services has been unable to reach agreement with the Developer for funding of this project. However, the project can be funded with available impact fees from

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the Southwest benefit area plus approximately \$40,000 from Tucson Water for the water work at the intersection of Camino Verde and Valencia.

At this time, there is sufficient funding available to construct the Camino Verde connection project, in addition to meeting the financial commitment for the pending Valencia project from Wade Road to Mark Road.

I trust this provides the information you need; and, please let me know if you have any questions.

PSC:RE:dg

c: John M. Bernal, Deputy County Administrator
Carmine DeBonis Jr., Director, Development Services
Carla L. Blackwell, Deputy Director, Development Services
Lesley Lukach, Pima County Attorney's Office
Ana Olivares, Deputy Director for Infrastructure
Rick Ellis, Engineering