



Travis County Commissioners Court Agenda Request

Meeting Date: September 4, 2012

Prepared By: _____ **Phone #:** 854-9383

Division Director/Manager: Carol B. Joseph

Department Head/Title: Steven M. Manilla, P.E., County Executive -TNR

Sponsoring Court Member: Commissioner Eckhardt, Precinct Two

AGENDA LANGUAGE:

Approve full and final settlement and release between Travis County and KB Home regarding substandard roads located at Quiet Pond Court and portions of Rick Whinery Drive and Emmett Parkway in the Wells Branch Phase 2-A Subdivision and authorize the County Judge to execute the same on behalf of the County.

BACKGROUND/SUMMARY OF REQUEST:

On June 12, 2012, the Travis County Commissioners Court determined that improvements to substandard roads located at Quiet Pond Court and portions of Rick Whinery Drive and Emmett Parkway in the Wells Branch Phase W-2A subdivision are necessary for the public health, safety, and welfare of the residents of the County. Pursuant to its authority under Chapter 253 of the Transportation Code, the Court proposed to improve these substandard roads to bring them in compliance with County standards and to assess all or a portion of the costs against the property owners along these roads. The Court held a public hearing on August 14, 2012 to receive public comments regarding the proposed improvements and assessments, and in accordance with Section 253.006 of the Transportation Code, ballots were sent by certified mail to each record owner of real property along the substandard roads.

There are 66 parcels in the Wells Branch Phase W-2A subdivision that abut the substandard roads. The estimated cost of the improvements is \$210,000. The property owners in the subdivision have proposed paying 25% of the expenses of the project, for a total of \$52,500, to be assessed equally per lot on a yearly basis for five years. The assessment per lot would be \$795.45. Eight of the parcels are owned by the Wells Branch Municipal Utility District (the "MUD").

KB Home (the successor-in-interest to the developer that developed the lots along these substandard roads) has agreed in principle to contribute \$7540 towards the non-MUD property owners' share of the cost of the project in exchange for the

County releasing KB Home of all claims relating to the roads. The \$7540 amounts to a reduction of \$130.00 for each non-MUD-owned lot.

TNR recommends that the Court approve the settlement agreement with KB Home so that, if a majority of the returned ballots are in favor of the assessments, the assessment for each non-MUD-owned lot would be reduced by \$130.00. TNR further recommends that the Court authorize the County Judge to execute the settlement agreement on behalf of the County.

ISSUES AND OPPORTUNITIES:

The proposed settlement agreement provides that the \$7540 payment from KB Home would be used to reduce the assessments for each non-MUD-owned lot and gives KB Home 14 days after it executes the agreement to deliver the \$7540 payment to the County. The proposed settlement agreement also states that the County will return the \$7540 to KB Home and that the agreement will be considered null and void if the County does not accept the substandard roads into the County roadway system by September 30, 2018.

FISCAL IMPACT AND SOURCE OF FUNDING:

EXHIBITS/ATTACHMENTS:

Full and Final Settlement and Release between Travis County and KB Home

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429

CC:

Susan Spataro	David Jungerman	Dana Debeauvoir	Gail Fisher
Michael Winn	Loretta Farb	Tom Nuckols	Julie Joe
Steve Sun	Donna Williams-Jones	Lee Turner	

FULL AND FINAL SETTLEMENT AND RELEASE BETWEEN TRAVIS COUNTY AND KB HOME

This Agreement is made by and between Travis County (hereinafter referred to as "County") and KB Home (hereinafter referred to as "KB") (collectively hereinafter referred to as the "Parties") as follows:

WHEREAS, the original developer of Quiet Pond Court and portions of Rick Winery Drive and Emmett Parkway (together, the "Substandard Roads") did not take the steps necessary to get the Substandard Roads accepted into the County-maintained roadway system when they were first constructed and thus the Substandard Roads have not been maintained by the County;

WHEREAS, the Substandard Roads do not currently meet County road standards;

WHEREAS, KB Home is the successor in interest to the original developer of the Substandard Roads;

WHEREAS, conflict exists between the Parties hereto with respect to responsibility of KB Home to bring the Substandard Roads into compliance with County road standards

WHEREAS, KB Home disclaims any liability related to the condition of the Substandard Roads; and

WHEREAS, the parties desire to compromise and settle all claims and causes of action of any kind between them regarding the Substandard Roads;

THEREFORE, in consideration of the mutual promises and agreements herein contained, including the recitals set forth above, the Parties agree as follows:

1. County, for and in consideration of the payment of \$7540.00 (the "Settlement Sum") by KB Home, the sufficiency of which consideration is hereby acknowledged and confessed, does hereby fully and forever RELEASE, REMISE, ACQUIT and DISCHARGE KB Home, its agents and servants, and all persons natural or corporate in privity with it, from any and all claims, demands, causes of action of any kind whatsoever which County may now have or hereafter have or claim to have, whether the same be known or not known at this time, directly or indirectly attributable to bringing the Substandard Roads into compliance with County standards.
2. It is further understood and agreed that the above stated consideration is the sole consideration for this release and the consideration stated herein is contractual and not mere recital.
3. As further consideration for the execution of this Agreement, each party represents

the following as an inducement to the other:

- a. It is completely and thoroughly understood that this is a complete and final settlement of any and all claims which it may have against the party released and it shall not receive any further payment on account of any damages claimed or that could have been claimed attributable to bringing the Substandard Roads into compliance with County standards, except those amounts and that consideration specifically stated herein.
 - b. That in entering into this Agreement, it is doing so freely and voluntarily upon the advice of its own counsel and in the exercise of its own free will, act and deed, free of any duress or coercion.
 - c. Except as specifically contained herein, no representations, promises, or other statements have influenced the making and executing this Agreement and this Agreement is final and conclusive and the parties desire that it be final and conclusive.
 - d. This Agreement, and the provisions contained herein, are not intended to be, and shall not be taken as, admission of liability by any individual or entity, and this Agreement is made simply as a compromised settlement of the disputed claims.
 - e. The Parties intend for the Settlement Sum to be used by the County to reduce the amount of any assessment imposed by the County pursuant to Chapter 253 of the Transportation Code against each parcel that abuts the Substandard Roads that is not owned by the Wells Branch Municipal Utility District.
 - f. Notwithstanding any provision to the contrary, if the County does not accept the Substandard Roads into the County-maintained roadway system by September 30, 2018, the County will return the Settlement Sum to KB Home, and this Agreement will be null and void.
 - g. KB Home will cause the Settlement Sum to be delivered to the County within 14 days after it executes this Agreement.
4. It is further expressly understood and agreed that this Agreement shall be construed and enforced in accordance with the laws of the State of Texas.
 5. If any provision of this Agreement or the application thereof to any of the parties hereto is held invalid, any such invalidity shall not affect other provisions or applications of this Agreement.

In Witness Whereof, the Parties have executed this Agreement effective as of the

later date of signing as indicated below.

KB Home

Travis County

By: _____
Its: _____

Samuel T. Biscoe
Travis County Judge

Date: _____

Date: _____