

TO: Mayor and City Council

FROM: Scott Buening, Community Development Director

DATE: April 28, 2020

RE: Approval of Resolution 20-071-R and 20-072-R Authorizing the Draw on Letters of Credit for Property at 1780 Hubbard Avenue

1. **Summary:** Should the City approve Resolution 20-071-R and 20-072-R authorizing the draw on Letters of Credit for property at 1780 Hubbard Avenue.

2. **Background:** The City Council approved of Resolution 20-054-R which authorized the draw on two Letters of Credit for a project located at 1780 Hubbard Avenue on April 6, 2020. When staff sent the draw request to the bank, they denied the draw as they felt that each Letter of Credit should have a separate Resolution. While we dispute that assertion, we are still proposing this to fully comply with the banks position. Resolution 20-071-R is for Soil Erosion Control and 20-072-R is for Off Site Roadway and Parking Lot Improvements.

Staff recommends approval of each Resolution.

3. **Alternatives, including no action if viable:**

- **Approve of Resolutions 20-071-R and 20-072-R Authorizing the Draw on Letters of Credit for Property at 1780 Hubbard Avenue.**
- **Do not approve of Resolutions 20-071-R and 20-072-R.**

- **Budget Impact:** The City would secure \$20,000 in funding to pay for resolution of the deficiencies on the property at 1780 Hubbard Avenue.
- **Staffing Impact:** No additional staffing is necessary for this item.

4. **Timeline for actions:** The Letters of Credit expire on June 4, 2020, so this draw needs to be provided to the bank in adequate time to effectuate the draw.

5. **Staff recommendation:** Staff recommends approval of Resolution 20-071-R and 20-072-R authorizing the draw on Letters of Credit for property at 1780 Hubbard Avenue.

Attachments:

1. Resolution 20-071-R authorizing the draw on Soil Erosion Control Letter of Credit for property at 1780 Hubbard Avenue.
2. Resolution 20-072-R authorizing the draw on Off Site Roadway and Parking Lot Improvements Letter of Credit for property at 1780 Hubbard Avenue.
3. Letters of Credit.

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 20-071-R**

**RESOLUTION AUTHORIZING THE DRAW ON SOIL EROSION
LETTER OF CREDIT FOR PROPERTY AT 1780 HUBBARD AVENUE**

WHEREAS, the City of Batavia (“City”) has Letter of Credit Number SB105292214 (also 4312001334) for Soil Erosion Control Improvements on Lot 23 in the Batavia Business Park, said Letters being issued from STC Capital Bank, now St. Charles Bank and Trust Company; and

WHEREAS, work has not been completed according to the plans submitted to the City, and the Developer is now in default on the obligations to complete said improvements; and

WHEREAS, The City has advised the Developer of a breach of the obligations of the Letter of Credit at least 30 days prior to this Resolution, that the deficiencies have not been cured and the City has in fact has filed suit to compel compliance with the required improvements; and

WHEREAS, the City has been put on notice that the Letter of Credit will expire on June 4, 2020 and will not be renewed; and

WHEREAS, the City finds that it needs to draw on the Letter of Credit in order to compel compliance with the required improvements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows;

SECTION 1. The recitals set forth above are incorporated in this Resolution as the material findings of Mayor and City Council.

SECTION 2. The City of Batavia has determined per said Letter of Credit that “(1) Developer has failed to satisfactorily complete or carry on the work of the installation and construction of the required improvements, in accordance with the schedule or at a faster pace if the installation of the private improvements shall be completed before public improvements to service them are available” and therefore the Developer is in default.

SECTION 3. The City of Batavia hereby demands to draw on Letter of Credit Number SB105292214 (also 4312001334) for Soil Erosion Control Improvements in the entire amount of \$10,000.00.

CITY OF BATAVIA, ILLINOIS RESOLUTION 20-071-R

PRESENTED to the City Council of the City of Batavia, Illinois, this ___ day of _____, 2020.

PASSED by the City Council of the City of Batavia, Illinois, this ___ day of _____, 2020.

APPROVED by me as Mayor of said City of Batavia, Illinois, this ___ day of _____, 2020.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Baerren				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Malay					Knopp				
5	Uher					Beck				
6	Cerone					Russotto				
7	McFadden					Miller				
Mayor Schielke										
VOTE: Ayes		Nays		Absent		Abstentions				
Total holding office: Mayor and 14 aldermen										

ATTEST:

Ellen Posledni, City Clerk

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 20-072-R**

**RESOLUTION AUTHORIZING THE DRAW ON OFF SITE ROADWAY
/PARKING LOT IMPROVEMENTS LETTER OF CREDIT FOR
PROPERTY AT 1780 HUBBARD AVENUE**

WHEREAS, the City of Batavia (“City”) has Letter of Credit Number SB 105292214 (also 4312001335) for Off-Site Roadway/Parking Lot Improvements on Lot 23 in the Batavia Business Park, said Letters being issued from STC Capital Bank, now St. Charles Bank and Trust Company; and

WHEREAS, work has not been completed according to the plans submitted to the City, and the Developer is now in default on the obligations to complete said improvements; and

WHEREAS, The City has advised the Developer of a breach of the obligations of the Letter of Credit at least 30 days prior to this Resolution, that the deficiencies have not been cured and the City has in fact has filed suit to compel compliance with the required improvements; and

WHEREAS, the City has been put on notice that the Letter of Credit will expire on June 4, 2020 and will not be renewed; and

WHEREAS, the City finds that it needs to draw on the Letter of Credit in order to compel compliance with the required improvements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows;

SECTION 1. The recitals set forth above are incorporated in this Resolution as the material findings of Mayor and City Council.

SECTION 2. The City of Batavia has determined per said Letter of Credit that “(1) Developer has failed to satisfactorily complete or carry on the work of the installation and construction of the required improvements, in accordance with the schedule or at a faster pace if the installation of the private improvements shall be completed before public improvements to service them are available” and therefore the Developer is in default.

SECTION 3. The City of Batavia hereby demands to draw on Letter of Credit Number SB 105292214 (also 4312001335) for Off-Site Roadway/Parking Lot Improvements in the entire amount of \$10,000.00.

CITY OF BATAVIA, ILLINOIS RESOLUTION 20-072-R

PRESENTED to the City Council of the City of Batavia, Illinois, this ___ day of _____, 2020.

PASSED by the City Council of the City of Batavia, Illinois, this ___ day of _____, 2020.

APPROVED by me as Mayor of said City of Batavia, Illinois, this ___ day of _____, 2020.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Baerren				
2	Callahan					Wolff				
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5	Uher					Beck				
6	Cerone					Russotto				
7	McFadden					Miller				
Mayor Schielke										
VOTE: Ayes Nays Absent Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

Ellen Posledni, City Clerk