



Date of Council Meeting: April 12, 2016

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: MacDowell Proffer Bond

Staff Contact: Brian Boucher, Deputy Director, Planning and Zoning

Council Action Requested: Approve a bond for certain public and private improvements proffered as part of the rezoning identified as TLZM-2013-0005 MacDowell Property.

Staff Recommendation: That Town Council approve the proposed proffer bond for the MacDowell Property.

Commission Recommendation: Not applicable.

Fiscal Impact: None.

Work Plan Impact: None.

Executive Summary: A Settlement Agreement between the Town of Leesburg and Gordon K. MacDowell requires Mr. MacDowell to post a proffer bond with the Town to resolve outstanding zoning issues, and to ensure completion of certain public and private improvements proffered as part of the rezoning known as TLZM-2013-0005 MacDowell Property. Section 15.2-2299 of the Code of Virginia authorizes the zoning administrator to require a bond to ensure timely completion of proffered conditions so long as the guarantee is satisfactory to the Town Council. Mr. MacDowell requests that Council accept a Letter of Credit from the Middleburg Bank in the amount of \$320,000 to ensure completion of an on-site sand containment system, and off-site public improvements including frontage improvements along Harrison and South Streets to comply with the Settlement Agreement and proffers of TLZM-2013-0005.

Background: The rezoning identified as TLZM-2013-0005 MacDowell Property was approved by Ordinance No. 2014-O-026 on September 19, 2014. The Concept Plan and proffers require the developer to build an on-site sand containment system to keep sand from clogging nearby storm drainage inlets on Harrison Street. Proffers also require public sidewalk improvements to be constructed within a certain timeframe.

In 2015, the Zoning Administrator determined that certain zoning and proffer obligations were not being met which ultimately resulted in a Settlement Agreement authorized by the Circuit Court for the County of Loudoun on February 10, 2016. Paragraph No. 5 of the Settlement Agreement specifies that a proffer bond in the amount of \$320,000.00 be established for the cost of the on-site sand containment system, and the off-site frontage improvements must be posted

with the Town no later than May 2, 2016 or at the time of site plan approval whichever occurs first.

In this case, a site plan (TLPF-2015-0007 MacDowell Brew Kitchen) is nearing completion, and posting of this proffer bond is one of the few remaining issues. Authority to accept a bond to ensure completion of proffered improvements is given to the Town Council by Section 15.2-2299 of the Code of Virginia. In addition, Section 13-9(a)(3) of the Subdivision and Land Development Regulations provides Town Council with the authority to accept a bond for improvements proffered as part of a rezoning.

The developer, Gordon K. MacDowell, proposes to provide a Letter of Credit issued by the Middleburg Bank. The Middleburg Bank meets the Town requirements for a bank that issues Letters of Credit. The \$320,000.00 bond amount has been determined by staff to adequately cover the cost of the proposed improvements.

Attachments: (1) Resolution

PRESENTED: April 12, 2016

RESOLUTION NO. _____

ADOPTED: _____

A RESOLUTION: AUTHORIZING A PERFORMANCE AND PROFFER COMPLIANCE AGREEMENT AND APPROVING A PERFORMANCE GUARANTEE FOR COMPLETION OF AN ON-SITE PRIVATE SAND CONTAINMENT SYSTEM AND OFF-SITE PUBLIC ROAD FRONTAGE IMPROVEMENTS FOR THE MACDOWELL PROPERTY (TLZM-2013-0005)

WHEREAS, in the rezoning identified as TLZM-2013-0005 MacDowell Property approved by Ordinance No. 2014-O-026 dated September 19, 2014, the applicant/owner Gordon K. MacDowell proffered to construct a private on-site sand containment system and off-site frontage improvements along Harrison Street and South Street as shown on the approved plan and in the proffers; and

WHEREAS, in 2015 the Zoning Administrator determined that certain zoning obligations were not being met contrary to the approved proffers for TLZM-2013-0005; and

WHEREAS, on February 10, 2016, the Town of Leesburg and Mr. MacDowell entered into a Settlement Agreement authorized by the Circuit Court for the County of Loudoun to resolve outstanding zoning issues on the MacDowell Property related to compliance with the approved plan and proffers; and

WHEREAS, Paragraph No. 5 of the Settlement Agreement specifies that a proffer bond in the amount of Three Hundred Twenty Thousand Dollars (\$320,000.00) for the cost of the required on-site sand containment system and for the required off-site frontage improvements shall be posted with the Town no later than May 2, 2016; and

A RESOLUTION: AUTHORIZING A PERFORMANCE AND PROFFER COMPLIANCE AGREEMENT AND APPROVING A PERFORMANCE GUARANTEE FOR COMPLETION OF AN ON-SITE PRIVATE SAND CONTAINMENT SYSTEM AND OFF-SITE PUBLIC ROAD FRONTAGE IMPROVEMENTS FOR THE MACDOWELL PROPERTY (TLZM-2013-0005)

WHEREAS, Gordon K. MacDowell, the developer, requests approval of a proffer bond for such private and public improvements in order to comply with the Settlement Agreement and to proceed with construction to guarantee compliance with the TLZM-2013-0005 MacDowell Property approved plan and proffers; and

WHEREAS, Section 15.2-2299 of the Code of Virginia authorizes the zoning administrator to enforce conditions attached to a zoning map amendment by requiring a guarantee, satisfactory to the governing body, in an amount sufficient and conditioned upon the construction of any physical improvements required by the conditions; and

WHEREAS, Section 13-9(a)(3) of the Subdivision and Land Development Regulations provides the authority to accept a bond for improvements proffered as part of a zoning map amendment; and

WHEREAS, the zoning administrator believes that a Letter of Credit in a sufficient amount is satisfactory and will ensure compliance with the Settlement Agreement and the timely completion of the specified improvements; and

WHEREAS, the developer has requested approval of a Letter of Credit issued by the Middleburg Bank in the amount of \$320,000.00 to guarantee compliance with the Settlement Agreement and the completion of the proffered on-site sand containment system and the frontage improvements; and

WHEREAS, the Director of Public Works and Capital Projects and the Zoning Administrator recommend approval of a Performance and Proffer Compliance Agreement and acceptance of the Letter of Credit in the amount of \$320,000.00 issued by the Middleburg Bank.

A RESOLUTION: AUTHORIZING A PERFORMANCE AND PROFFER COMPLIANCE AGREEMENT AND APPROVING A PERFORMANCE GUARANTEE FOR COMPLETION OF AN ON-SITE PRIVATE SAND CONTAINMENT SYSTEM AND OFF-SITE PUBLIC ROAD FRONTAGE IMPROVEMENTS FOR THE MACDOWELL PROPERTY (TLZM-2013-0005)

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia as follows:

SECTION I. The Town Manager shall execute the Performance and Proffer Compliance Agreement in a form approved by the Town Attorney for the private on-site sand containment system and the off-site public frontage improvements as shown on the approved plans and proffers for Ordinance No. 2014-O-026 and as specified in Paragraph No. 5 of the Settlement Agreement.

SECTION II. A Letter of Credit issued by the Middleburg Bank in the amount of \$320,000.00 is approved as security to guarantee installation of the private on-site sand containment system and the off-site public frontage improvements as shown on the approved plans and proffers for Ordinance No. 2014-O-026 and as specified in Paragraph No. 5 of the Settlement Agreement.

PASSED this 12th day of April, 2016.

David S. Butler, Mayor
Town of Leesburg

ATTEST:

Clerk of Council