

# Memorandum

## Department of Public Works



**TO:** Michael O. Geisel, P.E.  
City Administrator

**FROM:** James A. Eckrich, P.E.  
Public Works Dir. / City Engineer

**DATE:** September 19, 2018

**RE:** Brandywine Neighborhood Improvement District

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The Brandywine Subdivision has submitted a Pre-Application for the establishment of a Neighborhood Improvement District (NID) in order to reconstruct its private streets. The Pre-Application includes all of the required information, including approval of a minimum of seventy percent of the qualified voters residing within the proposed district. 156 of the 173 eligible voters (91%) voted in favor of the NID.

The streets of Brandywine are comprised of concrete with an asphalt overlay. These streets are over 40 years old and in declining condition. The subdivision studied the matter at length, and contemplated several different improvement projects. A number of meetings were held, including a meeting open to the entire subdivision held at City Hall. Ultimately, Brandywine determined that the NID, with Public Works Staff managing the project, was the best way to reconstruct its streets. By proceeding in this manner, the newly constructed streets will meet all City standards. The preliminary estimate to reconstruct the streets within Brandywine, provided by City Staff, is \$1,085,000.

Should City Council vote in favor of this project, the following will occur:

- a) City staff will meet with representatives from Brandywine to further define the project scope. Issues to consider include parking lots, sidewalk, curbing, and storm water concerns.
  - b) A detailed estimate will be created based upon the scope defined in A. This estimate will include legal costs and bonding expenses.
  - c) A survey and legal description will be created by City Staff.
  - d) City Staff and Legal Counsel will work with Brandywine to create a final NID petition which meets the requirements of 67.457 RSMO. Brandywine will then circulate this petition and provide the results to the City of Chesterfield.
  - e) Public Works Staff will compile a bid package, including plans and specifications. Once completed, the project will be publicly bid in accordance with City requirements.
  - f) The petition results and bid results will then be submitted to City Council for formal approval of the project. If approved, the project would then be managed by Public Works Staff.
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In addition to the requirements above, the City Staff will also require a letter from the Brandywine subdivision indicating that, in the future, it will work with the City to provide the temporary and permanent easements necessary to construct the missing section of the Pathway on the Parkway along the southeast portion of Chesterfield Parkway.

It is anticipated by both City Staff and the Brandywine Subdivision that bonds will be created to fund the construction of this project. For the previous two NIDs, General Fund – Fund Reserves were utilized to avoid bonding costs. However, during the approval of the previous NID, the direction from City Council was that all future NIDs would need to be bonded.

**Action Recommended**

This matter should be forwarded to the Finance and Administration Committee of City Council. Should the Committee favor the request from Brandywine, it should vote to recommend the creation of the NID, which should then be forwarded to the full City Council.

The Pre-Application, a sample Ballot, and the City NID Policy have been attached to assist F&A / City Council in its consideration of this matter. Should you have any questions, please contact me.

Please forward to the F&A Committee for review and direction.

 9/20/2018

**PRE-APPLICATION FOR  
NEIGHBORHOOD IMPROVEMENT DISTRICT**

1. **Name of Proposed District:** Brandywine Condominium Association (BCA) Neighborhood Improvement District

(a) Principals for the proposed project include:

Contact person: Byron Bury, BCA Board Member and BCA NID Chairperson 636.448.2447  
burycs@hotmail.com

Subdivision attorney: NA

Subdivision engineer: NA

Subdivision Board of Managers: Linda Carlson, President; Karen Bergman, Treasurer; Darrell Waters;  
Grace Stratton; Pat Northcutt; Anne Reese; Vipin Bhatt; Norman Wolff; Cherie Vie; and Byron Bury

2. **Narrative Description of the Proposed Project:**

(a) Description of project: The project consists of improvement of concrete streets and parking lots, including all costs incurred in connection with such improvement, including, but not limited to: costs incurred for the preparation of preliminary reports, plans and specifications, public notices, fees and expenses of consultants, interest accrued on borrowed money, costs incurred in connection with the issuance of bonds or notes (including reasonably required reserve funds for bonds or notes), materials and labor, reasonably construction contingencies, work done or services performed by the City of Chesterfield in the administration or supervision of such improvement.

(b) Project location: Brandywine Condominiums, Chesterfield, Mo.

(c) Description of project, need for NID, and private financing: Forming a neighborhood improvement district ("NID") would allow the Brandywine Condominium Association to obtain a long-term, low-interest loan, with all billing and collections managed by the City of Chesterfield, as well as the engineering, evaluation, bidding and project management.

(d) Identification of utility companies serving area: MSD, Missouri American Water Company, Charter, AT&T, Spire, Ameren.

3. **The proposed boundaries of the NID are Brandywine Condominium Plats 1 through 5.**

4. **A list of property owners within the proposed boundaries of the NID is set forth as Exhibit A, attached hereto and incorporated herein by reference.**

5. **The estimated cost of the proposed improvement is \$1,085,000. The final cost of such improvement assessed against the property within the NID shall not exceed such estimated cost by more than 25%. [A preliminary construction estimate is set forth as Exhibit B, attached hereto and incorporated herein by reference.]**

6. **A petition signed by at least 70% of the owners of real property located within the proposed NID is set forth as Exhibit C, attached hereto and incorporated herein by reference.**

7. **The proposed assessment would be levied equally against each unit within the boundaries of the proposed NID.**

8. **Once completed, the improvement will be maintained by the Brandywine Condominium Association.**

# BRANDYWINE CONDOMINIUM ASSOCIATION BALLOT

Road Replacement Options: (1) Concrete - NID program; (2) Asphalt - BCA

### OPTION 1

Work with the City of Chesterfield to form a Neighborhood Improvement District (NID) for Concrete streets and parking lots. Forming a NID would allow the Brandywine Condominium Association to obtain a long-term, low-interest loan, with all billing and collections managed by the City of Chesterfield, as well as the engineering, evaluation, bidding and project management. It is estimated that, under this plan, each homeowner would owe approximately \$500 (based on market interest rate) at the end of each calendar year, for a period of 20 years. The repayment obligation would attach to each home and not to each individual owner, meaning that if a current owner sells their home, the new owner would be responsible for balance of future annual payments.

### OPTION 2

Pay through self-funding for Asphalt streets, parking lots and driveways at an estimated cost of \$650,168. Payments would be the responsibility of each homeowner, collected monthly by Brandywine Condominium Association over a 2-year period (2019 & 2020), and each homeowner would pay an amount based on the square footage of their home (average overall, estimated at \$157 each month). The Brandywine Condominium Association would be responsible for the engineering, evaluation, bidding and project management.

### BALLOT INSTRUCTIONS:

Ballot must be completed and submitted with the signatures of each unit owner listed on the unit title (the owners of each unit must sign ballot). If the unit is owned in trust, one owner must sign as trustee.

### 'NID' VOTING PROCESS:

The recorded condo owners of each unit, or trustee(s), are allowed a single vote. To cast your vote, place a check mark next to Option 1 or Option 2 (choose only one Option), and sign your name and address in the spaces provided. Ballots counted by Board of Directors.



Option 1 - NID, option for concrete



Option 2 - Brandywine, option for asphalt

Name (Print)

\*Legal Owner\*

Name (Sign)

Property Address

Shannon Knobloch

1509 Hedgford Drive 63017

Shannon Knobloch

Unit 2

**CITY OF CHESTERFIELD, MISSOURI  
NEIGHBORHOOD IMPROVEMENT DISTRICT  
POLICY**

**INTRODUCTION**

One of the more serious issues facing the City of Chesterfield today is how to finance local infrastructure improvements primarily in subdivisions that existed prior to incorporation and improvements owned by the subdivision. Improvements to streets, storm water systems and subdivision amenities are critical to the quality of life of the residents of the City. Unfortunately, these infrastructure projects tend to be expensive and are overly burdensome for some residents. The issue becomes even more challenging when the infrastructure improvements benefit a specific geographic area or subdivision.

In most states, units of local governments (both cities and counties) can issue general obligation bonds backed by the "full faith and credit" of the governmental unit. These bonds are issued and the debt retired through assessments, special fees or taxes, levied against the real property that benefits from the improvements. Prior to 1991, Missouri had no provisions in place for this type of funding. Therefore, when faced with a specific improvement project, Missouri cities and counties had few options. One option was to consider the issuance of a general obligation bond issue, subject to a vote of the entire city or county. Another was use the authority granted under the subdivision indenture to impose special assessments, the revenues from which would be used to finance the improvements. The primary drawback to the assessment process was that the cumbersome, inflexible nature of the subdivision indentures made assessments difficult to enact and enforce. Subdivisions could also establish a special benefit district or a special tax district, but those had added costs, as well. The result was often that the subdivision and the municipality would simply ignore the situation. None of these options offered a practical alternative to resolve the problem.

The City Council is aware of the need to develop a structure that would enable improvements to be made to streets, stormwater systems and other subdivision amenities. At the same time, the City Council is concerned about maintaining its current strong financial rating. The City Council believes that the formation of Neighborhood Improvement Districts can provide an excellent opportunity for citizens to examine the particular needs of their communities or subdivisions and to structure a plan to address their needs. The City Council believes that it is important that local residents have the ability to avail themselves of those lawful opportunities which enable them to improve their quality of life. Further, the City Council is willing and able to partner with residents to make the necessary improvements in a way that is suitable to the residents and the city alike.

**THE MISSOURI NEIGHBORHOOD IMPROVEMENT DISTRICT ACT**

The Missouri Neighborhood Improvement District Act, Sections 67.453 to 67.475 of the Revised Statutes of Missouri, also known as the NID Act, was designed to provide a practical, flexible, and responsive tool to finance public infrastructure in response to citizen needs. Simply

Armstrong Teasdale LLP

NID Policy

Dated April 29, 2005

Revised to reference F&A Committee 1-3-08

defined, a Neighborhood Improvement District, or NID, is a geographically defined area within which certain public improvements are financed by the local governmental entity (either city or county) through the issuance of general obligation bonds. These general obligation bonds are in turn retired through special assessments imposed on the owners of real property within the NID area.

Therefore the basic premise of NID financing is that only those who benefit from the financed improvements pay for those improvements.

### **FORMATION OF A NEIGHBORHOOD IMPROVEMENT DISTRICT**

In Missouri, Neighborhood Improvement Districts can be formed in one of two ways: through the initiative petition process in which a petition is signed by at least two-thirds of the owners of record of real property within the proposed district area; or through an election submitted to all qualified voters residing within the proposed district area. Passage of the NID issue requires a four-seventh majority if the election is conducted at a general municipal election day, primary or general elections and two-thirds at all other elections. On all other election days, a two-thirds majority is required for passage.

The NID Act outlines the structure of and formation process for NIDs. These can be very complex, even to those experienced in governmental affairs. The NID Act places very specific requirements on City officials planning to implement NID. While some may believe that the passage of the ballot issuance or the submission of the petition is the major hurdle in the formation of a NID, it represents the first step in what can be a complicated and potentially costly process.

### **PROJECTS ELIGIBLE FOR NID FINANCING**

The NID Act has defined the range of projects which are eligible for Neighborhood Improvement District financing. Under the Act, to "improve" a project is to "construct, reconstruct, maintain, restore, replace, renew, repair, install, equip, extend, or to otherwise perform any work which will provide a new public facility or enhance, extend or restore the value or utility of an existing public facility." Further, an "improvement" includes "any one or more public facilities or improvements which confer a benefit on property within a definable area and may include or consist of a reimprovement of a prior improvement" including but not limited to projects:

- (a) to acquire property or interests in property when necessary or desirable for any purpose authorized by sections 67.453 to 67.475;
- (b) to open, widen, extend and otherwise to improve streets, paving and other surfacing, gutters, curbs, sidewalks, crosswalks, driveway entrances and structures, drainage works incidental thereto, and service connections from sewer, water, gas and other utility mains, conduits or pipes;

- (c) to improve main and lateral storm water drains and sanitary sewer systems, and appurtenances thereto;
- (d) to improve street lights and street lighting systems;
- (e) to improve waterworks systems;

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- (f) to improve parks, playgrounds and recreational facilities;
- (g) to improve any street or other facility by landscaping, planting of trees, shrubs, and other plants;
- (h) to improve dikes, levees and other flood control works, gates, lift stations, bridges and streets appurtenant thereto;
- (i) to improve vehicle and pedestrian bridges, overpasses and tunnels;
- (j) to improve retaining walls and area walls on public ways or land abutting thereon;
- (k) to improve property for off-street parking facilities including construction and equipment of buildings thereon;
- (l) to acquire or improve any other public facilities or improvements deemed necessary by the governing body of the city or county; and
- (m) to improve public safety.

### **COSTS THAT CAN BE PAID WITH NID FINANCING**

The NID Act identifies the costs that can be paid for through a Neighborhood Improvement District. Eligible costs include:

“... all costs incurred in connection with an improvement, including, but not limited to, costs incurred for the preparation of preliminary reports, the preparation of plans and specifications, the preparation and publication of notices of hearings, resolutions, ordinances and other proceedings, fees and expenses of consultants, interest accrued on borrowed money during the period of construction, underwriting costs and other costs incurred in connection with the issuance of bonds or notes, establishment of reasonably required reserve funds for bonds or notes, the cost of land, materials, labor and other lawful expenses incurred in planning, acquiring and doing any improvement, reasonable construction contingencies, and work done or services performed

by the city or county in the administration and supervision of the improvement...”

### **FINANCING NEIGHBORHOOD IMPROVEMENT DISTRICTS**

Neighborhood Improvement Districts can be financed in several ways, however the most common means is through the issuance of “debt” by the City, which is usually in the form of a general obligation bond. Because these bonds are designated as “Neighborhood Improvement District Bonds,” they generally carry relatively low interest rates when compared to conventional bank financing.

Once a NID is established, the City may issue temporary notes or may authorize a local bank or other financial institution to issue temporary notes which may then be refunded by issuing the NID bonds or general obligation bonds. This allows for projects to be linked together (also called “pooling”) creating a larger single bond which further reduces issuance costs and allows projects to begin construction while the final financing structure is developed.

These bonds are repaid through an annual assessment on all real property within the NID. The special assessment is included in the annual property tax bill for residents so only one payment is required per year. Failure to pay the special NID assessment is handled in the same manner as failure to pay property taxes. Failure to pay property taxes may result in the sale of the real property by the City at a tax sale. Further, the IRS has determined that special assessments cannot be deducted from a property owner’s income taxes, as can real and personal property taxes.

### **COMPLEXITIES ASSOCIATED WITH BOND ISSUES**

Bond issues, including those issued for Neighborhood Improvement Districts, create an obligation for the issuing agency, the City, which pledges its “full faith and credit” to secure the bonds. This means that should a default occur and repayment of the principal and interest on the bonds not occur as scheduled, the City of Chesterfield has pledged to make the delinquent payments. Therefore, the legal and financial structure of these bond issues is of critical importance both to ensure that the project is financially viable and, should a default occur, that sufficient protection is in place to minimize the potential for losses.

Correctly structuring and marketing general obligation bonds requires professional advice and expertise. First, bond counsel must be retained. Bond counsel serves several purposes including structuring the issue, drafting the documents, certifying its tax-exempt status and other related actions. A trustee must be retained. A trustee is the paying agent for the issuance. It is the trustee who certifies that sufficient funds are available to meet debt service obligations. In some instances, an underwriter is retained to “market” the bonds. To “market” bonds is to determine the bond interest rates and supply potential customers to purchase the bonds. The bonds and various disclosure documents must be printed in large quantities by a qualified printer. In certain instances, a financial advisor is retained to provide independent financial analysis of the project to ascertain risk. The costs incurred in completing these and other related tasks are called the costs of issuance. These costs are added to the obligation and are part of the overall issuance. Therefore, bond issues can become expensive to develop.



However, one must consider the fact that interest rates for government backed securities, including those issued for NIDs, will carry an interest rate substantially lower than the interest rates normally available to individuals because the City's pledge of its full faith and credit makes the obligations virtually risk free.

Therefore, in considering whether to pursue a Neighborhood Improvement Project, one must weigh the costs of complying with the "red tape" normally associated with government financing with the substantially lower interest rate offered by using government backed securities.

### **IMPACT OF SIZE OF PROJECT**

Given that the most appropriate means of financing neighborhood improvement projects is through the issuance of bonds, it is important that projects be large enough to justify the costs associated with the issuance. It makes very little sense to use bond financing for a small project if the costs of issuance add appreciably to the project. The bond market generally favors larger issues over smaller issues and there are distinct cost savings for larger issues when compared to smaller issues. Therefore, the City recommends that subdivisions consider the following when deciding whether to pursue a NID project:

Projects with total costs below \$300,000 will face some difficulty seeking Neighborhood Improvement District financing. The administrative costs and the costs of issuance are such that including projects of this size in the NID program will cause issuance and sale problems for the entire program. There are some additional considerations to make for projects between \$300,000 and \$500,000. It is possible that projects of this size can be "pooled", or joined, to one another to form a larger bond issue, but this will require significant coordination between construction and completion schedules. Projects greater than \$500,000 are more feasible than other smaller projects, although the aspect of "pooling" of these issues is still a very important consideration. Projects of \$1.0 million or greater are typically sustainable as "stand alone" bond issuances.

Although the City has recommended the following considerations, it is willing to consider any project that leads to the improvement of local subdivisions. To encourage the NID process for existing streets, stormwater systems and other subdivision improvements, the City desires to provide assistance to its residents by evaluating potential NID projects and determining such project's feasibility.

### **SPECIAL REQUIREMENTS TO ESTABLISH A NID**

In addition to the requirements for financing, the NID Act requires that the area seeking to be designated as a NID to operate in a readily-defined area. Generally, this requires that a metes and bounds survey of the NID area be completed and that a specific legal description be developed for the district. To assist in this process, the City will help identify and retain an

acceptable land surveyor who will complete the survey in a reasonable period of time and at a reasonable cost.

The NID Act also requires that the total costs for the proposed project be certified. However, properly determining these costs can be a cumbersome and expensive activity for property owners who are not familiar with the process. An incorrect cost estimate could cost the subdivision flexibility later, so the City is willing to prepare the cost estimates for the NID project and verify that they comply with the requirements of the NID Act.

Because these projects involve public improvements, all projects must include the payment of prevailing wage rates and must comply with the normal bidding and procurement policies of the City. The City is experienced in these matters and will incur the costs associated with the preparing and soliciting bids.

The City views itself as a partner in these proceedings, and is therefore willing to facilitate the formation and administration of NIDs. As a result, in addition to the items listed above, the City will also incur the initial legal expenses necessary to work with the subdivision trustees to prepare a proper petition and to ensure that the NID process has been properly initiated. The City begins by providing its residents with a form of the pre-application petition necessary to begin the formation process (see **Appendix A**).

### **LENGTH OF FORMATION PROCESS**

Because each Neighborhood Improvement District must be judged on its own strengths and merits, it is not possible to establish a "normal" time frame for establishment. It is important to understand that a NID is a "quasi-public" structure that requires that the City Council complete several administrative and legislative steps. However, the City Council is committed to considering and approving all feasible NID projects.

### **HOW TO INITIATE THE FORMATION PROCESS**

Given the fact that there are several "up-front" costs required to comply with the NID Act to form a Neighborhood Improvement District, and that these up-front costs may be substantial, the City Council would like to provide some assistance during the initiation process to verify that the proposed projects are being properly defined and that they have been structured in a way that is economically feasible. City Council has developed a "pre-application" which will be used to enable the City to perform an initial evaluation of all NID proposals. The Pre-Application is designed to help residents conceptualize the project and identify the means of making it most-productive. After an initial review and evaluation, it will then go through the formal review process.

#### *Pre-Application*

The Pre-Application contains the following elements, all of which are essential to its evaluation:

1. The name of the proposed Neighborhood Improvement District and the principals involved in the project. "Principals" include the local contact

person, the subdivision attorney, the subdivision engineer, the subdivision trustees and any other individual that will be involved in the project.

2. A Narrative Description of the proposed project. This narrative should include a statement of the problem and the prior steps that the subdivision has taken in attempting to solve the problem. If any sanctions have been imposed by other governmental agencies, such as the Health Department, those should be listed as well. The narrative should also include a general description of the area, including the major roads which service the subdivision, the character of the subdivision, in particular, an assessment of whether the area growing, declining, or unchanged; the number of single family homes, businesses, or other dwelling units in the subdivision and the utility companies which serve the area, particularly water company and the sanitary sewer company. Finally, the narrative should describe any steps that the subdivision has taken to secure financing for this project and the status of such requests.
3. If available, a metes and bounds survey of the proposed district. If this is not available, a copy of the recorded plat from the Recorder of Deeds office will suffice, which the City will help obtain. If this is not available, an aerial of the proposed area should be provided, which the City is also able to assist in securing through either commercial firms or the St. Louis County Assessor's Office.
4. A list, by street address and mailing address, of all persons residing within the boundaries of the proposed district. Such list can be obtained from the City.
5. A list, by street address, of all current owners of real property located within the boundaries of the proposed district. Such list can be obtained from the City.
6. A Preliminary Construction Estimate prepared and sealed by an engineer registered by the State of Missouri for the proposed construction project. The City has experience in obtaining bids for such estimates and is willing to assist as necessary. Because NID projects are public works projects, they are subject to the prevailing wage statutes of the state, and the City is able to advise as to whether the bids comply with the law.
7. A petition, which at a minimum, includes the signatures of at least 70% of the qualified voters residing within the proposed district;

-OR-

A petition, which at a minimum, includes the signatures of at least 70% of the owners of real property located within the proposed district. The City can help obtain names and addresses of those eligible to sign the petition.

8. A record of the current annual subdivision assessments, if any, the uses established for these assessments, a record of payments for each lot or property owner for the past three (3) years, and what proposed maintenance schedule will be established to ensure that one the improvement has been made that it is adequately maintained. To the extent that it is necessary, the City is able to assist in making these determinations.

Six copies of this Pre-Application should be submitted to the City Council as follows:

City Council of the City of Chesterfield  
690 Chesterfield Parkway West  
Chesterfield, Missouri 63017-0760  
ATTN: Finance & Administration Committee

After receipt, the City Administrator will cause a formal review of the application by all appropriate City Staff and/or City consultants and will, following said review, forward those applications considered to be complete to the City's Finance and Administration Committee. During this process, the Committee will also verify the accuracy of the property tax payment records on all properties within the proposed NID.

Throughout the evaluation process, the Finance and Administration Committee will be committed to reviewing and revising the proposal as necessary to help meet the needs of the subdivision and the City. To the extent that portions of the proposal are not sufficient to satisfy the requirements of the NID Act, the City will discuss potential revisions with the subdivision and attempt to reach agreement on any issues of concern.

After the review of the Pre-Application is completed, the Finance & Administration Committee will complete a written evaluation of the proposed project. This evaluation will include a recommendation on whether to include the project in the Neighborhood Improvement District Program for the City. The evaluation will be submitted to the applicant and after comments have been received, will be presented to the City Council for their action.

#### *Formal Application*

Once the Pre-Application review process is complete and the proposal is forwarded to the City Council for approval, it will be included in the NID program and the formal development of a NID Proposal will be started. Costs incurred during the formal application process are also reimbursable under the NID Act. The formal proposal should include all statutory requirements including, but not limited to:

1. The completion of a metes and bounds survey and the development of a project legal description;
2. The development and certification of costs associated with the project. This is to include construction costs (developed through a formal bidding process); the costs of issuance of the bonds to finance the project; the

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administrative costs for the project; and any other allowable costs deemed necessary and appropriate for the successful operation of the NID; and

3. The completion and submission of a petition which complies with the statutory requirements of section 67.457 RSMO.

-OR-

The conduct of an election which complies with the statutory requirements of section 67.457 RSMO.

As with the Pre-Application, to the extent that the subdivision requires assistance with any of the elements of the formal application process, City staff is available to help.

**FOR ADDITIONAL INFORMATION**

For additional information, contact:

Assistant City Administrator for  
Community Services & Economic Development  
690 Chesterfield Parkway West  
Chesterfield, Missouri 63017-0760  
636-537-6721