

RESOLUTION NO. 2200-07

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR
AUTHORIZING THE TOWN MANAGER TO MAKE PAYMENT FOR
MODIFICATIONS TO THE WINDSOR ROAD BRIDGE OVER WINDSOR CREEK**

WHEREAS, on May 17, 2000, the Town Council of the Town of Windsor adopted Ordinance No. 2000-127, establishing a drainage impact fee upon new development to pay for public drainage facilities, said ordinance providing for potential compensation to developers for construction of certain public drainage facilities, and also authorizing the adoption of administrative guidelines relating to the drainage impact fee by Town Council resolution; and

WHEREAS, on May 17, 2000, the Town Council of the Town of Windsor adopted Resolution No. 914-00, which includes administrative guidelines relating to the drainage impact fee, including provisions regarding potential compensation to developers for the construction of certain public drainage facilities; and

WHEREAS, on May 17, 2000, the Town Council adopted Resolution No. 912-00, approving a use permit/precise development plan and tentative subdivision map for the Vintage Greens Subdivision; and

WHEREAS, on June 21, 2000, the Town Council of the Town of Windsor adopted Ordinance No. 2000-130, approving a development agreement for the Vintage Greens subdivision (the "Development Agreement"), said agreement being subsequently executed by the Town of Windsor ("Town") and Damada LLC and Azac LLC (collectively "Developer") on September 27, 2000; and

WHEREAS, on November 1, 2001, the Town of Windsor entered into an Agreement Regarding Rephasing of Improvements for the Vintage Greens Subdivision (the "Rephasing Agreement") with Damada LLC and Azac LLC (collectively "Developer"), implementing the Development Agreement; and

WHEREAS, Resolution No. 912-00 and the Development Agreement provided that the Developer shall construct bypass channel improvements along Windsor Creek and East Windsor Creek identified as elements of the Town of Windsor Cumulative Drainage Impact Mitigation Program (the "Required Bypass Channel Improvements"), the design and construction costs thereof being eligible for credits against drainage impact fees for the Vintage Greens Subdivision and future reimbursement for excess credit in accordance with the provisions of the Town of Windsor's Cumulative Drainage Impact Mitigation Fee Ordinance subject to the approval of the Town Council; and

WHEREAS, the design and construction costs of the Required Bypass Channel Improvements were subsequently determined to be \$347,531.74, said amount being paid to the Developer in full by the Town on January 4, 2007, pursuant to Town Council Resolution No. 1995-06, adopted on December 6, 2006 (\$344,151.74 in the form of cash refund of drainage impact fees previously paid by Developer and \$3,380.00 in the form of drainage impact fees credited to Developer without payment); and

WHEREAS, the Development Agreement provided that the Developer be compensated by the Town for the land area underlying the Required Bypass Channel Improvements in accordance with specific provisions of the Development Agreement, said provisions being outside the scope of Resolution No. 914-00; and

WHEREAS, the compensation due the Developer for land area underlying the Required Bypass Channel Improvements was subsequently determined to be \$413,898.12, said amount being paid to the Developer in full by the Town on January 4, 2007, pursuant to Town Council Resolution No. 1995-06, adopted on December 6, 2006 (in the form of cash payment); and

WHEREAS, the Development Agreement and Rephasing Agreement provided that the Developer shall construct certain modifications to the Windsor Road Bridge over Windsor Creek (the "Required Bridge Modifications"); and

WHEREAS, the Rephasing Agreement provided that the total costs of the Required Bridge Modifications be fairly and reasonably apportioned by the Town between those modifications required to satisfy the drainage objectives of the 1999 Update to the Windsor Cumulative Drainage Impact Mitigation Program and those modifications required to satisfy the development conditions and mitigation measures associated with the subdivision, and that the portion of said costs apportioned to the satisfaction of the objectives of the 1999 Update to the Windsor Cumulative Drainage Impact Mitigation Program may be eligible for credits against drainage impact fees for the Vintage Greens Subdivision and future reimbursement for excess credit in accordance with the provisions of the Town of Windsor's Cumulative Drainage Impact Mitigation Fee Ordinance subject to the approval of the Town Council, all other costs of the Required Bridge Modifications to be the sole responsibility of the Developer; and

WHEREAS, based upon documentation submitted by the Developer, the total fair and reasonable costs of the Required Bridge Modifications have been determined to be \$1,668,597.79, of which \$872,873.94 is fairly and reasonably apportioned to satisfaction of the objectives of the 1999 Update to the Windsor Cumulative Drainage Impact Mitigation Program and \$795,723.85 is fairly and reasonably apportioned to satisfaction of the development conditions and mitigation measures associated with the Vintage Greens Subdivision; and

WHEREAS, under the provisions of Resolution No. 914-00 current drainage impact fee credits are limited to the total drainage impact fees due for a development, with any remaining excess fee credits being eligible for potential future reimbursement in accordance with, and subject to, the provisions of Town Council Resolution No. 914-00 for reimbursement for excess credit; and

WHEREAS, the total drainage impact fees due for the Vintage Greens Subdivision are \$1,037,121.00, of which \$347,531.74 have been previously credited and paid to the Developer for the Required Bypass Channel Improvements, leaving a balance of \$689,589.26 available for potential current drainage impact fee credits for the Required Bridge Modifications, and a balance of \$183,284.68 of the \$872,873.94 fairly and reasonably apportioned to satisfaction of the objectives of the 1999 Update to the Windsor Cumulative Drainage Impact Mitigation Program available for potential future reimbursement in accordance with, and subject to, the provisions of Town Council Resolution No. 914-00 for reimbursement for excess credit; and

WHEREAS, of the total amount of \$689,589.26 available for potential current drainage impact fee credits for the Required Bridge Modifications, there remain outstanding invoices unpaid by the Developer for Town services required to complete the Required Bridge Modifications in the amount of \$25,565.59, upon deduction of which the amount of current drainage impact fee credits potentially due to Developer is reduced to \$664,023.67,

NOW, THEREFORE BE IT RESOLVED that the Town Council of the Town of Windsor authorizes the Town Manager to make payment from the Town's Drainage Mitigation Fund to Damada LLC and Azac LLC or their duly authorized successors or assigns in the total amount of \$664,023.67 as full and complete compensation for the completion of required modifications to the Windsor Road Bridge over Windsor Creek; provided, however, that an additional amount of \$183,284.68 shall be eligible for potential future reimbursement in accordance with, and subject to, the provisions of Town Council Resolution No. 914-00 for reimbursement for excess credit.

PASSED, APPROVED AND ADOPTED this 19th day of December 2007 by the following vote:

**AYES: COUNCILMEMBERS ALLEN, PARKER, SALMON AND
MAYOR PRO TEM GOBLE**
NOES: NONE
ABSTAIN: NONE
ABSENT: MAYOR FUDGE



ROBIN GOBLE, MAYOR PRO TEM

ATTEST:


MARIA DE LA O, TOWN CLERK