

**TOWN OF BLACK BROOK
Polk County, Wisconsin**

**Ordinance # 10-04
An Ordinance Requiring Developer's Agreements**

Section 1: Purpose

This ordinance is enacted to ensure that public improvements that are proposed to be made in the Town of Black Brook due to proposed subdivision and land development activity will be designed and constructed in conformity with Town, County and State laws by requiring that developers agree to design and install public improvements at developer's expense and in conformity with all applicable governmental regulations, that adequate provisions are made by the developer for the future maintenance of stormwater management and erosion control devices by benefited land owners, and that the health, safety and welfare of Town residents and taxpayers are not unnecessarily affected by subdivision and development activity in the town.

Accordingly, and under the authority of the Town under Wis. Stats. ss 60.10(2)(c), 61.34, 61.35, 62.23, 236.13, 236.45 and the remainder of Chapter 236, the Town Board of the Town of Black Brook does hereby ordain that anyone proposing to create parcels of land in a manner that will result in the subdivision of land as defined by Wis. Stats. s 236.02(12) or in the Town's Subdivision Ordinance or that will result in the creation of a certified survey map (CSM) as defined and regulated by Wis. Stats. s 236.34 or in the Town's Subdivision Ordinance shall enter into a developer's agreement with the Town as a condition of the Town's preliminary plat or CSM approval, and in accordance with the requirements of this ordinance, the Town's Subdivision Ordinance and its Application and Review Fees Ordinance.

Section 2: Developer's Agreements Requirement

Anyone proposing to create a certified survey map or a subdivision in the Town of Black Brook shall enter into a developer's agreement with the Town if the development being proposed will create or affect public improvements whether already built or proposed to be built and dedicated to the Town, or if erosion control or stormwater management devices will be permanently installed and drain or affect stormwater drainage from areas other than the individual lot on which such devices will be located.

Section 3: Components of Developer's Agreement

- A. The developer's agreement shall identify all individuals or business entities holding an ownership interest in the subject property or holding an interest under an executed purchase agreement at the time the developer's agreement is executed. The developer's agreement shall also be executed and acknowledged by current and known future mortgagees, and shall be binding on the successors and assigns of the named developers, owners and mortgagees.
- B. The developer's agreement shall contain a full and accurate description of the area being subdivided.
- C. The developer's agreement shall address all exceptions to design standards being sought or being granted by the Town and affecting the area being subdivided.
- D. The developer's agreement shall require that an irrevocable letter of credit be posted with and in favor of the Town. The form of this letter of credit shall be subject to the approval of the Town Attorney. The letter of credit shall serve as a surety to guarantee that all public improvements called for in the plat or CSM are fully and properly installed and accepted by the Town. The developer's agreement shall address whether and when the letter of credit can be reduced or released as public improvements are completed and accepted by the town. The developer's agreement shall further require the developer to maintain the letter of credit in good standing until all improvements have been completed and accepted by the Town. A portion of the letter of credit shall also remain in effect for a period of at least one year after the last improvement has been accepted as a warranty for all improvement work. Pursuant to Polk County ordinance 18.19, up to fifteen percent (15%) of the value of the letter of credit may be required to remain in effect for a period of up to two years as a maintenance guarantee. Any requirement of the Town regarding maintenance of the letter of credit for the warranty period shall be in addition to the referenced Polk County ordinance requirement. The developer's agreement shall further specify that no portion of the letter of credit shall be released until any applicable liens have been released or waived in writing by any subcontractor or material supplier which performed work or supplied material on any public improvement for which acceptance is sought.
- E. The developer's agreement shall state that no work shall commence on the development property until all of the following conditions have been met:
 - 1) Three copies of the approved developer's agreement with exhibits have been fully executed by all parties to it and are in the possession of the Town Clerk.
 - 2) The original of the approved letter of credit is in the possession of the Town Clerk.
 - 3) An approved certificate of insurance naming the Town as a certificate holder is in

- the possession of the Town Clerk.
- 4) All necessary approvals have been granted for the development, including preliminary plat or CSM approval by the Town.
 - 5) The Town has granted written approval to the Developer for work to commence.
- F. The developer's agreement shall disclose and confirm relevant details regarding the developer's insurances, warranties, continuing maintenance requirements and responsibilities and other contracts and agreements affecting the subject property.
- G. Where any platted area in a subdivision or CSM will serve as open or buffer space and be jointly maintained and controlled by the owners of the platted lots or where erosion control or stormwater management devices will be installed in the area being subdivided that will require ongoing maintenance, the developer's agreement shall require that a homeowner's association be created with membership on an equal basis of all platted lots not commonly owned and on an equal basis that association bylaws be developed and that a restrictive covenant or other perpetual, binding legal device be employed that will create, administer and enforce the collective responsibilities of the individual members of the said homeowner's association concerning commonly held areas and/or erosion control or stormwater management devices.
- H. A developer's agreement shall contain measures to protect the investments and expectations of the Town and of existing and future lot owners against unilateral changes in the organizational or governing documents of a homeowner's association by a developer or association member(s) by requiring advance Town approval of material changes to the homeowner's association by-laws or restrictive covenants. **[Does the Town want to be identified as an enforcing entity in the restrictive covenants???**
- I. The developer's agreement and its exhibits shall contain information regarding the nature, extent, design, construction, quantity, location and other relevant characteristics, in such detail as requested by the Town, concerning all planned public infrastructure improvements including, but not limited to, sanitary sewer service, water service, public ways and roads, suggested speed limits, cul-de-sacs, intersections and road connection, stormwater and erosion control measures, parks, berms, plantings, ponds, streams, paths, lighting, monumentation, outbuildings, utility easements, drainage easements and all other public improvements that may be proposed by a developer or required by then existing state, county or Town statutes, regulations or ordinances.
- J. The developer's agreement shall contain the developer's representation concerning intended subdivision design standards and home price ranges and its agreement to maintain such standards through build out of the subdivision. When required by the Town, the developer's agreement shall further require such provisions to be placed in recorded restrictive covenants covering the development property. Such restrictive covenants shall be subject to Town approval.

- K. The developer's agreement shall address the timing of joint driveway paving, shall require shared maintenance agreements concerning shared driveways and shall address the control and removal of debris and rubbish during initial construction on lots being created.
- L. The developer's agreement shall refer to or include as exhibits the following information:
1. Preliminary plat;
 2. Final plat, to be added once approved and recorded;
 3. Road design and construction plans;
 4. Stormwater calculations and plans;
 5. Irrevocable letter of credit (photocopy);
 6. Construction schedule with cost estimates for all earth moving and public improvements, to be replaced by the developer with accepted bid amounts as soon as available;
 7. Homeowner's association articles of incorporation and bylaws, where required;
 8. Homeowner's association and any other restrictive covenants, where required;
 9. Copies of the documents officially creating any developer business entity that holds or will hold title to the property while the plat or CSM lots are initially developed and/or built;
 10. Utility easements, drainage easements, and conservation easements, where required;
 11. Town permits for any incoming transfer of development rights that will operate to create greater dwelling unit densities in the subject subdivision than would be allowed under the Town's Subdivision Ordinance without a transfer of development rights;
 12. Legal description of the development property;
 13. Phase map, if applicable;
 14. Grading plan for the development property;

12. Other project-related information as required by the Town.
- M. The developer's agreement shall require that all land divisions affected by the ordinance be subject to review and approval by the Town engineer and attorney. The developer's agreement shall require the developer to pay all of the Town professional fees and expenses related to such review as well as related to the developer's agreement itself. The developer's agreement shall require the developer to deposit up to ten percent (10%) of the estimated project costs in escrow in order to ensure payment of the professional review fees.
- N. The developer's agreement may also address areas not included in this ordinance or otherwise expressly required by law but that are nonetheless necessary, in the Town's sole discretion, to reasonably protect and promote the public health, safety and welfare of the residents and taxpayers of the Town of Black Brook.

Section 4: When Developer's Agreements Shall Be Executed and Delivered to the Town

- A. For a major subdivision, the developer's agreement shall be executed and delivered to the Town Board prior to commencement of any work on the development property.
- B. For certified survey maps, the developer's agreement shall be executed and delivered to the Town Board prior to its final approval of the said map.
- C. Failure to execute and deliver a developer's agreement to the Town within forty-five (45) days of the time of valid submission of a complete application to the Town Board for CSM or preliminary plat approval shall be grounds for rejection of the application by the Town unless the time is extended by written agreement with the developer.

Section 5: Violations and Penalties

- A. Anyone commencing the construction of any public improvements in an area for which preliminary plat approval has been requested and anyone causing or attempting to cause a plat or a certified survey map to be recorded without first executing a developer's agreement with the Town shall pay a forfeiture in an amount as set by the Town Board plus the Town's legal fees and costs of prosecution. The amount of the forfeiture shall be as set forth in the Town's Citation Ordinance. Each day during which such violation exists constitutes a separate offense. Non-compliance with this ordinance shall also constitute grounds for an injunction or other appropriate action or proceeding to stop a violation of any provision of this ordinance. No building permit shall be issued for any lot in any area for which a developer's agreement is required and has not been executed by all required parties. These penalties are in addition to any other penalties provided by

law.

- B. A developer's unilateral and material change of any portion of a homeowner's association governing document or restrictive covenants in a manner that has the potential to adversely affect the aesthetic value or other expectations of the Town or of current or future lot owners other than those of the developer shall constitute grounds for the Town to withhold further building permits in the subdivision affected until the change has been removed or modified to the satisfaction of the Town.

Section 6: Severability

If any portion, phrase or word of this ordinance is ruled by a court of competent jurisdiction to be invalid, unenforceable or unconstitutional, the remainder of this ordinance shall not be affected thereby.

Town Chair Charlie Bassing

Date 10/19/04

Attest:

Town Clerk Sally Pickard

Date 10-19-04