

VILLAGE OF GERMANTOWN
N112 W17001 MEQUON ROAD
GERMANTOWN, WI 53022

SPECIAL

MEETING: **PUBLIC WORKS & HIGHWAY COMMITTEE**

DATE AND TIME: **MONDAY, February 24, 2014 ***4:30 P.M.*****

LOCATION: **Germantown Village Hall Board Room**

- I. **CALL TO ORDER:** This meeting has been given public notice in accordance with Wisconsin Statutes, Section 19.83 and 19.84 in such form that will apprise the general public and news media of subject matter that is intended for consideration and action.
- II. **ROLL CALL:** Chairman Ewert, Trustees Zabel, Vanderheiden and Kaminski
- III. **NEW BUSINESS:**
 - A. Developer Agreement – Continental 246
- IV. **ADJOURNMENT:**

UPON REASONABLE NOTICE, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service please contact the Village Clerk at (262)250-4740 at least 2 days prior to the meeting.

*** Notice is given that a majority of the Village Board may attend this meeting to gather information about an agenda item over which they have decision making responsibility. This may constitute a meeting of the Village Board per State ex rel. Badke v. Greendale Village Board, even though the Village Board will not take formal action at this meeting.

**BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE
GERMANTOWN, WI**

MEETING DATE: February 24, 2014

AGENDA ITEM: New Business

ITEM TITLE: Developer Agreement – Continental 246

SUBMITTED BY: Dan Ludwig, Public Works Director

SUMMARY EXPLANATION:

Continental 246 is working with staff in regard with a proposed development along County Line Road at the Riversbend Country Club parcel. Three key items in the developer agreement are points of discussion: Traffic Signal Maintenance; Odor related to the Sanitary Lift Station; and Storm Water Declaration related to cross property line facilities and needed easements/access.

The Public Works Committee may recommend specific language giving direction in the Developer Agreement for these items.

ATTACHMENT: ORDINANCE_____ RESOLUTION_____ OTHER X

Email from Attorney Sajdak related to the above items in then DA.
Language in the DA contained on pages 4 and 14.

RECOMMENDATION:

As recommended by the Public Works Committee.

COMMITTEE ACTION:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

Date: 2-19-14

Village Clerk
Village of Germantown
P.O. Box 337
Germantown, WI 53022

Dear Village Clerk:

We here request that a SPECIAL PUBLIC WORKS COMMITTEE MEETING be
scheduled for MONDAY FEB 24TH, _____ at 4:30 p.m. for the
following purpose:

DISCUSS AND POSSIBLE ACTION OF ISSUES WITH
CONTINENTAL PROPERTIES CONSTRUCTION ON
COUNTY LINE ROAD.

Developer Agreement - Continental 24b

Melvin Ewert
Trustee

[Signature]
Trustee

Dan Ludwig

From: Brian Sajdak [brian@wrslegal.net]
Sent: Monday, February 17, 2014 3:20 PM
To: Sara Johnson; Dave Schornack; Dan Ludwig; Brionne Bischke; jgunn@cproperties.com
Subject: RE: Germantown Development Agreement - Revised
Attachments: CONTINENTAL 246 Developers Agreement.docx

Sara:

Attached is the revised version of the Developer's Agreement. A few comments:

1. With respect to the traffic signal, this is a policy decision. Any decision to not require developer to continue maintenance on it must be made by the Village Board.
2. With respect to the Odor issues, this is the proverbial line drawn. Village will require future explicit notice via deed restrictions/covenants to future buyers -- especially in light of desired outdoor seating areas.
3. Access easement provided does not seem to provide sufficient access to the development.
4. Storm Water Declaration coupled with the REA seems to cover the Village's concern re easement/access to storm water facilities as they cross property lines. However, the Village will continue to require all parties to be responsible to the Village for the whole system. Changes to the SW Declaration will follow to reflect this. The Village does not care if the parties wish to split up their respective responsibilities as amongst themselves, but we cannot be left in a situation when one party fails and refuses to comply because they view the fault to be one of the parties' responsibility. For example, we will not accept an argument from Riversbend that they haven't cleaned out the detention pond because they feel its unfair that the sediment stems from salt/sand/debris from the parking lot of the other parties.

Brian

From: sjohnson@cproperties.com
To: brian@wrslegal.net
Date: Fri, 7 Feb 2014 15:10:06 -0600
Subject: FW: Germantown Development Agreement - Revised

Sara L. Johnson
Development Director

CONTINENTAL PROPERTIES

Continental Properties Company, Inc.
W134N8675 Executive Parkway
Menomonee Falls, WI 53051-3310
p:262.502.5500
f:262.502.5522

strict compliance with required erosion control measures or be considered a substitute or replacement for such measures.

1.07 STORM WATER DRAINAGE FACILITIES. Developer shall design and submit to the Village Engineer and MMSD for approval storm water drainage and retention and detention facilities adequate to accommodate expected surface water flow within and through the Property, in accordance with Sec. 18.08-(10) of the Municipal Code and Chapter 13 of the Milwaukee Metropolitan Sewerage District rules.

(1) ~~Notwithstanding anything to the contrary contained herein, the Village, Developer and Riversbend agree that Riversbend they shall be solely jointly and severally responsible for the perpetual maintenance of all storm water drainage and detention and retention facilities ("Storm Water Facilities").~~

~~(a) Storm Water Facilities shall be maintained in the future according to the same performance standards to which they were constructed pursuant to Section 18.08(10), Germantown Municipal Code, namely, that they accommodate the maximum potential volumes of flow through and within the development, and meet applicable performance standards for storage and release.~~

(2) Developer shall install all storm sewer water facilities as shown on the Plans.

(3) All Storm Water Facilities shall be installed in an easement provided for the benefit of all owners of the Property. Said easement shall be approved by the Village Engineer and Village Attorney prior to recording.

1.08 LANDSCAPING. Developer shall complete all landscaping in accordance with the landscaping plans that form a part of the Plans and seeding, matting/mulching or sodding of Village right-of-way to the extent shown on the Plans, all to be completed prior to acceptance of the improvements by the Public Works Committee.

1.09 STREET SIGNS AND MARKINGS. Developer shall install street signs and markings as shown on the Plans.

Comment [BS2]: No Traffic Plans

ARTICLE II - CONSTRUCTION

2.01 GENERALLY. Developer, entirely at its own expense, shall construct and install all public improvements contemplated by this Agreement in accordance with the Plans. Developer shall provide a schedule of construction setting forth approximate dates of commencement and completion of each phase of the construction. Developer agrees that no work shall be scheduled for the improvements without the Village Engineers written approval of the starting date and schedule, which approval shall not be unreasonably withheld. Developer agrees that no work shall be scheduled for the improvements without the Village Engineers written approval of the starting date and schedule. A pre-construction meeting shall be scheduled between Developer, the Contractors and the Village prior to commencement of any construction on the improvements. Developer shall,

(1) STORM WATER FACILITIES. The Storm Water Facilities shall be maintained in accordance with Paragraph 1.07 of this Agreement.

(2) VILLAGE REMEDIES. The Village shall have the right to remedy deficiencies under the preceding paragraphs, the right to charge Developer for costs incurred and the right to enforce collection of such amounts in accordance with § 66.0627 of the Wisconsin Statutes.

(3) SANITARY LIFT STATION ODORS. The Village is not responsible for any sanitary lift station odors that may be offensive to restaurant patrons or owners. In the event odors become problematic to the owners/leasees, the applicant or owners or leasees shall be responsible for all odor control upgrades to the lift station in perpetuity. Performance of odor control devices installed due to problematic odors is not the Village's responsibility.

(4) TRAFFIC CONTROL EQUIPMENT MAINTENANCE. Maintenance on the traffic control equipment installed by the Developer shall be the responsibility of the owner(s) of the Developer Property in perpetuity. This includes the cost of power required to run/operate said equipment, the costs of maintaining the synchronization of the equipment within the other facilities within the corridor, and the costs of replacement in the event of malfunction, destruction or the like.

~~— ACQUISITION CONTINGENCY.~~ The parties acknowledge that the Developer must acquire the Developer Property in order to undertake the Developer's proposed development and uses. Accordingly, the Developer's rights and obligations under this Agreement are contingent upon the Developer's acquisition of the Developer Property. Upon written notice from Developer to the Village that the Developer will not acquire the Property, this Agreement and all approvals issued in connection herewith shall be null and void.

9.12 SEVERABILITY. If any part, term or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision; and the right of the parties will be construed as if the part, term or provision was never part of the Agreement.

ARTICLE X - NON-ASSIGNMENT

This Agreement which is binding upon Developer shall not be assigned by Developer to any individual, firm, partnership or corporation without the express approval of the Village. ~~It is hereby agreed that this Agreement does not run with the title to the Property, it being agreed that the Village is being provided a financial guarantee instead. Upon substantial completion of the public improvements in accordance with the Plans as contemplated herein and the Final Acceptance thereof, Developer's remaining obligations hereunder shall be limited to only the obligations set forth in Section 7.01 and the 10% surety contemplated in Section 6.01. Upon the request of Developer, the Village will execute a letter agreement or other reasonable agreement confirming to any potential purchaser of the Developer Property that this Agreement does not run~~

Dan Ludwig

From: Brian C. Sajdak [brian@wrslegal.net]
Sent: Thursday, February 20, 2014 2:04 PM
To: Joshua Gunn
Cc: Sara Johnson; Dave Schornack; Dan Ludwig; Brionne Bischke; Steve Wagner; Dean Wolter
Subject: Re: Germantown Development Agreement - Revised
Attachments: CONTINENTAL 246 Developers Agreement BCS Revisions 2-20-14.docx; ATT00001.htm

Attached are my comments. Note the following:

1. These are my comments. Village staff has not reviewed and provided me with anything to add.
2. With respect to the Odor and Traffic signal issues, my lack of changes does not reflect an acceptance to the same. As we discussed over the phone, this is what you wish to present for final Village approval. My position on these points will be memorialized in writing for the Village Board's consideration
3. For this reason, I also have not reviewed or changed any of the proposed covenant language as it relates to the stop light.
4. Clarified the language again to reflect the timing (what is now vs. what will be at the time of execution). Some of your changes again reintroduced the inconsistency (e.g., the CSM language in the ownership whereas clauses).
5. Deleted the provision re not running with the land. If you are not willing to provide a covenant re odor, the provisions of this agreement (especially the acknowledgment of the lift station's presence) will not be limited.
6. While not part of this document, remember that the Village will be amending the stormwater covenants to reflect that both parties will be responsible to the Village for future repairs/maintenance/etc. that is not completed as required. The Village doesn't care if you allocate that responsibility separately amongst the parties in a private agreement, but the Village will not be a party to that agreement.

Brian

On Feb 19, 2014, at 2:57 PM, Joshua Gunn <jgunn@cproperties.com> wrote:

Brian,

Thanks for your redraft. I have attached a response draft for your review. I am hoping you will find that it advances the ball quite a bit. There are three medium-sized issues left, but we are nearly there. To aid in going through this, here's an explanation:

Important issues:

1. Our lenders and equity group cannot sign up for a deal where our zoning could be revoked. I had thought we were in agreement on the call that the following remedies for the Village would be sufficient:
 - a. Withhold C of O until breach cured
 - b. Seize on security and cure breach
 - c. Pursue any other remedy at law or in equityI am hoping those remedies are sufficient.

not excuse Developer from strict compliance with required erosion control measures or be considered a substitute or replacement for such measures.

1.07 STORM WATER DRAINAGE FACILITIES. Developer shall design and submit to the Village Engineer and MMSD for approval storm water drainage and retention and detention facilities adequate to accommodate expected surface water flow within and through the Property, in accordance with Sec. 18.08(10) of the Municipal Code and Chapter 13 of the Milwaukee Metropolitan Sewerage District rules.

(1) Developer and Riversbend agree that they shall be jointly and severally responsible for the perpetual maintenance of all storm water drainage and detention and retention facilities ("Storm Water Facilities"). Storm Water Facilities shall be maintained in the future according to the same performance standards to which they were constructed pursuant to Section 18.08(10), Germantown Municipal Code, namely, that they accommodate the maximum potential volumes of flow through and within the development, and meet applicable performance standards for storage and release.

(2) Developer shall install all storm sewer water facilities as shown on the Plans.

(3) All Storm Water Facilities shall be installed in an easement provided for the benefit of all owners of the Property. Said easement shall be approved by the Village Engineer and Village Attorney prior to recording, it being acknowledged and agreed that the Village Engineer and Village Attorney approve for such purposes the easements contained in that certain Reciprocal Easement Agreement by and between Developer and Riversbend to be as recorded against the Project simultaneous with Developer's acquisition of fee title to the Developer Property.

(4) The obligations of Developer and Riversbend to maintain the Storm Water Facilities shall be as more particularly set forth in that certain Declaration of Covenant for Storm Water Management Facility Maintenance attached hereto as Exhibit D (the "Storm Water Declaration"), which Storm Water Declaration shall be as been executed by each of Developer and Riversbend and recorded against the Project simultaneous with Developer's acquisition of fee title to the Developer Property.

1.08 LANDSCAPING. Developer shall complete all landscaping in accordance with the landscaping plans that form a part of the Plans and seeding, matting/mulching or sodding of Village right-of-way to the extent shown on the Plans, all to be completed prior to acceptance of the improvements by the Public Works Committee.

1.09 STREET SIGNS AND MARKINGS. Developer shall install street signs and markings as shown on the Plans.

Comment [BS2]: No Traffic Plans

ARTICLE II - CONSTRUCTION

9.11 ~~ACQUISITION CONTINGENCY.~~ The parties acknowledge that the Developer must acquire the Developer Property in order to undertake the Developer's proposed development and uses. Accordingly, the Developer's rights and obligations under this Agreement are contingent upon the Developer's acquisition of the Developer Property. Upon written notice from Developer to the Village that the Developer will not acquire the Property, this Agreement and all approvals issued in connection herewith shall be null and void. Upon the Developer's acquisition of fee title to the Developer Property, this Section 9.11 shall be of no further force or effect.

9.412 TRAFFIC SIGNAL. Developer shall, simultaneous with Developer's acquisition of fee title to the Developer Property, cause the ~~{Covenant}~~Declaration of Covenants and Restrictions attached hereto as Exhibit E to be recorded against the Project. ~~be required, COVENANTS AND DEED RESTRICTIONS. All proposed covenants and deed restrictions pertaining to electricity bills for the traffic signal adjacent to the Project. Further, Developer shall be submitted to and be approved by pay to the Village Attorney prior to recording, and shall include the following: a fee of \$5,000 in lieu of assuming responsibility for the ongoing maintenance of the traffic signal.~~

(1) ~~STORM WATER FACILITIES.~~ The Storm Water Facilities shall be maintained in accordance with Paragraph 1.07 of this Agreement.

(2) ~~VILLAGE REMEDIES.~~ The Village shall have the right to remedy deficiencies under the preceding paragraphs, the right to charge Developer for costs incurred and the right to enforce collection of such amounts in accordance with § 66.0627 of the Wisconsin Statutes.

(3) ~~SANITARY LIFT STATION ODORS.~~ The Village is not responsible for any sanitary lift station odors that may be offensive to restaurant patrons or owners. In the event odors become problematic to the owners/leasees, the applicant or owners or leasees shall be responsible for all odor control upgrades to the lift station in perpetuity. Performance of odor control devices installed due to problematic odors is not the Village's responsibility.

(4) ~~TRAFFIC CONTROL EQUIPMENT MAINTENANCE.~~ Maintenance on the traffic control equipment installed by the Developer shall be the responsibility of the owner(s) of the Developer Property in perpetuity. This includes the cost of power required to run/operate said equipment, the costs of maintaining the synchronization of the equipment within the other facilities within the corridor, and the costs of replacement in the event of malfunction, destruction or the like.

9.4213 SEVERABILITY. If any part, term or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision; and the right of the parties will be construed as if the part, term or provision was never part of the Agreement.