

Request For Board Action

REFERRED TO BOARD: October 12, 2020

AGENDA ITEM NO: 7

ORIGINATING DEPARTMENT: Community Development

SUBJECT: Consideration of a Ordinance for approval of a Development Agreement between the Village of Antioch and Antioch Townhome LLC.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Staff has been working with the developer of the “Deercrest Townhomes” on their proposal to construct 64 townhomes at the Deercrest Neighborhood on Route 173 and Deercrest Drive. The subject site has been sitting vacant since Neumann Homes bankruptcy. While much of the public improvements were completed with the original development, including the roadways, curbs, and utilities, they have been sitting unutilized for over a decade. Consequently, the applicant is required to post a \$274,411.50 surety bond for completion of all the public improvements. Concurrent with the surety bond, Staff has negotiated the herewith attached “Development Agreement” that protects the Village of Antioch and ensures that these public improvements will be completed in a timely manner. Based on Staff’s review and the review of the Village’s consultant, HR Green, the estimated public improvements come to \$249,465.00.

The applicant has started field work and pouring foundations for the buildings.

Changes made since the first reading of the ordinance include reference to the “Development Agreement” which is now referenced as “The Public Infrastructure Agreement”.

Enclosed

- 1) Ordinance
- 2) Development Agreement
- 3) Cost Estimate
- 4) Letter from HR Green

Based on the foregoing analysis, Staff would make the following motion:

We move that the Village Board approve the herewith attached Ordinance approving the Development Agreement between the Village of Antioch and Antioch Townhomes LLC.

VILLAGE OF ANTIOCH

20-09-29

*ORDINANCE APPROVING A DEVELOPMENT AGREEMENT
FOR TOWNHOUSES IN DEERCREST SUBDIVISION*

ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES

OF THE

VILLAGE OF ANTIOCH, ILLINOIS

ON

OCTOBER 12, 2020

Published in pamphlet form by authority of the Village Board
of the Village of Antioch, Lake County, Illinois,
this 13th day of October, 2020.

LAWRENCE M. HANSON	President	MARY C. DOMINIAK	Trustee
		JERRY T. JOHNSON	Trustee
LORI K. ROMINE	Clerk	ED MACEK	Trustee
		SCOTT A. PIERCE	Trustee
ROBERT J. LONG	Attorney	TED P. POULOS	Trustee
		DANIEL YOST	Trustee

ORDINANCE 20-09-29

**ORDINANCE APPROVING A DEVELOPMENT AGREEMENT
FOR TOWNHOUSES IN DEERCREST SUBDIVISION**

WHEREAS, the original developer of Deercrest Subdivision declared bankruptcy in 2007, leaving a number of townhouse lots undeveloped, and

WHEREAS, Antioch Townhome LLC has acquired the right to develop these lots and their adjoining areas, and

WHEREAS, the resumption of development in this subdivision will require investment in the repair and installation of public utilities and roads, as well as the actual construction of the townhouses themselves, and

WHEREAS, Village Ordinances applicable to property development require the posting of bonds and construction must be performed to meet certain building codes, and

WHEREAS, the subdivision was originally developed pursuant to plans, specifications and other matters which remain in effect, and

WHEREAS, Village Staff has negotiated with the agents of Antioch Townhome LLC to create a renewed and restated development agreement in the form attached as Exhibit A hereto, and

WHEREAS, the Village Board finds that the Exhibit A draft agreement meets the needs and requirements of both Antioch Townhome LLC and the Village, and provides an appropriate summary of the means by which this development can successfully be restarted and any potential risk to the Village from such work is avoided, and

NOW THEREFORE, BE IT ORDAINED by the Village Board of the Village of Antioch, Lake County, Illinois as follows:

SECTION ONE: The draft Restated And Renewed Development Agreement attached as Exhibit A is approved.

SECTION TWO: The Mayor and Clerk are directed to execute the Exhibit A agreement on behalf of the Village.

SECTION THREE: The Clerk is directed to ensure that the fully executed agreement is duly recorded with the Lake County Recorder of Deeds, along with an appropriate legal description or other necessary documentation to correctly identify the properties affected by the agreement.

SECTION FOUR: The Administrator is directed to undertake and direct any and all other steps necessary for the full implementation of this agreement and to ensure compliance at all times therewith.

This Ordinance shall take effect immediately upon passage and approval, pursuant to law.

Dated this 23rd day of September, 2020.

LAWRENCE M. HANSON
Mayor, Village of Antioch, Illinois

LORI K. ROMINE
Clerk, Village of Antioch, Illinois

**RENEWED AND RESTATED DEERCREST TOWNHOUSE
DEVELOPMENT AGREEMENT**

FOR AND IN CONSIDERATION of the mutual undertakings and covenants described herein, the VILLAGE OF ANTIOCH and ANTIOCH TOWNHOME LLC (collectively, the "Parties") do hereby agree as follows:

PREAMBLE

WHEREAS, the VILLAGE OF ANTIOCH, a municipal corporation existing under the laws of the State of Illinois (the "Village") previously entered into a Development Agreement (originally known as the "Public Infrastructure Agreement for Special Service Area Number 1: Deercrest A.K.A. Neu Haven and 55 Acres") with Neumann Homes, Inc. ("NHI" or "Neumann") which Development Agreement related broadly to the development of single family and multi-family housing in the Deercrest Subdivision, and

WHEREAS, NHI commenced the development of the Deercrest subdivision, being a large parcel of undivided land within the corporate boundaries and jurisdiction of the Village, pursuant to the terms and conditions of the Development Agreement, and

WHEREAS, the lands referred to in the Development agreement were partially improved with roads, sewers, water lines, and other utilities, as well as a number of single-family homes as well as a more limited number of multi-family townhomes, and

WHEREAS, NHI filed for bankruptcy protection in 2007, and it was subsequently liquidated, leaving behind a partially completed subdivision, incomplete infrastructure and a host of legal issues, bond claims, contractors' liens and the like, and

WHEREAS, during the course of the NHI bankruptcy, the property in Deercrest that was then still owned by NHI was transferred through a chain of transactions, eventually becoming owned by ANTIOCH TOWNHOME LLC (AT), and

WHEREAS, the terms and conditions of the Development Agreement were transferrable and binding on the successors and assigns of NHI, and remain in effect on the incompletely developed townhome portion of Deercrest Subdivision, and

WHEREAS, AT has proposed to resume development of the townhome portion of the Deercrest subdivision consistent with the existing plats (as modified previously), the Development Agreement and the recorded Covenants, Conditions and Restrictions of Record, subject to certain modifications described generally herein, and

WHEREAS, the Village and AT wish to formally acknowledge the continued viability of the Development Agreement and its continued applicability to the development of townhouses on existing lots within the Deercrest subdivision, and for this reason, the said parties enter into this Renewed and Restated Development Agreement.

TERMS AND CONDITIONS

NOW THEREFORE be it agreed as follows:

1. The recitals set forth in the foregoing Preamble are merged into this agreement as substantive parts thereof.

2. The Parties acknowledge and agree that the Development Agreement was intended to, and did bind NHI and the Village, and that the terms and conditions set forth therein were intended to and did constitute binding covenants running with the land, and shall bind all successors and assigns of AT in perpetuity.

3. The parties acknowledge and agree that this Renewed and Restated Development Agreement will be recorded with the Lake County Recorder of Deeds in evidence of the continuing covenants once fully executed and approved by the corporate authorities of each party.

4. The Development Agreement was one part of a group of documents that NHI and the Village had negotiated to develop the Deercrest properties, and that group included, but is not limited to the following principal agreements:

- a. The Public Infrastructure Agreement;
- b. The Anest Settlement Agreement;
- c. The Potable Water Improvement Agreement;
- d. The Park Fee Reimbursement Agreement;
- e. The Sewer and Water Recapture Ordinances;
- f. The SSA Bond Ordinance.

5. Due to the Village's utilization of surety bond proceeds and undertaking litigation related thereto, and related to defending certain lien claims, some of the public improvements described in the foregoing principal agreements were completed, and are now fully paid for, within the control of the Village (although they may not yet have all been formally accepted by the corporate authorities thereof), and for that reason, AT is not entitled to any additional benefits (such as recapture or any other financial incentive) from said agreements, but is fully entitled to connect to and tap onto the utilities in the course of development, pursuant to the Development Agreement and the Ordinances of the Village.

6. At the time of executing this Renewed and Restated Development Agreement, AT covenants and agrees that it has fully reviewed the existing infrastructure within the Deercrest subdivision, that it is satisfied with the level of knowledge and information available to it about the locations and types of installed wet and dry utilities, and the conditions of the roadways, whether improved, partially improved or unimproved, and AT further acknowledges that it is the obligation of the developer of the land to develop and install any remaining unconstructed roadways and utilities and to connect to the existing water and sewer lines and other utilities, and to improve and install roads according to the development plans, plats and the Development Agreement without monetary contribution by the Village.

7. The Parties further agree that the Sewer and Water Recapture Ordinances were adopted for the benefit of NHI, and whatever rights of recapture may exist, if any, are owned by the Liquidator of the assets of NHI, not AT. Additionally, the Village acknowledges that NHI obtained the right to certain sewer line tap-on credits from Lake County. The Parties agree that nothing in this Agreement is intended to modify those rights.

8. The Parties acknowledge that the Park Fee Reimbursement Agreement has been previously fully satisfied by the dedication of lands within the Deercree subdivision, and as such, no further contribution of cash or land shall be required as a result thereof.

9. The Potable Water Improvement Agreement has also been fully satisfied from NHI funds, the proceeds of the initial placement of the SSA bonds, Village funds and the proceeds of litigation against one or more of NHI's sureties, and other than is set forth in this paragraph, AT is not entitled to receive any contribution whatsoever from that Agreement, and conversely is not required to make any contributions thereunder, aside from the ordinary tap fees otherwise currently required.

10. The Development Agreement incorporated and was integrally related to the Anest Settlement Agreement, and as such, the Parties acknowledge and agree that the Anest Settlement Agreement remains in full force and effect, and is binding on AT as the assignee or successor of NHI.

11. The Developer agrees that it will develop the Deercree property in compliance with the 2002 Village of Antioch, Illinois Planned Unit Development Ordinance applicable to Deercree Subdivision (the "PUD Ordinance"). The Village acknowledges that the Developer, together with homebuilders that Developer may contract with, will bring specific architectural plans to the Village for approval prior to construction. To the extent such plans do not substantially conflict with any plans approved under the PUD Ordinance, the Village agrees that it shall approve such plans. To the extent such plans do substantially conflict with plans approved under the PUD Ordinance, the Developer and/or homebuilder may request modifications to the PUD Ordinance with regard to such plans and the Village agrees it will entertain such revisions pursuant to the Village's normal process for amending the PUD Ordinance.

12. Developer also makes the following specific commitments:

- a. Prior to undertaking development work, Developer shall post performance bonds as required by the Village's Building Code, Subdivision Ordinance, and Watershed Development Ordinance to cover performance and installation of public and quasi-public improvements. These bonds will either be the existing \$250,000 bonds that are currently in place and on file with the Village or they will replace and/or supplement that bond. Such bonds shall be subject to review and approval as to form and content by the Village, including the examination and approval of the contracts for the construction of the improvements in questions. The Village's approval shall not be unreasonably withheld, conditioned or delayed.
- b. Developer shall further undertake and complete the following enumerated tasks and commitments in conjunction with obtaining timely Village approvals on all matters requiring permitting, oversight or review:

- i. Repair of the asphalt base of roadways within this development, including removing all trees and other vegetation which have grown through the base.
- ii. Repair of any damaged curbs within the roadways of this development.
- iii. Inspect and repair any storm sewers, detention ponds, overland flows or other stormwater management systems within this development.
- iv. Inspect and repair all existing sanitary sewers within this development.
- v. Inspect all water lines within this development and chlorinate any specified water lines as may be required by the Antioch Public Works Department and any other regulatory agency with jurisdiction over the potable water supply.
- vi. Inspecting and verifying that all B-Boxes have been installed and are in working condition.
- vii. Installing street lights and verifying that all street lights are operational within the development as per the Final Engineering Plans. (To be completed prior to issuance of a Certificate of Occupancy)
- viii. Installing all public sidewalks within the neighborhood. (To be completed prior to issuance of a Certificate of Occupancy)
- ix. Installing parkway trees as per the approved landscape plan. (To be completed prior to issuance of a Certificate of Occupancy)
- x. Completing the “final lift” for all roadways within the neighborhood. (To be completed at 75% occupancy of all Townhome Units within this development)
- xi. Providing a line item for the projected costs for each of the foregoing improvements subject to review and approval by the Village Engineer. The line items shall identify the public improvement, the estimated costs and the timing of completion for each improvement.

13. Nothing herein should be taken as an indication of the Parties to further modify any of the previously approved and recorded plats of Deercrest subdivision, or any approved and recorded plat of any phase thereof. Any such modification shall take place only upon compliance with all state and local laws, including but not limited to the Illinois Plat Act.

14. Except as modified herein, the Development Agreement shall remain in full force and effect.

15. Nothing herein is intended to, nor shall it be construed to, affect in any way the obligations of the parties and the landowners of record to the terms and conditions of the applicable SSA Ordinance and the bonds used to fund public improvements within the Deercrest Subdivision previously.

16. The parties reserve the right to modify this Agreement, but only in a written document duly executed pursuant to all applicable laws, including the Illinois Municipal Code and the Antioch Municipal Code, and for that reason, no oral modifications hereof shall be of any force or effect.

17. This document is intended as the final expression of the Agreement of the parties on the matters set forth herein, and all oral and written representations, negotiations and other discussions preliminary to its execution are merged into this document.

18. This document shall be governed by the laws of the State of Illinois and the sole venue for the resolution of any disputes shall be the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois.

19. This Agreement shall remain in full force and effect until such time as the certificate of occupancy is granted by the Village to AT (or any successor in interest to AT) for the last platted townhouse in Deercrest Subdivision, or twenty (20) years from its execution, whichever comes first.

20. Notices of any kind given under this Agreement shall be in writing and shall be delivered by overnight delivery (UPS or FedEx) or by email and shall be given to the following persons and entities as follows:

Village of Antioch:

James J. Keim, Administrator
874 Main Street
Antioch, IL 60002
email: jkeim@antioch.il.gov

with a copy to:

Robert J. Long
Village Attorney
Daniels, Long & Pinsel, LLC
19 North County Street
Waukegan, IL 60085
email: rlong@dlplawyers.com

AT:

Troy Mertz
340 W. Butterfield Road
Unit 2D
Elmhurst, IL 60126
email: troymertz@gmail.com

21. This Agreement may be executed in counterparts, all of which shall be considered to be an original duplicate copy of this Agreement and fully enforceable.

22. If any provision, term or clause within this Agreement shall be found to be invalid by a court of competent jurisdiction, that finding shall not affect the balance of this Agreement, which shall remain in full force and effect to the fullest extent possible under the Laws of Illinois.

IN WITNESS WHEREOF, the parties have set their hands and seals on the dates below:

VILLAGE OF ANTIOCH

by: Lawrence M. Hanson,
its Mayor

Date: _____, 2020

Witness:

Lori K. Romine
Village Clerk

Date: _____, 2020

ANTIOCH TOWNHOME LLC

By: _____
Troy Mertz, its Manager

Date: _____, 2020

Deercrest Townhome Development Infrastructure Cost Estimate

- a. Testing B-Boxes (Value \$6,400)
- b. Televising the Storm and Sanitary lines (Value \$15,000)
- c. Public Works reported that the water system has been operational
- d. Curb Restoration (Value \$60,000)
- e. Detention Basin Maintenance (Value \$5,000)
- f. Hot Mix Asphalt Surface 5,220 SY (Value \$43,065)
- g. Tree removal and repair in asphalt (Value \$10,000)
- h. Street lights (Value \$10,000)
- i. Sidewalk (Value \$50,000)
- j. Landscape, erosion control, street trees (\$50,000)

Total \$249,465.00



▷ 420 North Front Street | Suite 100 | McHenry, IL 60050
Main 815.385.1778 + Fax 815.385.1781

▷ HRGREEN.COM

September 30, 2020

Mr. Jim Keim, Village Administrator
Village of Antioch
874 Main Street
Antioch, Illinois 60002

RE: Deercreech Townhome Development
Public Improvement Infrastructure Cost Estimate Review/Recommendation
Job No.: 200197

Dear Jim:

Per your request, our office has completed our research and review of the subject project in regard to the Opinion of Probable Cost (Estimate) for the repair/remaining work related to the public infrastructure improvements. We reviewed the approved engineering plans and our punchlist of items that was shared with the Developer and their contractors last summer. We conducted a field visit last fall and I drove through the site yesterday. We utilized the punchlist letter from October 2015 and the checklist/criteria we have used on all the developments that were substantially completed and left unfinished after the Great Recession.

Our office also utilized recent bids for similar type work to confirm the pricing would be adequate to complete the remaining items by the summer of 2021 and we contacted a few local contractors to confirm pricing for material and labor. Based on our research, field review, and coordination, it is our professional opinion that the amount of \$249,465 as presented is appropriate for the remaining items A-J as shown on the attachment.

We recommend obtaining a performance bond in the amount of \$274,411.50, which is the \$249,465 x 110% (Village Ordinance) of the approved EOPC.

Please call with questions.

Sincerely,

HR GREEN, INC.

A handwritten signature in black ink that reads "Timothy J. Hartnett".

Timothy J. Hartnett
Principal/Vice President
Governmental Services Midwest

Attachment

cc: Mr. Dennis Heimbrodt, Director of Public Works
Ms. Lori Romine, Village Clerk

Deercrest Townhome Development Infrastructure Cost Estimate

- a. Testing B-Boxes (Value \$6,400)
- b. Televising the Storm and Sanitary Lines (Value \$15,000)
- c. Public Works reported that the water system has been operational
- d. Cub Restoration (Value \$60,000)
- e. Detention Basin Maintenance (Value \$5,000)
- f. Hot Mix Asphalt Surface 5,220 SY (Value \$43,065)
- g. Tree removal and repair in asphalt (Value \$10,000)
- h. Street lights (Value \$10,000)
- i. Sidewalk (Value \$50,000)
- j. Landscape, erosion control, street trees (\$50,000)

Total \$249,465.00