

**TOWN OF CLIFTON
PIERCE COUNTY, WISCONSIN**

**Ordinance 2006-2
An Ordinance Requiring Developer Agreement**

In the interest of the public health, safety and welfare, the Town Board of the Town of Clifton does hereby ordain as follows:

Section 1: Purpose

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

Accordingly, and under the authority granted the Town under Wisconsin law, including, but not limited to, Wis. Stats., Sec 60.10(2), 61.34, 61.35, 62.23, 236.13, 236.45 and the balance of Chapter 236, the Town Board of the Town of Clifton 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., Sec 236.02(12) or in the Pierce County subdivision ordinance or the Town's Subdivision Ordinance or that will result in the creation of a Certified Survey Map (C.S.M.) as defined and regulated by Wis. Stats., Sec 236.34 or in the Town's or Pierce County Subdivision Ordinance shall enter into a Developer Agreement with the Town as a condition of the Town's preliminary and final plat or C.S.M. approval, and in accordance with the requirements of this Ordinance and the Town's Subdivision Ordinance.

Section 2: Developer Agreement Required

Anyone proposing to create a Certified Survey Map or a subdivision in the Town of Clifton shall enter into a Developer's Agreement with the Town if the development being proposed: 1) will create or affect public improvements whether already built or proposed to be built and dedicated to the Town; 2) will create private roads or other private improvements that will serve lots created in the subdivision or Certified Survey Map; or 3) if erosion control or storm water management devices will be permanently installed and drain or affect storm water drainage from areas other than the individual lot on which such devices will be located.

Section 3: Components of Developer Agreement

- A. The Developer 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 Agreement is executed. The Developer 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 Agreement shall contain a full and accurate description of the area being subdivided.
- C. The Developer 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 Agreement shall require, a condition of Certified Survey Map or preliminary or final plat approval, as determined by the Town Board, that an irrevocable letter of credit in the minimum amount of 125% of the estimated cost of public and private improvements in the subdivision or Certified Survey Map and otherwise satisfactory to the Town be posted with and in favor of the Town before construction of public or private improvements called for in the plat or C.S.M. may be commenced. The Developer Agreement shall address whether and when the said irrevocable letter of credit can be released and shall further require the developer to take all steps necessary to maintain the letter of credit in the Town's possession and not to allow it to expire.
- E. The Developer Agreement shall disclose and confirm relevant details regarding the developer's obligations, insurances, warranties, continuing maintenance requirements and responsibilities and other contracts and agreements affecting the subject property.
- F. Where any platted area in a subdivision or C.S.M. will serve as open or buffer space and be jointly maintained and controlled by the owners of the platted lots or where private roads, erosion control or storm water management devices, or other private improvements will be installed in the area being subdivided which will require ongoing maintenance, the Developer Agreement shall require that a homeowner's association be created with membership on an equal basis of all platted lots not commonly owned and that association bylaws be developed and 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 private roads, erosion control or storm water management devices, or other private improvements serving the subdivision. The restrictive covenants, homeowner's association bylaws shall provide that no change to the maintenance responsibilities of the homeowner's association as described above shall be effective without Town Board approval.

- G. The Developer 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 or private infrastructure or improvements including, but not limited to, sanitary sewer service, water service, public or private ways and roads, suggested speed limits, cul-de-sacs, intersections and road connection, storm water and erosion control measures, conservation easements, parks, berms, plantings, ponds, streams, paths, lighting, monumentation, outbuildings and all other public or private improvements that may be proposed by a developer or required by then existing State, County or Town statutes, regulations or ordinances.
- H. The Developer 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.
- I. The Developer 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;
 - (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 C.S.M. lots are initially developed and/or built;
 - (10) Conservation easements, where required;
 - (11) Other project-related information as required by the Town.
- J. The Developer Agreement shall require the developer to pay all of the Town's professional fees and expenses related to the Developer Agreement and review of the proposed subdivision or Certified Survey Map, including but not limited to, surveying, engineering, inspection, and attorney's fees incurred in review of the proposed subdivision and preparation and enforcement of the Developer Agreement.
 - K. The Developer Agreement may provide that no building permits shall be issued for lots in the subdivision or Certified Survey Map until all improvements are installed and accepted by the Town.
 - L. The Developer Agreement shall provide that the developer may not sell, transfer or lease any of the property within the subdivision or Certified Survey Map until all of the improvements called for in the Developer Agreement have been fully and faithfully completed in accordance with the provisions of the Developer Agreement, and final plat approval has been granted, unless: 1) the Town consents, in writing; or 2) the Certified Survey Map or final plat has been approved and the developer has deposited the necessary financial security with the Town and/or County to guarantee the installation of all improvements called for in the Developer Agreement.
 - M. The Developer Agreement may also address items not included in this Ordinance or otherwise expressly required by law but that are nonetheless mutually agreeable to the developer and the Town and which promote the public health, safety and welfare of the residents and taxpayers of the Town of Clifton. A developer's refusal to agree to such items if requested by the Town shall not serve as the sole basis for rejection of a plat or Certified Survey Map by the Town.

Section 4: **When Developer Agreement Shall Be Executed and Delivered To The Town.**

- A. For a major subdivision, the Developer Agreement shall be executed and

delivered to the Town Board prior to preliminary plat approval.

- B. For Certified Survey Maps, the Developer Agreement shall be executed and delivered to the Town Board prior to final approval of the said Certified Survey Map.
- C. Failure to execute and deliver a Developer Agreement to the Town within 90 days of the time of valid submission of an application to the Town Board for C.S.M. or preliminary plat approval shall be grounds for rejection of the said application by the Town unless the time is extended by written agreement with the developer.

Section 5: **Waiver**

- A. The Town Board may, but is not required to, waive the requirement of a Developer Agreement in a situation where:
 - (1) The application for subdivision of land complies with the Town's master plan (if any), with all applicable local and county ordinances and state law, and no variances or rezoning will be required;
 - (2) No significant public or private improvements, facilities or dedication of facilities or areas for public use or common private use among the lot owners will be required by the Town as a result of the development being proposed; and
 - (3) No utilities will be significantly altered.
- B. The Town Board shall have sole discretion in determining whether to waive the requirement of a Developer Agreement. It shall consider the recommendation of the Plan Commission in making this decision.

Section 6: **Violations and Penalties**

- A. Anyone commencing construction of any public or private 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 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 no less than \$300.00 and no more than \$500.00. Each day during which such violation exists constitutes a separate offense. Noncompliance with this Ordinance shall also constitute grounds for an injunction or other appropriate action or proceeding to stop or prevent a

violation of any provision of this Ordinance. No building permit shall be issued for any lot in any area for which a Developer 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. Remedies for breach of a Developer Agreement or default in any obligation established in the Developer Agreement shall include, but not be limited to unilateral suspension or withholding by the Town of all permits, licenses, or other authorization issued or to be issued by the Town in connection with the property shown on the plat. This is in addition to any other remedies to which the Town may be entitled by law.

Section 7: 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 OF CLIFTON

Dated: July 5, 2006

LeRoy Peterson

LeRoy Peterson, Town Chair

Judy Clement-Lee

Judy Clement-Lee, Town Clerk

Adopted by the Town Board: July 5, 2006
Public Hearing held August 7, 2006
Published: _____

Class II Public Hearing Notice published in _____ on _____

Town Hall
Clifton Highlands
Clifton Hollow - July 25, 2006