

**TOWN OF CENTER
OUTAGAMIE COUNTY, WISCONSIN
Chapter 24
An Ordinance Requiring Developer Agreements**

In the interest of the public health, safety, and welfare, the Town Board of the Town of Center hereby ordains as follows:

Section 1: Purpose.

This ordinance is enacted to ensure that public improvements that are proposed to be made in the Town of Center 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 storm water management and erosion control facilities by benefitted 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 granted the Town under Wisconsin law, including, but not limited to, Wis. Stats. 60.10(2), 61.34, 61.35, 62.23, 236.13, 236.45 and the remainder of Chapter 236, the Town Board of the Town of Center 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. 236.02(12) or in the Outagamie County subdivision ordinance or that will result in the creation of a certified survey map (CSM) as defined and regulated by Wis. Stats. 236.34 or in the Outagamie County Subdivision Ordinance or create a condominium plat as described by Wis. Stat. 703.26(c). shall enter into a developer agreement with the Town as a condition of the Town's preliminary and final plat, CSM approval, or recording of a condominium plat, and in accordance with the requirements of this ordinance.

Section 2: Developer Agreements Required.

Anyone proposing to create a certified survey map or a subdivision in the Town of Center shall enter into a developer agreement with the Town if the development being proposed:

- A. will create or affect public improvements whether already built or proposed to be built and dedicated to the Town; or
- B. will create private roads or other private improvements that will serve lots or condominium units created in the subdivision plat, certified survey map, or condominium plat ; or
- C. if erosion control or storm water management facilities will be permanently installed and drain or affect storm water drainage from areas other than the individual lot or unit on which such facilities 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 be binding on the successors and assigns of the named developers and/or owners.
- 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, as a condition of certified survey map or preliminary or final plat approval, or condominium plat, that an irrevocable letter of credit, or other form of security acceptable to the Town, 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, CSM or condominium may be commenced. The form of this letter of credit, or other security, shall be subject to the approval of the Town Attorney. The letter of credit, or other security, shall serve as a surety to guarantee that all public improvements called for in the plat or CSM are fully and properly installed, paid for and accepted by the Town. The developer's agreement shall address whether and when the letter of credit or other security may 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. Up to fifteen percent 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 any that may be required by Outagamie County. 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. The Town may also require one or more of the owners of the land and/or the developer to individually and personally guarantee the obligations of the developer and/or owner.
- 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. A copy of the approved and executed developer's agreement is in the possession of the Town Clerk.
 - 2. The original of the approved letter of credit or other security is in the possession of the Town Clerk.
 - 3. An approved certificate of insurance naming the Town as an additional insured and a certificate holder is in the possession of the Town Clerk.
 - 4. All necessary approvals have been granted for the development, including plat or CSM approval by the Town.
 - 5. A drainage plan for stormwater approved by the Town Board.

- F. 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.
- 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 storm water management facilities will be installed in the area being subdivided that 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 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 storm water management facilities.
- H. The restrictive covenants, and/or homeowners' association bylaws shall provide that no change to the maintenance responsibilities of the homeowners' association as described above shall be effective without Town Board approval.
- I. 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 statutes, county or Town ordinances or regulations.
- J. The developer's agreement shall address the control and removal of debris and rubbish during initial construction on lots being created.
- K. The developer agreement shall refer to or include as exhibits the following information:
 - 1. Preliminary plat or condominium plat.
 - 2. Final plat, to be added once approved and recorded.
 - 3. Road design and construction plans.
 - 4. Stormwater calculations and approved drainage plan.
 - 5. Irrevocable letter of credit or other security (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, or operating agreement, where required by the Town Board.
 - 8. Homeowner's association bylaws, rules and any other restrictive covenants, where required, including but not limited to:
 - i. Outagamie County 52-102 (j)
 - ii. Town of Center restrictive covenant requirements
 - 1. Sump pump hoses must end a minimum of 10 feet from the property line or road right-of-way.
 - 2. Downspouts may not be piped into ditches.

3. All outlots, including retention ponds, except for engineered design safety vegetation, and associated waterways vegetation must be mowed annually by September 15th or Town may cut and charge costs to lot owners in the subdivision as special charges under section 66.0627 Wis Stats.
 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, conservation easements, where required.
 11. Legal description of the development property.
 12. Phase map, if applicable.
 13. Grading plan for the development property.
 14. Other project-related information as required by the Town.
- L. The developer 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 Town professional fees and expenses related to such review, 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's agreement. The developer's agreement shall require the developer to deposit the greater of up to 10% of the estimated project costs or \$8,000.00 in escrow to ensure payment of the professional review fees.
- M. The developer agreement may provide that no building permits shall be issued for lots in the subdivision, plat condominium plat, or certified survey map, until all improvements are installed and accepted by the Town.
- N. 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's agreement, and final plat or condominium 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 letter of credit, or other approved security, with the Town and/or County to guarantee the installation and payment of all improvements called for in the developer's agreement.
- O. The developer's agreement may also address items not specifically itemized or otherwise expressly required by law but that are nonetheless necessary to reasonably protect and promote the health, safety, and welfare of the residents and taxpayers of the Town of Center.
- P. The development agreements may be recorded by the Town with the Register of Deeds office.

Section 4: When Developer Agreements Shall Be Executed And Delivered To The Town.

- A. For a subdivision plat, 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 Town Board final approval of the said certified survey map.
- C. For a condominium plat, the developer agreement shall be executed and delivered to the Town Board prior to recording the condominium plat.

- D. Failure to execute and deliver a developer's agreement to the Town within 45 days of the time of valid submission of an application to the Town Board for CSM 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. 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
 - 2. No public utilities will be significantly altered or installed.
- B. The Town Board shall have sole discretion in determining whether to waive the requirement of a developer agreement under circumstances that will not be detrimental to public health, safety or welfare of the Town or its residents.

Section 6: Violations and Penalties

- A. Anyone commencing the 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, or condominium plat 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 enforcement. 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 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. 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.
- C. 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.