



Office of *County Attorney's Matters 12/05/2017*
INDIAN RIVER COUNTY
ATTORNEY

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MEMORANDUM

TO: Board of County Commissioners

FROM: William K. DeBraul, Deputy County Attorney 

DATE: November 29, 2017

SUBJECT: Second Amendment to Developer's Agreement for Millstone Landing PD

In October, 2004, the Board of County Commissioners gave conceptual approval of Millstone Landing PD, a 300 acre, 613 unit residential Planned Development community southwest of the intersection of 17th Street SW and 27th Avenue (the Project). That approval included a condition that prior to project construction, the developer enter into a developer's agreement for off-site road improvements. A developer's agreement was then put together by Public Works and the County Attorney. The developer of the Project, Shelby Homes at Millstone, Inc., entered into a Developer's Agreement (Original Agreement) with the County that was approved by the Board on July 12, 2005. The 2005 Agreement called for the Developer to construct various improvements and dedicate right-of-way for certain roads and intersections impacted by the development. The developer has constructed improvements required under the Original Agreement, including the paving of 21st Street SW and turn lanes at the 21st Street SW / 27th Avenue intersection.

The development went into foreclosure in 2009 and in May 2010, SLV Millstone, LLC, purchased the property from Regions Bank. An updated traffic study was performed in 2014 and the results were reviewed by County staff. One of the conditions of project approval is the construction of 23rd Street SW, a pre-existing "half street" that runs along the southern border of the overall Millstone Landing project site. On October 4, 2016, the Board approved the First Amendment to Developer's Agreement (First Amendment) which sets milestones for the design and construction of 17th Street SW from 27th Avenue to the east border of the Project's school site. On October 4, 2016, the Board approved the attached Agreement Concerning Offsite 23rd Street SW Roadway Improvements (Offsite Agreement). The Offsite Agreement specifically contemplated including the improvements to 23rd Street SW into the Developer's Agreement and that the Developer's Agreement and not the Offsite Agreement, would be the controlling document. This proposed change to the Developer's Agreement will allow staff and the developer to base completion of the 23rd Street SW improvements on the number of Millstone Landing certificates of occupancy issued and a specific completion date.

The parties have prepared the attached Second Amendment to Developer's Agreement (Second Amendment) that addresses the improvements to 23rd Street SW. If approved, the improvements to 23rd Street SW will become part of the overall Developer's Agreement for the Project and the letter of credit posted as security for the Offsite Agreement will be released to the Developer's bank. The Second Amendment calls for the completion of the 23rd Street SW improvements by the issuance of the 450th Certificate of Occupancy or July 1, 2018, whichever first occurs. Currently, the Project has received 342 certificates of occupancy with another 66 building permits issued and 17 in the

application status. Staff will continue to track the number of project C.O.'s and will enforce the proposed C.O. threshold of 450 total units.

Funding. There is no impact to County funds contemplated by the Second Amendment to Developer's Agreement.

Recommendation. Staff recommends the Board approve the Second Amendment to Developer's Agreement for Millstone Landing PD pertaining to the completion of 23rd Street SW improvements and authorize the Chairman to execute it on behalf of the Board.

Attachments: Agreement Concerning Offsite 23rd Street SW Roadway Improvements
Proposed Second Amendment to Developer's Agreement

Copies to: Masteller & Moler
Bruce Barkett, Esq.
Stan Boling, Community Development Director
John McCoy, Chief of Current Development
Richard Szpyrka, Public Works Director