

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: November 16, 2005

SUBJECT: Improvement Guarantee for White Oak Village, Phases 1 through 4

ATTACHMENTS:

1. Letter From Paul Patterson Requesting an Extension
2. Draft Performance Guarantee Agreement
3. Detailed Cost Estimates

SUMMARY OF REQUEST:

The Board of Commissioners approved an improvement guarantee application on May 9, 2005 for Phases 1 through 4 of the White Oak Village subdivision. The improvement guarantee covers the installation of public sewer improvements (and related remaining engineering fees) as well as storm drainage improvements.

The developer posted with the County a surety performance bond in the amount of \$535,375.00 to cover the cost of the improvements (\$428,300.00) as well as the required twenty-five percent (25%) contingency (\$107,075.00) on May 12, 2005. The completion date for the improvements is January 1, 2006.

Paul Patterson, engineer for the project, submitted a letter requesting to extend the completion date from January 1, 2006 to September 1, 2006. Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners, upon proof of difficulty, to grant extensions to completion dates for improvement guarantees for a maximum of one additional year, provided that the time between initiation and completion of the improvements does not exceed two years.

An amended draft Performance Guarantee Agreement which reflects a new completion date is attached for the Board's consideration. If the request is approved, the developer must submit an amended surety performance bond in accordance with the terms of the Agreement. Once the County receives an amended bond in proper form, the relevant parties must execute the Agreement.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

I recommend that the Board approve the request to extend the completion date, subject to the developer submitting to Henderson County an amended surety performance bond in accordance with the terms of the attached draft Performance Guarantee Agreement.

PATTERSON & PATTERSON

PAUL PATTERSON WILLIAM PATTERSON
PROFESSIONAL ENGINEER/LAND SURVEYOR PROFESSIONAL LAND SURVEYOR
P.O. BOX 1189
HENDERSONVILLE, NC 28793-1189
1-828-692-6629 (TEL & FAX)

Memorandum

To: Matt Card, Planner @ Henderson County Planning Department
From: Paul Patterson, P.E./P.L.S.
Date: November 2, 2005
Re: White Oak Village - Performance Guarantee Agreement

Mr. Card,

As per our conversation this morning, we are hereby requesting an extension of the Performance Guarantee Agreement between VGC Properties, LLC and the Henderson County Board of Commissioners. The agreement was entered into on May 9, 2005 with an anticipated completion date of January 1, 2006 for all infrastructure improvements.

We have obtained approval for the White Oak Village Sewer Line Extension from both NCDENR and the City of Hendersonville. The required sewer impact fee for Phases 1 through 4 has been paid to the City of Hendersonville. Additionally, a Sewerline Extension Agreement, between VGC Properties, LLC and the City of Hendersonville, has been signed and recorded in the Henderson County Register of Deeds.

Due to some unforeseen delays, the new start date for construction should be on or before November 21, 2005. This delay will cause the construction to be finished past the agreement deadline. Furthermore, the late start comes during the upcoming holidays of Thanksgiving, Christmas, and New Year, as well as during times of questionable weather conditions. These items alone cause costly delays in the installation of the infrastructure.

Therefore, we are requesting that the agreement be extended by eight (8) months until September 1, 2006 and that this request be heard at the next Henderson County Board of Commissioners meeting on November 16, 2005. Should you have any question and/or comments, please do not hesitate to call. Thanks in advance for your assistance in this matter.

Sincerely,



Paul Patterson, PE/PLS

Cc: File 05-06-27-ENG

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between VGC Properties, LLC, hereinafter referred to as "Developer," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

WITNESSETH:

WHEREAS, the Board and the Developer entered into an Agreement on May 9, 2005 (hereinafter "the original Agreement"), concerning an improvement guarantee for a portion of a proposed subdivision known as White Oak, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County a surety performance bond in the amount of \$535,375.00 in accordance with the original Agreement; and

WHEREAS, the original Agreement provided that all required improvements were to be completed on or before January 1, 2006, and

WHEREAS, the developer obtained approval of a Final Plat for Phases II, III and IV from Henderson County Planning Department staff on May 18, 2005, and subsequently recorded such Final Plat; and

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the original agreement to September 1, 2006;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before the 1st of September, 2006, complete as required the following improvements to serve lots in the Project: installation of public sewer system improvements (and related remaining engineering fees) and storm drainage improvements as required by the Henderson County Subdivision Ordinance, as shown on the Development Plans for the Project conditionally approved by the Henderson County Planning Board on December 21, 2004 (Phase 1) and conditionally approved by Henderson County Planning Department staff on April 28, 2005 (Phases 2, 3 and 4) and as shown on the attached cost estimate prepared by Robert Paul Patterson, P.E., (sealed 4/28/05).
2. The Developer will post with Henderson County an amended surety performance bond guaranteeing completion of said improvements by the required date, and having an expiration date not earlier than 60 days after the completion date stated in Paragraph 1, above.

3. At such time as this Agreement is fully executed and the Developer has filed an amendment to the original bond as provided in Paragraph 2, above, this Agreement will supercede prior Agreements between the Board and the Developer regarding the improvement guarantee.
4. In the event that the required improvements are completed as required, the surety bond will be released. In the event that the improvements are not completed as required, then the Developer shall be in breach of this Agreement and the Improvement Guarantee and the County shall call the surety bond and use the funds to complete the required improvements.
5. The County Manager shall have the authority to approve the release of portions of the Improvement Guarantee as work progresses, provided the amount remaining under the Improvement Guarantee meets or exceeds 125% of the cost of the remaining improvements. The County Manager has the discretion to require the Developer to provide, at the Developer's expense, an independent verification of the remaining work.

IN WITNESS WHEREOF, the Board has, by appropriate action, caused this Agreement to be reviewed for approval by the County Attorney and executed by its Chairman or other authorized member and attested by the Clerk, and the Developer has caused this Agreement to be properly executed, this the ____ day of _____, 200__.

APPROVED AS TO FORM:

County Attorney

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

[OFFICIAL SEAL]

Elizabeth W. Corn, Clerk to the Board

DEVELOPER:

VGC Properties, LLC

BY: _____
Manager

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Henderson County, a municipal corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by the Chairman of the Board of Commissioners, sealed with its corporate seal, and attested by her as its Clerk.

THIS the ____ day of _____, 200_.

Notary Public

My Commission Expires: _____ **[NOTARIAL SEAL]**

**STATE OF _____
COUNTY OF _____**

I, _____, Notary Public for said State and County certify that _____, Manager of White Oak Village, LLC, a limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

THIS the ____ day of _____, 200_.

Notary Public

My Commission Expires: _____ **[NOTARIAL SEAL]**

WHITE OAK SUBD.
ESTIMATE

SEWER:	(PHASE 1 THRU 4)		
Item Description:	Quantity	Unit Cost	
Manholes (0'-12')	32 ea	2000.00	\$64,000.00
Laterals (New)	28 ea	375.00	\$10,500.00
Pipe Bedding	904 tns	19.50	\$17,637.00
2" SDR13.5 PVC	1044 lf	8.50	\$8,874.00
Sewer Lift Station	1 ls	85000.00	\$85,000.00
Tie into Existing Force Main	1 ea	1500.00	\$1,500.00
Misc. Fittings	1 ls	1000.00	\$1,000.00
8" CL350 D.I./8" SDR35 PVC	5858 l.f.	20.50	\$120,089.00
Tie to Existing MH	0 ea	1000.00	\$0.00
Open Cut Roads	11 ea	800.00	\$8,800.00
Extra Long Laterals (New)	3 ea	1200.00	\$3,600.00
Crush & Fill - Laterals	56 ea	1250.00	\$70,000.00
		Subtotal:	\$391,000.00
ENGINEERING FEES (Sewer System):			\$30,000.00
COH Impact Fees (Sewer):	1 ls	8400.00	\$8,400.00

STORM DRAINAGE	Quantity	Unit Cost	Cost
Item Description:			
Pipe Removal/Replacement	5 ea	1100.00	\$5,500.00
Pipe Removal @ Old Pond	1 ls	1800.00	\$1,800.00
		Subtotal:	\$7,300.00

WHITE OAK SUBD.
(TABULATED ESTIMATE)

Item Description:	Cost
Sewer	\$391,000.00
Storm Drainage	\$7,300.00
Engineering Fees	\$30,000.00
	Subtotal:
	\$428,300.00
25% Contingency	\$107,075.00
TOTAL ESTIMATED CONSTRUCTION, BOND:	\$535,375.00

