

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: December 4, 2006

SUBJECT: Extension Request for the Blacksmith Run Improvement Guarantee

ATTACHMENTS: 1. Letter from Mr. Norman Divers, III
2. Draft Performance Guarantee Agreement

SUMMARY OF REQUEST:

On May 19, 2006 the Board of Commissioners approved an application for an improvement guarantee for the Blacksmith Run subdivision. As required by the performance guarantee agreement for the improvement guarantee, the developer posted with Henderson County an irrevocable letter of credit in the amount of \$386,063.00. The improvement guarantee covered the cost of the installation of the wastewater treatment plant. The original agreement required that the improvements be completed by December 30, 2006.

On November 16, 2006 the Planning Department received a letter from Mr. Norman Divers requesting to extend the completion date to April 1, 2007. Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners to grant extensions to completion dates for a maximum of one additional year, provided that the time between initiation and completion of the improvements does not exceed two years. If the Board of Commissioners agrees to grant the requested extension, staff has attached for the Board's consideration, a draft performance guarantee agreement. This agreement reflects a new completion date of April 1, 2007 and requires submittal of an amendment to the original irrevocable letter of credit showing an expiration date not earlier than 60 days after the new improvements completion date.

BOARD ACTION REQUESTED:

Action is needed by the Board of Commissioners to either grant or deny the request to extend the completion date to April 1, 2007. I recommend that the Board approve the request to extend the completion date of the performance agreement for Blacksmith Run to April 1, 2007.

Suggested Motion: I move that the Board of Commissioners find and conclude that the extension, if granted, would not cause the developer to exceed the two-year maximum time period for completion of the required improvements and therefore be approved.

Project Memo

To: Matt Card, Subdivision Administrator – Henderson County
From: Norman Divers
CC: Vista Developers, File
Date: November 16, 2006
Re: Project Status – Blacksmith Run

Matt:

As you know the planning approvals for the Blacksmith Run development are approaching the time for renewal or declaration of completion. We are writing to advise you of the project status and to also request an extension of the approvals. Currently, the project is approximately 80% complete with the onsite utilities and roads complete and in place with the exception of final paving. Water and sewer is complete onsite. The sewer system only needs the wastewater treatment plant to be installed to be fully operational. The roads are completely graded and in place with only asphalt paving needed in the mid and rear portion of the project.

The request for extension is needed to allow time to complete the construction of the wastewater treatment plant. The plant is fully permitted through the State and is being fabricated as we speak. Delivery of the plant to the site is expected within the next 30 days and complete installation is expected to occur on or about March 1, 2007. With the completion of the plant, the subdivision's infrastructure will be complete and so will the project. There are approximately 10 spec homes slated to begin construction with the first full-time residents expected on or after March 30, 2007.

We respectfully request an extension of the plan approvals such to allow for the completion of the subdivision as discussed above. As our approvals expire in December, we respectfully request the Board consider or request for approval on their December 20th agenda.

Should you need anything further please do not hesitate to contact me.

Best regards,

Norman E. Divers, III



STATE OF NORTH CAROLINA
COUNTY OF HENDERSON
PERFORMANCE GUARANTEE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 200_, by and between Blacksmith Mountain, 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 19, 2006 (hereinafter "the original Agreement"), concerning an improvement guarantee for the subdivision known as Blacksmith Run, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$386,063.00 in accordance with the original Agreement; and

WHEREAS, the original Agreement provided that all required improvements were to be completed on or before December 30, 2006; and

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the latest agreement to April 1, 2007;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before April 1, 2007, complete as required the following improvements to serve lots in Phase I of Blacksmith Run: installation of the wastewater treatment plant as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for Blacksmith Run, conditionally approved by the Henderson County Planning Board on December 21, 2004, and as shown on the attached cost estimates prepared by Edward Medlock, P.E., (signed and sealed on April 24, 2006).
2. The Developer will post with Henderson County an amended irrevocable letter of credit 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, this Agreement will supercede prior Agreements between the Board and the Developers regarding the improvement guarantee.
4. 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:
Blacksmith Mountain, LLC

BY: _____
Managing Member

**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 Blacksmith Mountain, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

THIS the ____ day of _____, 200__.

Notary Public

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