

ORDINANCE NO. 5133

AN ORDINANCE AMENDING TITLE 15, CHAPTER 154 OF THE LOMBARD VILLAGE CODE IN REGARD TO CONSTRUCTION AND MAINTENANCE GUARANTEES AND ACCEPTANCE FOR PRIVATELY CONSTRUCTED PUBLIC IMPROVEMENTS

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That Title 15, Chapter 154, Sections 154.603, 154.604 and 154.605 of the Lombard Village Code are revised to read in their entirety as follows:

§154.603 GUARANTEE OF COMPLETION AND COMPLIANCE

All subdivisions and developments shall provide guarantees that any improvements required by this ordinance shall be completed in compliance with the terms and conditions of this ordinance. Such guarantees shall include the following.

(A) Submittal of Engineer's Cost Estimate

A detailed estimate of the costs for all public improvements as defined in Section 154.703 shall be submitted to the Director of Community Development (hereinafter the "Director" for purposes of this Section) for review and approval. Estimates shall be based on current costs for materials and labor. The approved engineer's cost estimate shall be used to determine the amount of the instrument of credit described below.

(B) Submittal of Instrument of Credit

An irrevocable letter of credit (or other comparable instrument of credit) equal to 115 percent of the engineer's cost estimate for the public improvements as defined in Section 154.703 shall be provided to the Village. Any instrument of credit other than a cash bond or a letter of credit that follows the Village's form letter of credit format shall be reviewed by the Village Attorney, at the cost of the permit applicant, payment of which shall be due at the time of permit issuance. The instrument of credit shall be subject to the approval of the Director and is subject to the following conditions:

(1) In the case of a letter of credit, the lending institution shall be acceptable to the Director; shall have capital resources of at least \$10,000,000 or such other amount acceptable to the Director; shall have an office in the Chicago Metropolitan area; and shall be insured by the Federal Deposit Insurance Corporation.

(2) The instrument of credit shall not be cancelled without the prior written consent of the Director and shall not require the consent of the developer prior to any draw/call on it by the Director.

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(3) If at any time the instrument of credit will expire within ninety (90) or less days, and if it has not been renewed, and if any applicable obligation of the developer for which its security remains uncompleted or is unsatisfactory, then the Director may, without notice and without being required to take any further action of any nature whatsoever, call and draw down the instrument of credit and thereafter either hold all proceeds as security for the satisfactory completion of all such obligations or employ the proceeds to complete all such obligations and reimburse the Village for any and all costs and expenses, including legal fees and administrative costs, incurred by the Village, as the Director shall determine.

(4) If at any time the Director determines that the funds remaining in the instrument of credit are not, or may not be, sufficient to pay in full the remaining unpaid cost of required public improvements, then, within ten (10) days following a demand by the Director, the developer shall increase the amount of the instrument of credit to an amount determined by the Director to be sufficient to pay such unpaid costs. Failure to so increase the amount of the security shall be grounds for the Director to draw down/call the entire remaining balance of the instrument of credit.

(5) In the case of a letter of credit, if at any time the Director determines that the lending institution issuing the letter of credit is without capital resources of at least \$10,000,000, is unable to meet any federal or state requirements for reserves, is insolvent, is in danger of becoming any of the foregoing, or is otherwise in danger of being unable to honor the letter of credit at any time during its term, or if the Director otherwise reasonably deems the bank/issuer to be insecure, then the Director shall have the right to demand that the developer provide a replacement letter of credit from a bank/issuer satisfactory to the Director. Such replacement letter of credit shall be deposited with the Director not later than ten (10) days following such demand. Upon such deposit, the Director shall surrender the original letter of credit to the developer.

(C) Guarantee of Completion

The Development Agreement and the instrument of credit shall include a guarantee that all public improvements as defined in Section 154.703 shall be completed by the developer or his subcontractors not later than twenty-one (21) months from the date of the recording of the plat or the issuance of a building permit for the private development, whichever occurs first. Not less than twenty-five (25) percent of the amount of each line item of the engineer's cost estimate plus the entire fifteen (15) percent contingency amount in the instrument of credit shall be held in abeyance by the Village until such time as all public improvements have been fully completed and accepted by the Village Board.

(D) Failure to Complete

If the owner/developer fails or refuses to complete all public improvements or repairs thereto within the specified time periods or in any way fails or refuses to meet

fully its obligations under this Code, the Director shall have the sole authority to draw/call on and retain all or any of the funds remaining in the instrument of credit. The Director thereafter shall have the right to take any action deemed reasonable and appropriate to mitigate the effects of such failure or refusal. The proceeds of the instrument of credit shall be utilized to pay for all costs and expenses including legal fees and administrative expenses, resulting from or incurred as a result of the developer's failure or refusal to complete the public improvements and fully meet its obligations under this Code. If the funds remaining in the instrument of credit are insufficient to cover all such costs and expenses and to maintain a cash reserve equal to the required instrument of credit during the entire time such instrument of credit should have been maintained by the developer, then the developer shall, upon demand of the Director, immediately deposit with the Director such additional funds as the Director determines are necessary to fully cover such costs and expenses and to establish such cash reserve.

(E) Extension of Instrument of Credit

The Director of Community Development, upon written proof of difficulty, shall have the authority to grant one extension of the instrument of credit, not to exceed six (6) months. The Village Board may, upon written proof of difficulty, grant additional extensions of the instrument of credit. Prior to any extension, an amendment to the Development Agreement shall be submitted which proposes a revised schedule of construction in compliance with the terms of this Section.

§154.604 ACCEPTANCE AND ASSURANCES

(A) Record Drawing (as-built drawings)

Upon completion of the required public improvements two (2) copies of a detailed record drawing (a.k.a. as-built drawings) of the subdivision or development shall be submitted by the owner/developer to the Director of Community Development (hereinafter the "Director" for purposes of this Section). Completion shall include all public improvements guaranteed by the instrument of credit. The purpose of the record drawing is to ensure that such public improvements have been installed in accordance with the approved final engineering plans for the subdivision or development. The record drawing shall indicate location (setback from property lines), dimensions, elevations, and construction materials of all public improvements, and any other information as may be required by the Director.

(B) Acceptance

Public improvements shall be accepted by the Village Board after certification by the Village Engineer and Director that the public improvements are in compliance with previously approved plans, specifications, and relevant codes and ordinances. All required fees and procedures shall be provided and complied with prior to such acceptance. The Village shall not be liable for any damages that may occur on any

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dedicated road or to any utilities within a new subdivision or development that has not been accepted by the Village Board. The owner/developer shall hold the Village free and harmless from any and all such claims that may be submitted.

§154.605 GUARANTEE OF MAINTENANCE

In order to ensure the operation of public improvements after acceptance by the Village Board, the following assurances and guarantees shall be provided.

(A) Guarantee Period for Public Improvements

All public improvements required pursuant to this Code must be guaranteed by the developer for a period of at least two (2) years after final acceptance by the Village Board. For public improvements not to be owned by the Village (e.g. stormwater management improvements), such guarantee shall be for a period of at least two (2) years after approval of the record drawings. Any warranty that is still in effect on materials accepted by the Village Board shall be submitted to the Village Engineer at the time of acceptance.

(B) Maintenance Deposit

No public improvements shall be accepted by the Village Board until the developer shall provide a deposit equal to ten (10) percent of the estimated cost of the improvements. The deposit shall guarantee the satisfactory operation and maintenance of the public improvements. The maintenance deposit shall include the following:

(1) The deposit shall be cash, letter of credit, or comparable instrument of credit in a form to be approved by the Director and Village Attorney.

(2) The deposit shall generally comply with the requirements of Section 154.603 above.

(3) The deposit shall be held by the Village for twenty-four (24) months after acceptance or approval of the public improvements by the Village Board.

(4) The full deposit shall be refunded at the end of the twenty-four (24) months if no defects in materials (including dead landscape materials), workmanship, or design have become apparent. If defects are found, the balance of the deposit shall be refunded after reimbursement of the Village for the amounts expended to correct defective public improvements.

(5) The deposit under this subsection shall be made immediately upon completion, acceptance, and approval of the construction of said public improvements. The guarantee of completion deposit required by Section 154.603, above, shall be released upon receipt of the maintenance guarantee required by this subsection.

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(C) Establishment of Property Owner's Associations

In order to guarantee the continued maintenance of privately owned common areas, storm water control outlots, public parkways, recreation areas, open space, and other public, semi-public, or common areas, an association of property owners or other comparable administration may be required. The association shall be responsible for the perpetual maintenance of all such areas. The terms and conditions of the property owner's association agreement relative to maintenance of all such areas shall be subject to the review and approval of the Director of Community Development.

SECTION 2: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on this first reading this 2nd day of May, 2002.

First reading waived by action of the Board of Trustees this _____ day of _____, 2002.

Passed on second reading this 16th day of May, 2002.

Ayes: Trustees DeStephano, Koenig, Sebby, Florey, Soderstrom

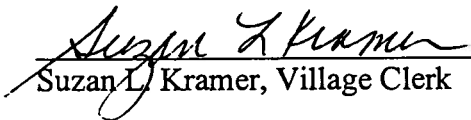
Nayes: None

Absent: Trustee Tross

Approved this 16th day of May, 2002.


William J. Mueller, Village President

ATTEST:


Suzan L. Kramer, Village Clerk

Published by me in pamphlet form this 20th day of _____ May _____, 2002