



Memorandum

TO: Common Council
FROM: Greg Keil, CDD *gk*
DATE: February 28, 2013
RE: Third Amendment to Development Agreement – City of Menasha/Ponds of Menasha, LLC

The proposed amendment to the development agreement between the City of Menasha and Ponds of Menasha, LLC was requested by Jeff Marlow as a representative of the Ponds of Menasha, LLC, and Lexington Homes, Inc. The request was made in order to streamline land transactions between the entities and the ultimate homebuyer. As it stands now, the Ponds of Menasha, LLC pays the Redevelopment Authority of the City of Menasha \$5,700 upon the transfer of a lot to Lexington Homes, Inc. Upon completion of a home, the property is transferred from Lexington Homes, Inc. to a homebuyer. Each of these transactions requires the preparation of deeds, title work, transfer fees, recording fees and the satisfaction of mortgages as well as the creation of new financing arrangements. This amendment will eliminate the step involving the transfer between the Ponds and Lexington, in that now the lot can be transferred directly from Lexington to the homebuyer.

The other significant aspect of the amendment is that the timing of the payment to the Redevelopment Authority will be altered. Currently, Ponds is to pay the redevelopment authority upon any transfer of a lot, including the transfer from Ponds to Lexington. This amendment will delay the payment for a lot by Lexington until a building permit is issued.

Although the initial transaction between the Ponds and Lexington involved ten lots, more recently we have been experiencing the transfer of one to three lots at any given time. The amount owed the Redevelopment Authority in these recent transactions ranged between \$5,700 and \$17,100. The proposal to delay payment for the lots until a building permit is issued should have minimal impact on the amount of accrued interest foregone by the Redevelopment Authority. This is because the lots are currently being transferred on an as-needed based on home sales. The shift to a building permit based scenario will likewise be based on the pace of home sales, so there should not be a material difference in the flow of lot sale revenue to the Redevelopment Authority.

This proposed amendment carries no particular benefit to the City of Menasha or to the Redevelopment Authority. It does, however, make for a cleaner, less costly process for buying lots and selling homes in the development. To the extent that this amendment will benefit the developer and facilitate its endeavors to carry out its obligations under the development agreement, I am in support of this proposal and ask that the Common Council approve it.

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MENASHA,
WISCONSIN, AND PONDS OF MENASHA, LLC
DATED AS OF SEPTEMBER 7, 2011**

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT, executed in Menasha, Wisconsin on this ____ day of February, 2013, is made effective between the City of Menasha and Ponds of Menasha, LLC. The Development Agreement by and between the parties dated as of September 7, 2011 is amended as follows:

1. As to ARTICLE III, SECTION 3.01.1, after the sentence, "DEVELOPER shall be required to make a payment of \$5,700 to CITY toward the outstanding balance of the Promissory Note for each Lot sold or transferred by DEVELOPER prior to or at the time of each closing using first proceeds for said payment." add the following: Notwithstanding the foregoing, DEVELOPER shall not be required to make payment of \$5,700 to CITY with respect to any Lot or Lots sold or transferred by DEVELOPER to LEXINGTON HOMES, INC., a Wisconsin corporation, owned by Jeffrey T. Marlow, the managing member of DEVELOPER, until the earlier of: (1) application for a building permit; or (2) any subsequent sale or transfer of any Lot or Lots using first proceeds for said payment; (3) January 1, 2020, the Maturity Date of the Loan, unless accelerated.
2. All other terms and conditions set forth in the Development Agreement dated September 7, 2011, shall remain the same except as otherwise previously amended.

City of Menasha

By: _____

Donald Merkes, Mayor

By: _____

Deborah A. Galeazzi, City Clerk

Ponds of Menasha, LLC

By: _____

Jeffrey T. Marlow, Managing Member