

VILLAGE OF DOWNERS GROVE
Report for the Village
7/18/2017

| | |
|----------------------------------|-----------------------------------|
| SUBJECT: | SUBMITTED BY: |
| Approval of Settlement Agreement | Enza Petrarca Village Attorney |

SYNOPSIS

A resolution has been prepared authorizing execution of a settlement agreement *regarding Bradley Land Group, Inc. v. Village of Downers Grove, 2002 MR 0363.*

STRATEGIC PLAN ALIGNMENT

The goals for 2015-2017 include *Steward of Financial, Environmental and Neighborhood Sustainability.*

FISCAL IMPACT

The settlement amount is \$1.45 million.

RECOMMENDATION

Approval on the July 18, 2017 consent agenda.

BACKGROUND

This settlement agreement will resolve all outstanding issues regarding the pending litigation. The Village will pay Bradley Land Group, Inc. \$1.45M and will take over ownership and responsibility for the completion of the detention basin at the Brookbank Prairie Subdivision. The Village will also be responsible for the construction of Brookbank Road from 59th to 60th. Bradley Land Group will be responsible for completion of the required subdivision public improvements. Upon execution of the settlement agreement the pending lawsuit will be dismissed with prejudice.

ATTACHMENTS

Resolution
Settlement Agreement

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT AND RELEASE BETWEEN THE VILLAGE OF DOWNERS GROVE AND BRADLEY LAND GROUP

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Settlement Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Bradley Land Group ("Bradley"), for the settlement and release of all claims concerning Case No. 2002 MR 0363, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Attorney, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:
Attest: _____
Village Clerk

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is made as of the ___ day of July, 2017 by and between Bradley Land Group, Inc. (“**BLG**”), and the Village of Downers Grove (“**Village**”).

RECITALS

WHEREAS, on or about December 5, 2012, BLG reopened and filed a Supplemental Complaint in the case bearing the caption *Bradley Land Group, Inc. v. Village of Downers Grove and David Fieldman*, Case No. 02 MR 0363, in the Circuit Court of Eighteenth Judicial Circuit, DuPage County, Illinois, which is currently pending (the “**Litigation**”).

WHEREAS, the parties desire to avoid the costs of litigation and seek to fully and finally resolve any and all legal and equitable claims between them, upon and subject to the terms and conditions set forth herein.

WHEREAS, the parties also desire to resolve disputes related to the stormwater management associated with that subdivision located in Downers Grove Illinois on the real property described in Exhibit A attached hereto, commonly known as Brookbank Prairie (“**Brookbank Prairie**”), so that BLG, its designee or a third party can build single family homes on lots 2, 3, and 6 in Brookbank Prairie, and complete all necessary public improvements in accordance with the subdivision plans previously approved.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree and covenant as follows:

(1) Incorporation of Recitals. The recitals set forth above are expressly incorporated and made part of this Agreement.

(2) Effective Date. This Agreement shall become effective upon the execution of this Agreement by all Parties hereto (the “**Effective Date**”). The parties shall execute this Agreement within 3 business days of the approval of the Agreement by the Village Council of Downers Grove.

(3) Payment. Within 30 days after the Effective Date and concurrently with the dedication to the Village of that portion of Lot 3 necessary to construct the Stormwater Facilities, the Village shall pay to BLG the sum of One Million, Four Hundred Fifty Thousand Dollars and No Cents (\$1,450,000.00) (“**Settlement Amount**”), reflecting loss and diminution of value.

(4) Dismissal of Litigation. Within fourteen (14) days of the receipt of the Settlement Amount, BLG shall take all action necessary to dismiss its claims against the Village in the

Litigation with prejudice, with each party to bear its own costs and attorneys' fees, and with the Court retaining jurisdiction to enforce the terms of this Agreement.

(5) BLG Release of Village. Upon the Effective Date of this Agreement, BLG and its present and former officers (including but not limited to David Bradley), directors, employees, partners, shareholders, members, executors, committees, fiduciaries, trustees, employee benefit plans, plan administrators, administrators, insurers, reinsurers, attorneys and agents, and the successors and assigns of each of them, hereby fully, finally and unconditionally releases and forever discharges the Village of Downers Grove and its present and former elected officials, employees, attorneys and agents, and the successors and assigns of each of them (collectively "**Village Releasees**") of and from any and all charges, promises, actions, causes of action, covenants, contracts, controversies, agreements, complaints, claims, counter-claims, liabilities, obligations, suits, demands, grievances, arbitrations, costs, losses, sums of money, accounts, bills, judgments, executions, damages, debts and expenses, including attorneys' fees and costs, of any nature whatsoever, in law or in equity (collectively, "**Claims**"), which BLG ever had, now has, or shall or may have, whether known or unknown, suspected or unsuspected, and howsoever denominated or described, against the Village, in any way arising out of, related to or on account of any act, matter, omission, cause or event occurring prior to the Effective Date of this Agreement, including, without limitation, Claims that relate to the Litigation; provided, however, that nothing in this release shall relieve the Village from any of its obligations under this Agreement.

(6) Village's Release of BLG. Upon the Effective Date of this Agreement, the Village, and its present and former elected officials, employees, attorneys and agents, and the successors and assigns of each of them, hereby fully, finally and unconditionally releases and forever discharges BLG, and its present and former officers (including but not limited to David Bradley), directors, employees, partners, shareholders, members, executors, committees, fiduciaries, trustees, employee benefit plans, plan administrators, administrators, insurers, reinsurers, attorneys and agents, and the successors and assigns of each of them (collectively "**BLG Releasees**") of and from any and all Claims (as defined in Section 5 above) which the Village ever had, now has, or shall or may have, whether known or unknown, suspected or unsuspected, and howsoever denominated or described, against any of the BLG Releasees, in any way arising out of, related to or on account of any act, matter, omission, cause or event occurring prior to the Effective Date of this Agreement, including, without limitation, Claims that relate to the Litigation; provided, however, that nothing in this release shall relieve BLG from any of its obligations under this Agreement. Nothing herein shall release BLG from compliance with any and all Village ordinances and regulations regarding the construction for the Brookbank Subdivision.

(7) Ownership of Released Matters. The parties warrant and represent that they are the sole and lawful owner of all rights, title, and interest in and to all matters released above, and that they have not previously assigned, transferred, or purported to assign or transfer, any of such released matters, in whole or in part, to any other person or entity.

(8) Stormwater Facilities. The Village shall be responsible, at its sole cost and expense, for engineering, providing, installing, constructing, and maintaining all stormwater

storage detention, requirements and/or facilities on the dedicated portion of Lot 3 for the construction of Brookbank Road and the construction of single-family homes on Lots 2, 3 and 6 in Arnold Court (collectively “**Stormwater Facilities**”) located in Brookbank Prairie including, (i) the Brookbank Road extension, and (ii) those certain homes to be installed and constructed on Lots 2, 3 and 6 on Arnold Court as depicted/described on Exhibit A attached hereto so that the subdivision and road extension, when completed, will comply with all Village and County stormwater rules, requirements, regulations and ordinances. The Village acknowledges and agrees that the Stormwater Facilities shall be constructed properly and in accordance with all Village ordinances, and in a sufficient manner to provide the stormwater detention and facilities to allow for the issuance of all permits from any applicable governmental authority, including but not limited to, stormwater management permits and building permits, necessary to construct three single family homes on Lots 2, 3 and 6, and the extension of Brookbank Road. Nothing herein shall require the Village to design, construct or operate the Stormwater Facilities as a dry bottom basin. The Village shall begin the process to engage engineering services appropriate for the design of the Stormwater Facilities with seven (7) days after the Effective Date. BLG shall agree to provide for the execution of a license agreement to authorize the Village and its agents full access to Lot 3 in anticipation of the dedication to the Village of that portion of Lot 3 necessary for the construction of the Stormwater Facilities, as depicted on Exhibit B. Within thirty (30) days after the Effective Date, BLG shall arrange for the dedication to the Village of that certain portion of Lot 3 in Brookbank Prairie necessary for the Village to engineer, provide, install, construct and maintain the Stormwater Facilities and as depicted on Exhibit B, at no cost to BLG. The Village will prepare a plat of dedication providing for the dedication to the Village, of that portion of Lot 3 as depicted on Exhibit B. BLG shall arrange for its execution within three (3) days from receipt from the Village. Except for Lot 3, the Village understands and agrees that if it requires additional rights beyond the dedicated portion of Lot 3, it shall be responsible for obtaining any and all rights necessary (whether through easement, dedication or otherwise) over any and all portions of Brookbank Prairie owned by third parties to allow for the Village to install, construct and maintain the Stormwater Facilities.

(9) Release of Stop Work Order. Promptly after the Effective Date of this Agreement, the Village shall rescind the Stop Work Order relating to Brookbank Prairie dated December 15, 2010. Notwithstanding the foregoing, construction activities may not resume on Brookbank Prairie until the appropriate permits are obtained. The parties shall work together cooperatively and in good faith to secure the appropriate permits.

(10) Construction of Improvements. After permit approval and in a commercially reasonable time after the Effective Date of this Agreement, BLG shall complete the remaining public improvements that are BLG’s responsibility as set forth in the previously approved subdivision plans, provided however, that nothing in this Agreement shall relieve the Village of its obligation to construct the Brookbank Road extension, and provided further, BLG shall not be obligated to repair previously constructed public improvements. It is expressly understood that BLG will provide the Village with written notice prior to the construction of any public improvements.

(11) Confidentiality of this Agreement. The parties agree to keep the terms of this Agreement confidential and, accordingly, they shall not, directly or indirectly, disclose the same

to any person or entity, except (i) the parties shall be permitted to disclose such information in confidence to their lawyers, accountants, insurers, financial advisors and consultants, and tax authorities, who shall have the same responsibility to keep confidential the terms of this Agreement, but only to the extent necessary for such individuals to perform their function for the party retaining them. Notwithstanding the foregoing, this paragraph does not preclude (i) any disclosure ordered by a court of competent jurisdiction or otherwise required by law, including but not limited to the Freedom of Information Act or the Open Meetings Act; or (ii) disclosure to legal counsel. If the terms of this Agreement are made public because either party is required by law to disclose such, then the parties shall no longer be bound by this confidentiality clause.

(12) Notice. Any notice to be provided pursuant to this Agreement must be sent to the following:

Bradley Land Group, Inc.
515 Ogden Ave.
2nd Floor Suite 208
Downers Grove IL 60515
Attention: David Bradley

With a copy to:

Gozdecki, Del Giudice, Americus, Farkas & Brocato LLP
1 East Wacker Dr.,
Suite 1700
Chicago, IL 60601
Attention: Rick A. Del Giudice

Village of Downers Grove
801 Burlington Ave.,
Downers Grove, IL 60515
Attention: Village Manager and Village Attorney

With a copy to:

DeAno & Scarry
53 W. Jackson Blvd.,
Suite 740
Chicago Illinois 60604
Attention: James DeAno

(13) Governing Law and Venue. This Agreement and any other documents referred to shall be governed by, construed and enforced in accordance with the laws of the State of Illinois exclusive of any choice of law provisions that would make the law of any jurisdiction apply. Venue for any legal action arising out of or relating to this Agreement shall be exclusively in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois or the United States District Court for the Northern District of Illinois, Eastern Division, and the parties consent to the exclusive jurisdiction of those courts and waive any objection to the laying of venue of any litigation in such courts.

(14) Waiver. No failure to exercise, and no delay in exercising, any right, remedy, or power under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

(15) Voluntary Agreement/Authority to Execute. The parties hereto represent and declare that they have carefully read this Agreement and know its contents and that they sign it freely and voluntarily and have full authority to do so. The parties further stipulate and acknowledge that this Agreement was entered into in good faith after extensive arms-length negotiations, and that all parties were represented by counsel of their own choosing.

(16) Severability. If for any reason any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement nevertheless shall be construed, performed and enforced as if the invalidated or unenforceable provision had not been included in the text of the Agreement.

(17) Drafting. The drafting and negotiation of this Agreement has been participated in by each of the parties, and for all purposes, therefore, this Agreement shall be deemed to have been drafted jointly by each of the parties and any rule of construction that ambiguous terms are construed against the drafting party shall not be in effect.

(18) Counterparts. If this Agreement is executed in counterparts, each counterpart shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatories to the same counterpart. Execution of this Agreement by the parties via facsimile or electronic signatures shall be deemed the same as original signatures.

(19) Enforcement of this Agreement. The parties reserve all rights and remedies in connection with any breach or alleged breach of this Agreement, including the right to seek specific performance of this Agreement.

(20) Entire Agreement/Amendment/Miscellaneous. This Agreement constitutes the entire and sole agreement between the parties with respect to the subject matters hereof, and all prior and contemporaneous agreements conversations, negotiations, possible and alleged agreements, representations, covenants and warranties, whether express or implied, and whether oral or written concerning the subject matter of this Agreement are merged herein. Notwithstanding the foregoing, the Village's obligation to construct the Brookbank Road extension shall survive the execution of this Agreement and remain a valid, binding obligation on the Village. This Agreement may not be amended or modified except in a writing signed by all the parties and expressly stating that it is intended to amend this Agreement. Time is of the essence on all matters referenced in this Agreement. The parties further acknowledge that their respective attorneys have explained this Agreement to them and they understand the terms of this Agreement, and the rights and claims they are releasing under this Agreement. The parties further acknowledge that they have had sufficient time to consider this Agreement before signing it, and to consult with whomever necessary to ensure that they understand the legal implications

of this Agreement before signing it.

(21) Captions. The captions of this Agreement are for convenience only and shall not be considered or referred to in interpretation or construction of any terms or provisions.

(22) Past Attorneys' Fees and Costs. Each party shall bear its or his own costs, expenses and attorneys' fees incurred through the execution of this Agreement.

(23) Successors and Assigns. The provisions of this Agreement shall bind and benefit the Village and BLG, and their respective successors and assigns.

(24) Execution. The parties acknowledge that they have carefully read and understand the terms of the Agreement, and their rights and obligations hereunder.

[EXECUTION PAGES TO FOLLOW]

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and date first above written.

BRADLEY LAND GROUP

By: _____

Its: _____

Date: _____

State of ILLINOIS

County of DUPAGE

On _____, before me,

(date)

personally appeared,
_____, who proved to me
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or
the entity upon behalf of which the
person(s) acted, executed the instrument

WITNESS my hand and official seal

(notary signature)

My Commission Expires: _____

THE VILLAGE OF DOWNERS GROVE

By: _____

Its: _____

Date: _____

State of ILLINOIS

County of DUPAGE

On _____, before me,
_____,
(date)

personally appeared,
_____, who proved to me
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or
the entity upon behalf of which the
person(s) acted, executed the instrument

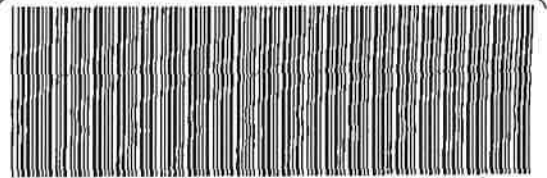
WITNESS my hand and official seal

(notary signature)

My Commission Expires: _____

PLAT

J. P. "RICK" CARNEY
DU PAGE COUNTY RECORDER
P. O. BOX 936
WHEATON, ILLINOIS 60189



J.P. "RICK" CARNEY
DUPAGE COUNTY RECORDER

JAN 27, 2004

4:21 PM

PLAT

09-18-407-020

000 PAGES

R2004-026701

DATE OF INSTRUMENT 11-20-03

CASH
 CHECK

CHARGE
 CREDIT CARD 57.00
+ 10.00 copies

DOCUMENT TYPE

- RE-SUBDIVISION
- ANNEXATION
- VACATION
- DEDICATION
- ORDINANCE
- EASEMENT
- DECLARATION
- RESOLUTION
- _____

TITLE BRADLEY'S BROOKBANK
PRAIRIE RESUB

1ST PARTY _____

2ND PARTY _____

LEGAL DESCRIPTION.

L- 1 to 6 IN BRADLEY'S BROOKBANK
Prairie sub
pt of

SEC 17, 18 TWP. 38N RANGE 11

PIN NO _____

UNIT NO _____

09-18-407-020 to 026

SUBMITTED BY

DAVE

ACCOMPANYING PAPERS

YES NO

BOOK 1

MAIL TO. DAVID BRADLEY

PAGE _____

1032 OGDEN AVE

NUMBER OF PAGES 2

DOWNERS GROVE, IL

60515

