



Meeting: Village Board
Meeting Date: 04/22/13
Agenda Item: 9b

Mission Statement
Delivering quality services in a courteous, cost-effective and efficient manner.

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: Burt R. McIntyre, President
Village Board of Trustees

REPORT FROM: Michael J Kaster, PE, Director of Engineering

AGENDA ITEMS: Review and take action on Agreement Waiving Notice and Agreeing to Special Assessments for Public Improvements between the Village of Howard and Valley Brooke Heights, LLC and Patricia Kaster and Deborah Meacham for Plat of Valley Brooke Heights 2nd Addition

POLICY ISSUE

1. Should the Village Board approve the Agreement Waiving Notice and Agreeing to Special Assessments (aka. Development Agreement)?

BACKGROUND INFORMATION

The Village Board approved preliminary resolution 2012-23 on November 12, 2012 declaring the intent to levy special assessments. In accordance with the resolution, staff has prepared plans, specifications, estimates, a schedule of assessments and called for a public hearing.

The current economic conditions have created an unwillingness for lending institutions to advance letters of credit to fund private developments in Northeast Wisconsin and nationwide. Thus the Developer has also requested that the Village finance the construction improvements until the lots can be sold at which time the improvement costs would be repaid. The Village is desirous of encouraging continued growth to expand its tax base, attract additional business activity within the Village, and increase tax revenues. An additional advantage would be that the Village would earn a greater interest rate on monies that would otherwise remain lower interest account. Of course a greater rate of return comes with some risk.

The proposed Development Agreement includes definitive assessment terms including a maximum repayment term of 5 years with an interest rate of 4.00% beginning at the time the assessments are levied. The cost of improvements would be levied on each individual lot within the development and the Village would receive repayment as each lot is sold or transferred, as well as receiving interest payments quarterly if the sale of lots has not provided adequate payment. The subdivision lots could be sold either as vacant lots or with homes constructed on the lots.

The Final Plat is still in the approval process, and will be recorded pending review from State and County departments. The plat recording will be required prior to issuance of building permits or the selling of any lots.

Due to the fact that the Village Clerk has to sign off on the Plat at time of recording stating that there are no special assessments on the property it is imperative that the plat be recorded prior to the levying of special assessments against the subject parcels.

PRIOR ACTION/REVIEW

- October 8, 2012, the Village Board approved the relocation order for the construction of a sanitary sewer interceptor from Evergreen Ave approximately 1,300 feet north.
- November 12, 2012, The Village Board approved the Preliminary Resolution declaring the intent to levy special assessments upon Valley Brooke Heights 2nd Addition, Evergreen Ave, and a Utility Easement.
- February 25, 2013, the Village Board approved the final plat of Valley Brooke Heights 2nd Addition.

FINANCIAL INFORMATION

FISCAL IMPACT:

- | | |
|------------------------------|------------------------|
| 1. Is There A Fiscal Impact? | <u>Yes</u> |
| 2. Is it Currently Budgeted? | <u>Yes</u> |
| 3. If Budgeted, Which Line? | <u>Capital Project</u> |
| 4. Amount: | \$1,325,000 |

RECOMMENDED ACTION

- b) Village staff recommends that the Village Board approve the Agreement Waiving Notice and Agreeing to Special Assessments.

If the Village Board were in favor of this policy action, the following motion may be made:

“Motion to approve the “Agreement Waiving Notice and Agreeing to Special Assessments”.

POLICY ALTERNATIVE(S)

The Village Board could take the following actions:

- Approve the Development Agreement
- Deny the Development Agreement and decide how to proceed
- Table the Development Agreement and request additional information

ATTACHED INFORMATION

- I. Agreement Waiving Notice and Agreeing to Special Assessments
- II. Personal Guarantee
- III. Final Plat.

DOCUMENT NO.	AGREEMENT WAIVING NOTICE AND AGREEING TO SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS
<p>THIS AGREEMENT, made and entered into this _____ day of _____, 2013, by and between the Village of Howard, a Wisconsin municipal corporation (“Village”), Valley Brooke Heights, LLC (“Developer”), owning property in the Plat of Valley Brooke Heights 2nd Addition in the Village of Howard, and Patricia Kaster and Deborah Meacham, adult individual and principal members of Valley Brooke Heights, LLC.</p>	
<p style="text-align: right;">Return to: Dennis M. Duffy P.O. Box 488 Green Bay, WI 54305-0488</p>	

Parcel No. VH-208

WHEREAS, Developer will subdivide property it owns in the Village of Howard known as the Plat of Valley Brooke Heights 2nd Addition into thirty six (36) lots; and

WHEREAS, Developer wishes to have Village construct public improvements consisting of public street, water, sanitary sewer, storm sewer, curb and gutter, sidewalks, gas, power, cable TV, street lighting, street trees and other incidental or accessory improvements where necessary, to serve such property legally described as:

Parcel No. VH-208, shown on the attached Exhibit A, incorporated herein.

WHEREAS, pursuant to Chapter 32, Article V. – Public Improvements and Assessments, Howard Municipal Code, and the Village of Howard’s Policy for Determining Special Assessments, Developer has requested that the Village construct such improvements and specially assess the benefiting parcels for the costs thereof; and

WHEREAS, under Chapter 32, Article V. – Public Improvements and Assessments, Howard Municipal Code, the Village of Howard’s Policy for Determining Special Assessments, the Village Board has the discretion to authorize construction of public improvements to be paid for by special assessment when the property owner does not file a letter of credit for payment of such improvements and the Village Board determines it to be in the public interest to construct such improvements; and

WHEREAS, due to poor economic conditions and an unwillingness in lending institutions to advance letters of credit for private development, Developer is unable to obtain appropriate financing to enable it to file a letter of credit for the aforementioned public improvements; and

WHEREAS, the economic climate has fostered a market for those who seek to purchase mid-priced homes, providing the opportunity for residential development within the Village; and

WHEREAS, the Developer and Village believe that it is in their mutual best interests and in the public interests of the Village of Howard to approve such public improvement construction along the terms and conditions provided herein.

NOW, THEREFORE, the parties hereto, based on the recitals stated above and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

1. The Village of Howard has let bids for the Developer’s project for public improvement of Valley Brooke 2nd Addition – Utility #12013U March 2013 & Valley Brooke 2nd Addition – Roadway #12013R March 2013 and the Village proposes to award contracts and finance the project as bid. (\$928,327.21)

Developer represents and warrants that he or she has reviewed the project contract of Valley Brooke 2nd Addition – Utility #12013U March 2013 & Valley Brooke 2nd Addition – Roadway #12013R March 2013 and the bid of the lowest

responsible bidder for the project (\$928,327.21) and further authorizes and consents to the Village awarding the contract subject to the terms and conditions therein.

The Village does not represent or warrant or assume responsibility for assuring that the bid amount (\$928,327.21) from the project contract will be sufficient to complete construction. Developer acknowledges and understands that the final project costs may differ from the contract price by reason of unforeseen conditions and change orders. Developer agrees that additional monies will be escrowed or paid to the Village to cover costs in excess of the bid contract price for the project.

Any extra change, allowance or other construction work ordered by the Village, which changes the bid, will be documented with a written change order. A copy of all such signed change orders and change orders mandated by the contract documents will be sent to the Developer.

Upon receipt of construction permits, conveyance of the required right of way and easements by Developer, and completion of this Agreement the Village shall award and issue a Notice to Proceed for Valley Brooke 2nd Addition – Utility #12013U March 2013 & Valley Brooke 2nd Addition – Roadway #12013R March 2013.

2. Upon the Developer recording the Plat of Valley Brooke Heights 2nd Addition (Exhibit A), the Village Board of the Village of Howard will approve Resolution No. 2013-10, a Final Resolution Authorizing the Levying of Special Assessments Against Benefitted Property for Sanitary Sewer and Laterals, Watermain and Services, Storm Sewer and Laterals, Storm Water Management Facilities, Driveways, Sidewalks, Curb and Gutter and Roadway Reconstruction on Valley Brooke Heights 2nd Addition all relating to Developer's property in the Plat of Valley Brooke Heights 2nd Addition which is incorporated herein by reference as though more fully set forth herein and made part of this Agreement.

The purpose of the Special Assesmsnets in addition to Developer's Personal Guarantee, are to guarantee payment by the Developer to the Village for the payment of those contract costs for public improvements (\$928,327.21) as the same will become due and owing as provided for in the Final Resolution No. 2013-10 for the project contract of Valley Brooke 2nd Addition – Utility #12013U March 2013 & Valley Brooke 2nd Addition – Roadway #12013R March 2013.

3. Developer's payment of Nine Hundred Twenty Eight Thousand Three Hundred Twenty Seven Dollars and 21/100 (\$928,327.21) for the requesting public improvements shall be made as follows:

a. The assessments hereby levied for such improvements shall be paid to the Village as provided in the Final Resolution Authorizing the Levying of Special Assessments, Resolution No. 2013-10; and

b. Developer shall also execute a Personal Guarantee guaranteeing the repayment of the total public improvement costs (\$928,327.21) to the Village plus any accrued interest, charges or penalties on the liens of special assessment or the remaining balance thereon as reduced by paid special assessments to the Village, upon the expiration of five (5) years from the date of the Final Resolution. A copy of the Personal Guarantee is attached hereto and made part of this Agreement as Exhibit B.

4. Developer, on its own and on behalf of any and all successors and assigns, requests the installation of the public improvements specifically provided for in this Agreement.

5. Developer, on its own behalf and on behalf of any and all successors and assigns, freely and voluntarily waives any right it may have under state or local laws to notice of such street, sanitary sewer, water, stormwater and curb and gutter improvement construction affecting the property legally described in this Agreement, such property hereinafter be referred to as “the benefited properties”. Each principal member of Developer shall also execute a Personal Guarantee guaranteeing the repayment of the total public improvement costs to the Village or the remaining balance thereon upon the expiration of five (5) years from the date of the Final Resolution.

6. The method of determining the assessment rate is reasonable.

7. The subject property will receive special benefit as a result of public improvements constructed under this Agreement.

8. Developer waives any and all right or recourse it may have, through State or Federal Court pursuant to Wis. Stats. §66.0703, or otherwise to challenge the assessment agreed to in this agreement, it being the desire of Developer, to be placed in the same position as if they had been fully and adequately noticed of the procedures pertaining to the assessment for the reconstruction activity.

9. The Village shall act in reliance upon the representations of Developer in this agreement and shall commence as soon as it is reasonably possible the improvements contemplated by this agreement.

10. This Agreement shall be recorded in the office of the Brown County Register of Deeds.



EXHIBIT A

Valley Brooke Heights Second Addition; part of the Northwest ¼ of the Southwest 1/4 , Section 6, T24N-R20E, Village of Howard, Brown County, Wisconsin, more fully described as follows:

Commencing at the Southwest corner of said section 6; thence N00 °57'00"E, 2627.65 feet to the West 1/4 corner of said Section 6 and the point of beginning; thence N88 °32'11"E, 485.55 feet along the North line of said Northwest 1/4 of the Southwest 1/4 to the Southerly right-of-way line of the Mountain Bay Recreational Trail; thence 697.06 feet along the arc of a 2939.83 foot radius curve to the left whose long chord bears S57 °41'16"E, 695.43 feet along said Southerly line to the Northwest corner of the recorded plat of Valley Brooke Heights First Addition, recorded in Volume 21, Plats, Page 40, Document Number 1688805 Brown County Records; thence S30°27'54"W, 166.46 feet along a West line of said plat; thence S23 °59'43"W, 60.38 feet along a West line of said plat; thence S30°27'54"W, 130.00 feet along a West line of said plat; thence S59 °32'06"E, 32.48 feet along a West line of said plat; thence S01 °48'43"E, 200.00 feet along a West line of said plat; thence S49 °30'33"W, 79.07 feet along a West line of said plat; thence S15 °42'04"W, 139.56 feet along a West line of said plat; thence S47°01'29"W, 67.51 feet along a West line of said plat; thence S23 °18'40"W, 187.72 feet along a West line of said plat to the South line of said Northwest 1/4 of the Southwest 1/4 as established by Mau and Associates Plat of Survey dated May 31, 2011; thence S88 °11'26"W, 733.15 feet along said South line to the West line of said Northwest 1/4 of the Southwest 1/4; thence N00 °57'00"E, 1313.82 feet to the point of beginning.

Said parcel contains 1,133,580 sq. ft./26.02 Acres of land more or less.



PERSONAL GUARANTEE OF SPECIFIC TRANSACTION

1. GUARANTEE. For value received, and to induce the Village of Howard (Village) to extend credit to Valley Brooke Heights, LLC, a Wisconsin Limited Liability Company, (Developer) for the installation of public improvements benefiting property owned by Developer, Patricia Kaster and Deborah Meacham (hereinafter “the undersigned”) guarantees payment of and promises to pay or cause to be paid to Village, when due and as described herein, or to the extent not prohibited by law, at the time Developer becomes a subject of bankruptcy or other insolvency proceedings the total construction costs incurred by Village in constructing the public improvements.

Such public improvements are estimated to cost \$928,327.21 (the Estimate), for which the undersigned agrees to repay, plus interest charges and fees as provided for in the Development Agreement for Public Improvements (the Agreement), and any extensions, renewals, and deferrals thereof, and also including the amount of any payments made to Village on behalf of Developer which are recovered from Village by a trustee, receiver, creditor, or other party pursuant to applicable law (the obligations) and to the extent not prohibited by law, all costs, expenses, fees, at any time paid or incurred in endeavoring to collect all or part of the obligations or to realize upon this guarantee or any collateral securing any obligation. To the extent not prohibited by law, this guarantee

is valid and enforceable against the undersigned, even though any obligation is invalid and unenforceable against Developers.

2. TIMING OF REPAYMENT. Repayment as guaranteed herein, shall be made over a five (5) year period, as follows:

- A. Not less than one-fifth of the total public improvement costs funded by Village in accordance with the Agreement shall be repaid to the Village by the end of each year of the assessment deferral beginning at the date of assessment approval. Such one-fifth payment shall be made first at the transfer of ownership of individual parcels assessed and, if such amounts not sufficient, by the undersigned pursuant to this Guarantee.
- B. The full costs of the public improvements shall be calculated at the completion of the project. However, assessments shall initially be levied based upon the construction Estimate upon parcels transferred prior to completion of the project. Should the assessment levied upon the estimate be less than the amount attributable to the parcel(s) transferred, such difference shall be shared among the parcels not transferred as of the date of completion. Should the assessment levied upon the parcels transferred be more than the amount attributable to the parcel(s) transferred, such credit shall be among the parcels not transferred as of the date of completion.

3. REPRESENTATIONS. The undersigned acknowledges and agree that Village has not made any representations or warranties with respect to, does not assume any responsibility to the undersigned for, and has no duty to provide information to the undersigned regarding the collectability or enforceability of any of the obligations or the financial condition of Developer. The undersigned has independently determined the collectability and enforceability of the obligations and, until the obligations are paid in full, will independently, and without reliance on Village, continue to make such determinations.

4. PERSONS BOUND. This guarantee benefits the Village, its successors and assigns, and binds the undersigned, his respective heirs, personal representatives, and assigns.

Dated in Howard, Brown County, Wisconsin, this ____ day of _____, 2013.

Patricia Kaster
Managing Member, Valley Brooke
Heights, LLC

Deborah Meacham
Managing Member, Valley Brooke
Heights LLC

Valley Brooke Heights, LLC
1317 Lombardi Access Dr.
Green Bay, WI 54304

STATE OF WISCONSIN)
)
COUNTY OF BROWN)

Personally came before me this ____ day of _____, 2013, the above named Patricia Kaster and Deborah Meacham to be known to be the person who executed the foregoing instrument and acknowledged the same.

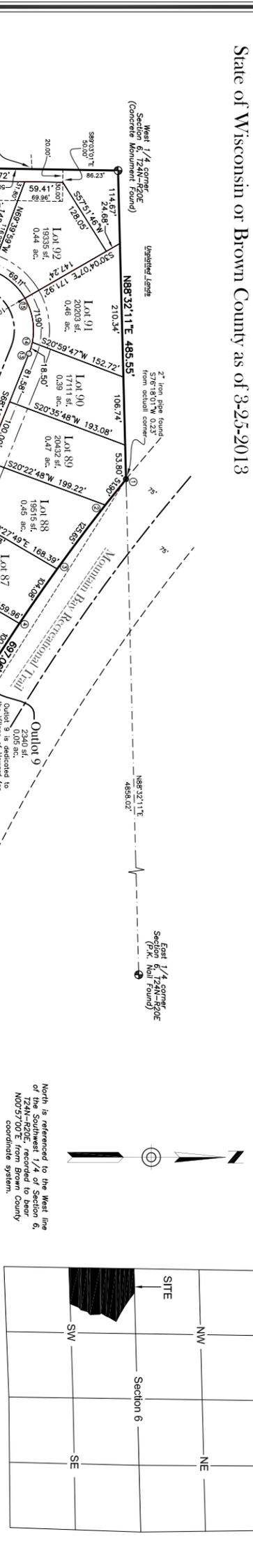
Notary Public:

My commission expires: _____

VALLEY BROOKE HEIGHTS SECOND ADDITION

Part of Northwest 1/4 of the Southwest 1/4, Section 6, T24N-R20E,
Village of Howard, Brown County, Wisconsin.

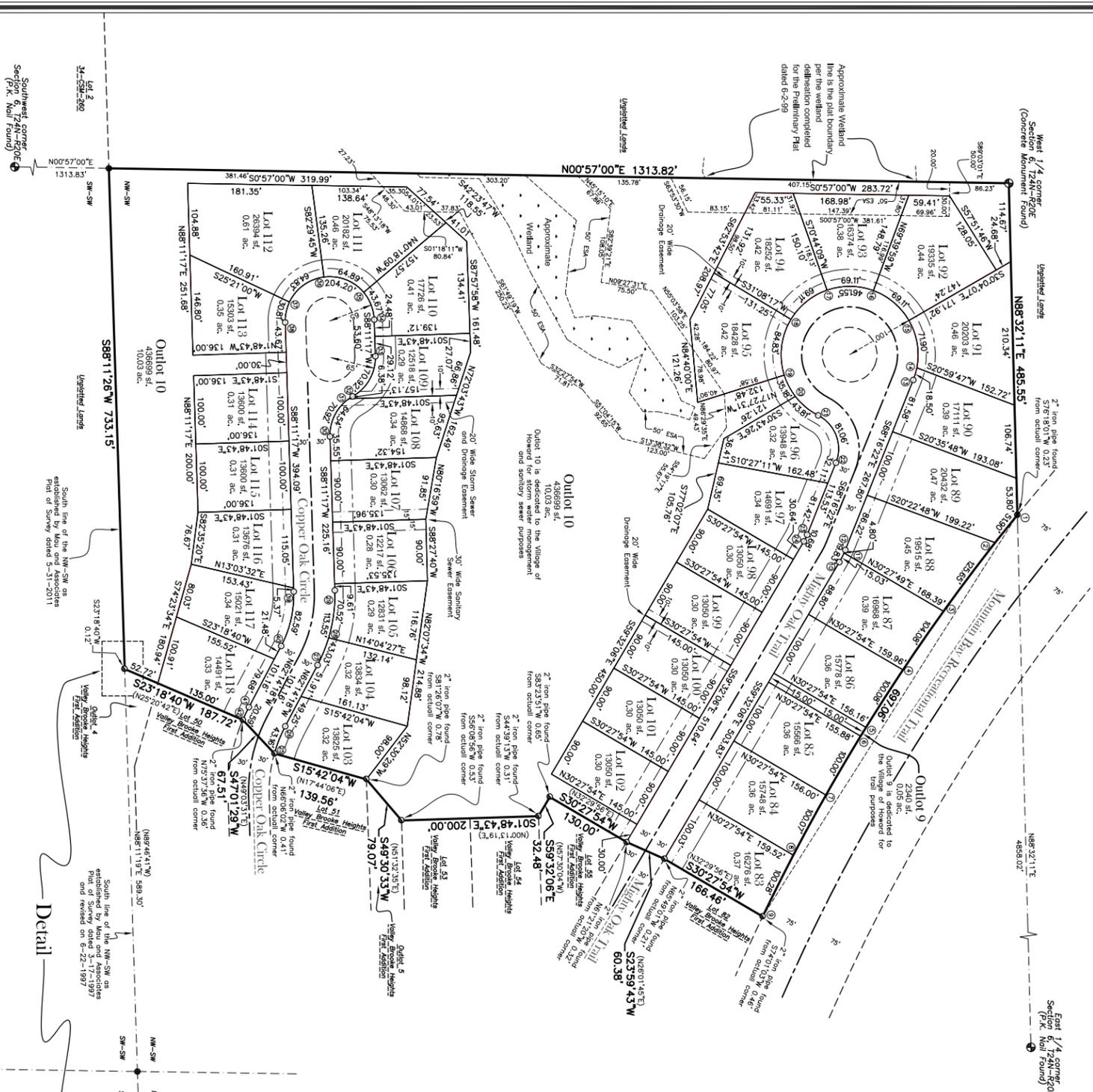
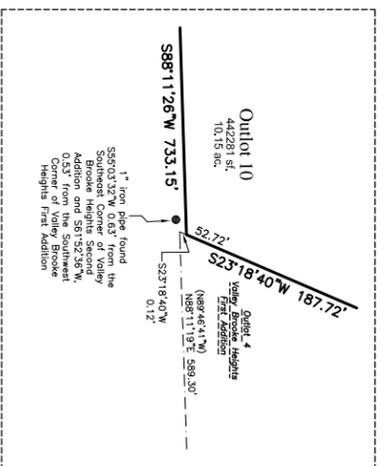
Note: Final Plat has not received approval from the
State of Wisconsin or Brown County as of 3-25-2013



Legend

- 2.38" (od.) x 1/8" iron pipe weighing 3.65 lbs/ft., foot set
- 1" iron pipe found
- 2" iron pipe found
- Brown County Monument
- ⊕ - Type noted
- All other lot corners marked with a 1.32" (od.) x 1/8" iron pipe weighing 1.68 lbs/ft., foot.
- All linear measurements have been made to the nearest hundredth of a foot.
- All distances on curves are arc lengths.
- 30' Building setback (unless noted)
- 12" Utility easement (unless noted)
- () Recorded as

Detail Not to Scale



There are no objections to this plat with respect to
Secs. 236.15, 236.16, 236.20 and 236.21(1) and (2),
Wis. Stats. as provided by s. 236.12, Wis. Stats.

Certified _____ 20____

Department of Administration

Office of the Register of Deeds
Brown County, Wisconsin

Received for Record _____ 20____
at _____ o'clock _____ M and recorded as
Document # _____ in
Volume _____ of _____ on Page _____
County of _____ State of Wisconsin

Valley Brooke Heights LLC.
Valley Brooke Heights
Second Addition
FINAL PLAT
Tax Parcel Number: VH-208

Mach IV
Engineering & Surveying LLC
211 N. Broadway, Suite 114, Green Bay, WI
PH: 920-569-5765 Fax: 920-569-5767

NO.	REVISION DESCRIPTION
1	Village of Howard Revisions

DATE: January 31, 2013
DRAFTED BY: BIL
CHECKED BY: ASC
PROJECT # 0014-05-12
SCALE: 1" = 100'
SHEET NUMBER
1 OF 2
DRAWING NUMBER
785

