

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: February 8, 2010**

SUBJECT: Resolution requesting Buncombe County to establish a deadline for substantial completion of infrastructure in Phase III of The Settings and to call the bond in the event of failure to perform

AGENDA INFORMATION

Agenda Location: Old Business
Item Number: 7-A
Department: Legal
Presenter: Ron Sneed, Town Attorney
Mark Kraemer, The Settings - Phase III property owner

BRIEF SUMMARY: The Settings of Black Mountain, LLC, has not completed the infrastructure for Phase III, and one house is completed or nearing completion in that Phase. There have been ongoing communications for many months between The Settings and the Town Attorney about progress of The Settings' applications for funds to complete the infrastructure after the lender that financed construction in earlier phases refused to fund construction of Phase III. Despite the ongoing discussions, there appears to be no indication that funding is in place or that the developer has the means or intent to complete the project.

Because the development was permitted under Buncombe County regulations prior to voluntary annexation by the Town of Black Mountain, only Buncombe County has the authority to establish a deadline for substantial completion or call the bond to force performance on the part of the developer/general contractor. Settings property owners, Mark Kraemer and Deepal Eliatamby, who have been negotiating with The Settings of Black Mountain LLC, to provide private financing for completion of the infrastructure have requested the Board to encourage Buncombe County to step in and ensure project completion by calling the bond if the developers have failed to provide for substantial completion by April 30, 2010.

MOTIONS FOR CONSIDERATION: To adopt the attached resolution as presented.

FUNDING SOURCE: N/A

ATTACHMENTS: Resolution

TOWN ATTORNEY'S COMMENTS AND RECOMMENDATIONS:

That the Board of Aldermen set a deadline for substantial completion of Phase 3 of The Settings, with that date to be no later than April 30, 2010, and request that Buncombe County call the bond if the deadline is not met.