

Brookfield Developer Amenities and Home Owners Association Fact Sheet

What amenities were proposed by the Developer?

The original developer has proposed multiple amenities for the development including, but not limited to:

1. Private pond/water feature (within Stormwater pond)
2. Private park (slated for existing Outlot)
3. Landscaped medians (within City right of way)
4. Boulevard landscaping (within private property along Nowthen Boulevard)

Were these amenities required by the City?

No. The private amenities listed above are not a requirement of the City. The City allowed the developer to construct these amenities, but stated that the City would not accept future maintenance obligations of these private amenities.

Why was the Home Owners Association formed?

Although the City shall not comment on the legal aspects of the HOA or Declaration of Covenants and Restrictions, the HOA was formed in part in order to provide a mechanism to maintain the private amenities. This includes financing for a pump for the water feature and irrigation for landscaping.

Why is the pond not holding water as originally anticipated?

A pond liner was installed in order to maintain a level of water where it would normally infiltrate through the soil into the groundwater aquifer. It is the City's understanding that the pond liner failed, and that a portion of the water is infiltrating through the soil. It should be noted that the City only requires that the pond function as a Stormwater pond to capture surface water runoff from impervious surfaces within the development. The City does not require that the pond maintain a certain water level.

Which parcels are subject to the HOA?

The City is not in a position to comment on the legal aspects of the HOA, nor the accompanying declarations and restrictions. It is the City's understanding that a portion of the existing parcels were removed at least in part from certain obligations of the HOA, or lacked the ability to enforce certain provisions to begin with. Most notably, it has been communicated to the City that the original Declaration of Restrictive Covenants lacked the enforceability to collect HOA dues. This is not an official legal opinion of the City, simply communication provided to the City. Concerned residents should consult a real estate attorney for more information.

The City would, however, assist in facilitating a discussion amongst residents to discuss the future of the HOA. While the City cannot require the HOA, it can create a space for discussion and provide educational and technical information in an attempt to point the HOA in a positive direction related to administration and maintenance of the private amenities.

What happens if the private amenities are not properly maintained?

While the City is cognizant and aware of the benefit of providing these amenities for the neighborhood, the City is not in a financial position, nor a resource position, to take on these additional obligations at this time.

The City will ensure that the pond continues to function as a Stormwater pond in compliance with the approved grading plan. The City will not maintain the pond in such a way that guarantees a certain water level. If the residents of the community desire to maintain a level of water, it shall be their responsibility to do so through appropriate tools and mechanisms.

The City will not construct or maintain the planned private park, as stipulated throughout the platting and Development Agreement process for Brookfield 1st, 2nd, and 3rd Additions and, as it is not part of the City's Master Park and Trail Plan as recommended by the Park and Recreation Commission. The City will, however, continue to develop key connections through linear parks and trails as planned in the Master Park and Trail Map. The City will not maintain the landscape medians at the Nowthen Boulevard entrance and roundabout. In the event the lack of maintenance results in vegetation failure, the City will remove these improvements from the right of way. At this time, the City has no plans to remove the vegetation from the City right of way, so long as the condition of the landscaping remains acceptable. It is noted that said landscaping is beginning to deteriorate, so it is preferred if corrective action is commenced as soon as possible.

Will the future lots being created as part of BROOKFIELD 4TH ADDITION include an HOA?

Based on the materials submitted to date, it does not appear that the Applicant is planning on including itself as part of the existing HOA nor creating a new HOA. According to information provided to the City, the Declaration of Restrictive Covenants was only recorded on individual buildable lots for BROOKFIELD 1ST, 2ND, and 3RD ADDITIONS. The Declaration does not appear to have been recorded on Outlots, which are undeveloped portions anticipated for future development.

What options do we have to ensure the private amenities are properly constructed and maintained?

Interested individuals should consult legal counsel specializing in real estate law. Options include forming or re-forming an HOA or exploring other funding and maintenance alternatives. Again, the City is interested in assisting by facilitating discussion and providing educational materials, but cannot provide legal counsel nor require formation of an HOA.