

STAFF REPORT TEXT AMENDMENT



Hearing Date: NA

Case File #: TA-16-15

Updated: 12-8-16, 1-11-17

General Description: Amend the UDO to require the completion of infrastructure prior to final plat approval for subdivisions.

Town Initiated

Citizen Initiated

Applicant(s): NA

STAFF COMMENTARY

Based on discussion during the Planning Board meeting held 9/1/2016, staff has developed a text amendment requiring infrastructure installation prior to final plat approval in subdivisions. In addition, per changes to NC General Statutes, maintenance guarantees are no longer allowed per law. References to such have been removed and a one-year workmanship guarantee on improvements has been provided.

The proposed amendment requires that final as-built plans be submitted, that the improvements conform to the approved preliminary plat/plan, and that the infrastructure be complete (except for a final coat of asphalt and landscaping) prior to final plat approval. As a result, no land may be conveyed prior to final plat approval and subsequent installation of infrastructure.

While working on this text amendment, staff became aware of an area of potential concern in how final Planned Residential Development (PRD) plans are approved. It appears as though it was intended for a PRD final development plan to function as a final plat, as it is required that the plans be adequate for recordation at the register of deeds. It does not, however, make this clear, and does not clearly designate who approves a PRD final plan, only stating that the Board of Adjustment must make a recommendation. We are proposing that section 13.19 clarify that PRDs get final approval similar to a traditional final plat.

Update: 12-8-2016: Minor revisions have been addressed in regards to Planning Board discussion. Underground electric utilities have now been included as a required improvement prior to Final Plat approval.

Referenced UDO Text:

Section 2.17 Underground Electric Service

Underground electric service to all new construction is required. Underground service shall be required in the event of repairs and upgrading of electric service to an existing building.

SECTION 13.08 REQUIRED IMPROVEMENTS AND MINIMUM STANDARDS OF DESIGN FOR SUBDIVISIONS

(A) Required Improvements. Each **subdivision** of this Ordinance shall contain the following improvements:

- (1) Graded **Streets** or **Easements**.
- (2) Construction Entrances. Where applicable, it is recommended that construction vehicles shall be afforded entrances and exits separate from the developed portions of the **subdivision** to preserve the integrity of paving in such areas; entrances and exits to such developed areas shall exhibit a **sign** or **signs** bearing the legend "NO CONSTRUCTION VEHICLES" and directing such traffic to the appropriate entrance.
- (3) Adequate Drainage System.
- (4) Installation of water distribution and sewage collection lines within the **subdivision** and connection to the Town's water and/or sewage system where the Town's system exists adjacent to the **subdivision** or the property being subdivided, where feasible.
- (5) **Street** Name Markers.
- (6) Monuments as required by the NCGS Chapter 39, Article 5.
- (7) Official Speed Limit and Stop **Signs**.

(B) Design Standards.

- (1) Design Standards for **Streets** as set forth in Chapter 98 of the Code of Ordinances.
- (2) Marginal **Access Streets**. Where a tract of land to be subdivided adjoins an existing major thoroughfare, the subdivider will be required to provide a marginal **access street** parallel to the major thoroughfare, or reverse frontage on a **subdivision street** to be developed adjacent to the major thoroughfare. Where reverse frontage is established, private driveways shall be prevented from having direct **access** to the major thoroughfare. If it is demonstrated that a marginal **access** or reverse frontage is not feasible, **lots** fronting on a major thoroughfare must be a minimum of one hundred (100) feet wide with a turning circle or a drive way with a three (3) point turn.
- (3) **Signs**. **Signs**, within the **subdivision**, desired by the developer, must be indicated on a plan showing the location of the **signs** and a description indicating height, color, wording, etc. The plan must be approved by the **Planning Board** before a **sign** permit may be issued. A permit must be issued before any **signs** are **erected**. Any changes in the **sign** plan approved by the **Planning Board** must be submitted to the **Zoning Officer** before a **sign** permit is issued.
- (4) Official Traffic **Signs**. All **subdivision streets** shall have official speed limit and stop **signs erected** in accordance with the NC

PROPOSED TEXT AMENDMENT

SECTION 13.01 PRELIMINARY PLAT

- (C) Approval of a preliminary plat shall constitute tentative approval of a final subdivision plat. Such approval shall be valid for a period of one (1) year. The Planning Board may extend preliminary plat validity in six (6) month increments provided that reasonable progress has been made. A preliminary plat shall show the following:

SECTION 13.02 FINAL PLAT

The Town Planning Board shall review the final plat to ensure that the subdivision is equal to or exceeds the standards of this article, the applicable zoning regulations and any applicable other federal, state, county or local regulations. No subdivision or planned residential development (PRD) shall be recorded nor any structural building permit issued within a proposed subdivision until all Town requirements have been met and all required infrastructure has been installed and approved by the appropriate Town officials. Upon determination that these standards have been achieved, the Planning Board shall grant final plat approval of the subdivision and inform the Town Council of this action at the next Council meeting. ~~As each building in a multi-family project is completed, the Planning Board will review and approve the final plat prior to recording. All sections of 13.02 (A)–(D) (C) and 13.03–13.07 of the Subdivision Regulations shall be followed for multi-family projects.~~

- (A) *Submitting the Final Plat.* After the preliminary plat has been approved and all required infrastructure installed and approved, the final subdivision plat as described in Section 13.05 shall be submitted ~~on a computerized disk~~ electronically along with as-built plans showing water lines, wastewater lines, stormwater facilities, roads, utilities and any other improvements. This final subdivision plat computerized disk must be submitted for final approval before any building permits may be issued and prior to expiration of the preliminary plat. Such owner or subdivider shall submit an one (1) original mylar and two (2) paper copies of the final plat as required by the County; ~~and two (2) blueprint copies of the final plat;~~ properly signed and executed as required for recording in the office of the Register of Deeds of the County ~~along with the necessary probate and recording fees.~~

- (B) *Conformity with Preliminary Plat.* The final plat shall conform with the preliminary plat as approved, ~~and if~~ and if desired by the owner or subdivider, ~~it the final plat~~ it the final plat may constitute only that portion of the approved preliminary plat which the developer proposes to record and develop at the time, ~~provided. However, that~~ provided. However, that the Planning Board shall find that the portion of the subdivision is reasonably located with respect to existing roads and utility lines, that such portion shall conform to all requirements of this article, ~~and that all infrastructure is planned and installed to adequately serve all lots shown on the final plat.~~ and that all infrastructure is planned and installed to adequately serve all lots shown on the final plat.

SECTION 13.03 GUARANTEE OF IMPROVEMENTS

~~All required improvements required by Section 13.08, except the final lift of asphalt on roadways and minor improvements such as required landscaping or electric utilities, shall be installed, inspected, and approved prior to approval of any final plat. The County Engineer shall determine if the water and sewer utilities work is satisfactory and complete. A Subdivision Improvement Agreement shall be entered into for the purpose of guaranteeing the proper installation of the final lift of asphalt on roadways and any other approved minor improvements according to the requirements of this Section. In addition, a workmanship guarantee shall be provided for all required improvements according to the requirements of subsection E.~~

- (A) *Subdivision Improvement Agreements.* The UDO Administrator shall ~~have delegate~~ have delegate the authority to review and approve all subdivision improvement agreements ~~to the Chief Building Inspector. The Chief Building Inspector may delay the requirement for the completion of required improvements prior to recording of the final plat or final site development plan if the applicant enters into a Subdivision Improvement Agreement by which the applicant agrees to complete all required~~ The Subdivision Improvement Agreement shall guarantee completion of all eligible on-site and off-site public improvements no later than one (1) year following the date upon which the final plat is recorded. Such period may be extended for up to an additional six (6) months upon its expiration at the discretion of the UDO Administrator. The Applicant shall bear the responsibility to prepare a Subdivision Improvement Agreement. The Town Attorney shall approve any Subdivision Improvement Agreement as to form.

~~In order to provide for emergency access, no Subdivision Improvement Agreement shall be approved, and no performance guarantee shall be accepted, until the Base Course for the streets within the applicable phase for which a final plat is proposed has been installed.~~

DEPARTMENT OF PLANNING AND INSPECTIONS

~~At the discretion of the UDO Administrator, the Town of Sunset Beach may enter into a subdivision improvement agreement with the applicant for a development containing multiple final plats or plans. Notwithstanding any provision in this Ordinance to the contrary, the subdivision improvement agreement shall determine the time when the required improvement or dedication for multiple final plat developments shall occur.~~

- (B) *Performance Security.* Whenever ~~the Chief Building Inspector permits~~ an applicant ~~is subject to enter into~~ a Subdivision Improvement Agreement, the applicant shall be required to provide sufficient security to ensure completion of the required public improvements. The security shall be in any form authorized by N.C.G.S. § 160A-372(g)(1) ~~the form of an irrevocable letter of credit, or cash escrow~~. If in the form of a surety bond, the bond shall be reviewed annually.

The letter of credit, cash escrow, ~~or~~ surety bond, or other approved guarantee shall be in an amount ~~approved by the Chief Building Inspector as~~ reflecting one hundred twenty-five percent (125%) of the cost of the improvements and shall be sufficient to cover all promises and conditions contained in the Subdivision Improvement Agreement. ~~The County Engineer~~ An engineer selected by the Town shall approve the estimated cost of improvements before the Agreement is executed. The estimated cost shall be broken down separately for each element of the agreement. In addition to all other security, when the Town participates in the cost of an improvement, the applicant shall provide a performance bond from the contractor, with the Town as a co-obligee. The issuer of any surety bond shall be subject to the approval of the Town Attorney and the UDO Administrator.

If security is provided in the form of a cash escrow, the applicant shall deposit with the Town Finance Director a cash amount or certified check endorsed to the escrow agent for a face value in an amount not less than the amount specified ~~herein by the Chief Building Inspector~~. The surety bond or cash escrow account shall accrue to the Town for administering the construction, operation, and workmanship of the improvements. Where oversized facilities are required, the UDO Administrator ~~Chief Building Inspector~~ and applicant shall specify a reimbursement procedure in the Subdivision Improvement Agreement.

- (C) *Release of Performance Security.* Upon completion of all improvements required by the Subdivision Improvement Agreement, the ~~Chief Building Inspector shall inspect the work. If the Chief Building Inspector~~ UDO Administrator shall have the

~~work inspected. The County Engineer shall determine if the water and sewer utilities work is satisfactory and complete. If the UDO Administrator determines that the work is satisfactory and complete, the letter of credit, cash escrow, or surety bond shall be released. The UDO Administrator Chief Building Inspector shall also require evidence from the subdivider that all contractors have been paid in full prior to the release of the performance security.~~

(D) *Failure to Complete Improvements.* If a Subdivision Improvement Agreement has been executed and security has been posted and required public improvements are not installed pursuant to the terms of the Agreement, the UDO Administrator may:

- (1) Declare the Agreement to be in default thirty (30) days prior to the expiration of the guarantee instrument, and require that all public improvements be installed regardless of the extent of completion of the development at the time the agreement is declared to be in default;
- (2) Obtain funds pursuant to the surety and complete the public improvements by itself or through a third party;
- (3) Assign its right to receive funds pursuant to the surety in whole or in part to any third party, including a subsequent owner of the subdivision or addition for whom the public improvements were not constructed, in exchange for the subsequent owner's Agreement to complete the required public improvements; and/or
- (4) Exercise any other rights available under the law.

(E) *Maintenance Workmanship Guarantee.* ~~The UDO Administrator shall delegate the authority to review and approve all maintenance bonds to the Chief Building Inspector.~~ The applicant shall guarantee all the improvements against defects in workmanship and materials for a period of one (1) year from the date of acceptance of such improvements. ~~In exceptional situations, where undue hardship would otherwise result and the shorter term would not be inconsistent with the purposes of this Ordinance, the UDO Administrator in consultation with the County Engineer may approve a shorter term maintenance guarantee. The maintenance guarantee shall be secured by a surety bond or cash escrow in an amount reflecting five percent (5%) of the cost of the completed improvements.~~

~~The applicant shall construct and pay for all costs of temporary improvements required by the Chief Building Inspector and shall maintain said temporary improvements for the period specified by the Chief Building Inspector.~~

Thirty (30) days prior to the expiration of the maintenance workmanship guarantee instrument, if any defects in workmanship and/or materials are not repaired to the satisfaction of the UDO Administrator Chief Building Inspector, the subdivider shall be required to make all necessary repairs immediately. Failure to complete improvements will result in penalties as outlined in this Ordinance.

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- (3) Adequate Drainage System.
- (4) Installation of water distribution and sewage collection lines within the subdivision and connection to the Town's water and/or sewage system where the Town's system exists adjacent to the subdivision or the property being subdivided, where feasible.
- (5) Street Name Markers.
- (6) Monuments as required by the NCGS Chapter 39, Article 5.
- (7) Official Speed Limit and Stop Signs.
- (8) Underground electric service to serve all development within the subdivision.

SECTION 13.19 FINAL PLAT DEVELOPMENT PLAN

The final plat of a Planned Residential Development (PRD) shall be approved in the same manner as a traditional subdivision pursuant to Part 1 of this Article, provided that an approved PRD Site Development Plan shall serve as an approved preliminary plat for the purposes of final plat approval and shall conform substantially with the approved Site Development Plan or phase or subsection thereof.~~The final site development plan shall comply substantially with the preliminary site development Plan; however, it shall have sufficient detail to permit its being recorded by the Register of Deeds. The Board of Adjustment shall review the final site development plan and recommend the approval, conditional approval, or denial of the same. After conducting a public hearing according to Section 13.17, the stated reasons for conditional approval or disapproval shall be placed in the record of the minutes of the proceedings.~~

PLANNING BOARD SUMMARY

Action:

(A) _____ The Planning Board hereby recommends adoption of the proposed UDO Amendment for Subdivision Infrastructure Improvements prior to Final Plat Approval by the Town Council and finds that the proposed amendment to the Unified Development Ordinance is:

- (i) consistent with the Town’s comprehensive plan (2010 Town of Sunset Beach CAMA Land Use Plan) and all other applicable plans and policies adopted by the Town, which is consistent with Policy 15 of the Land Use Compatibility Policy Statements: “The Town shall support an orderly growth pattern which reinforces the community’s existing coastal residential and commercial areas and protects the environment.” and
- (ii) that it is in the public interest because it will advance the public health, safety, and/or welfare of the Town of Sunset Beach.

Passed ____ Denied _____ (For ____ Against _____ Abstained _____)