



Staff Report

Text Amendment

Case #: TA-2017-03-00005

Attachments:

Staff Report, Current Code

Planning Commission Public Hearing: Thursday, April 6, 2017

City Council Introduction: Tuesday April 11, 2017

City Council Final: Tuesday April 25, 2017

City Council Request (Ordinance):

Introduction of an Ordinance to Amend Unified Development Code Ordinance #14-5634 to provide Relative to Article 3 Permits and Final Plat Approval Section 3.2.2 Bond and Maintenance Requirements D) Maintenance Bond (Case#TA-2017-03-0005) Recommend Approval by Planning Commission.

Additional Information:

D. MAINTENANCE BOND

(1) The applicant (developer) shall be required to file a maintenance bond or The maintenance bond may be substituted by a cash escrow account or property of equal value to the bond, with the governing body, prior to dedication, in an amount equal to 10 percent of the costs of such improvements and in a form satisfactory to the local government attorney. This is done in order to assure the satisfactory condition of the required improvements for a period of ~~one (1)-~~ **year two (2) years** after the date of their acceptance by the governing body and dedication of same to the local government (city).

Public Hearing:

For: NONE

Against: NONE

Commission Recommendation:

Motion: To recommend approval to change 1 year to 2 year maintenance bond

For: Matt Sandifer, Jeffrey Smith, Stanley Young

Against: NONE

Abstain: NONE

Absent: Jimmy Meyer, William Travis

Ordinance to Read:

WHEREAS the Planning Commission held a public hearing on April 6, 2017 and recommended approval to change Unified Development Code Ordinance #14-5634 Article 3 Permits and Final Plat Approval Section 3.2.2 Bond and Maintenance Requirements D) Maintenance Bond for a period of two (2) years instead of one (1) year, and add "in the event of any conflicting provision contained in any previous ordinance, this ordinance shall supersede as the conflicting provisions."

(3) It will be the responsibility of the Planning Commission staff or appointed representatives to insure that the final plat is filed with the Clerk of Court within thirty (30) days of the date of signature of the Council President.

3.2.2 Bond and Maintenance Requirements

A. IMPROVEMENTS AND COMPLETION BOND

(1) **COMPLETION OF IMPROVEMENTS.** Before the final plat is signed by the City Council President, all applicants shall be required to complete, in accordance with the Planning Commission's decision and to the satisfaction of the Local Review Engineer, all the street, sanitary, and other improvements on the individual lots of the subdivision as required in these regulations, specified in the final subdivision plat, and as approved by the Planning Commission, and to dedicate same to the local government, free and clear of all liens and encumbrances on the property and public improvements thus dedicated.

(2) SURETY OR COMPLETION BOND IN LIEU OF IMPROVEMENTS

(a) The Planning Commission may waive the requirement that the applicant complete and dedicate all public improvements prior to the signing of the final subdivision plan, and that, as an alternative, the applicant post a bond or an escrowed cash fund may be set up in lieu of the completion bond at the time of application for final subdivision approval in an amount estimated by the Planning Commission and the Review Engineer, and in form approved by the Commission's attorney, as sufficient to secure to the local government the satisfactory construction, installation, and dedication of any incompleting portion of required improvements. The completion bond shall also secure all lot improvements on the individual lots of the subdivision as required in these regulations.

(b) Such completion bond shall comply with all statutory requirements and shall be satisfactory to the local government attorney as to form, sufficiency, and manner of execution as set forth in these regulations. The 12 month period within which required improvements must be completed shall be specified by the Planning Commission in the resolution or motion approving the final subdivision plat and shall be incorporated in the bond. The period shall be counted as starting with the date of final approval of the plans and plat.

The Planning Commission may, upon proof of difficulty, recommend to the governing body extension of the completion date set forth in such bond for maximum period of one (1) additional year. The governing body may at any time during the period of such bond accept a substitution of principal or sureties on the bond upon recommendation of the Planning Commission.

(3) **COSTS OF IMPROVEMENTS.** All required improvements shall be made by the applicant, at his expense, without reimbursement by the local government or an improvement district therein.

(4) **FAILURE TO COMPLETE IMPROVEMENTS.** For subdivisions for which no completion bond has been posted, if the improvements are not completed within the period specified by the Planning Commission in the resolution approving the plat, the approval shall be deemed to have expired. In those cases where completion bond has been posted and required improvements have not been installed within the terms of such bonds, the local government may thereupon declare the bond to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default.

(5) **ACCEPTANCE OF DEDICATION OFFERS.** Acceptance of formal offers of dedication of streets, public areas, easements, and parks shall be by ordinance of the local governing body. The approval by the Planning Commission of a subdivision plat shall not be deemed to constitute or imply the acceptance by the local government of any street, easement, or park shown on said plat. The Planning Commission may require said plat to be endorsed with appropriate notes to this effect. Acceptance of dedication shall be signed by the City Council President in form similar to that appearing in [Appendix D](#).

B. INSPECTION OF IMPROVEMENTS AND RELEASE OF BOND

(1) **GENERAL PROCEDURE.** The Planning Commission shall provide (through their representative) for inspection of required improvements during construction to insure their satisfactory completion. If the local government's engineer finds, upon inspection, that any of the required improvements have not been constructed in accordance with local construction standards and specifications, or the approved plat, the applicant shall be responsible for completing the improvements accordingly. Wherever the cost of

improvements is covered by completion bond, the applicant and the bonding company shall be severally and jointly liable for completing the improvements according to specifications.

(2) RELEASE OR REDUCTION OF COMPLETION BOND

(a) CERTIFICATE OF SATISFACTORY COMPLETION. The governing body will not accept dedication of required improvements nor release nor reduce a performance bond, until the Local Review Engineer has submitted a written certificate stating that all required improvements have been satisfactorily completed and until the applicant's engineer has certified that the improvements have been completed, are ready for dedication to the local government, and are free and clear of any and all liens and encumbrances. Upon such approval and recommendation, the governing body shall thereafter accept the improvements for dedication, in accordance with the established procedure, and release the bond.

(b) REDUCTION OF COMPLETION BOND. A performance bond may be reduced upon actual dedication of public improvements but only to the ratio that the public improvement dedicated bears to the total public improvement for that plat.

C. MAINTENANCE OF IMPROVEMENTS BEFORE CITY ACCEPTANCE

(1) The applicant shall be required to maintain all improvements in the subdivision until acceptance of said improvements by the governing body.

D. MAINTENANCE BOND

(1) The applicant (developer) shall be required to file a maintenance bond or The maintenance bond may be substituted by a cash escrow account or property of equal value to the bond, with the governing body, prior to dedication, in an amount equal to 10 percent of the costs of such improvements and in a form satisfactory to the local government attorney. This is done in order to assure the satisfactory condition of the required improvements for a period of one (1) year after the date of their acceptance by the governing body and dedication of same to the local government (city).

E. DEFERRAL OR WAIVER OF REQUIRED IMPROVEMENTS

(1) The Planning Commission may defer or waive at the time of final approval, subject to appropriate conditions, the provisions of any or all such improvements as, in its judgment, are not requisite in the interests of the public health, safety, and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities that are to be provided by the City.

(2) Whenever it is deemed necessary by the Planning Commission to defer the construction of any improvement required herein because of incompatible grades, future planning, inadequate or lack of connecting facilities, or for other reasons, the applicant shall pay his share of the costs of the future improvements to the local government prior to the signing of the final subdivision plat, or the applicant may post a bond insuring completion of said improvements upon demand of the local government.

F. ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY

(1) Where a completion bond has been required for a subdivision no certificate of occupancy for any building in the subdivision shall be issued prior to the completion of the improvements and dedication of same to the local government, as required in the Planning Commission's final approval of the subdivision plans.

(2) The extent of street improvements shall be adequate for vehicular access by the prospective occupant and by police and fire equipment, prior to the issuance of an occupancy permit.

(3) No building permits shall be issued for the final ten percent (10%) of lots in a subdivision, or if ten percent (10%) be less than two (2), for the final two lots of a subdivision, until all public improvements required by the Planning Commission for the plat have been fully completed and dedicated to the local government.

G. CONSUMER PROTECTION LEGISLATION AND CONFLICTS OF INTEREST STATUTES

(1) No building permit or certificate of occupancy shall be granted or issued if a developer or his authorized agent shall have violated any federal, state, or local law pertaining to consumer protection of real estate land sales, promotion, or practices, or any applicable conflicts of interest legislation with respect to the lot or parcel of land which is subject of the permit or certificate, until so ordered by a court of competent jurisdiction.

(2) With respect to said lot or parcel of land, in the event a building permit or certificate of occupancy has been granted or issued, it shall be subject to revocation by the municipality until so ordered otherwise by a Court of competent jurisdiction, provided that in no event shall the rights of intervening innocent third parties in possession of a certificate of occupancy be prejudiced by any such revocation.

(3) Any violation of a federal, state, or local consumer protection law (including but not limited to: Postal Reorganization Act of 1970; the Federal Trade Commission Act of 1970; Interstate Land Sales Full Disclosure