

STAFF REPORT

DOCKET # UDO-253

STAFF: [Aaron King](#)

REQUEST

A UDO Text Amendment proposed by City-County Planning and Development Services staff to amend Chapter D of the *Unified Development Ordinances* to revise the platting requirements dealing with private infrastructure.

BACKGROUND

The UDO currently requires that developers post surety for all public and private infrastructure to ensure that the stated infrastructure will be completed. With surety being held by the City, if a developer does not complete a portion of the proposed infrastructure, the City can use the surety that has been posted to facilitate the completion of any incomplete infrastructure. Surety has to be posted before a plat can be signed and is held until completion of the project. The City does allow for the surety to be reduced on a pro-rated basis commensurate with the amount of work that has been completed.

The rationale for a municipality holding surety to ensure the completion of proposed public infrastructure is a fairly universal practice. Where the Winston-Salem/Forsyth County UDO differs is in the requirement of surety for *private* infrastructure. If a project proposes public infrastructure that the municipality will ultimately be responsible for maintaining, it makes logical sense to require surety. It provides a level of assurance to potential buyers/tenants that the public infrastructure will be completed. Requiring surety for private infrastructure in non-residential and multifamily situations poses an unnecessary burden on the development community as there are existing safeguards in place (COs, stop work orders, etc) to ensure the completion of work prior to occupancy.

ANALYSIS

Staff proposes to eliminate the requirement for private infrastructure surety but still retain the requirement for public infrastructure surety. There are a few items to point out regarding this proposal:

- Staff does not propose to modify the private infrastructure surety requirements for single family; duplex; twin home; triplex; or townhouse developments. Staff only proposes to modify these requirements for multifamily and non-residential development.
- Posting surety for private infrastructure is an added financial burden for developers of multifamily and non-residential projects. They currently have to pay for one hundred percent (100%) of the cost of the private infrastructure and its installation. In addition to that, they also have to post surety with the City for the same amount plus an additional fifty percent (50%).
- Staff has the ability to ensure all private infrastructure is completed via the issuance of a Certificate of Occupancy (CO). Ultimately, this will ensure that infrastructure is complete before tenants begin to occupy the property.

Staff believes that the elimination of private infrastructure surety requirements will end an unnecessary burden on multifamily and non-residential developers. Staff will still be able to ensure that private infrastructure is complete before issuing the CO.

RECOMMENDATION

APPROVAL

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-253
DECEMBER 11, 2014**

Aaron King presented the staff report.

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

During discussion by the Planning Board, the following points were made:

Melynda Dunigan asked what constitutes private infrastructure? Aaron King responded that it is basically any infrastructure which the City will not be providing.

Melynda Dunigan asked if the City has ever had a case where you had to call in a bond because they didn't complete the infrastructure? Is a project inspected for compliance? Staff answered that there has not been an instance where a bond had to be called in for multifamily or commercial zoning. However there have been instances where a bond had to be called in for single family development. Before a certificate of occupancy is issued the sites are inspected for compliance with all conditions. Projects may be completed in phases, but each section will be checked as it is ready.

Staff explained that the change from 25% to 50% compliance was simply to bring the UDO into conformity with existing codes.

MOTION: Paul Mullican moved approval of the text amendment.

SECOND: Allan Younger

VOTE:

FOR: Melynda Dunigan, Tommy Hicks, Arnold King, Clarence Lambe, Darryl Little, Barry Lyons, Paul Mullican, Brenda Smith, Allan Younger

AGAINST: None

EXCUSED: None

UDO-253
AN ORDINANCE AMENDING
CHAPTER D OF THE *UNIFIED DEVELOPMENT ORDINANCES*
TO REVISE THE PLATTING REQUIREMENTS DEALING WITH PRIVATE
INFRASTRUCTURE

Be it ordained by the City County Planning Board of Winston-Salem/Forsyth County, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter D, Article IV of the UDO is amended as follows:

Chapter D – Subdivision Regulations

4. Major Subdivisions

(H) Recording Final Plats

The final or record subdivision plat shall be prepared and submitted to Planning staff by the owner or owner's agent and recorded in the office of the Register of Deeds within two (2) years after the approval of the preliminary subdivision plat by the Planning Board or an extension of preliminary subdivision approval as provided in Section D.4(E) or a revised preliminary subdivision approval as provided for in Section D.4(F) must be granted. Plat(s) will be signed by Planning staff when all the following requirements have been met:

- (1) Conformance of Final Plat. The final plat shall conform to the preliminary subdivision plat and the conditions as approved by the Planning Board, the recording requirements of State law and shall meet the requirements as listed in Chapter 1235, 1959 Session Laws (G.S. 47-30 as amended) General Assembly of North Carolina.
- (2) Required Information and Certifications. Final plats will not be signed by Planning staff until all of the following information or certifications are received, if applicable:
 - (a) Street and Utilities Improvements. No final plat shall be approved by Planning staff until the compliance with the requirements of NCDOT standards or the *Infrastructure Development Standards* developed by the Engineering Division of the City of Winston-Salem Department of Public Works has been certified to the Planning staff by the Assistant City Manager - Public Works, City Engineer, and/or the District Engineer of the North Carolina Department of Transportation.
 - (b) Plat Recordation: Residential (Single Family; Duplex; Twin Home; Triplex; and Townhouse)

Prior to Recordation of Plat

- (i) Construction plans for infrastructure (public and private) approved by the appropriate jurisdiction, and
- (ii) Complete all utilities (unless City-County Utilities Director has agreed to surety in lieu of construction for off-site sewer outfalls), drainage, curbing, stone base and street signs to be in place and functioning. In lieu of placing first/bottom layer of asphalt, developer shall protect manholes, inlets, pipes, valves, hydrants, and curb during building construction, and
- (iii) Detailed estimate of incomplete infrastructure, based on approved plans in [i] above, prepared by the design engineer and approved by the holder of the surety, and
- (iv) Form and conditions of surety for incomplete infrastructure approved by the City Attorney to be held until final acceptance of streets, drainage, and utilities.

NOTE: For Duplex, Triplex, Townhouse and Multifamily development, two (2) stage platting will be allowed. The final plat will verify common wall and infrastructure as-built locations.

- (c) Plat Recordation: Nonresidential and Multifamily:
 - (i) Construction plans for infrastructure (public and private) approved by the appropriate jurisdiction, and
 - (ii) Detailed estimate, for incomplete public infrastructure construction, based on approved public infrastructure construction plans in [i] above prepared by the design engineer and approved by the holder of the surety, and
 - (iii) Form of surety for all or incomplete public infrastructure approved by City Attorney to be held until final acceptance of streets, drainage, and utilities.
- (d) Certificate of Occupancy: Residential (Single Family; Duplex; Twin Home; Triplex; and Townhouse), and Nonresidential and Multifamily:
 - (i) Complete sidewalks, if required, or repairs to sidewalks damaged during construction, and
 - (ii) Install street trees, if required, and

- (iii) Install driveway from street with a smooth and level transition from the sidewalk, if provided across the driveway, and
- (iv) Complete street to the building/lot including in front of the subject building/lot with at least the first/bottom layer of asphalt on public and private streets (not parking lots or access easements).

NOTE: Sections D.4.(H)(2)(d)(i)-(iv) will be verified by the City-County Inspections Division with final acceptance and approval to be verified by the appropriate jurisdiction during the Final Street and/or Utility Acceptance procedures of Section D.4(H)(2)(e).

- (e) Final Street and/or Utility Acceptance: Residential (Single Family; Duplex; Twin Home; Triplex; and Townhouse), and Nonresidential and Multifamily:
 - (i) Design Engineer Certification approved by the appropriate jurisdiction. Certification statement shall be placed on each sheet of the record drawings and shall include all public and private streets, drainage, water and sewer infrastructure on the approved construction plans, and
 - (ii) Infrastructure Record Drawings approved by City of Winston-Salem Engineering Division Records Center. These record drawings will include all "as-constructed" location, size, length, slope, invert/top elevations, and pipe material used. The record drawings shall also include phases/sections (current and previous), street names, lot lines, lot numbers, addresses, street rights-of-way, and easements (on and off-site) as approved and/or as recorded, and
 - (iii) All public ~~and private~~ infrastructure completed and accepted by the appropriate jurisdiction.
- (f) The developer or design engineer shall, based upon the approved infrastructure plans and in accordance with the Infrastructure Development Standards, prepare a detailed, unit price cost estimate to complete the approved infrastructure for submittal to the holder of the surety for review and approval. To this approved estimate shall be added a minimum ~~twenty-five percent (25%)~~ fifty percent (50%) contingency plus an amount estimated by the City Engineer to reimburse the City for its administrative costs to process the completion of the approved infrastructure. The amount of surety posted shall not be less than the sum of the estimated infrastructure costs, the contingency amount, and the estimated administrative enumerated above. The surety shall be satisfactory to the attorney of the jurisdiction as valid, sufficient and enforceable. Such surety shall be conditioned upon the performance of all work necessary to make the specified improvements within a stipulated period not to exceed two (2) years from the date of the

surety. Such surety shall provide that an action may be instituted by the jurisdiction for breach of any term(s) or condition(s) upon failure of the principal to perform the obligation(s) in all respects within one year from the end of the stipulated period during which the work required is to be performed. A bond, an irrevocable letter of credit issued by a bank in a form approved by the Attorney of the jurisdiction or a deposit of funds in escrow may be accepted under the same terms and conditions applicable to sureties. The bond, letter of credit, or deposit may be released by the jurisdiction when the specified improvements covered by the bond have been completed and approved by the Director of Public Works as being in accordance with the jurisdiction's standards and specifications. Notwithstanding the above requirements, if a development is financed in whole or in part through aid from the Federal Housing Authority or another agency of the federal or State governments, and said federal or State agency requires the filing of performance and payment bonds to insure completion of the specified improvements in accordance with approved plans, the filing of said performance and payment bonds is to be accepted in lieu of the sureties describe above, so long as the local jurisdiction is named as a beneficiary of the surety posted.

- (g) Private Utilities. No final plat shall receive approval unless the following private utilities have either been constructed or approved plans prepared ~~and, if applicable, the execution guaranteed by a good and sufficient surety as discussed in Section D.4(H)(2):~~
 - (i) For all subdivisions which propose to use private water systems or private septic systems, those facilities shall be installed in conformance with the standards of the Public Health Department. For private septic systems, lots will be approved only if they are at least twenty thousand (20,000) square feet in area and have been certified in writing by the Public Health Department to be *Provisionally Suitable or Unsuitable* for on-site sewage disposal. Larger lot sizes may be required by other local or state land regulatory ordinances.
- (h) Statement. No subdivision shall be granted final approval until Planning staff has received a statement duly acknowledged before some officer authorized to take acknowledgment of deeds and signed and executed by each owner of the property and the owner's spouse, if any, (the word *owner* used herein is defined to include private corporations) to the effect that:
 - (i) The subdivision plan and land shown on the final plat is made with the owner's free consent and in accordance with the owner's desires;
 - (ii) The dedication of streets or roads shown on the plat is freely offered to the public for public use;

(iii) Reserved.

Such statements shall, after examination by Planning staff, be recorded on a separate document with the final plat or shall be shown on the face of the final plat which is recorded in the office of the Register of Deeds (see Planning staff for copies of appropriate dedication statements).

(i) Reserved.

Section 2. This ordinance shall become effective upon adoption.