

d. Drawings shall include a typical trench section showing backfill, compaction and shoring requirements.

6. Street Lighting:

a. Lighting Plans And Standards: Street lighting plans shall address lighting at intersections, public facilities, trails and crosswalks. Lighting standards shall be installed in accordance with the requirements set forth in section 4-7-4 of this code.

b. Use Of Nonstandard Streetlights: If the subdivider proposes a lighting plan that uses nonstandard streetlights, the plan must be reviewed by the planning commission for its recommendation, and then approved by the city council. Unless agreed by the city council, LaVerkin City will not accept public dedication of, and will not assume any costs associated with installation, operation and maintaining of nonstandard lights, even if there is an attempt to dedicate such lights to LaVerkin City.

c. Submission Contents: Lighting construction drawings must be sufficiently complete to enable the city to determine compliance with the requirements of this chapter. If city staff indicates that such plans cannot enable this determination, the applicant shall be required to additionally submit as evidence of compliance certified reports by a recognized laboratory that the plan meets city requirements. Lighting construction drawings shall include the following:

(1) Plans indicating the location and type of illuminating devices.

(2) A description of the illuminating devices. Submissions may include information and drawings from manufacturers.

(3) Photometric data, such as that furnished by manufacturers or similar data showing the angle of cutoff and level of light emissions.

F. Replacement Drawings: Construction drawings shall be replaced by a copy of the drawings of record "as built" when the project is completed. (Ord. 2006-26, 8-2-2006)

11-3-4: FINAL PLAT: Not more than one year after receiving preliminary plat approval, the developer shall prepare and submit a final plat to the planning commission for its review and

E. Activities To Be Completed Before Final Plat Review: Before final plat review by the planning commission and city council may be scheduled, all application fees and per lot fees must be paid. Construction drawings must be completed and signed off by all interested utilities and affected entities. Bonding must be in place for twenty five percent (25%) of the construction cost. (Ord. 2008-02, 1-16-2008)

F. Submission To City Attorney:

1. Prior to all other approvals and signatures,

a. The Mylar plat, and

b. A title report, and

c. Either:

(1) A certificate of taxes paid (signed and certified by an authorized representative of the county treasurer's office, and dated not more than 30 days prior to the date on which the Mylar plat is submitted for review and approval) that all outstanding taxes and special assessments associated with and payable on all property situated within the boundaries or limits of the subdivision have been paid in full, or

(2) A letter, approved in writing by the county treasurer, stating that a satisfactory bond has been filed with the county to secure such payment, and

d. Proof of bonding and related documents, as specified in this subdivision title,

Shall be submitted to the city attorney for his or her review.

2. The city attorney shall verify the following, after which he or she shall submit the Mylar to the planning commission and city council for consideration and action:

a. That the subdivision complies with city ordinances and the laws and administrative rules of the state;

b. That ownership of the property being subdivided and dedicated as shown on the plat is confirmed by the title report; and

c. That the bond(s), or equivalent as approved, is/are in appropriate form and signed by the parties, and that the subdivider or developer has signed the subdivision improvement cost overrun agreement described in subsection 11-3-5H of this chapter.

3. Before recommendation and approval can be given by the planning commission and city council, final approval by the city engineer and city attorney must be obtained.

G. Signatures And Recording:

1. All signatures required by this chapter, except those of the mayor, city recorder, city attorney, and the county recorder shall appear on the final plat prior to submitting said plat to the city council for final approval.

2. After the city council verifies that all conditions of this chapter have been met and that a satisfactory bond has been posted with the city and that all taxes and fees have been paid or bonded for (as specified in this subdivision title), and that the subdivider or developer has signed the subdivision improvement cost overrun agreement described in subsection 11-3-5H of this chapter, the mayor, city recorder and city attorney shall sign the Mylar.

3. However, the plat is not effective (and no lots may be sold) until the plat has been recorded by the city. (Ord. 2009-08, 4-15-2009)

H. Dedications: The recording of the final plat constitutes a legal dedication of all public streets, parks, utility easements, and similar dedications identified on the plat. However, pursuant to Utah Code Annotated section 10-9A-607(2), such dedication does not impose liability upon the municipality for streets and other public places that are dedicated in this manner but are unimproved. (Ord. 2006-26, 8-2-2006)

11-3-5: PERFORMANCE BOND OR EQUIVALENT:

A. Type Of Bond Or Guarantee: The bond or guarantee shall be in the form of cash deposited with the city and held in an interest bearing account, or a letter of irrevocable credit from an approved institution or such other cash security bond as the subdivider may obtain that is approved by the city.

- B. Amount Of Bond: The bond shall be equal to twenty five percent (25%) of the total cost of all subdivision improvements. The subdivider shall furnish an estimate of the cost of constructing the required improvements. Said estimate shall be prepared by an engineer registered to practice in the state. However, no estimate may be used as the basis for the amount of the bond until it has been approved by the city engineer.
- C. Duration: The duration of the bond shall be for one year from the date of approval of the final plat of the subdivision by the city council.
- D. Final Inspection And Partial Release Of Bond Or Default: The subdivider shall be responsible for the quality of all materials and workmanship of all improvements. No later than one year from the date of approval of the final plat by the city council, the city engineer and public works director shall make a preliminary inspection of the improvements and shall submit a report to the city manager, setting forth the conditions of such facilities. If the improvements are completed, all liens are paid, and conditions thereof are found to be satisfactory, the city manager shall release the bond. If conditions or materials or workmanship show unusual depreciation or do not comply with the standards of the city in effect at the time of final plat approval, or if any outstanding liens are not paid, the procedures in subsection F of this section shall be followed.
- E. Final City Acceptance: The subdivider shall be responsible for the subdivision improvements for a period of one year after said improvements are completed. In accordance therewith, the twenty five percent (25%) cash bond, or equivalent as approved, which is retained after completion of the improvements, shall be preserved in escrow by the city for a period of one year to assure that if latent defects or other problems with the improvements are found, whereby the improvements fail to meet city standards, such defects and/or problems are repaired and made to comply with city standards. Ninety (90) days prior to the one year anniversary of the date the twenty five percent (25%) deposit or bond or security is created, the city engineer and public works director shall again inspect the improvements and shall make a checklist of any needed repairs and a report of the condition of the facilities, which shall then be submitted to the city manager. If the improvements are satisfactory at the time of this inspection, the city manager shall direct that the twenty five percent (25%) deposit, bond, or security retained in escrow shall be released to the subdivider. If defects or problems are found at this inspection, the procedures in subsection F of this

section shall be followed. Once the needed repairs and improvements have been made and are acceptable to the city, and after the city has received all required drawings of record showing any changes to the improvements, the city shall release any remaining deposit or bond or security amount and shall make final acceptance of and assume responsibility for the public streets, public property and the city infrastructure within the subdivision.

- F. Default: If an inspection reveals that the improvements are deficient, the city shall notify the subdivider that he is in default, and set a reasonable time period, not to exceed ninety (90) days, to correct the problem. At the end of the specified time, the property shall be reinspected, and if the improvements still fail to meet the required standards and the subdivider has not submitted to the city and obtained approval of a plan with a deadline to correct the problem, the city council shall notify the subdivider of the date a public hearing shall be held on the issue, at which the subdivider shall be entitled to demonstrate why all or part of his bond should not be forfeited to be used to remedy the problem. The city council shall decide the matter and issue written findings on the same no later than thirty (30) days after the public hearing. If the city council's decision after the hearing is that the subdivider is still in default and no agreement with a deadline between the city and the subdivider has been made to fix the problem, the city council may declare his cash deposit or bond or equivalent forfeited, and the city may use the same to repair or install the required improvements. In such case, if the bond is found to be insufficient to cover the reasonable cost of completing or repairing the improvements, the city may enforce the terms of the subdivision improvement cost overrun agreement described in subsection H of this section. Once the needed repairs and improvements have been made and are acceptable to the city, and after the city has received all required drawings of record, the city shall release any remaining bond or equivalent, less twenty five percent (25%) in the case of a bond for original improvements, which twenty five percent (25%) bond shall be held pursuant to subsection E of this section.
- G. Bond Forfeiture: In the event a subdivider and the city enter into an agreement with a deadline for the subdivider to remedy a problem with the subdivision improvements, if upon inspection by the city it is found that the subdivider has substantially failed to live up to the terms of said agreement and/or failed to meet the agreed deadline, the city council may declare his bond to be forfeited and use the proceeds thereof to correct any problem that may exist with said improvements, and may also pursue enforcement of his subdivision

improvement cost overrun agreement if required. No extension of the agreed deadline beyond thirty (30) days shall be allowed.

- H. Subdivision Improvement Cost Overrun Agreement: Prior to or at the time of the obtaining of any bond under this section, the subdivider shall also sign a subdivision improvement cost overrun agreement, on a form approved by the city. This agreement shall provide that if the city council declares a bond forfeited under this section, and the bond is found to be insufficient to cover the cost of installing or repairing the improvements, the city may file a lien upon any of the subdivision property owned by the subdivider, or may otherwise bring legal action pursuant to said agreement against the subdivider or his properly acknowledged successor, for the difference between the amount of the bond and the cost of installing or repairing the improvements. Said agreement shall provide that the subdivider shall be responsible for all legal fees and costs of such an action.
- I. Absence Of Bond: In the absence of a bond or equivalent, the subdivision plat will not be approved by the city for recordation. (Ord. 2006-34, 10-4-2006)

11-3-6: INSTALLATION OF IMPROVEMENTS:

- A. Responsibility For Studies And Tests: All studies and tests on improvements that are required by this title shall be the responsibility of the developer unless there is an indication that they are to be provided by the city.
- B. Inspection And Testing: The subdivider shall install all improvements required by the city council including, but not limited to, curb and gutter, sidewalk, culinary water, utilities, secondary water connections, streets and drainage. The city may require the subdivider to pay for all or a portion of the cost of extending improvements from the nearest point of existing improvements to the subdivision, in accordance with the Utah impact fees act. The layout of the subdivision must provide for future extension of improvements to adjacent properties and shall be compatible with appropriate LaVerkin City master plans. All underground improvements shall be installed to the boundary lines of the subdivision. Geotechnical investigation recommendations shall be followed when installing all improvements. All construction work involving the installation of improvements shall be subject to inspection and testing by LaVerkin City for quality control. Requests for inspections shall be made to the LaVerkin City representative by the person responsible for the

construction, which inspections shall occur within a reasonable time. The city shall give notice twenty four (24) hours in advance that it will be performing the required inspection. Any work to be backfilled or covered shall not be backfilled or covered prior to inspection. If the subdivider fails to remedy any deficient condition after the same has been identified by a city inspection, the city may issue a stop work order, requiring that all work on the subdivision by the subdivider must be stopped until the deficiency is remedied. If such a stop work order is issued, no building permit may be obtained by the subdivider, and no sales of lots by the subdivider/developer or its agent or affiliate may occur until the stop work order is removed.

- C. Drawings Of Record: After final installation of all improvements and the final inspection and approval of the same, the contractor shall provide a complete set of drawings of record for all improvements that includes all items listed in the construction drawings and any improvement dimensions or changes to the improvements as they were constructed in the field. The drawings shall be submitted on twenty four inch by thirty six inch (24" x 36") sheets. No bond shall be released until drawings of record are received, and if changes were made to improvements, a new drawing of record for such improvements shall be submitted, as appropriate, before release of the bond. A submittal of drawings of record shall include a transmittal letter, in duplicate, containing: submittal date, project title, and the signature of the contractor or the contractor's authorized representative. The transmittal letter shall also include certification by a professional engineer or surveyor, licensed in the state of Utah, that each drawing of record is complete and accurate. (Ord. 2006-26, 8-2-2006)

(Utah Code 2019)

(relevant
excerpts)

10-9a-103. Definitions.

As used in this chapter:

(for P.C. dist.)

(1) "Accessory dwelling unit" means a habitable living unit added to, created within, or detached from a primary single-family dwelling and contained on one lot.

(2) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, property owner, property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(3) "Affected owner" means the owner of real property that is:

(a) a single project;

(b) the subject of a land use approval that sponsors of a referendum timely challenged in accordance with Subsection 20A-7-601(5)(a); and

(c) determined to be legally referable under Section 20A-7-602.8.

(4) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(5) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(6) (a) "Charter school" means:

(i) an operating charter school;

(c) describe a building that:

(i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;

(ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;

(iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the municipality; and

(iv) does not require any additional engineering or analysis.

(20) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.

(21) "Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a municipality to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:

(a) recording a subdivision plat; or

(b) development of a commercial, industrial, mixed use, or multifamily project.

(22) "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

(a) complies with the municipality's written standards for design, materials, and workmanship; and

(b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

(23) "Improvement warranty period" means a period:

(a) no later than one year after a municipality's acceptance of required landscaping; or

(b) no later than one year after a municipality's acceptance of required infrastructure, unless the municipality:

(i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and

(ii) has substantial evidence, on record:

(A) of prior poor performance by the applicant; or

(B) that the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.

(24) “Infrastructure improvement” means permanent infrastructure that is essential for the public health and safety or that:

(a) is required for human occupation; and

(b) an applicant must install:

(i) in accordance with published installation and inspection specifications for public improvements; and

(ii) whether the improvement is public or private, as a condition of:

(A) recording a subdivision plat;

(B) obtaining a building permit; or

(C) development of a commercial, industrial, mixed use, condominium, or multifamily project.

(25) “Internal lot restriction” means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(26) “Land use applicant” means a property owner, or the property owner’s designee, who submits a land use application regarding the property owner’s land.

(27) “Land use application”:

(a) means an application that is:

10-9a-509.5. Review for application completeness — Substantive application review — Reasonable diligence required for determination of whether improvements or warranty work meets standards — Money damages claim prohibited.

(1) (a) Each municipality shall, in a timely manner, determine whether a land use application is complete for the purposes of subsequent, substantive land use authority review.

(b) After a reasonable period of time to allow the municipality diligently to evaluate whether all objective ordinance-based application criteria have been met, if application fees have been paid, the applicant may in writing request that the municipality provide a written determination either that the application is:

(i) complete for the purposes of allowing subsequent, substantive land use authority review; or

(ii) deficient with respect to a specific, objective, ordinance-based application requirement.

(c) Within 30 days of receipt of an applicant's request under this section, the municipality shall either:

(i) mail a written notice to the applicant advising that the application is deficient with respect to a specified, objective, ordinance-based criterion, and stating that the application shall be supplemented by specific additional information identified in the notice; or

(ii) accept the application as complete for the purposes of further substantive processing by the land use authority.

(d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the application shall be considered complete, for purposes of further substantive land use authority review.

(e) (i) The applicant may raise and resolve in a single appeal any determination made under this Subsection (1) to the appeal authority, including an allegation that a reasonable period of time has elapsed under Subsection (1)(a).

(ii) The appeal authority shall issue a written decision for any appeal requested under this Subsection (1)(e).

(f) (i) The applicant may appeal to district court the decision of the appeal authority made under Subsection (1)(e).

(ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of the written decision.

(2) (a) Each land use authority shall substantively review a complete application and an application considered complete under Subsection (1)(d), and shall approve or deny each application with reasonable diligence, subject to the time limit under Subsection 11-58-402.5(2) for an inland port use application, as defined in Section 11-58-401.

(b) After a reasonable period of time to allow the land use authority to consider an application, the applicant may in writing request that the land use authority take final action within 45 days from date of service of the written request.

(c) Within 45 days from the date of service of the written request described in Subsection (2)(b):

(i) except as provided in Subsection (2)(c)(ii), the land use authority shall take final action, approving or denying the application; and

(ii) if a landowner petitions for a land use regulation, a legislative body shall take final action by approving or denying the petition.

(d) If the land use authority denies an application processed under the mandates of Subsection (2)(b), or if the applicant has requested a written decision in the application, the land use authority shall include its reasons for denial in writing, on the record, which may include the official minutes of the meeting in which the decision was rendered.

(e) If the land use authority fails to comply with Subsection (2)(c), the applicant may appeal this failure to district court within 30 days of the date on which the land use authority is required to take final action under Subsection (2)(c).

(3) (a) With reasonable diligence, each land use authority shall determine whether the installation of required subdivision improvements or the performance of warranty work meets the municipality's adopted standards.

(b) (i) An applicant may in writing request the land use authority to accept or reject the

applicant's installation of required subdivision improvements or performance of warranty work.

(ii) The land use authority shall accept or reject subdivision improvements within 15 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as practicable after that 15-day period if inspection of the subdivision improvements is impeded by winter weather conditions.

(iii) The land use authority shall accept or reject the performance of warranty work within 45 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as practicable after that 45-day period if inspection of the warranty work is impeded by winter weather conditions.

(c) If a land use authority determines that the installation of required subdivision improvements or the performance of warranty work does not meet the municipality's adopted standards, the land use authority shall comprehensively and with specificity list the reasons for the land use authority's determination.

(4) Subject to Section 10-9a-509, nothing in this section and no action or inaction of the land use authority relieves an applicant's duty to comply with all applicable substantive ordinances and regulations.

(5) There shall be no money damages remedy arising from a claim under this section.

HISTORY:

C. 1953, 10-9a-509.5, enacted by L. 2007, ch. 363, § 3; 2008, ch. 112, § 3; 2010, ch. 378, § 164; L. 2018 (2nd S.S.), ch. 1, § 1; 2019 ch. 384, § 11, effective May 14, 2019.

Amendment Notes

The 2018 (2nd S.S.) amendment, effective July 21, 2018, added "subject to the time limit under Subsection 11-58-402.5(2) for an inland port use application, as defined in Section 11-58-401" in (2)(a).

The 2019 amendment, effective May 14, 2019, substituted "a land use application" for "an application" in (1)(a); added the introductory language of (2)(c); redesignated and rewrote former (2)(c); added (2)(c)(ii); and substituted "the land use authority's determination" for "its determination" at the end of (3)(c).

10-9a-604.5. Subdivision plat recording or development activity before required infrastructure is completed — Improvement completion assurance — Improvement warranty.

(1) A land use authority shall establish objective inspection standards for acceptance of a landscaping or infrastructure improvement that the land use authority requires.

(2) (a) Before an applicant conducts any development activity or records a plat, the applicant shall:

(i) complete any required landscaping or infrastructure improvements; or

(ii) post an improvement completion assurance for any required landscaping or infrastructure improvements.

(b) If an applicant elects to post an improvement completion assurance, the applicant shall provide completion assurance for:

(i) completion of 100% of the required landscaping or infrastructure improvements; or

(ii) if the municipality has inspected and accepted a portion of the landscaping or infrastructure improvements, 100% of the incomplete or unaccepted landscaping or infrastructure improvements.

(c) A municipality shall:

(i) establish a minimum of two acceptable forms of completion assurance;

(ii) if an applicant elects to post an improvement completion assurance, allow the applicant to post an assurance that meets the conditions of this title, and any local ordinances;

(iii) establish a system for the partial release of an improvement completion assurance as portions of required landscaping or infrastructure improvements are completed and accepted in accordance with local ordinance; and

(iv) issue or deny a building permit in accordance with Section 10-9a-802 based on the installation of landscaping or infrastructure improvements.

(d) A municipality may not require an applicant to post an improvement completion assurance for:

(i) landscaping or an infrastructure improvement that the municipality has previously inspected and accepted;

(ii) infrastructure improvements that are private and not essential or required to meet the building code, fire code, flood or storm water management provisions, street and access requirements, or other essential necessary public safety improvements adopted in a land use regulation; or

(iii) in a municipality where ordinances require all infrastructure improvements within the area to be private, infrastructure improvements within a development that the municipality requires to be private.

(3) At any time before a municipality accepts a landscaping or infrastructure improvement, and for the duration of each improvement warranty period, the municipality may require the applicant to:

(a) execute an improvement warranty for the improvement warranty period; and

(b) post a cash deposit, surety bond, letter of credit, or other similar security, as required by the municipality, in the amount of up to 10% of the lesser of the:

(i) municipal engineer's original estimated cost of completion; or

(ii) applicant's reasonable proven cost of completion.

(4) When a municipality accepts an improvement completion assurance for landscaping or infrastructure improvements for a development in accordance with Subsection (2)(c)(ii), the municipality may not deny an applicant a building permit if the development meets the requirements for the issuance of a building permit under the building code and fire code.

(5) The provisions of this section do not supersede the terms of a valid development agreement, an adopted phasing plan, or the state construction code.

HISTORY:

C. 1953, 10-9a-604.5, enacted by L. 2013, ch. 309, § 6; 2015 ch. 327, § 4, effective May 12, 2015; 2018 ch. 339, § 4, effective May 8, 2018; 2019 ch. 384, § 15, effective May 14, 2019.

Repeals and Reenactments.

Laws 2013, ch. 309, § 6 repeals former § 10-9a-604.5, as enacted by L. 2008, ch. 112, § 4, authorizing subdivision plat recording or development activity before completion of required improvements under specified circumstances, and enacts the present section, effective May 14, 2013.

Amendment Notes.

The 2015 amendment, effective May 12, 2015, rewrote (1), which formerly read: "A land use authority

2005 LaVerkin Ordinance

Utah Power: one (1);

QWest: one (1);

Cable Television: one (1);

Questar Gas: one (1);

LaVerkin Canal Company: one (1).

12.. Receive comments and revise and resubmit plans as outlined in 10 and 11 above. (The submittal and review process will be repeated as many times as necessary to obtain approval from all reviewing entities.)

13. Approval by City of LaVerkin staff (approvals from other reviewing agencies will also be obtained when appropriate.)

14-12. Install **improvements** or post a bond (or equivalent, as approved) for **110% of the required improvements to be held for two (2) years**. If improvements are installed in lieu of a bond, upon the **completion and the City's acceptance of said improvements**, a bond (or equivalent as approved) for fifteen percent (15%) of the cost of the improvement must be provided for one (1) year thereafter to insure the repair of latent defects **as outlined in this Title**, pursuant to Section 11-4-3 of this Title.

15-13. **Make application to Planning Commission for action on final plat.** (City staff will submit a list of recommended conditions of approval.)

NOTICE: No subdivision or site plan final approvals will be scheduled with Planning Commission or City Council until all reviews and revisions have been completed, and bond requirements met.

16-14. City Council action on final plat.

17-15. Construction: (owner to contract required inspection and testing not provided by the City). **Install Improvements: Install curb and gutter, sidewalk, streets, utilities, secondary water connections, drainage and other improvements as required by City Council. All required studies, inspections, and tests not provided by the City shall become the responsibility of the developer.**

18-16. Prepare and submit drawings of record. **Final Plat Submission: Prepare and present Drawings of Record, Final Plat and Mylar Plat. Record Mylar as outlined in this Title.**

19. Planning Commission and City Council action to release all but fifteen percent (15%) of the subdivider's bond or equivalent, which fifteen percent (15%) must be maintained for

WASHINGTON CITY

2.3.3 GUARANTEE/WARRANTY

Improvement Guarantee Bond

In order to ensure the completion of the required improvements for a development, project or phase of, and prior to the recording of the final plat, the developer shall enter into a security agreement in the amount equal to 110% of the total cost of all public and private improvements associated with the project, as determined by an approved engineers estimate. Perimeter walls and landscaping as required by the City Council are also required to be included in the security agreement. The security agreement, when accepted by the City attorney will remain in affect for a period not to exceed twelve (12) months or until the City accepts the improvements. The bond will not be considered renewable or on going.

At the written request from the developer, the security agreement maybe reduced in lump sum intervals. Only items included on the engineers estimate as they are listed are to be considered. No security agreement shall ever be reduced below 10% of the approved engineers estimate until such time the project is 100% complete as determined by the City engineer and the City attorney has accepted the warranty security agreement. Bonding must be in place prior to the start of any work.

Warranty Bond

At such time the project, development or phase of, is 100% complete as determined by the City engineer. The developer shall enter into a security agreement for all public improvements associated with the project in the amount of 10% of 100% as determined by the engineers estimate. This security agreement shall remain in effect for a period of twelve (12) months from the time the security agreement is accepted by the City attorney. For some unforeseen circumstances and only under the direction and approval of the City engineer, some items may be uncompleted at the time this warranty bond is required. For these uncompleted items, a guarantee bond shall be required with the exception of no lump some reductions. At the time the remaining items are complete as determined by the City engineer, a warranty bond will be required.

Restoration Bond

Prior to the start of any work the developer shall enter into a security agreement equal to 10% of the total cost of all improvements associated with the project, as determined by an engineer's estimate. The purpose of the restoration bond is to protect the public from any safety hazards and/or nuisances should the project become idle for any length of time. The restoration bond will be held until the project is completed or until all safety hazards and/or nuisance issues are resolved as determined by the City.

Security Agreement

The following are the only secure agreements accepted by Washington City, municipal escrow bond, letters of credit, corporate assurance, or cash bond deposited with the City. All bonds submitted are subject to review and approval by the City attorney. Circumstances may require other types of security agreements. These security

Early Plat Approval and Recording

Early **Dedication** of Streets, Parks, and Public Improvements –
Avoidance of **Liens** - **Bonding** in Lieu of Improvements – **Financial**
Assurances – Temporary **Easements** (Access – Construction –
Maintenance) – **Sales** instead of Reservations - **\$\$** for Project

Current vs. Proposed (Alternate) Timeline

- Currently:
 - Submit acceptable Preliminary Title Report
 - *Submit Subdivision Improvement Cost Overrun Agreement*
 - **Preliminary Plat Approval**
 - Construction Drawings
 - **Construct Public Improvements**
 - (Some sell “reservations”) (???)
 - -----*Completion of Improvements?*-----
 - Clear liens – Payment of Taxes
 - Acceptance of Improvements; provide Warranty Bond (25%)
 - Submit acceptable Final Title Report
 - **Final Plat Approval**
 - **Recording of Plat**
 - **Sale of Lots within development**
 - Building Permits, Construction, and Certificate of Occupancy
- Proposed Alternate (additional route to success):
 - Submit acceptable Preliminary Title Report
 - **Preliminary Plat Approval, Construction Drawings Approval, and Final Plat Approval**
 - Estimate cost of improvements; and provide the City with
 - Adequate financial assurances (bonding, escrows, etc.) (100%) in lieu of constructing improvements up front
 - **Subdivision Improvement Cost Overrun Agreement**
 - Temporary Easements to/for Property (access, construction, maintenance)
 - **Construct Public Improvements**
 - Acceptance of Improvements; provide Warranty Bond (10%)
 - Submit acceptable Final Title Report
 - **Final Plat Approval and Recording**
 - **Sale of Lots within development (anytime thereafter)**
 - **Construct Public Improvements**
 - Building Permits, Construction, and Certificate of Occupancy

Comparison of Two Procedural Timelines

Construct; then secure Final Approval

- **Pros:**
 - Roads, parks, and public improvements are definitely in before any homes are legitimately sold
 - Total burden on developer to pay for improvements; no final approval until acceptable
 - One-year time limitation in which to construct improvements (incentive to get them in)
- **Cons:**
 - Construction may never be completed; no money, legal right, or power of City to remedy harm to adjacent properties by unfinished development and erosion
 - Legality of selling “reservations”
 - Proposed roadways subject to liens and possible loss to the bank or need for satisfaction of liens for project to continue
 - One-year time limitation in which to construct improvements (incentive to hurry and maybe cut corners; what to do if they are not completed in time; only one extension possible)

Secure Final Approval and “bond” ...

- **Pros:**
 - Roads, parks and public improvements become City’s “up front” and are not subject to liens by those constructing improvements
 - No need to sell questionable “reservations”
 - City has the money, legal right, or power of City to remedy harm to adjacent properties by unfinished development and erosion
- **Cons:**
 - City may get “stuck” with part of the costs of the improvements (depends on estimate and unintended market changes)
 - May have to watch to ensure that properties are not sold and seeking development/occupancy before all of the improvements are in, acceptable to the City, and warranted
 - Fighting the issues of bonds, letters of credit, etc.; preference for escrow accounts (but that tends to tie up developer monies)
 - No one-year time limitation in which to construct improvements (less incentive to get them in timely)
 - No expiration of Final Approval. Should there be?

What is needed?

- A **determination** whether to pursue an early approval and recording of the final plat.
- If not, an **update** of our financial assurances percentages.
- If so, we need to address:
 - **Financial assurances** – what will the City accept? in what amounts?
 - **Temporary easements** (for the period through the acceptance of the proposed public improvements) (access, constructions, maintenance)
 - Use and enforcement of the **Subdivision Improvement Cost Overrun Agreement** already provided for in our Code

