

STAFF REPORT ON PETITION FOR LAND SUBDIVISION REGULATIONS TEXT AMENDMENT

SRA 2016-4: AMENDMENT TO ARTICLE 4-7(D)(9)(A),(B),(G) & 4-8(C)(D)&(F); MAJOR SUBDIVISION PLAN PROCEDURE

REQUESTED BY: Urban County Planning Commission

PROPOSED TEXT: (Text ~~dashed through~~ indicates a deletion, and text underlined indicates an addition to the existing Land Subdivision Regulations.)

4-7(d)(9) PERFORMANCE / WARRANTY SURETY - The developer shall post a combination performance and warranty surety, which shall be both to ensure the completion of public improvements, as indicated by the punch list, and for the repair of infrastructure that is found to be defective due to improper workmanship or defective materials.

4-7(d)(9)(a) ACCEPTABLE SURETIES - Acceptable sureties shall generally be an irrevocable letter of credit in favor of the Urban County Government from a bank with offices in Lexington-Fayette County. For sureties less than \$5,000, cash, certified check, or money order is acceptable. For sureties greater than \$5,000, cash, certified check, money order, or other surety is acceptable.

4-7(d)(9)(b) DETERMINATION OF THE AMOUNT OF THE SURETY - The total amount of the combination surety shall be ten percent (10%) of the total cost of the installed infrastructure, including roads, sanitary sewer system and storm water facilities, plus one hundred percent (100%) of the cost of the items included on the punch list of incomplete work. Where the sanitary sewer pumping station has been constructed, and all pumping equipment installed, but electrical service has not been provided to the facility, the entire cost of the pumping station shall be included in the surety. The cost of roads, sanitary sewers, storm water facilities and the punch list items shall be based upon the unit cost of each construction item which is a part of the plan. The unit costs for public improvement construction items shall be determined ~~annually in conformance with the procedure established in the Procedures Manual and shall be available from the~~ by Division of Engineering. The surety shall also include an additional twenty percent (20%) of the amounts listed above to provide for inflation and administrative costs, should the surety be called; and the Urban County Government must cause the work to be constructed or repaired, as appropriate.

4-7(g) NO OCCUPANCY PERMIT - No person shall allow occupancy of any building until the Division of Building Inspection has verified that the private utilities (water, electricity, telephone, and, where applicable, sanitary sewers, access to a public street or private street or access easement, stormwater infrastructure and natural gas), or public sanitary sewer pumping station, are completed in such a fashion that such utilities are available for use on the property in question.

4-8(c) COMPLETION OF UTILITIES AND FINAL COURSE OF ASPHALT ~~—Only when all utilities have been installed, the base courses of the roadway have been completed for at least one year and the project engineer has certified the same to the Division of Engineering, shall the developer install the final course of asphalt. Any defective areas of the base courses of pavement must be identified by the project engineer and corrected or reconstructed, including removal of portions of the pavement in order to obtain a uniformly compacted base prior to the installation of the final surface. Completion of utilities and final course of asphalt shall be in conformance with the current edition of the Procedures Manual.~~ Upon installation of the final surface, the amount of the surety may be reduced by an amount equal to 10% of the cost of the base courses; but in no case shall the reduction be more than 10% of the cost of the final surface.

4-8(d) RENEWAL OF THE SURETY - When requested by the developer, the Urban County Engineer shall renew the surety for uncompleted items for one additional year, beyond the three years otherwise provided. As a condition of renewals for sureties older than 3 years, the Division of Engineering will require recalculation of the amount of the surety based on the current unit prices. Any further renewals or extensions of the surety may only be granted by the Planning Commission upon a finding that there are conditions that prevent the timely completion of the public improvements. As a condition to the extension or renewal, the Planning Commission may require recalculation of the amount of the surety when there has been a significant increase in the cost of the items that are not completed.

4-8(e) FINAL REDUCTION / RELEASE OF SURETY - When the developer has completed all required improvements, and the final course of asphalt has been applied for at least one year, the developer may request a final release of the surety. When so requested, the Division of Engineering will conduct a final inspection within thirty (30) days. Upon determination by the Division of Engineering that all improvements have been properly constructed in conformance with the requirements of these Subdivision

Regulations, the Zoning Ordinance, the Division of Engineering ~~Technical~~ Manuals and the Division of Engineering Standard Drawings, the Urban County Engineer shall, in writing, notify the Planning Commission, which shall release the surety.

4-8(f) Surety Forfeitures-If a surety is forfeited or called by the Urban County Government, the Corporation, Corporation Principal(s) or developer will be prohibited from submitting a surety to the Urban County Government for a period of three years from the date of forfeiture.

STAFF REVIEW:

At the request of the Division of Planning staff, the Planning Commission has initiated this amendment to the requirements that regulate performance/warranty sureties for the completion of public improvements as required by the Land Subdivision Regulations. This amendment was requested by the staff on behalf of the Division of Engineering. The Division of Engineering has been reviewing the surety requirements for several months in an effort to increase their effectiveness and to ensure that all required public infrastructure improvements are completed as designed and in a timely manner. Several small revisions have previously been made over the past few years to address issues that arose, including the bonding of private sidewalks to include the Urban County Government and including street trees as a bondable item.

Although the concern that sureties would not cover the actual cost of completing the public improvements is not new, the downturn in the economy known as the "Great Recession" heightened this concern. The downturn did not result in a significant increase of forfeitures but did emphasize the need to address the ability of the surety requirements to insure completion of the required public improvements while minimizing the potential cost to the Urban County Government. Some subdivisions were not "completed" with street trees and sidewalks, after developers allowed their sureties to be collected by the LFUCG.

The recommended changes more clearly define the amount and type of sureties that are acceptable; determination of costs; verification of required infrastructure; completion requirements and renewal of the surety. A significant addition, not previously included in the procedures, includes a penalty for forfeiture that restricts any Corporation, its Principals or a developer from submitting another surety to the Urban County Government for three years from the date of the forfeiture.

The Planning Staff agrees with the Division of Engineering's proposed changes and believes they will improve compliance with the Land Subdivision Regulations and minimize costs to the Urban County Government should a future forfeiture occur. This is consistent with the public health and safety intent of the Land Subdivision Regulations.

The Staff Recommends: **Approval**, for the following reasons:

1. The proposed text amendment is a timely improvement to the Land Subdivision Regulations that will improve compliance with the public improvements requirements of the regulations.
2. The proposed text amendment is consistent with the public health and safety provisions inherent in the Land Subdivision Regulations.