

VI. **COMMISSION ITEMS** – The Chair will announce that any item a Commission member would like to present will be heard at this time.

A. **SRA 2016-4: AMENDMENT TO ARTICLE 4-7 OF THE LAND SUBDIVISION REGULATIONS** - to alter the allowable sureties acceptable by the Urban County Government.

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 or insurance bond 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 are acceptable. For sureties greater than \$5,000, cash, certified check, money order, or other surety are 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~~ by the 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(d)(9)(c) SURETY FOR PRIVATE STREETS - All private street improvements (excepting only the final course of asphalt and possibly the sidewalks) shall be constructed in compliance with the approved improvement plan before the final subdivision plan is recorded. For the final course of asphalt only, the developer shall be permitted to post a surety in favor of the final maintenance association responsible for the private street, and shall note such requirement on the final plat of the property. For any sidewalks not yet constructed, the developer shall be permitted, at the time of recordation of the final plat, to post a surety in favor of the final maintenance association responsible for the private street, as long as it is also in favor of the Urban County Government. This shall not be construed to hold the Urban County Government responsible for the construction of such sidewalks other than to the extent of the funds provided by the surety; and neither this, nor any action by the Urban County Government relative to the enforcement of the required construction of such sidewalks and/or the surety, therefore, shall be construed as acceptance of responsibility by the Urban County Government for the construction, maintenance or dedication of such sidewalks as public infrastructure. The amount of the surety for the private street shall be 10% of the cost of the installed private street plus 100% of the cost of the final course of asphalt. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate. When private streets are permitted, the surety that is submitted in favor of the Urban County Government for the infrastructure shall not include an amount equal to the surety for private streets. The amount of the surety for the sidewalks shall be 100% of the cost of the construction of the sidewalks. The surety shall also include an additional 20% of the amounts above to provide for inflation and administrative cost, should the surety be called; and the final maintenance association must cause the work to be constructed or repaired, as appropriate.

4-7(e) CERTIFICATION OF PLANNING COMMISSION APPROVAL AND RECORDING - Within one (1) year of the Commission's approval, or conditional approval, unless a time extension has been granted prior to the expiration date, the following steps shall be completed, or else the Commission's approval, or conditional approval, becomes null and void: (1) The developer shall fully comply with any conditions of approval placed on the plan by the Commission and shall submit the completed original plan drawing to the Division of Planning; (2) The plan shall be certified by the Commission's Secretary if it is in conformance with all requirements; (3) The plan shall be recorded in the plat records of the Fayette County Clerk by the Division of Planning at the developer's expense; and (4) Required copies shall be made of the recorded plan by the Division of Planning at the developer's expense.

4-7(f) RECORDING OF A PORTION OF A FINAL PLAN - The Division of Planning shall be authorized to permit a developer to record a final plan that has been approved or conditionally approved by the Commission in smaller land increments than depicted on the final plan. For any such developer's request, the Division of Planning shall review the proposal with the Division of Engineering to ensure that no problems in provision of streets, storm drainage, or sanitary sewers would result. In any disputed cases, the request will be forwarded to the Planning Commission for final judgment.

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 COMPLETION OF PUBLIC IMPROVEMENTS - Public improvements that were not completed prior to certification of the final plan by the Urban County Engineer shall be completed in conformance with the approved improvement plan and with the submitted schedule for completion. In the event the public improvements are not completed as provided in the schedule for completion, or repaired as required, the Urban County Engineer shall, in writing, advise the Planning Commission, which shall have the authority to call the surety posted in favor of the Urban County Government and cause the work to be constructed or repaired, as appropriate.

4-8(a) PRE-FINAL INSPECTION AND FIRST REDUCTION IN THE SURETY - Within thirty (30) days of the certification of the final plan by the Urban County Engineer, the Division of Engineering shall inspect the public improvements. If the Division of Engineering finds that portions of the work on the public improvements that were included in the punch list have now been completed, a first reduction in the surety shall be permitted, when so requested by the developer. The reduction in the surety shall equal the cost of those punch list items that are found to be complete.

4-8(b) ADDITIONAL REDUCTIONS OF SURETY - Additional reductions in the amount of the surety will be permitted. The surety may be reduced only at times provided below. In all cases, the Division of Engineering shall retain the amount of the surety for inflation and administration until the release of the surety. No reduction will be permitted after the completion date has passed, and no reduction will alter the original completion or termination date of the surety.

(1) SECOND REDUCTION - When requested by the developer, a second reduction shall be allowed one year from the Urban County Engineer's certification of the final plan. Within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total amount of the cost of the stormwater facilities, plus the value of all punch list items that are found to have been completed during the first year.

(2) THIRD REDUCTION - At the end of the second year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to the value of the items that are found to have been completed in the second year. If the final course of asphalt has been applied for at least one year, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

(3) FOURTH REDUCTION - At the end of the third year from the date of the certification of the plan by the Urban County Engineer, and within thirty (30) days of the request by the developer, the Division of Engineering shall inspect the improvements. The surety may be reduced by an amount equal to ten percent (10%) of the total cost of the sanitary sewer and pump station facilities plus the value of any items that are found to have been completed in the third year. If the final course of asphalt has been applied for at least one year, and if a previous reduction for the final course of asphalt has not been taken, the amount of the surety may be reduced by an amount equal to ten percent (10%) of the total cost of the final course of asphalt.

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 4 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.

The Subdivision Committee made no recommendation.

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.

Staff Presentation – Mr. Martin indicated that the Planning Commission continued consideration of this item from the December 8, 2016, meeting due to concerns with the proposed language that was presented on the staff report and how the unit prices were calculated. He added that Doug Burton Director, with the Division of Engineering, was present to address those concerns from the Commission.

Mr. Burton said that due to a scheduling conflict he was not able to attend the December 8th meeting, but he did have the opportunity to watch the video recording of the meeting, and he was since able to speak with Mr. Cravens and Mr. Wilson about their concerns.

Mr. Burton said that, as the language reads now, the unit prices are generated at a conference that is held every December with the construction industry. He explained that the unit prices have not been adjusted for several years because the Urban County Government does not have the negotiating power that the development industry does. This means the unit prices were being based on unit prices that we as a government entity could not acquire. He then said that if a contractor puts out a bid for an item, that contractor has the power to negotiate a lower bid; whereas, the LFUCG does not have that ability. Mr. Burton said that several years ago it was determined that using bids for small public construction projects could determine the real unit price that is used through the Division of Engineering and other departments. He then said that the Division of Engineering uses eight different contractors to attain the lowest bid for any project that needs to be done.

Mr. Burton said that how the unit prices are determined for the sureties is through averaging the prices of the different contractors that they use. He explained the reason this process is being done this way is because should the Division of Engineering ever need to call a 20 year old surety to finish a project that the developer did not complete, that surety would be based on unit prices from 20 years ago, which would create a huge financial gap. This change would allow the unit prices to be more competitive and allow a surety to be renewed every 4 years. The Division of Engineering has not yet called a surety, but if that were to happen, that surety would be subjected to the newer unit prices, not the original unit price when it was first opened. He said that the proposed language will help protect the LFUCG and the tax payers from old unit prices by being able to obtain competitive prices and complete projects that the developers did not finish.

Commission comments – The Chair said that Mr. Cravens was not present for today's hearing, but he wanted to extend his appreciation in providing them a one-on-one tutorial as to what this proposed change meant. He also extended the Commission's apologies to Ms. Adkins, who was caught up in the confusion at the December 8th meeting.

Citizen Comments - There were no audience members present to speak to this request.

Commission questions – The Chair asked if the Subdivision Committee had reviewed the text amendment. Ms. Plumlee replied negatively. The Chair asked if the Committee would like time to review the proposed changes or move on. Ms. Plumlee replied that the Commission should move on. The Chair indicated that he was ready for a motion on this request.

Mr. Owens indicated that he was not present for the December 8th meeting; therefore, he would be abstaining from voting on the motion.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Smith and carried 8-0 (Brewer and Owens abstained; Cravens, Drake and Penn absent) to approve **SRA 2016-4: AMENDMENT TO ARTICLE 4-7 OF THE LAND SUBDIVISION REGULATIONS** - to alter the allowable sureties acceptable by the Urban County Government, as recommended.

