

## **SECTION 3 SECURITY FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS**

### **3.1 Improvement and Adequate Security**

#### **A. Completion of Improvements**

Before the plat is signed by the Chair of the Board of Commissioners or his/her designee, all applicants shall be required to complete, in accordance with the County's requirements, all the street, sanitary, and other improvements in the subdivision, including without limitation, improvements on the individual lots of the subdivision as required in these regulations, specified in the final subdivision plat, and as approved by the County and to dedicate same to the appropriate government body, free and clear of all liens and encumbrances on the property and public improvements thus dedicated.

#### **B. Adequate Security**

- (1) When seventy-five (75) percent of the improvements based on the total estimated cost of the improvements to be installed have been completed and all weather access for emergency vehicles has been provided, upon request the County may enter into a contract with the applicant under which the applicant agrees to complete all required improvements. Once the contract has been executed by the County and the applicant and the security required herein is provided, the final plat may be signed and recorded if all requirements of this Ordinance, except the completion of the improvements, have been met. To secure the obligation under the contract, the applicant shall provide any one or a combination of the guarantees set forth below to cover the costs of the uncompleted improvements. The amount of the security shall not be less than 150% of an amount determined by a licensed architect, registered engineer, surveyor, or licensed contractor acceptable to the County as sufficient to secure to the County the satisfactory construction, installation, and dedication of the incomplete portion of required improvements including labor and material payments. The security shall also assure all lot improvements on the individual lots of the subdivision as required in these regulations.
- (2) Such adequate security shall comply with all statutory requirements and shall be satisfactory to the County Attorney as to form and manner of execution as set forth in these regulations, and the Planning Director as to sufficiency (i.e., inflation or rising construction costs shall be taken into account of security amount). A copy of the power of attorney for any countersigning agent shall be attached. The period in which required improvements must be completed shall be specified by the County prior to the recordation of the final subdivision plat and shall be incorporated in the contract. The County Attorney may at any time during the period of such security accept a substitution of principal or sureties on the security. The security shall take one of the following forms:
  - a. Surety Performance Bond(s)
    - i. The applicant shall provide a surety bond from a bonding company authorized to issue such bonds in North Carolina.
    - ii. The bond shall be payable to Chatham County and shall be in an amount equal to at least 150% of the entire estimated cost, as approved by the County, of installing all uncompleted improvements.

Applicants must submit a request for bonding including a detailed construction cost estimate upon submission of the final plat.

- iii. The bond amount and term shall be as approved by the Planning Director and such consultants as deemed necessary.
- iv. The County Attorney shall review the submitted bond and make a recommendation regarding its legal sufficiency to the Planning Director.

b. Cash or Equivalent Security

- i. The applicant shall deposit cash, an irrevocable letter of credit, or other instrument readily convertible to cash at face value, with the County. Any irrevocable letter of credit or other instrument shall be made payable to Chatham County. The amount of deposit shall be equal to at least 150% of the entire estimated cost, as approved by the County, of installing all uncompleted improvements.
- ii. The amount and term of such security shall be as approved by the Planning Director and such consultants as deemed necessary.
- iii. The County Attorney shall review the submitted security and make a recommendation regarding its legal sufficiency to the Planning Director.

- (3) A contract, satisfactory to the County as to form, shall accompany any security accepted by the County for improvements, and shall be signed and approved prior to recordation of the Final Plat.

**C. Temporary Improvement**

The applicant shall build and pay for all costs of temporary improvements required by the County and shall maintain the same for the period required by the County. Prior to construction of any temporary facility or improvement, the applicant may be required to file with the County a separate suitable financial guarantee for temporary facilities, such guarantee assuring that the temporary facilities will be properly constructed, maintained and removed.

**D. Costs of Improvements**

All required improvements shall be made by the applicant, at his/her expense, without reimbursement by the County.

**E. Failure to Complete Improvement**

In those cases where the required improvements have not been installed in accordance with the contract, an authorized agent of the County may declare the applicant to be in default and require that all the improvements be installed regardless of the extent of the building development at the time of default. The authorized agent of the County may take such actions necessary to collect on the security and provide for the completion of the required improvements.

**F. Acceptance of Dedication Offers**

Acceptance of formal offers of dedication of public areas, easements, and parks shall be by deed or other instrument acceptable to the County. The approval by the County of a subdivision plat shall not be deemed to constitute or imply the acceptance by the County of any easement, or park shown on said plat.

### **3.2 Inspection of Improvements**

#### **A. General Procedure**

The County and other reviewing agencies may provide for inspection of required improvements during construction to assure their satisfactory completion. If the reviewing agencies find upon inspection that any of the required improvements have not been constructed in accordance with the construction standards and specifications of the County or agencies involved, the applicant shall be responsible for completing the improvements. Wherever the cost of improvements is covered by a financial security, the applicant and the bonding company, if applicable, shall be jointly and severally liable for completing the improvements according to specifications.

#### **B. Release or Reduction of security**

##### **(1) Certificate of Satisfactory Completion**

The County will not accept the required improvements, nor will an authorized agent of the County release or reduce said security, until the District Engineer of the North Carolina Department of Transportation (NCDOT), or other appropriate authority, has submitted a certificate stating that all required public street improvements have been satisfactorily completed, or until an engineer, surveyor, architect or contractor acceptable to the County has certified that all other required improvements have been completed in conformity with the requirements of this ordinance. Upon such certification, the County may thereafter accept the improvements in accordance with the established procedure and release the financial guarantee.

##### **(2) Reduction of Security**

A guarantee may be reduced upon actual completion of required improvements and then only to the ratio that the required improvements completed bears to the total required improvements for the subdivision.

### **3.3 Deferral or Waiver of Required Improvements**

#### **A. Conditions**

The County may defer or waive at the time of final approval, subject to appropriate conditions, the provision 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.

#### **B. Payment in Lieu of Improvements**

Whenever it is deemed necessary by the County 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 may be required to pay his/her share of the costs of the future improvements to the County prior to signing of the final subdivision plat, or the applicant shall post financial security assuring completion of said improvements upon demand of the County.

### **3.4 Maintenance Guarantees – Public Roads**

#### **A. Purpose**

Maintenance guarantees shall be required for the purpose of ensuring that roads that are to be dedicated to the public are properly maintained and free from defects between the time of construction and the time of formal acceptance for maintenance by the NCDOT.

#### **B. Timing**

A maintenance guarantee shall be in place before the recordation of any Final Plat for subdivisions containing public road improvements. If an applicant provided security for public road improvements as specified in Section 3.1, a maintenance guarantee shall be in place before any such security is released.

#### **C. Agreement**

Maintenance guarantees for public road facilities shall stipulate that the applicant will maintain all required public road improvements, drainage improvements, and sedimentation and erosion control improvements to the standards of any County Ordinances and/or state or federal regulations until the public road improvements are added to the state-maintained road system. The guarantee shall also state that the applicant will be responsible for correcting any defects that may arise during the maintenance period and shall remove temporary sedimentation and erosion control measures.

#### **D. Form and Amount**

Maintenance guarantees shall be in the form of a performance bond, irrevocable letter of credit, or cash escrow account, and shall include a contract, approved to form by the County Attorney, between the County and applicant.

- (1) The amount of the guarantee shall be at least 15% of the total cost of constructing the public road improvements, excluding the costs of clearing and rough grading.
- (2) The estimated cost of the required improvements must be itemized and certified by a licensed architect, registered engineer, surveyor, or licensed contractor acceptable to the county.
- (3) Cost estimates must be based on industry norms within Chatham County.
- (4) The Planning Director, County Manager or Board of Commissioners may require a higher guarantee amount when deemed necessary to address higher potential correction costs due to the subdivision's size and site characteristics, but in no event may the amount exceed 25% of estimated construction costs.

#### **E. Term**

The maintenance guarantee shall have an initial term of two years and shall provide for renewal of the maintenance guarantee at the option of the County for additional two-year terms with an updated cost estimate to be provided prior to renewal.

#### **F. Release of Maintenance Guarantee**

The maintenance guarantee shall be released by the County once the NCDOT has officially accepted the public road(s) covered by the maintenance guarantee into the state road system for maintenance.