

**City of Wimberley**  
City Hall, 221 Stillwater  
Wimberley, Texas 78676  
**Planning & Zoning Commission**  
Minutes of Special Meeting  
October 11, 2012 at 6:00 p.m.

Meeting called to order by Acting Chair Jean Ross. Present were Commissioners Beth Mitchell, Charles Lancaster, Steve Klepfer, Lance Cawley, and Rick Burleson. Chair Tracey Dean was absent.

Staff Present: City Administrator Don Ferguson and City Secretary Cara McPartland

**Citizen Communications:**

No citizen comments were heard.

**1. Consent Agenda**

Approval of minutes of the Regular Planning & Zoning Commission meeting on September 27, 2012.

Commissioner Lancaster moved to approve the minutes, as presented. Commissioner Klepfer seconded. Motion carried on a vote of 6-0.

**2. Discuss and Consider Action**

Discuss and consider action on issues relating to the platting and planning procedures of Chapter 154 Subdivision Control of the City of Wimberley Code of Ordinances. (*City Administrator*)

City Administrator Ferguson presented a draft of proposed revisions to §154.026 and §154.027 (*attached to these minutes*).

Commission discussion included:

- Language in §154.026(G)(2) stating that the City *may* (as opposed to *shall*) require a preconstruction conference as part of the permitting process
- Additional requirement of electronic submission of CAD drawings
- Determination of completion of improvements and associated bond requirements
- Alternatives to completing improvements, including performance bonds, escrow accounts, and letters of credit
- Possible revisions to §154.027(F) to change the number and/or length of the extension period(s) for the completion date
- Role, responsibility, and liability of the City in granting approval for developments and completion of improvements

- Problems associated with unfinished developments
- Definition of governmental delays referred to in §154.027(F)
- Inclusion of references to phasing of developments and incremental reductions in surety requirements
- Inclusion of language requiring completion of certain improvements such roads and utilities, prior to construction of structures
- Relating to Letters of Credit in §154.027(3), clarification of “reputable institution or individual,” and the additional requirement that bank ratings be used as criteria for determining such reputability
- Under §154.027(F), allowing developers to request an extension of the completion date for one (1) year, and to request additional one-year extensions as needed, for a period not to exceed five (5) years
- Relating to §154.026(H)(2)(c), inclusion of language relating to an appeals process, should improvements be deemed by City Council to be not satisfactorily complete

City Administrator Ferguson advised that recommended changes will be incorporated into the draft ordinance for further review at the Commission’s next meeting.

**3. Staff and Commission Reports**

- Announcements
- Future Agenda Items

City Administrator Ferguson noted that the Commission’s next agenda will include discussion of types of desired subdivisions and design standards (commercial and residential) as part of its ongoing Code review process and asked for Commission input, specifically on lot size/configuration, road width/length, sidewalks, drainage, and green space requirements.

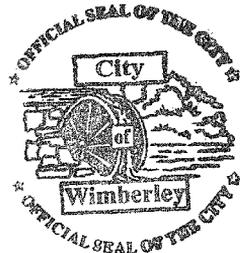
Hearing no announcements or future agenda items, Commissioner Lancaster moved to adjourn. Commissioner Burluson seconded. Motion carried on a vote of 6-0.

**Adjourn at 7:03 p.m.**

Recorded by:

*Cara McPartland*  
 Cara McPartland

**These minutes approved the 8<sup>th</sup> of November, 2012.**



**APPROVED:**

*Tracey Dean*

**Tracey Dean, Chair**

**(G) Construction Procedures**

- (1) A site development permit is required from the City prior to beginning any site development-related work in the City or its extraterritorial jurisdiction.
- (2) The City may require that all contractors participating in construction meet for a preconstruction conference to discuss the construction plans prior to the release of a site development or building permit. All contractors shall comply with all applicable provisions of the Code including but not limited to water quality and landscaping provisions.
- (3) Prior to authorizing the release of a site development permit, the City Administrator or his designated representative shall determine if the following conditions have been met:
  - (a) The preliminary plat has been approved by the City Council and any conditions of such approval have been met;
  - (b) All required construction drawings and engineering documents have been completed and approved by the City Engineer;
  - (c) All necessary easements and dedications required for all utilities and City-maintained facilities have been conveyed solely to the City or utility, as applicable;
  - (d) All contractors participating in the construction have been presented with a set of approved plans bearing the stamp of release of the City Engineer. At least one (1) set of these plans shall remain on the job site at all times;
  - (e) A complete list of the contractors, their representatives on the site, and telephone numbers where a responsible party may be reached at all times has been submitted to the City; and
  - (f) All applicable fees must be paid to the City.
- (4) All nonpoint source pollution controls, erosion controls, and tree protection measures and devices shall be in place prior to the start of construction on any property.

**(H) Construction of Required Public Improvements**

- (1) Construction of public improvements shall be completed in accordance with the approved engineering plans and other applicable codes and ordinances. Any change in design that is required during construction shall be made by the licensed professional engineer whose seal and signature are shown on the plans or another licensed professional engineer with prior approval of the owner of the plans. All revisions shall be noted on the plans or documents and shall be approved in advance by the City Administrator or his designated representative. If the City Administrator or his designated representative finds, upon inspection, that any of the required public improvements have not been constructed in accordance with the approved engineering plans and applicable standards, then the applicant shall be responsible for completing and correcting the deficiencies.
- (2) The City shall not consider public improvements as satisfactorily complete until the improvements have been completed and inspected by the City Engineer and applicant's engineer or surveyor has submitted "as-built" drawings of the property and the improvements to the City Administrator or his designated representative. The "as-built" drawings shall certify completion of the improvements and contain the following:
  - (a) A complete set of sealed record drawings of the paving, drainage, water, sanitary sewer and other public improvements, showing that the improvements are in accordance with the approved engineering plans;
  - (b) Detail of all changes made in the plans during construction;
  - (c) An "as-built" stamp on each page bearing the signature and seal of the licensed professional engineer and the date.

Upon determining that the above-mentioned requirements have been met, the City Administrator shall recommend the City Council deem the improvements satisfactorily complete. Once the City Council makes such a determination, the City Administrator shall issue the Letter of Acceptance.

- (3) Acceptance of the public improvements shall mean that the applicant has transferred all rights to all the public improvements to the City for use and maintenance.

(j) **Construction of Required Non-Public Improvements.**

- (1) The City Administrator or his designated representative shall inspect all required non-public improvements, including all fences and landscaping, to ensure compliance with City requirements and the approved construction plans. The inspection shall occur within ten (10) working days upon notification by the applicant. A report on the inspection shall be issued within ten (10) working days of the date of inspection.
- (2) When all required improvements have been satisfactorily completed, the City Administrator or his designated representative shall either accept, in writing, the improvements as having been satisfactorily completed, or shall issue a punch list to the applicant identifying the items to be completed.

**§ 154.027 Alternatives to Completing Improvements**

- (A) At the time of final plat approval, the City Council may waive the requirement that the applicant complete all improvements required by this Chapter. That waiver shall be contingent upon the City securing from the applicant a guarantee, as provided for by this section, for completion of all required improvements, including the City's cost for collecting the guaranteed funds and administering the completion of improvements in the event the applicant defaults. This guarantee shall be satisfactory to the City Attorney and shall take one of the following forms:
  - (1) *Performance bond.* The applicant shall post a performance bond with the City, as set forth herein, in an amount equal to 110% of the estimated construction costs for all remaining required improvements, using the form found on file with the City.
  - (2) *Escrow account.* The applicant shall deposit cash or other instrument readily convertible into cash at face value, either with the City or in escrow with a bank or savings and loan institution. The use of any instrument other than cash shall be subject to the approval of the City. The amount of the deposit shall equal 110% of the estimated construction costs for all remaining required improvements. In the case of any escrow account, the applicant shall file with the City an agreement between the financial institution and the applicant guaranteeing the following:

- (a) The funds of the escrow account shall be held in trust until released by the City and may not be used or pledged by the applicant as security in any other matter during that period;
  - (b) In the case of a failure on the part of the applicant to complete the improvements, the financial institution shall immediately make the funds in the account available to the City for use in the completion of those improvements; and
  - (c) The escrow account agreement shall be prepared using the form on file with the City.
- (3) *Letter of credit.* The applicant shall provide a letter of credit from a bank or other reputable institution or individual. This letter shall be submitted to the City and shall certify the following:
  - (a) The creditor does guarantee funds equal to 110% of the estimated construction costs for all remaining required improvements;
  - (b) In the case of failure on the part of the applicant to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and without further action, those funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter;
  - (c) This letter of credit may not be withdrawn, or reduced in amount, until approved by the City; and
  - (d) The letter of credit shall be prepared using the form on file with the City.
- (B) A registered professional engineer, licensed to practice in this state, shall furnish estimates of the costs of all required improvements to the City Administrator or his designated representative who shall review the estimates to determine the adequacy of the guarantee instrument for insuring the construction of the required facilities.

- (C) The surety shall comply with all statutory requirements and shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution as set forth in these regulations. All such surety instruments shall be both a payment and performance guarantee.
- (D) If the project is located in the extraterritorial jurisdiction, and is subject to the bonding requirements of Hays County for the construction of roadways, then that amount of money shall be reduced from the amount required to be posted with the City, provided that the instrument is transferable from the County to the City upon annexation.
- (E) The period within which required improvements must be completed shall be specified by the City Council in approving the final plat and shall be incorporated in the surety instrument and shall not in any event, without prior approval of the City, exceed one (1) year from date of final plat approval.
- (F) The City Council may, upon written request of the applicant, and upon proof of hardship, approve an extension of the completion date set forth in the bond or other instrument for a maximum period of one (1) additional year. Hardship may include delays imposed due to projects by governmental entities which have a direct impact and impair the completion of the improvements. If the delay is due to the governmental entity, an application for extension shall be accompanied by written letter from the governmental entity detailing the delay and estimated time for completion of its projects. The written request for an extension shall include an updated estimate of construction costs prepared by a registered professional engineer, licensed to practice in this state in all instances. A surety instrument for guaranteeing completion of remaining required improvements must be filed in an amount equal to 110% of the updated estimate of construction costs as approved by the planning staff.
- (G) The City Council may, at any time during the period of the surety instrument, accept a substitution of principal sureties.
- (H) Final plats shall be deemed to have expired in subdivisions for which no assurances for completion have been posted or the improvements have not been completed within the period specified in this Chapter. In those cases where a surety instrument has been required and improvements have not been completed within the terms of that surety instrument, the City may declare the surety to be in default and require that all the improvements be installed. No

development rights, if any, shall vest in a conditionally approved final plat that has expired under this section.

- (I) A surety instrument may be reduced with the approval of the City Administrator upon actual construction of required improvements by an amount equal to the value of the completed improvements, as determined by the City Administrator. Before the City shall reduce the surety instrument, the applicant shall provide a new surety instrument in an amount equal to 110% of the estimated cost of the remaining required improvements. The substitution of a new surety instrument shall in no way change or modify the terms and conditions of the performance surety instrument or the obligation of the applicant as specified in the performance surety instrument. In no event shall a surety instrument be reduced below 25% of the principal amount prior to completion of all required improvements.
- (J) The City shall not release a surety instrument unless and until all the improvements have been satisfactorily completed.

**§ 154.028 Required Maintenance Bond**

- (A) The applicant shall furnish the City with a maintenance bond or other acceptable surety instrument to ensure the quality of materials and workmanship, and maintenance of all required improvements. The bond or instrument shall be furnished to the City prior to the release of any performance surety instrument or the signing of the final plat where subdivision improvements were made prior to the signing and recordation the final plat.
- (B) The required bond or surety instrument shall be in an amount equal to 10% of the cost of the improvements and shall include the City's costs for collecting the guaranteed funds and administering the correction or replacement of covered improvements in the event the applicant defaults. The term of the bond or instrument shall run for a period of one (1) calendar year measured from the date of the release of the performance surety instrument or the recording of the final plat, whichever is later.
- (C) The form, sufficiency, and manner of execution of the maintenance bond or other surety instrument shall be approved by the City Attorney.
- (D) In an instance where a maintenance bond or other surety instrument has been posted and a defect or failure of any required improvement occurs within the period of coverage, the City may

declare the bond or surety instrument to be in default and require that the improvements be repaired or replaced.

- (E) Whenever a defect or failure of any required improvement occurs within the period of coverage, the City shall require that a new maintenance bond or surety instrument be posted for a period of one (1) full calendar year *from the date the defect was repaired or replaced* sufficient to cover the corrected defect or failure.