

ORDINANCE NUMBER 09-11-10

AN ORDINANCE TO AMEND CHAPTER 91 SUBDIVISION REGULATIONS OF THE TOWN OF LAKE LURE MODIFYING THE REQUIREMENTS FOR IMPROVEMENTS GUARANTEES; ADDING REQUIREMENTS FOR DEPOSITS OF COMPLIANCE

WHEREAS, the Zoning and Planning Board has recommended modifications to the Subdivision Regulations of the Town of Lake Lure as noted in the title of this ordinance; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 10th day of November, 2009, upon the question of amending the Subdivision Regulations in this respect.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE:

SECTION ONE. Paragraph (G) of Section 91.17 of the Subdivision Regulations of the Town of Lake Lure, entitled "Preliminary Plat", is hereby created to read as follows:

§ 91.17 Preliminary Plat

(G) Deposit of Compliance. A deposit of compliance that is refundable when all infrastructure has been approved by the Subdivision Administrator. In the event that any damages occur to Town infrastructure and/or property, these funds may be seized to cover any costs associated with correcting said damages. The deposit of compliance shall be a certified or cashier's check in the amount set by the Zoning and Planning Board. The Zoning and Planning Board shall establish the amount of the deposit based on the degree of risk to town infrastructure and/ or property. This amount shall be no less than one thousand dollars (\$1000), and no more than ten thousand dollars (\$10,000).

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK-THROUGH~~.]

SECTION TWO. Section 91.18 of the Subdivision Regulations of the Town of Lake Lure, entitled "Begin Development" is hereby amended as follows:

§ 91.18 Begin Development

(A) Upon approval of the preliminary plat by the Zoning and Planning Board, the subdivider may proceed with preparation of the final plat, the land clearing, the land disturbance and/or the installation of or arrangements for roads, utilities, and other improvements as specified in the approved portion of the preliminary plat that will be submitted for final approval.

(B) Improvements Guarantees.

- (1) Agreement Prior to Final Plat Approval. In lieu of requiring the completion, installation and dedication of all improvements prior to final plat approval, the town may enter into an agreement with the subdivider whereby the subdivider shall agree to complete all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat within a reasonable time to be determined in said agreement.

The guarantees under such an agreement shall include the following:

- (a) That water supply and distribution systems and sewer collection systems are installed in accordance with the *Town of Lake Lure Standard Specifications and Details for Construction*;
- (b) That streets and the storm water collection network are installed as specified in these regulations;
- (c) That soil erosion control measures are installed and maintained as specified in Chapter 96, the Soil Erosion and Sedimentation Control Regulations;
- (d) That tree and/or environmental protection measures shown on the plat shall be properly installed and maintained throughout land clearing, land disturbance and/or development;
- (e) That areas of the subdivision specified on the plat to be graded shall be graded as specified or shall be so graded at the expense of the subdivider;
- (f) That areas of the subdivision specified on the plat to be left ungraded shall be left ungraded as specified or shall be returned as far as possible to the original condition at the expense of the subdivider;
- (g) That any significant trees cut without appropriate approvals, or damaged to an extent likely to cause the death of those trees, shall be replaced by healthy trees at the expense of the subdivider;
- (h) That any areas exceeding 100 sq. ft. in size from which native shrubbery and their stumps and roots have been removed without approval as part of a tree protection plan, or damaged to an extent likely to cause the death of

those shrubs, shall be replanted with healthy shrubbery at the expense of the subdivider;

(i) That replacement trees and shrubbery shall be of species recommended in the *Lake Lure Tree Protection Handbook*, and at the 'minimum dbh for replanting' sizes appropriate to the species as shown in Attachment D. They shall be planted in sufficient numbers to equal the total inches in dbh of the trees so damaged or removed, and/or to fully replant the area of shrubbery so damaged or removed, and; such replacement trees and shrubs shall be inspected at intervals, and any not continuing in good health for a minimum of two years shall be replaced at the expense of the subdivider.

~~(j) — Such replacement trees and shrubs shall be inspected at intervals, and any not continuing in good health for a minimum of two years shall be replaced at the expense of the subdivider.~~

(2) The Town may require that the final plat be broken into smaller phases when the required security exceeds five hundred thousand dollars (\$500,000), or when the Town's interest (as determined by Town Council) would be served by an alternate phasing plan. The extent of the smaller phases shall be established by the applicant in cooperation with the Subdivision Administrator.

(C) Once said agreement is signed by both parties and security required herein is provided, the final plat may be approved by the Zoning and Planning Board provided it meets with the requirements of § 91.19. To secure this agreement, the subdivider shall provide, following the preliminary plat approval of the Zoning and Planning Board, either one or a combination of the following guarantees not exceeding ~~1.25~~ 1.75 times the entire cost as ~~provided herein: approved by the Subdivision Administrator, of installing all required improvements, replanting, and repairs, as specified in §91.18(B)(1), on the approved preliminary plat for that portion of the subdivision to be shown on the final plat.~~

(1) Surety Performance Bond(s). The subdivider shall obtain a performance bond(s) with supporting references relative to our region from a surety bonding company authorized to do business in the state, and having a "Secure" financial strength rating from the A.M. Best Company or an equivalent rating from a firm acceptable to the Town. No bond(s) in excess of one hundred thousand dollars (\$100,000) shall be accepted from any single surety bonding company with a rating from the A.M. Best Company lower than A- (or an equivalent rating from a firm acceptable to the Town). The bond(s) shall be payable to the Town of Lake Lure, and shall be in an amount equal to 1.25 times the entire cost, as approved by the Subdivision Administrator, of installing all required improvements,

~~replantings, and repairs, as specified in §91.18(B)(1), on the approved preliminary plat for that portion of the subdivision to be shown on the final plat. The duration of the bond(s) shall be until such time as the improvements are approved by the Zoning and Planning Board Town Council. The Zoning and Planning Board shall not give said approval until it has been satisfied that all required improvements have been installed as specified on the preliminary plat for that portion of the subdivision to be shown on the final plat, that all replantings and repairs have been made as specified in §91.18(B)(1), and that the subdivider has submitted a letter of credit, as described below, for a sufficient period to replant again any replaced trees and/or shrubbery failing to remain in good health for the period specified in §91.18(B)(1)(j).~~

- (2) Cash or Equivalent Security. The subdivider shall deposit cash or other instrument readily convertible into cash at face value, either with the town or in escrow with a financial institution designated as an official depository of the town. The use of any instrument other than cash shall be subject to the approval of the ~~Zoning and Planning Board~~ Town Council. ~~The amount of deposit shall be equal to 1.25 times the entire cost, as approved by the Subdivision Administrator, of installing all required improvements replantings, and repairs, as specified in §91.18(B)(1), on the approved preliminary plat for that portion of the subdivision to be shown on the final plat, plus 1.25 times the amount approved by the Subdivision Administrator to replant again any replaced trees and/or shrubbery failing to remain in good health for the period specified in §91.18(B)(1)(j).~~ If cash or other instrument is deposited in escrow with a financial institution as provided above, then the subdivider shall file with the Town Council an agreement between the financial institution and himself guaranteeing the following:
- (a) That said escrow account and any accumulated interest shall be held in trust until released by the ~~Zoning and Planning Board~~ Town Council and may not be used or pledged by the subdivider in any other matter during the term of the escrow; and
- (b) That in the case of a failure on the part of the subdivider to complete any improvements or any required replantings or repairs, the financial institution shall, upon notification by the Town Council and submission by the Town Council to the financial institution of the Subdivision Administrator's determination of the amount needed to complete the improvements, replantings, or repairs immediately either pay to the town the funds determined to be needed to complete the improvements, replantings, or repairs up to the full balance of the escrow account, or

deliver to the town any other instruments fully endorsed or otherwise made payable in full to the town.

- (3) Letter of Credit. ~~A satisfactory, irrevocable letter of credit as approved by the Town Attorney and Town Council and deposited with the Subdivision Administrator shall be submitted.~~ When a letter of credit is submitted it shall be approved by the Town Attorney and the Town Council and Deposited with the Subdivision Administrator; the following information shall be contained in said letter:
- (a) Shall be entitled "Irrevocable Letter of Credit";
 - (b) Shall indicate that the town is the sole beneficiary;
 - (c) The amount (of the letter of credit) as approved by the Subdivision Administrator;
 - (d) Account number and/or credit number that drafts may be drawn on;
 - (e) List of improvements that shall be built that the letter is guaranteeing;
 - (f) List of conditions to be met with regard to tree and/or native shrub health and safety at the conclusion of land clearing, land disturbance and/or development, including replanting any replaced trees and/or shrubs not found in good health for the period specified in §91.18(B)(1)(j).
 - (g) Terms in which the town may make drafts on the account;
 - (h) Expiration date of the letter.
- (D) Default. Upon default, meaning failure on the part of the subdivider to complete the required improvements, replantings, and/or repairs in a timely manner as spelled out in the agreement in division (B) (1) above, then the surety, or the financial institution holding the escrow account shall, if requested by the Town Council, pay all or any portion of the bond or escrow fund to the town up to the amount needed to complete the improvements, replantings, and/or repairs based on the Subdivision Administrator's determination. Upon payment, the Town Council, in its discretion, may expend such portion of said funds as it deems necessary to complete all or any portion of the required improvements, replantings, and/or repairs. The town shall return to the surety or escrow account any funds not spent in completing the improvements, replantings, and/or repairs.

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- (E) Release of Guarantee Security. The Town Council may release a portion of any security posted as the improvements, replantings, and/or repairs are completed and recommended for approval by the Subdivision Administrator. Prior to release of all or any portion of the security posted, the subdivider shall
- (1) Submit signed and sealed statements from a licensed engineer and/or the tree protection officer that the improvements, replantings, and/or repairs for which the developer seeks release of funds have been installed in accordance with all applicable state and local specifications and according to the approved plans and that the property is properly stabilized.
 - (2) Obtain a two-year extension of the letter of credit in cases where trees and/or shrubs were required to be replaced, to assure replanting of any such trees and/or shrubs not found to be in good health at the end of the period specified in §91.18(B)(1)(j). This deposit shall be in an amount equal to ~~1.25~~ 1.75 times approved cost of replanting the failed replacement trees, as approved by the Subdivision Administrator.

At such time as these requirements have been met, and the Subdivision Administrator approves all improvements, replantings, and/or repairs placed in the subdivision as set forth by the Zoning and Planning Board, then all security posted shall be immediately released. Penalty, see § 91.99

SECTION THREE. Paragraph (A) of Section 91.19 of the Subdivision Regulations of the Town of Lake Lure, entitled "Final Plat" is hereby amended as follows:

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~.]

§ 91.19 FINAL PLAT.

- (A) General. No final plat for a major subdivision shall be considered unless it has been preceded by a preliminary plat approved by the Zoning and Planning Board. The final plat shall constitute only that portion of the preliminary plat which the subdivider proposes to record and develop at the time of submission. No final plat shall be considered unless and until the subdivider shall have installed in that area represented on the final plat all improvements required by this ordinance as specified in the approved preliminary plat, or financial guarantees of said improvements have been arranged in accordance with § 91.18. No final plat shall be considered until any and all damages (caused as a result of the development of the subdivision) to public infrastructure and/or property have been corrected to the satisfaction of the Town. The subdivider shall submit seven copies and one original of the final plat to the Subdivision Administrator. At the

time of submission of the final plat, the subdivider shall pay such fee as established by the town and any fees incurred by the town during the plat review process.

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~.]

SECTION FOUR. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 91.99 of the Subdivision Regulations.

SECTION FIVE. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION SIX. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION SEVEN. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing violations.

SECTION EIGHT. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 10th day of November, 2009.

ATTEST:

Mary A. Flack, MMC
Town Clerk

Jim Proctor
Mayor

Approved as to content and form:

J. Christopher Callahan
Town Attorney