



MEMORANDUM

TO: Mayor and City Councilors

FROM: Rich Olson, City Manager
June Brooks, Planning & Community Development

DATE: January 7, 2016

REF: Consideration - Call for a Public Hearing on TA 02-15 to amend the Unified Development Ordinance, specifically Article X Subdivisions – Procedures and Standards; and Article VIII Amendments by adding and Updating language governing bonding for unimproved requirements and Protest petitions.

BACKGROUND:

This request is for the City Council to call for a Public Hearing to be held on Monday, January 25, 2016 on TA 02-15. The 2015 General Assembly enacted legislation, House Bill 721 (Session Law 2015-187), to limit the amount of performance guarantees that can be required to complete improvements for developments and House Bill 201 (Session Law 2015-160) amended the process by which City Councils receive citizen input on zoning ordinance amendments.

ANALYSIS:

In Article 10-6 of the Subdivision Ordinance, Sureties or Improvement Guarantees, the City allows a developer to post a bond or letter of credit as a performance guarantee in the amount of 150% of the amount of unimproved requirements in lieu of requiring the completion, installation, and dedication of all improvements prior to final subdivision plat approval. The new legislation, House Bill 721, limits the City's ability to 125% for the unimproved requirement. Article 10-6.1(A)(1)(b) and 10-6.1(A)(2)(a) will need to be amended to reflect the revised legislative change .

Article 10-8 of the Unified Development Ordinance addresses protest of Zoning District Changes. If a petition opposing a change in a zoning classification of any property is filed, there are certain circumstances whereby the City Council must have a three-fourths supermajority vote in order to change the classification. These instances would require a petition signed by owners of either 20 percent or more of the area included in the proposed change or 5 percent of the owners within a 100 foot buffer around the entire boundary of the tract to be rezoned. House Bill 201 repealed this process and

established a new process whereby any resident or property owner in the city may submit a written statement regarding the amendment, modification or repeal to a zoning ordinance to the City Clerk at least two business days prior to the proposed vote and the City Clerk shall deliver such written statement to the City Council. If the change is subject to a quasi-judicial proceeding, only the names and addresses of the individuals providing written comment are given to City Council. In addition to this change, the House Bill established the manner on which approval is given by a simple majority vote.

The application was reviewed by the Planning Commission during their meeting of December 16, 2015. A unanimous recommendation for approval was given.

STAFF RECOMMENDATION:

By motion, call for a Public Hearing to be held on Monday, January 25, 2016 at 7:30 p.m. in Council Chambers of the Municipal Administration Building, 306 E. Colonial Avenue to gather citizen input regarding TA 02-15.

RCO/vdw

CASE NO.

TA 02-15

REQUEST

TA 02-15 is a proposal to amend the Unified Development Ordinance, specifically Article X Subdivisions -Procedures and Standards; and Article VIII Amendments by adding and updating language governing bonding for unimproved requirements and protest petitions.

BACKGROUND

Recently, the 2015 General Assembly enacted legislation, House Bill -721 (Session Law 2015-187), to limit the amount of performance guarantees that can be required to complete required improvements for developments. Currently, the City requires the developer to post a bond or letter of credit as a performance guarantee in the amount of 150 % for the amount of unimproved requirements . The new legislation limits the City's ability to 125% for the unimproved requirement.

House Bill201 (Session Law 2015-160) amended the process by which the City Councils receive citizen input in zoning ordinance amendments. This change specifically applies to Protest Petitions. A qualified protest against a zoning map amendment requires a petitions to be signed by the owners of either twenty percent (20%) or more of the area included in the proposed change or five percent (5%) of a 100 foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. The rezoning does not become effective unless it receives a favorable vote of three fourths of all the members of the City Council. The new legislation states that any resident or property owner in the city may submit a written statement to the clerk of the board at least two business days prior to the proposed vote on the change, and the clerk shall deliver the written statement to the city council. A vote to approve the change requires a majority vote of the City Council. These changes became effective October 1, 2015 and apply to actions taken on or after that date by the local governing bodies.

TEXT AMENDMENT

UDO Development Standards Text Amendment

Bolded Red – new language to be added

Strikethrough – language to be deleted

10-6 SURETIES OR IMPROVEMENT GUARANTEES

10-6.1 Agreement and Security

(A) Financial Guarantee in Lieu of Immediate Installation for Approval

In lieu of requiring the completion, installation, and dedication of all improvements prior to final plat approval, the City may enter into an agreement with the developer

whereby the developer shall complete all required improvements. Once said agreement is signed by the developer and the security required herein is provided, the final plat may be approved if all other requirements of this Ordinance are met. To secure this agreement, the developer shall provide any or a combination of the following guarantees to cover the costs of the uncompleted improvements:

- (1) Surety Performance Bond(s)
 - (a) The developer shall obtain a surety bond from a surety bonding company authorized to issue said bonds in North Carolina.
 - (b) The bond shall be payable to Elizabeth City and shall be in an amount equal to ~~150~~ **125** percent of the entire estimated cost, as approved by the City, of installing all uncompleted improvements. Developers must submit a request for bonding including a detailed construction cost estimate upon submission of the final plat.
 - (c) The bond amount and term shall be as approved by the Public Works Director.
 - (d) The City Attorney shall review the submitted bond and make a recommendation regarding its sufficiency to the Public Works Director.
- (2) Cash or Equivalent Security
 - (a) The developer shall deposit cash, an irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the City or in escrow with a financial institution. The amount of deposit shall be equal to ~~150~~ **125** percent of the entire estimated cost, as approved by the City, of installing all uncompleted improvements.
 - (b) If cash or other instrument is deposited in escrow with a financial institution as provided above, then the developer shall file with the City an agreement between the financial institution and himself guaranteeing the following:
 - i) that said escrow account shall be held in trust until released by the City and may not be used or pledged by the developer in any other matter during the term of the escrow; and
 - ii) that in case of a failure on the part of the developer to complete said improvements, the financial institution shall, upon notification by the City, immediately pay the funds deemed necessary by the City to complete the improvements, up to the full balance of the escrow amount, or deliver to the City any other instruments fully endorsed or otherwise made payable in full to the City.
 - (c) All instruments shall be reviewed by the City Attorney and a recommendation regarding their sufficiency made to the Public Works Director.

8-10 ~~PROTESTS TO ZONING DISTRICT CHANGES~~ CITIZEN COMMENTS

- (A) ~~If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this Section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the membership of the City Council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered "members of the council" for calculation of the required supermajority. In accordance with the provisions of NCGS 160A-385(a), protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted conditional zoning district if the amendment does not (i) change the types of uses that are permitted within the district, (ii) increase the approved density for residential development, (iii) increase the total approved size of the nonresidential development, or (iv) reduce the size of any buffers or screening approved for the conditional zoning district.~~

(Section 8-10 Amended by City Council 11/26/2012)

If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the City Clerk at least two business days prior to the proposed vote on such change, the City Clerk shall deliver such written statement to the City Council. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160A-388, the City Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the City Council shall not disqualify any member of the board from voting.

- (B) ~~To invoke the three-fourths vote requirement, the petition must:~~

- (1) ~~Be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change, or (ii) five percent (5%) of the area within a 100 foot buffer around the entire boundary of the tract to be rezoned. The 100 foot wide area does not include the area of any street right of way less than 100 feet wide. When only a portion of a parcel is to be rezoned, the 100 foot buffer shall be measured around the entire parcel.~~
- (2) ~~Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.~~
- (3) ~~Be received by the Zoning Administrator in sufficient time to allow the City at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition. For purposes of this subsection, the date of the public hearing shall not be counted as a normal working day.~~
- (4) ~~Be on a form provided by the Zoning Administrator and contain all the information requested on this form.~~

- (B) No member of City Council shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e)(2). A failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance or take any action having the effect of an ordinance.

STAFF RECOMMENDATION

As stated, the proposed text amendment is the result of recent legislation during the 2015 North Carolina General Assembly session.

Staff recommends **APPROVAL** of the proposed amendment to the Unified Development Ordinance TA 02-15 as presented.

Planning Commission Recommendation:

This item was presented at the December 16, 2015 Planning Commission Meeting. A unanimous vote approving TA-02-15 as presented was given.

ORDINANCE# 2016-01-_____
Approving
Text Amendment 02-15
Amending the
Unified Development Ordinance to
Comply with House Bills 721 and 201

WHEREAS, the 2015 North Carolina General Assembly enacted legislation, House Bill 721 limiting the amount of performance guarantees Cities may impose and House Bill 201 amending the process by which Cities receive citizen input in Zoning amendments; and

WHEREAS, these changes became effective October 31, 2015; and

WHEREAS, on December 16, 2015, the Planning Commission reviewed TA-02-15 for compliance with the new state legislation; and

WHEREAS, as a result of this review, the Planning Commission believes that the proposed text amendment to the City of Elizabeth City Unified Development Ordinance will comply with House Bill 721 and House Bill 201; and

WHEREAS, the following text is recommended for adoption:

Bolded Red – new language to be added
Strikethrough – language to be deleted

Sureties or Improvement Guarantees

Surety Bonds
10-6.1 (A)(1)(b)

The bond shall be payable to Elizabeth City and shall be in an amount equal to 150 **125** percent of the entire estimated cost, as approved by the City, of installing all uncompleted improvements. Developers must submit a request for bonding including a detailed construction cost estimate upon submission of the final plat.

Cash or Equivalent Security
10-6.1(A)(2)(a)

The developer shall deposit cash, an irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the City or in escrow with a financial institution. The amount of deposit shall be equal to 150 **125** percent of the entire estimated cost, as approved by the City, of installing all uncompleted improvements.

8-10 ~~PROTESTS TO ZONING DISTRICT CHANGES~~ CITIZEN COMMENTS

- (C) ~~If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this Section, then the proposed amendment may be adopted only by a favorable vote of three fourths of the membership of the City Council. For the purposes of this subsection, vacant positions on the council and~~

~~members who are excused from voting shall not be considered "members of the council" for calculation of the required supermajority. In accordance with the provisions of NCGS 160A-385(a), protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted conditional zoning district if the amendment does not (i) change the types of uses that are permitted within the district, (ii) increase the approved density for residential development, (iii) increase the total approved size of the nonresidential development, or (iv) reduce the size of any buffers or screening approved for the conditional zoning district.~~

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~~(B) To invoke the three-fourths vote requirement, the petition must:~~

~~Be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change, or (ii) five percent (5%) of the area within a 100-foot buffer around the entire boundary of the tract to be rezoned. The 100-foot wide area does not include the area of any street right-of-way less than 100 feet wide. When only a portion of a parcel is to be rezoned, the 100-foot buffer shall be measured around the entire parcel.~~

~~Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.~~

~~Be received by the Zoning Administrator in sufficient time to allow the City at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition. For purposes of this subsection, the date of the public hearing shall not be counted as a normal working day.~~

~~Be on a form provided by the Zoning Administrator and contain all the information requested on this form.~~

No member of City Council shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e)(2). A failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be

recorded as an affirmative vote. An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance or take any action having the effect of an ordinance.

NOW THEREFORE, BE IT ORDAINED that the City Council of the City of Elizabeth City does hereby amend the above text of the Unified Development Ordinance to reflect the changes in North Carolina General Statutes as presented.

Adopted, this the 25th day of January, 2016.

Joseph W. Peel
Mayor

Attest
:

Vivian D. White, CMC/NCCMC
City Clerk