

**STAFF REPORT
TO THE
FLORENCE COUNTY PLANNING COMMISSION
Tuesday, April 23, 2013
PC#2013-06**

SUBJECT: Request for text amendments to the Florence County Code, Chapter 28.6 – Land Development and Subdivision Ordinance, Article VI. –Subdivision Improvements and Guarantees, Sec.6-98. Acceptance techniques in lieu of completion of all improvements, Sec. 28.6-100 – Reduction of guarantee, and Sec. 28.6-101. – Release of guarantee.

APPLICANT: Florence County Planning & Building Department

STAFF ANALYSIS:

Periodically staff reviews ordinance items that need to be updated to meet the needs of Florence County as a whole. The amendments proposed provide more discretion to staff when accepting new developments in the County and gives developers more options when developing a property.

The amendment changes simplify the process in which a project can be accepted in lieu of full completion. It also gives developers a clear process of what is expected of them if they chose to provide a financial guarantee.

The Florence County Code, Chapter 28.6 – Land Development and Subdivision Ordinance, Article VI. –Subdivision Improvements and Guarantees, Sec.6-98. Acceptance techniques in lieu of completion of all improvements, Sec. 28.6-100 – Reduction of guarantee, and Sec. 28.6-101. – Release of guarantee. The text amendments shall read as follows:

Sec. 28.6-98. - Acceptance techniques in lieu of completion of all improvements.

- (a) ~~In lieu of requiring the completion of all improvements prior to final plat approval, the county administrator may, at his/her discretion, enter into a contract with the subdivider whereby the subdivider shall guarantee to complete all improvements required by this chapter, or otherwise specified by the planning commission, in a manner satisfactory to the county administrator. Any funds unused by the county to complete said improvements shall be returned to the subdivider.~~ Financial guarantees may be posted in lieu of completing improvements required by these regulations to allow for the recording of a final plat or to obtain building permits for properties for which ownership will be transferred. Acceptance of financial guarantees is discretionary and the County Administrator reserves the right to refuse a financial guarantee for any remaining

improvements and require that such improvements be completed before the recording of a final plat or issuance of building permits. Acceptance of a financial guarantee by the County Administrator shall not to be construed as an obligation to any other agency, utility or property owner within affected developments

- (b) Prior to the granting of final plat approval by the planning commission, the county administrator and subdivider shall agree upon a deadline for the completion of all required improvements; such deadline not to exceed one (1) year from the date of final plat approval. The county administrator shall have the right to extend the deadline for one (1) additional year where the subdivider can present substantial reason for doing so. Florence County shall not approve a subdivision guarantee until a copy of the SC DHEC "Approval To Place Into Operation" for water and sewer systems are provided. An engineer's cost estimate for financial guarantees shall be submitted to the Florence County Engineering Department and follow the procedures enumerated below. Failure to follow these procedures may delay the approval of such guarantee and recording of a final plat or issuance of building permits.

(1) An itemized cost estimate shall be submitted for the improvements that the financial guarantee will cover. Such estimate shall bear the original signature and seal of a licensed professional engineer, be on company letterhead, and be in a form acceptable to the Florence County Engineering Department. Cost estimates may include, but are not be limited to the following:

- a. Storm drainage systems and erosion control measures.
- b. Street improvements including curbs, gutters, temporary culs-de-sac and required grassing or landscaping within rights-of-way or easements.
- c. Street monuments.
- d. Street intersection lighting.

(2) The Florence County Engineering Department will determine if the proposed cost estimate is consistent with the prevailing costs for construction materials. Upon such determination, the Engineering Department will inform the Planning Department that the cost estimate is acceptable and a financial guarantee for the proposed amount may be submitted.

(c) ~~To secure this contract, the subdivider shall provide, subject to this approval, of the county administrator one of the following guarantees:~~The County Administrator may accept letters of credit as financial guarantees to ensure the completion of public improvements in accordance with the requirement enumerated below.

(1) ~~Eserow account.~~ The subdivider shall deposit cash or other instrument readily convertible into cash at face value, either with the county, or in escrow with a financial institution in the State of South Carolina. The use of any instrument other than cash, and, in the case of an escrow account, and the financial institution with which the funds are deposited, shall be subject to the approval of the county. The amount of the deposit shall be at least equal to the cost of installing all required improvements plus ten percent, as estimated by the subdivider and approved by the planning commission staff engineer and the county.

~~In the case of an escrow account, the subdivider shall file with the county an agreement between the financial institution and himself guaranteeing the following:~~Approved guarantees shall be independent of the development project's construction loan. The County Administrator will not accept any guarantee that requires drawdowns for monthly expenditures. Payment of monthly expenditures is the sole responsibility of the developer and does not affect the amount of money held by Florence County. Approved letters of credit shall adhere to the following standards:

- ~~a. That the funds of said escrow account shall be held in trust until released by the county and may not be used or pledged by the subdivider as security in any other matter during that period.~~
- ~~b. And that in the case of a failure on the part of the subdivider to complete said improvements, then the financial institution shall immediately make the funds in said account available to the county for use in completion of those improvements.~~
- a. Be equal to 125 percent of the approved cost estimate.
- b. Be issued for an initial coverage period not less than 12 months from the date that the final plat is submitted for recording.
- c. Be irrevocable, unconditional and subject to presentation for drawing within the State of South Carolina. Upon consent of the issuing institution and Florence County, facsimile drawing may be permitted. In no instance shall a letter of credit only include a facsimile number for the purpose of potential drawing.
- d. Be payable to Florence County.
- e. Be for no less than \$10,000.00 of construction.

f. Substantially conform to the format shown in Appendix B.

~~(2) *Real Property Escrow.* The subdivider may offer real property as a guarantee. The value of any such property shall be at least equal to the cost of all contracted improvements, as estimated by the subdivider and approved by the planning commission staff engineer and county administrator, plus ten percent. The county tax assessor shall establish the value of any property so used and, in so doing, shall take into account the likelihood of a decline in the value of said property during the guarantee period. The county shall retain the right to reject the use of any property when the value of such property is sufficiently unstable, when it believes that the property will be unusually difficult to sell, or for other reasons such as will inhibit the county from exchanging the property for a sufficient amount of money to complete the required improvements.~~

~~When property is offered as an improvement guarantee, the subdivider shall:~~

- ~~a. Deed, in fee simple, the property to Florence County.~~
- ~~b. Provide title insurance, to the satisfaction of the county.~~
- ~~c. Pay all closing costs, including deed preparation and recording.~~

~~(3) *Letter of credit.* The subdivider shall provide a letter of credit from a bank or other financial institution or individual. The letter of credit is subject to the approval of the county administrator, and shall certify the following:~~

- ~~a. That the creditor does guarantee funds in an amount equal to the cost plus ten percent for completing all required improvements as estimated by the subdivider, verified by the planning commission staff engineer, and approved by the county administrator.~~
- ~~b. That the letter of credit shall remain valid for a period of two years, unless it is released by the county.~~
- ~~c. That the letter of credit can be released only by the county.~~
- ~~d. That, in the case of failure on the part of the subdivider to complete the specified improvements within the required time period, the creditor shall pay to the county immediately, and without further action, the value of credit stated in the letter.~~
- ~~e. That if the letter of credit is not released by Florence County, within 30 calendar days of its expiration date any remaining amount of credit shall be paid to Florence County by the bank, financial institution, or individual who provides the letter.~~
- ~~f. That the letter of credit is in the county's name and may not be withdrawn, or reduced in amount, unless released by the county.~~

(d) A developer may extend a letter of credit before the expiration date of its initial coverage period. To qualify for an extension a revised construction cost estimate shall be supplied to the Engineering Department showing the improvements that the extended letter of credit will guarantee. The revised construction cost estimate shall meet the standards enumerated in subsection Sec.28.6-98 (b), above. The extension request must be received thirty days prior to the expiration of the initial coverage period. Upon approval of the revised construction cost estimate, the extended letter of credit shall be provided to the County Administrator no fewer than ten days prior to the expiration date of the letter of credit. The extension may be in the form of an amendment or new letter of credit. Extensions shall be no longer than 1 year and may occur in two six-month extensions. No individual extension shall be for a period less than six-months. If the improvements for which the letter of credit were posted have not been completed within one year, the County Administrator may allow one additional one year extension. Such extension is subject to approval of a revised construction cost estimate. Additional extensions may be considered on a case by case basis.

Sec. 28.6-100. - Reduction of guarantee.Setup, extensions, and reduction of guarantee.

~~In those cases where improvement guarantees have been made, the amount of the guarantee may be reduced upon acceptance, in compliance with section 28.6-99, of the dedication of a portion of the required improvements. The amounts of the reduction shall not exceed the percentage of the original improvements just accepted for dedication. In no case, however, shall the guarantee be reduced to less than 15 percent of the original amount, until the project is complete and acceptable.~~

a) The fees listed below will apply to letters of credit established with Florence County or extended before their expiration. All fees shall be paid at the time of guarantee submittal or prior to the guarantee's expiration. Payment shall not be a portion of the guarantee amount and will be in the form of a cashier's check made payable to Florence County.

<u>Setup</u>	-	-	-	-
<u>\$500.00</u>	<u>plus</u>	<u>\$0.25</u>	<u>for every</u>	<u>\$100.00</u>
<u>Extensions</u>				
<u>\$250.00</u>	<u>plus</u>	<u>\$0.25</u>	<u>for every</u>	<u>\$100.00</u>

b) A developer may reduce a financial guarantee during the initial coverage period. A request to reduce the financial guarantee shall be submitted to the Planning Department and include a revised construction cost estimate. The Planning Department will forward the revised cost estimate to the Florence County Engineering Department for review. Reductions of financial guarantees will not be allowed within 6-months of any previous reduction request and shall be no less

than the greater of 25 percent or \$10,000 of the revised of construction cost estimate. A fee of \$100.00 shall be charged for any letter of credit that is authorized for reduction before its expiration. Requests involving both the reduction and extension of a letter of credit shall be subject to the extension fees listed in subsection Sec. 28.6 – 100. (a) above.

Sec. 28.6-101. - Release and draw of guarantee.

- (a) ~~Escrow accounts or letters of credit.~~ Upon acceptance of the project, in accordance with section 28.6-99 of the dedication of the final portion of improvements, the governing body shall authorize the release of any remaining portion of the improvements guarantee. The Planning Department may draw a letter of credit when it has been determined that the improvements for which the financial guarantee were posted will not be completed in accordance with these regulations. Any unexpended funds, once construction is complete, shall be released to the financial institution or responsible entity that posted the guarantee.
- (b) ~~Real property.~~ Upon acceptance of the project, the county will execute a deed transferring the real property back to the developer. This deed must be prepared and filed by the developer. The Florence County Engineering Department shall authorize the Planning Department to release guarantees to the financial institution or responsible entity. Authorization will occur once all improvements have been installed, received final inspection and a warranty financial guarantee (when applicable) has been submitted and approved by the Florence County Engineering Department. In addition, the developer's engineer shall furnish the Engineering Department a letter certifying that all non-county owned or maintained improvements have been completed and accepted by the applicable entities who will own or maintain such improvements. Such letter shall be on company letterhead with an original signature and professional seal.

Note: Appendix B is to be added after Appendix A of the current Ordinance.

Appendix B

Format for Letter of Credit

[Bank/Issuer name, address and telephone number]

[Date] Letter of Credit Number

Amount: \$ _____ U.

S. To: The County of Florence, South Carolina, a municipal jurisdiction

Re: Irrevocable Letter of Credit issued on behalf of [Name of developer]

Dear Sirs:

The Issuer opens its Irrevocable Letter of Credit in your favor available in the following manner and on the following terms:

1. Issuer: [name of bank/issuer]

2. Beneficiary: The County of Florence, South Carolina, a political subdivision of the State of South Carolina

3. Customer: [name of developer]

4. Project: [name of project, site, subdivision]

5. Obligation of Issuer: The Credit is irrevocable.

6. Transferability: The Credit is to be non-transferable.

7. Total: The sum total of the Credit is \$ _____ U. S.

8. Purpose: To provide surety for a developer's bond required by County Code Section 28.6-98 to ensure construction of required public improvements at [name of project, site, subdivision] to include installation of [list of public facilities to be constructed/installed] in accordance with the specifications of the County of Florence, South Carolina.

9. Default: In the event that any or all of the above-stated public improvements are not constructed and/or installed in accordance with the specifications of the County of Florence within twelve (12) months from this date, the Beneficiary may upon written notice to Issuer and Customer at the addresses noted herein demand and receive payment from the Issuer in cash in the entire amount of \$ _____ if one of the required public improvements have been constructed and/or installed or in such lesser amount as may be required to complete construction and/or installation of the aforesaid improvements if said improvements have been partially constructed and/or installed. All drafts drawn under this Letter of Credit shall contain the clause "Drawn under [name of Issuer] Letter of Credit Number ____." This letter of Credit is based on an Engineers Estimate for construction; if cost of construction or repair exceeds the amount of funds designated by this Letter of Credit the owner/developer shall remit those additional funds immediately to the County. By this letter the County of Florence reserves the right to recover any excess costs for completion of the required public improvements from the owner/developer by any legal means necessary.

The Issuer shall have ninety (90) days from the receipt of said notice to effect a cure by procuring completion of construction and/or installation of the aforesaid public improvements

in accordance with the specifications of the County of Florence, South Carolina, and thereby receive a refund of any sum paid in default.

10. Addresses:

Issuer:

[nameofIssuer]
[streetaddress]
[city,state,zip]

Customer:

[nameofCustomer]
[streetaddress]
[city,state,zip]

Beneficiary: County of Florence, South Carolina
c/o Rusty Smith, County
Administrator City-County Complex
180 North Irby Street
MSC-G Florence, SC
29501

11. Termination: This is a continuing agreement and shall remain in full force and effect until written notice is received by the County of Florence that it has been terminated and revoked.

12. Miscellaneous: This Letter of Credit and the terms hereof shall be binding upon the respective parties, heirs, executors, administrators, successors and assigns. None of the terms of this agreement or its provisions may be waived, altered, modified or amended except in writing signed by the Beneficiary and the Issuer.

13. ApplicableLaw: This Letter of Credit is to be governed by the Uniform Commercial Code of the State of South Carolina.

Given under our hands this day of , 201 .

[Issuer Bank name], Issuer

By: _____
 [Title]

Seen: _____ Customer

County of Florence, South Carolina, Beneficiary

STAFF RECOMENDATION:

The Planning Staff recommends approval of the amendment request by Florence County Planning and Building Department as presented.

FLORENCE COUNTY COUNCIL:

This item is tentatively scheduled to appear for Introduction Thursday, May 16, 2013 @ 9:00 a.m. in room 803 of the City-County Complex, 180 North Irby St., Florence.