

Proposed amendments to the Fincastle Subdivision Ordinance

Additions shown in ***Bold and Italics***. Deletions are shown in ~~strikethrough~~

Sec. 21-31. Schedule of fees.

There shall be reasonable fees and charges not to exceed an amount commensurate with the costs incurred for administration, examining plans and plats, making investigations, advertising, travel, or other work incidental to the review of plats or plans. Such fees shall be payable to the Town of Fincastle and the County of Botetourt where applicable, in the amount set by the Town Council and/or Botetourt County Board of Supervisors and maintained in the agent's office.

The fees for subdivision reviews ***are set by the Town Council. A schedule of the current fee amounts is available at the Town office.*** ~~are as follows:~~

<i>Lot Line Adjustment:</i>	<i>\$75.00</i>
<i>Family subdivision:</i>	<i>\$75.00</i>
<i>Minor Subdivisions (5 or fewer lots):</i>	<i>\$100.00</i>
<i>Major Subdivisions (6 or more lots)</i>	<i>\$100.00 + \$25 per lot</i>
<i>Vacation of plats, rights-of-ways or easement:</i>	<i>\$100.00</i>

Sec. 21-66. Preliminary sketch-consultation.

~~The applicant shall submit to the agent a preliminary sketch of the proposed subdivision prior to the applicant preparing an engineered preliminary plat. The purpose of such preliminary sketch is to permit the agent to advise the applicant whether his plans, in general, are in accordance with the requirements of this Section, and to facilitate the review as hereafter provided. The agent shall study the sketch and advise the applicant as to any changes that would be necessary to substantially conform to the requirements of this Section. The agent shall mark the sketch indicating any such necessary changes. The agent shall provide such advice to the applicant within ten (10) working days of submission of the preliminary sketch.~~

All applicants seeking subdivision approval are encouraged to meet with the Town's agent as early as possible in the design and planning process. Meetings between the Town and applicant prior to the submission of a preliminary or final plat will help to smooth the approval process.

Sec. 21-106. Posting of bond.

~~–(a) After approval of the final plat, the subdivider shall post a surety bond, cash bond, or an irrevocable letter of credit in an amount sufficient to cover the costs of necessary improvements as determined by the agent. A proposed surety bond, cash bond, or irrevocable letter of credit will not be accepted by the Town until it is approved by the Town Attorney. Improvements to be covered shall include, without limitations, all roads, streets, drainage facilities, water and sewer facilities, other utility facilities and all other required or proffered facilities. The bond or irrevocable letter of credit shall be terminated only with the consent of the agent.~~

~~–(b) In determining the cost of required improvements and the amount of the bond, the agent may consult with a duly licensed engineer who shall prepare this data for the agent or, preferably, shall require a bona fide estimate of the cost improvements to be furnished him by the subdivider to assist the agent in determining the amount of the bond.~~

~~–(c) The agent shall review progress on all subdivisions on an annual basis to determine if adjustment of the amount of the bond is necessary.~~

~~–(d) All such bonded subdivision improvements shall be accomplished and roads accepted into the Virginia VDOT system within two (2) years from date of approval of the subdivision and the bond shall guarantee such performance. The bond shall not be released until the construction has been inspected and approved by the highway engineer, Town administration, and other appropriate authorized agents.~~

~~–(e) The subdivision agent shall be empowered to grant up to two (2) six-month extensions or one (1) twelve-month extension to this two-year period when extenuating circumstances or hardship conditions are found to exist. The agent shall make such determination within thirty (30) days of receiving such request from the applicant in writing. If proposed public street(s) or public street improvements have not been approved by the Virginia VDOT for acceptance into the Virginia State Highway System within the time limits specified, the Town subdivision agent shall immediately initiate appropriate bond collection procedures.~~

Sec. 21-106. Bonding Policy

(a) Performance Agreement. A Performance Agreement between the applicant and the Town Council, supported by an acceptable form of guarantee (as described below, generally called “bonds”), shall be required to ensure timely and proper installation of public and required improvements as shown on approved Construction Plans; provided, however, that any improvements to be owned or maintained by Botetourt County shall be subject to the County’s ordinances or procedures, including but not limited to storm water improvements.

The Town Attorney shall approve the form of the Performance Agreement and the bond.

(b) Bonded Improvements. Performance Agreements with the Town Council shall be executed to guarantee the installation of all improvements described below:

(1) All improvements described in Virginia Code §15.2-2241(5) that will be dedicated for public use and accepted for public maintenance by the Town of Fincastle, the Virginia Department of Transportation, or the Western Virginia Water Authority;

(2) All other site-related improvements required by Town ordinance and/or the approved final plat of the subdivision or other final approved plat or plan, and other law or regulation, including those specified in Virginia Code §15.2-2241(5), as determined by the agent;

(3) Improvements proffered and adopted as part of any zoning map amendment, as required by the agent in accordance with Virginia Code §15.2-2299;

(4) Improvements offered and granted as part of any variance or special exception application or required by the Board of Zoning Appeals in accordance with Virginia Code §§ 15.2-2309(2) and 15.2-2309(6).

(c) Procedure for Town Council approval. The applicant shall file a signed Performance Agreement, using a form supplied by the agent, and accompanied by an acceptable bond, with the agent at least 20 days prior to the Town Council meeting at which first consideration of the agreement is desired. The agreement shall specify the manner and date by which the required improvements shall be completed. The maximum period of the initial Performance Agreement term shall be twenty-four (24) months. A cost estimate for construction of the bonded improvements, in accordance with specifications and construction schedules prepared for the applicant by a professional engineer ("Construction Plans"), must be filed with the Performance Agreement; however, the required amount of any bond will be set by the Town. The Town may obtain its own cost estimate. Where two or more bonds are provided in conjunction with one performance agreement, the agreement shall identify and incorporate each guarantee separately.

(d) Bond Amount. Any and all bonds shall be at least equivalent to one-hundred percent (100%) of the estimated cost of bonded improvements, including engineering costs, plus ten percent (10%) as a reasonable allowance in accordance with Virginia Code § 15.2-2241(5).

If there is any change in the Construction Plans that affects the cost estimate for bonded improvements, the Town may require the subdivider or developer to provide a bond in an amount adjusted to include the change in cost estimate. Any adjusted or new bond shall be subject to the same conditions for bonds required by this Section.

(e) Acceptable Guarantees

The following guarantees are acceptable, provided they are consistent with the regulations below. Any of these guarantees may be referred to as “bonds” throughout Town ordinances:

(1) Cash escrow. The face amount of the bond shall be submitted to the Town Treasurer and shall be deposited in an interest-bearing escrow account in an institution selected by the Town and approved by the state for investment by state or local government entities. Such interest shall be available to the Town in the case of default or breach of the Performance Agreement. If the improvements are successfully completed, the principal and interest shall be refunded to the developer; provided, however, that the town is entitled to retain up to ten percent (10%) of the accrued interest to cover the cost of administering the account.

(2) Letter of credit. An irrevocable letter of credit from a financial institution is acceptable, provided it is in a form acceptable to the Town Attorney and that the initial expiration date extends at least six months beyond the expiration date of the Performance Agreement. The letter of credit must contain conditions for automatic renewal for additional six-month periods, unless the financial institution notifies the agent in writing by certified mail at least 60 days before the end of the initial term or any renewal term, that the letter of credit will not be renewed for the following term. The financial institution issuing the letter of credit shall be chartered in the Commonwealth of Virginia or be authorized to conduct business in Virginia and insured by the Federal Depository Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(3) Corporate bond. Corporate surety bonds are acceptable, provided the bonds are in a form acceptable to the Town Attorney, are furnished by an insurance company licensed to transact fidelity and surety insurance in Virginia, and the surety holds a certificate of authority from the Federal Government to act as surety on Federal projects or has a rating of A or better by Best's Key Rating.

(f) Extensions

(1) Performance Agreements with the Town may be extended by the Town Council for periods of one year or less. Any request for extension shall be in writing and shall be accompanied by an estimate of the remaining work and a timetable for completion of the improvements, as well as the conditions which have prevented the applicant from completing the required improvements. The agent may, but is not required to, investigate and prepare a report approximately 60 days prior to a Performance Agreement expiration date on the completion status of required improvements shown on the final

plat and as described in the Construction Plans, and send a letter to the applicant/developer and the surety or bond provider warning of possible default if the improvements cannot be completed within the remaining Performance Agreement time. Extension of the Performance Agreement may be conditioned on an adjustment to the amount of the bond to cover the cost of the remaining work plus 10%.

(2) Bonds: For improvements bonded with the Town, the bond must remain effective until the improvement is completed and accepted for maintenance by the appropriate agency or person. If the applicant fails to complete all of the bonded improvements within the time period specified by the Performance Agreement, and/or fails to build the bonded improvements as shown on approved Construction Plans, and no extension has been obtained, the applicant is deemed to be in default of the Performance Agreement. If a replacement bond becomes necessary for any reason, the applicant must supply the replacement prior to the expiration or termination of the bond then in place. Improvements bonded with the County must follow County bond extension requirements.

(g) Bond Reductions

Periodic partial releases of bonds held by the Town may be approved by the Town Council in accordance with Virginia Code § 15.2-2245. Bonds held by Botetourt County must be reduced in accordance with County bonding policy. The Town Council shall approve a partial bond release that meets the standards below within thirty (30) days of the receipt of a written notice from the subdivider that part or all of any bonded improvements has been completed, unless the agent notifies the applicant in writing of non-receipt of approval by an applicable state agency or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the 30-day period.

The following standards shall apply to any request for a bond reduction:

(1) No more than three reductions shall be permitted within any 12-month period.

(2) No bond shall be partially reduced beyond 90 percent of the original bond amount. Periodic partial releases shall not occur before completion of at least 30 percent of the improvements covered by the bond.

(3) The applicant shall pay the town a fee for processing such reductions according to a fee schedule established by the town council. The applicant shall also be responsible for all engineering costs incurred by the town in the process of inspecting the required improvements.

(h) Bond Release Procedures

(1) For the purpose of final release, the term "acceptance" is deemed to mean when said improvements are accepted by and taken over for operation and maintenance by the Town, Botetourt County, VDOT, the Western Virginia Water Authority, or other entity which is responsible for maintaining and operating such improvements.

(2) Upon completion of all required improvements, the subdivider or developer shall notify the agent in writing of such completion and shall submit as-built plans, certified as to construction by a licensed engineer, accompanied by the required fee. The agent shall have all such improvements inspected by the appropriate agency and the applicant shall be responsible for all costs of inspection. The agent shall notify the subdivider or developer in writing of non-receipt of applicable state agency approval or of any specified defects or deficiencies in construction and suggested corrective measures within thirty (30) days of receipt of the notice and the certified as-built plans.

When all improvements have been confirmed as accepted for operation and maintenance by the Town, Botetourt County, VDOT, the Western Virginia Water Authority or other appropriate responsible entity, the Town Council shall release any remaining bond within 30 days.

(3) Bonds held by Botetourt County shall be released by the County in accordance with County bonding policy.

(i) Conditions for Acceptance of Public Improvements

The Town Council shall accept public improvements installed by a subdivider or developer which meet the following conditions:

(1) The completed improvements comply with the design standards of this ordinance; have been constructed in accordance with all requirements; and have been installed in accordance with the approved Construction Plans, including any approved amendments thereto;

(2) All final inspections required by this article have been completed and the bonded improvements were found to be acceptable;

(3) The subdivider or developer has prepared and submitted three (3) sets of prints of plans that accurately depict the bonded improvements as actually built (as-built plans); and

(4) The subdivider or developer, by appropriate instrument, has conveyed any required access, maintenance, repair and improvement easements to the entity responsible for operation and maintenance of the improvement. The instrument must be approved by the Town Attorney. The subdivider or

developer shall furnish a copy of the recording receipt for any applicable deed or bill of sale to the Town prior to bond release.

(5) The subdivider or developer, by appropriate instrument, has conveyed good title, free of all liens, to any equipment connected to the Town water and/or wastewater systems. The Town Attorney must approve the instrument. The subdivider or developer shall furnish a copy of the recording receipt for any applicable deed or bill of sale to the Town prior to bond release.

(6) Any public improvements installed pursuant to a Botetourt County bond shall be accepted in accordance with County ordinance and policy. All stormwater management improvements shall meet Botetourt County stormwater management improvement requirements. Botetourt County does not accept ownership or responsibility for such improvements; therefore, ownership and maintenance/repair/improvement responsibilities must be transferred to an existing homeowners' association.

(j) Street Maintenance Bond

(1) In the event the Town Council has accepted the dedication of a street for public use and such street, due to factors other than its quality of construction, is not acceptable into the secondary system of state highways, the subdivider or developer may be required to post a maintenance and indemnifying bond, with acceptable surety, in an amount sufficient for and conditioned upon the maintenance of such street until such time as it is accepted into the secondary system. "Maintenance of such street" shall mean maintenance of the pavement, curb, gutter, drainage facilities, utilities or other improvements, including the correction of defects or damages and the removal of snow or debris, to keep such street reasonably open for public usage.

(2) Streets to be dedicated to or maintained by Botetourt County shall meet the requirements of the County bonding policy.