

**VILLAGE OF WESLEY CHAPEL
PLANNING BOARD MEETING MINUTES
March 28, 2016, 7:00 PM**

MINUTES

The Planning Board of the Village of Wesley Chapel, North Carolina, met at Town Hall, 6490 Weddington Road, Wesley Chapel, NC 28104.

Present: Vice Chair John Souza, Members Chuck Adams, David Boyce, and Michael Kenary; Deb Bledsoe (alternate sitting as regular member), and Alternate Vincent Gahren (arrived late)

Absent: Sandra Ells and Alternate Amanda Fuller

Village Staff present: Cheryl Bennett, Village Clerk; Bill Duston, Planning/Zoning Administrator

1. Pledge and Invocation

The pledge of allegiance and invocation were said.

2. Public Comments

A citizen spoke who said he enjoyed the field next door to his home, but knew eventually it would be developed.

3. Additions, Deletions and Approval of Agenda

Chuck Adams motioned to approve the agenda; Michael Kenary seconded the motion. The motion passed unanimously.

4. Approval of Minutes

Chuck Adams motioned to approve the minutes of February 22, 2016. Michael Kenary seconded the motion.

The motion passed unanimously.

5. Conditional Zoning Request CZ15-02 EPCON

Bill Duston gave an overview of conditional zoning. The application is for a 50 acre tract at Cuthbertson Road opposite the high school. The request is to re-zone from R-40 to allow construction of a 138 unit detached single-family unit senior housing development. He reviewed the staff report, incorporated herein.

To: Planning Board, Village of Wesley Chapel

From: Bill Duston

Date: March 28, 2016

Re: Staff Report: CZ 15-02: The Ridge at Wesley Chapel Senior Housing Development

EPCON Communities is proposing to rezone 50.42 acres of land along Cuthbertson Road from R-40 to Conditional Zoning R-40, the purpose of which is to allow the construction of a 138-unit senior housing development. All units in the development are proposed be detached single-family units. The Wesley Chapel Village Council adopted conditional zoning in 2015 and also made text amendments to the Wesley Chapel Zoning Ordinance to allow senior housing in all Residential (R) zoning districts subject to the issuance of a conditional use permit or through conditional rezoning. EPCON has chosen to use the conditional rezoning process, similar to the process which was used for the Ridge at Wesley Chapel conditional zoning request along NC 84.

The rezoning involves all or portions of the following lots:

LOT	OWNER	ACREAGE
06135006 (part)	Rebecca McManus	9.3 acres
06135004A	James and Carol Mullis	7.33 acres
06135005	James and Carol Mullis	3.85 acres
06105001	Borich LLC	8.00 acres
06105001A	B3JR LLC	11.2 acres
06105003C	Robert and Ellen Thurbon	3.48 acres
06105006 (part)	Stephen Lyle Dean	2.2 acres
06105007B	Samuel and Velma Boatright	3.3 acres

SUMMARY OF SENIOR HOUSING REGULATIONS

A summary of the Village’s senior housing regulations are shown below:

- **Maximum Density:** 3.0 units/acre for detached single-family dwellings’
- **Required Perimeter Screens:** 50 foot in the front (can be reduced to 40 feet if a wall or fence is provided); 30 feet in the rear and side.
- **Minimum Lot/Structure Setbacks:**
 1. Front: 20 feet with a driveway length of 25 feet
 2. Side: 7.5 feet except 15 feet for end/corner units
 3. Rear: 10 feet
- **Garages:** Wide enough to simultaneously accommodate 2.0 vehicles.
- **Clubhouse:** A clubhouse for use by residents is required for all senior-housing developments.

LOCATION

The tract in question lies along Cuthbertson Road directly across the street from the Cuthbertson High School/Middle School complex. The development lies immediately adjacent to the Lawson Subdivision in Waxhaw. There are also six lots within the Champion Forest subdivision in Wesley Chapel that abut the development.

FRONT-YARD BUFFER

A fifty (50) foot buffered screen will be placed along and parallel to Cuthbertson Road. The proposed buffer meets the screening requirements contained in Section 4.2 of the Zoning Ordinance. The developer is proposing to augment the number of trees contained in this buffer. See "Conditions Added by the Developer" for more information.

UTILITIES

Public water and sewer will be provided by Union County Public Works. **A letter from Union County Public Works is attached.**

STORMWATER

Two wet detention ponds and two sand filters are proposed to control stormwater runoff from the site. Stormwater plans have been reviewed by the Village's stormwater engineer, Bonnie Fisher. **A copy of Ms. Fisher's letter of approval is attached.**

TRANSPORTATION IMPROVEMENTS

A Traffic Impact Analysis (TIA) was conducted for this development by Randy Kemp & Associates. **DUE TO THE LENGTH OF THE DOCUMENT, 78 PAGES, IT IS NOT INCLUDED IN THIS PACKET. A COPY OF THE TIA CAN BE FURNISHED TO ANY PARTY UPON REQUEST.** The development is proposed to have one access point along Cuthbertson Road. The Village requires two or more points of ingress/egress only for developments with 150+ lots (This development contains 138 lots). The developer is proposing to construct a left-hand lane into the development with a 100 feet of storage (which can accommodate approximately 5 cars) lane. **An email from NCDOT is also attached showing their approval of the proposed improvements**

Justin Carroll, the Village's Consulting Transportation Engineer, has reviewed the TIA. **A copy of Mr. Carroll's letter is attached.** According to Mr. Carroll, "the intersection of Cuthbertson and New Town Road currently operated with a failing LOS (Level of Service) in the AM condition and any addition of background traffic or site traffic, without intersection improvements, will only degrade the failing LOS. This proposed development does negatively affect the operations of this intersection (minimally), however this development should not be held wholly responsible for a complete intersection solution. We recommend acceptance of the TIS as submitted."

All streets within the development are proposed to be built to NCDOT standards with sidewalk and a planting strip on both sides of all streets. A sidewalk would also be constructed along and parallel to Cuthbertson Road within the boundaries of the tract.

Only one point of ingress/egress is provided in the development along Cuthbertson Road. The Village's Subdivision Ordinance mandates two (2) points of ingress/egress with development.

CLUSTER MAILBOXES

Two cluster mailboxes, one at the clubhouse and one alongside a street within the development. Parking spaces for each are provided. **A letter of approval from the USPS is attached.**

TREE SURVEY/TREE REMOVAL

Per the results of a tree survey conducted by the developer, approximately 40.67 acres of tract, or 80.67% is wooded. Based on the existing tree coverage area, 30% of the tree canopy must be retained. This translates into a mandated tree save area of 12.2 acres. According to the site plan, a total of 12.55 acres of tree save area is being provided.

The tree save area proposed is located along front, side and rear peripheries of the site as well as along a creek that traverses the middle portion of the site. All treed area lie within commonly owned areas, thereby being owned and maintained by a homeowners’ association. Although the tract is heavily wooded, some additional tree plantings are proposed to either meet or augment the Village’s tree save regulations. As indicated in the “Conditions Added by the Developer” section, the applicant is proposing to increase the required amount of trees along the periphery of the development.

The Village’s Subdivision Ordinance does not allow for the removal of any trees having a diameter of 20” or greater (e.g., heritage trees), without specific Village Council approval. According to the tree survey, the site contains a total of 72 trees having a diameter of 20”+. Of this total, 15 are proposed to remain, 57 are proposed to be removed. **IN ORDER TO APPROVE THE DEVELOPMENT AS PROPOSED, THE VILLAGE COUNCIL WOULD HAVE TO ISSUE A MODIFICATION TO ALLOW FOR THE REMOVAL OF THE 57 HERITAGE TREES.**

The Village’s Subdivision Ordinance does provide for mitigation of heritage trees that are proposed for removal. If the mitigation standards were fully met, trees with an aggregate caliper of 3912 inches would need to be planted on-site, with each of these trees having a minimum caliper of 4 inches (i.e., 978 trees). The developer is proposing to add an aggregate of 480 inches of trees or 120 trees. These mitigation trees are located in the front yard buffer along Cuthbertson Road, in the side and rear yard buffers and near the stormwater facilities and clubhouse. Although the mitigation trees meet the minimum caliper requirements and the trees proposed are included in the list of allowed trees in the Village, the number of trees proposed for mitigation purposes falls far short of the required number. **IN ORDER TO APPROVE THE DEVELOPMENT AS PROPOSED, THE VILLAGE COUNCIL WOULD HAVE TO ISSUE A MODIFICATION TO ALLOW FOR THE PLACEMENT OF MITIGATION TREES AS PROPOSED.**

COMMUNITY MEETINGS/CITIZEN COMMENTS

Two community meetings were held on the rezoning on January 27 and February 9, 2016. Approximately 23 persons attended the first meeting and 13 persons attending the second meeting. **Minutes of each meeting are attached. Written comments made by attendees at both meetings and given to staff are also attached.** Most attendees were from the adjacent Lawson subdivision in Waxhaw, although a few were from the Champion Forest subdivision.

Three issues were discussed at length at both meetings:

1. Stormwater runoff;
2. Trees; and,

3. Fences.

The developer stated that stormwater plans had been approved by the Village's consulting engineer and that per the Village's regulations, post-development stormwater runoff could not exceed the pre-development amount of runoff.

Significant discussion took place regarding trees. A number of residents from the Lawson development indicated that they paid a premium for their lots as they were treed and they were concerned that a significant amount of tree cover would be removed as a result of this development. The applicants explained that the Village did have tree cover requirements which they met and, with respect to many of the lots that adjoin Lawson, minimum tree cover standards have been exceeded.

A number of residents stated that they would like to see an existing electric/barbed wire fence be retained, that fence being found on the perimeter of a portion of the property in question. **(SEE "CONDITIONS ADDED BY THE DEVELOPER" FOR MORE INFORMATION ON TREE COVER AND THE FENCE.)**

Staff also received a number of emails from residents regarding the rezoning. **A compendium of the emails received is included in your packets.**

CONDITIONS ADDED BY THE DEVELOPER

As a result of input received at the January 27 and February 9 Community Meetings, the developer amended the site plan and added the following conditions:

1. The electric/barbed wire fence that is currently located on the southern and eastern edge of the development would be retained. If this condition is contained in the zoning approval, maintenance of the fence would come under the auspices of the Homeowners' Association.
2. The number of trees planted in the exterior buffers will be increased. Along the 30 foot side and rear buffers, the number of trees will be increased from a minimum of six (6) trees per 100 linear feet to seven (7) trees per 100 linear feet. Along the front buffer along Cuthbertson Road, the number of trees planted will be increased from nine (9) trees per 100 linear feet to eleven (11) trees per 100 linear feet.

STAFF RECOMMENDATION

There has been significant input from adjoining property owners regarding maintenance of tree cover on the site. The site is heavily wooded and neighbors are concerned that the tree cover will be significantly denuded. The developer does meet the Village's tree save requirements. Moreover, the width of the required side and rear tree buffer in many cases exceeds the required thirty (30) feet. The developer has also indicated that the side and rear tree buffers will be augmented with a tree canopy that exceeds the Village's minimum requirements.

As indicated above, however, a modification would be required for the removal of the 57 heritage trees. The number of trees being proposed to mitigate for the removal of the heritage trees falls far short of the standards contained in the Subdivision Ordinance (978 trees required

with only 120 trees being proposed). Staff cannot support this rezoning given this large discrepancy.

SUGGESTED STATEMENT OF CONSISTENCY (Planning Board and Village Council): The Land Use Plan does contemplate senior housing in the Village by stating that lots sizes of less than 40,000 square feet are allowed in senior housing developments. The proposed development has lots of less than 40,000 square feet and has a density of less than the maximum of 3.0 units/acre. The LUP does not give significant guidance as to where in the Village senior housing should be located. Thus, the rezoning is neither consistent nor inconsistent with the Future Land Use Plan.

SUGGESTED STATEMENT OF REASONABLENESS (Village Council): The proposed rezoning is deemed reasonable if all tree mitigation issues are addressed with respect to the removal of all heritage trees that are 20"+ in diameter.

Phil Fankhauser, principal at EPCON, described their thirty years of experience building homes for the age 55 plus market. Amenities proposed include walking trails, clubhouse, fitness center, bocce ball, pool, and community garden. The HOA maintains the lawns and exteriors creating more free time for homeowners. He reported on the growth of the age 55 plus portion of the population. There will be three phases, and he stated the value will be \$55 million and have very few children. Rich Heareth from EPCON shared comments from two happy buyers in Marvin last week. Bill Duston noted they provided renderings of homes, so this is what type home you would get. Mr. Fankhauser reported there is a preservation area in the middle, a small stream and a walking path. They will preserve a corner next to Champion Forest homeowners. Backyards will be maintained and homeowners are prohibited from doing anything there, outdoor space is between the homes with a private garden and courtyard facing the blank wall of the next home. They have a comprehensive stormwater management plan which goes beyond our requirements. The entrance and frontage will look country and rural with a high density of trees. They are cutting 57 of the 72 heritage trees, and must plant trees to mitigate, many are on HOA property where there is greater control over trees.

Engineer Wes Smith reported they surveyed trees sized 10" plus, approximately 2,000 were surveyed. He stated other towns require you to keep less trees. Mr. Fankhauser noted when the tree code was written, the town never contemplated senior housing density.

Gary Fankhauser, their certified landscape architect, stated the code requires three times the diameter of the 20 inch plus trees to be mitigated with four inch diameter trees. There are tree root protection zones, and he read the code that trees in those zones removed call for the three times mitigation; according to his conversation with the County urban forester usually it is 1 to 1 mitigation. He noted trees require 350-400 square feet to grow, and they are required to put in 978 trees. They are putting in 138 street trees, plus 120 in buffers, near stormwater facilities and clubhouse, and they could add 138 more in front yards. They were asked if they could cut the number of homes. It was noted they are cutting down 80% of the heritage trees.

The subdivision exit lane was discussed, it is 22 feet wide, for a right out and a left out lane. The age 55 plus criteria was discussed; Mr. Fankhauser said the buyer has to be vetted by the builder, and the HOA will maintain the census. He stated their

communities have never gotten to more than 20% of younger ages, noting you cannot put in a swing set or basketball goal. Over five years, they average 1-2 children per hundred homes. The average age is 66 for homeowners. Other senior living communities locally include 94 homes in Lawyers Road in Stallings, 61 in Marvin, 33 at the Courtyards at Weddington in Stallings, and the Polo Club in Mecklenburg County.

There is room for two cars in the garage, and two in the driveway. Sidewalks are on both sides of the street and along Cuthbertson Road. Cuthbertson is a three lane road. David Boyce asked about the failing Level of Service on Cuthbertson Road. Bill Duston noted it will create more traffic, but the traffic engineer felt not enough to fix the intersection. Since this is 138 lots, it will not require two points of ingress/egress. Traffic numbers are based on an ITE manual, the date of the data was unknown.

Engineer Wes Smith described how stormwater will drain from Champion Forest and be treated by a sand filter. They will leave the existing pond, and construct two ponds. There is a small sand filter by the cul de sac, the sand is covered by pea gravel, and it is not fenced off. It will service the one year, five year, ten year, and twenty five year storm, and pass the fifty and hundred year storm safely. The post development flow rate will be less than the pre-development flow rates for both the east and west outfall. There will be underground piping, homes have downspouts to pipes, and go under the patio to the front, then go underground to the ponds.

A citizen from the audience reported he is the consultant who handles property questions when the developers are gone, and cited some situations that can arise, he suggested a book which explains answers to situations regarding the federal statute for senior housing.

A citizen noted a lot of water comes off the cul de sac near the knoll, and asked how much of the water will go underground to the north; Wes Smith said all the water will go to the basin.

Existing heritage trees will be protected by a “do not disturb” area identified by a temporary fence and signs until development is done. An arborist will visit the site monthly during development.

Homes will have optional second floors, most homes you can go from the garage to the shower in a wheelchair. Up to six homes will have a walk out lower level to the rear.

A citizen had concerns on property values, and suggested maybe only 94 homes is right, and keep the trees. Mr. Fankhouser noted in a short time the EPCON homes will not be visible from the existing homes.

Landscape architect Gary Fankhouser felt only subsection 6(d) requires mitigation; Bill Duston said it is all encompassing for all twenty inch trees. He noted if the applicant disagrees with his interpretation of the ordinance, they can go to the Board of Adjustment for a final decision on how the code is interpreted, but they must appeal his decision.

A citizen asked about the buffer with Lawson, Wes Smith said the minimum is thirty feet and they have 40-50 feet in the area next to Lawson, also from the property line to the back of the home is ten feet.

Deb Bledsoe motioned to deny the application because they are way below the ordinance requirements for tree mitigation. David Boyce seconded the motion. Discussion was held on the procedure should the applicant request a Board of Adjustment appeal of the zoning administrator’s decision. There has been modifications given by Council before, but no history of allowing less trees to be mitigated.

The motion passed unanimously.

Bill Duston noted the application will go on to Council, and a public hearing held. Wes Smith asked if there are any other concerns besides the trees; it was the prime issue.

David Boyce motioned that the application it is denied and to use the statement of consistency as recommended in the staff report and incorporated herein. Deb Bledsoe seconded the motion.

The motion passed unanimously.

Michael Kenary motioned to take a short break. Deb Bledsoe seconded the motion.

The motion passed unanimously.

6. Proposed Text Change – Temporary Family Health Care Structures (Continued from the October 2015 Planning Board meeting)

Bill Duston explained that state legislation was enacted that requires a use by right for a “temporary family health care structure” with specific requirements as per NC GS 160A-383.5. The proposed text has been vetted through the attorney. Chuck Adams motioned to quote text verbatim from the NC GS. The motion was withdrawn.

Michael Kenary motioned to recommend accepting the proposed text changes for temporary health care structures, as incorporated herein, and the statement of consistency be that the Land Use Plan does not address temporary housing. Thus, the proposed text change is neither consistent nor inconsistent with the Land Use Plan. David Boyce seconded the motion.

The motion passed unanimously.

The proposed text is as follows:

1. Add the following definition to Section 2.2, “Definitions”:

Activities of Daily Living

Activities which persons do on a daily basis including bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.

Caregiver

An individual 18 years of age or older who (i) provides care for a mentally or physically impaired person and (ii) is a first or second degree relative of the mentally or physically impaired person for whom the individual is caring.

Person, Mentally or Physically Impaired.

A North Carolina resident, certified in writing by a physician licensed to practice in North Carolina, as requiring assistance with two (2) or more activities of daily living.

Relative, First or Second Degree

A spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew, or niece and includes half, step, and in-law relationships.

Temporary Family Health Care Structure

A transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code and G.S. 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

2. Add the following text as Section 4.7.8, "Temporary Structures and Uses":

Temporary family health care structures housing a single mentally or physically impaired person shall be allowed per Section 4.9.9 of this Ordinance.

3. Add the following text as Section 4.9.9, "Accessory Uses and Structures":

4.9.9 A temporary family health care structure that houses no more than one (1) mentally or physically impaired person shall be allowed by right as an accessory structure on lots located in a Residential (R or RA) zoning district subject to the following conditions:

- A. (i) The temporary family health care structure shall be used by a caregiver in providing care for a mentally or physically impaired person on property owned or occupied by the caregiver as the caregiver's residence or (ii) the temporary family health care structure shall be used by an individual who is the named legal guardian of the mentally or physically impaired person on the property of the residence of the individual and shall be used to provide care for the mentally or physically impaired person.
- B. Such temporary family health care structure shall comply with all setback requirements for the primary residential structure.
- C. Only one (1) such temporary family health care structure shall be allowed per lot.
- D. Any person proposing to install a temporary family health care structure shall first obtain a permit from the Village. An annual review shall be conducted by the Village to ensure that all requirements for having such structure remain are in place. As a part of such annual review, the Village may require that the applicant provide evidence of compliance with this Section on an annual basis as long as the temporary family health care structure remains on the property. The evidence may involve the inspection by the Village of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation, and annual renewal of the doctor's

certification. A fee, in accordance with the provisions of NCGS 160A-383.5(e) shall be charged by the Village to issue the initial and any subsequent annual permits for such structures.

- E. The temporary family health care structure shall be occupied by the mentally or physically impaired person.
- F. Any temporary family health care structure installed pursuant to this Section shall be removed within sixty (60) days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this Section. If the temporary family health care structure is needed for another mentally or physically impaired person, the temporary family health care structure may continue to be used, or may be reinstated on the property within sixty (60) days of its removal, as applicable.
- G. Notwithstanding subsection (H) of this Section, any temporary family health care structure installed under this Section may be required to connect to any water, sewer, and electric utilities serving the property and shall comply with all applicable State law, local ordinances, and other requirements, as if the temporary family health care structure were permanent real property.
- H. The Village may revoke the permit granted pursuant to subsection (d) of this Section if the permit holder violates any provision of this Section or G.S. 160A-202. The Village may seek injunctive relief or other appropriate actions or proceedings to ensure compliance with this section or G.S. 160A-202.

7. Proposed Text Change – Protest Petitions

Bill Duston reported NC legislation was enacted that eliminates the ability for property owners to submit a protest petition with respect to a zoning map amendment, so he proposed eliminating Section 12.1.8 of the ordinance. Michael Kenary motioned to recommend accepting the text change removing Section 12.1.8 with the Statement of Consistency that the proposed change is neither consistent nor inconsistent with the Land Use Plan as said document does not address protest petitions. David Boyce seconded the motion.

The motion passed 4-1, with Chuck Adams voting nay.

Proposed text change is as follows:

- 1. Remove all of Section 12.1.8, which deals with protest petitions; Place the term “Reserved” under Section 12.1.8.**

~~12.1.8~~A written petition of protest may be filed with reference to any proposed change to the zoning map. In case of a protest against such change an amendment shall not become effective except by three fourths (3/4) vote of the Village Council. For purposes of this subsection, vacant positions on the Council and members who are excused from voting shall not be considered 'members of council' for calculation of the requisite three fourths vote. To qualify as a protest, 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 a 100 foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right of way shall not be considered in computing the 100 foot buffer area as long as that street right of way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100 foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the Village may rely on the county tax listing to determine the 'owners' of potentially qualifying areas. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in this Ordinance at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement. *(Amended 1.05.06)*

This section shall not be applicable to any amendment which initially zones property added to the territorial coverage of this Ordinance as a result of annexation or otherwise. *(Amended 06.14.04)*

~~a.~~ No protest against any proposed change shall be valid or effective unless it 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 and unless it shall have been received by the Village Clerk in sufficient time to allow the Village at least two (2) normal work days excluding Saturdays, Sundays and legal holidays before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. All protest petitions shall be on a form prescribed and furnished by the Zoning Administrator and such form may prescribe any reasonable information deemed necessary to permit the Zoning Administrator to determine the sufficiency and accuracy of the petition. No fees for processing any such petition shall be assessed by the Village. *(Amended 06.14.04)*

Reserved

8. Proposed Text Change – Subdivision Bonds

Bill Duston reported state legislation was enacted that affects how the Village accepts bonds for subdivision plats. Two major changes resulted: 1. The maximum amount of performance bond has been capped at 125% of the cost of the improvements; and 2. Road maintenance bonds are no longer allowed. We can still have stormwater maintenance bonds. This does not affect currently held bonds. Michael Kenary motioned to recommend accepting the proposed subdivision ordinance text changes, incorporated herein. Deb Bledsoe seconded the motion.

The motion passed unanimously.

The proposed text is as follows:

309.2 Improvement and Guarantee Standards

a) Improvement and Guarantee Standards *(Amended 01.05.06)*

In lieu of requiring the completion and dedication of all improvements prior to final plat approval, the Village of Wesley Chapel may enter into an agreement with the subdivider whereby the subdivider shall guarantee completion of all required improvements. Once said agreement is signed by both parties and the surety required herein is provided, work may proceed and the final plat may subsequently be considered for approval by the Village Council, if all other requirements of this Ordinance are met. ~~including the additional survey requirements of Section 313.~~ To secure this agreement, the subdivider shall provide either one, or a combination of the following guarantees equal to one and ~~one-half (1.5)~~ one-quarter (1.25) times the entire estimated cost as provided herein. The type of surety shall be chosen by the subdivider. The amount shall be subject to the approval of the Village Council:

- 1. Surety ~~Performance Bond(s)~~ or Letter of Credit:** The subdivider shall obtain a ~~performance surety~~ bond(s) from a ~~surety bonding~~ company ~~licensed authorized~~ to do business in North Carolina ~~or a letter of credit issued by any financial institution licensed to do business in North Carolina~~. The bond(s) ~~or letter of credit~~ shall be payable to the Village of Wesley Chapel and shall be made in or total an amount equal to one and ~~one-half (1.5)~~ one-quarter (1.25) times the entire cost, as estimated by the subdivider, verified by the Village Engineer (or Office of the District Engineer, State of North Carolina Department of Transportation, Division of Highways, for street improvements) and thereafter accepted by the Village Council, for the installation of all required improvements. The duration of the bond(s) ~~or letter of credit~~ shall be for not more than two (2) years, or until such time as the improvements are accepted by the Village Council or otherwise dedicated, whichever is less. Any expenses associated with cost verifications incurred by the Village shall be borne entirely by the subdivider.
- 2. ~~Cash~~ Other Form of Guarantee that Provides ~~or Equivalent Surety to a Surety Bond or Letter of Credit.~~** The subdivider shall deposit ~~cash, an irrevocable letter of credit from a bank doing business in North Carolina such~~

~~guarantee where deposits are insured by the Federal Deposit Insurance Corporation (FDIC), or Savings and Loan doing business in the State of North Carolina, where deposits are insured by the Federal Savings and Loan Insurance Corporation (FSLIC), or certified check drawn in favor of the Village of Wesley Chapel~~ with the Village Clerk before any work commences. -The use of any instrument other than cash shall be subject to the approval of the Village Council. The amount of ~~deposit or letter of credit said guarantee~~ shall be equal to one and ~~one-half (1.5) one-quarter (1.25)~~ times the cost as estimated by the subdivider, verified by the Village Engineer and thereafter accepted by the Village Council, for the installation of all required improvements.

Interest derived on any such cash or equivalent security deposit(s) shall inure to the provisional credit of the subdivider, and shall be delivered to him upon completion, acceptance and dedication of all required improvements, less any reasonable administrative expenses.

b) Default

Upon default, meaning the failure on the part of the subdivider to complete the required improvements within two (2) years as spelled out in the performance bond or other surety, then the surety, shall, if requested by the Village Council, pay all or any portion of the ~~bond-surety~~ to the Village of Wesley Chapel up to the amount needed to complete the improvements based on an updated engineering estimate. Upon payment, the Village Council, at its sole discretion, may expend such portion of said funds as it deems necessary to complete all or any portion of the required improvements, or restore the property to its pre-development state to the maximum extent feasible. The Village Council shall return to the subdivider, or guarantor in the event the guarantor is called upon to pay for improvements, any funds not so spent, less any reasonable administrative expenses. Any cash or equivalent surety held by the Village may be used likewise, in event of default.

c) Release of Guarantee Surety

The Village Council may release a portion of any surety posted as the improvements are completed and recommended for approval by the Subdivision Administrator. Within thirty (30) calendar days after receiving the Subdivision Administrator's recommendation, the Village Council shall approve or disapprove said improvements. When the Village Council approves said improvements, it shall immediately release such amount of surety posted, as it deems appropriate; provided however, the balance remaining as surety shall continue to equal one and ~~one-half (1.5) one-quarter (1.25)~~ times the estimated cost of the remaining improvements, as verified by the Village Engineer.

Whenever a surety bond, ~~or~~ letter of credit, or other approved surety has been submitted, the Subdivision Administrator shall notify the subdivider at least ninety (90)

calendar days prior to the time said guarantee is about to expire. If the subdivider does not extend or replace said guarantee within sixty (60) calendar days of said notification, the Subdivision Administrator shall, through the Village Attorney's Office, and after notifying the Village Clerk's Office, begin proceedings for calling upon the guarantee. Any extension or replacement shall be ~~in the same amount as the guarantee~~calculated in the same manner as the original guarantee at an amount equal to one-hundred twenty-five (125) percent of the cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained. ~~Any extension or replacement shall be in the same amount as the guarantee being extended or replaced unless a portion of the improvements have been completed and a reduction in amount is appropriate as provided for in the Sub-section 309.2.c).~~

The period within which required improvements must be completed shall not in any event exceed two (2) years from the date of ~~preliminary or~~ final plat approval, unless an extension is agreed upon by the Village Council, or the Village shall begin the process of calling upon the guarantee as specified herein.

If the subdivider indicates that the final plat will be completed in sections as herein provided, he may post such guarantee separately but before the time each respective section is submitted and considered for final plat approval.

Section 313. Maintenance of Dedicated Areas Until Acceptance

313.1 Subject to Sub-section 309.1 requirements, all facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer of dedication is accepted by the appropriate public authority.

~~**313.2** The owner of any development containing streets intended for public dedication shall post a performance bond or other sufficient surety to guarantee that such streets will be properly maintained until the offer of dedication is accepted by the North Carolina Department of Transportation or by formal acceptance by resolution of the Village of Wesley Chapel. The amount of the security shall constitute fifteen percent (15%) of the cost of the improvements.(road base and pavement) The owner shall provide information sufficient for the Village of Wesley Chapel Subdivision Administrator to determine the actual cost of improvements. This surety is in addition to those required in Sub-Section 309.2(a). If the surety/bond described herein is not provided, the Village of Wesley Chapel shall not issue Zoning Permits to any properties on the said street(s).~~

~~**313.3** The Village Council may relieve the owner of the requirements of this section, if it determines that a property owners' association has been established for the~~

~~development, and that this association has requested responsibility for the subject improvements, and has satisfied the obligations set forth herein. The Council, at its discretion, may require any such property owners' association to post the bond referred to in Sub-section 313.2.~~

~~313.4 The above bond/surety shall be posted with the Village of Wesley Chapel prior to the release of any Guarantee Surety in accordance with Sub-section 309.2(c).~~

~~313.5 Whenever a surety bond or letter of credit has been submitted, the Subdivision Administrator shall notify the owner or the property owners' association at least ninety (90) days prior to the time said guarantee is about to expire. If the owner or the property owners' association does not extend or replace said guarantee within sixty (60) calendar days of said notification, the Subdivision Administrator shall through the Village Attorney's Office, and after notifying the Village Clerk's office, begin proceedings for calling upon the guarantee. In such case, no further zoning permits on the affected street(s) shall be issued without specific Village Council approval.~~

9. Proposed Text Change – Conservation Zoning (Continued from the October 2015 Planning Board Meeting)
Item was tabled.

10. Amending the Future Land Use Plan Text
Item was tabled.

11. Other Business
John Souza brought up the points from the recent joint meeting to prioritize them. Items were prioritized as follows.

1. Senior housing – a district, exclude infrastructure land from density, density, show district on Future Land Use Plan, age 55 or 62+, exclude right of way if lot goes to center of road, traffic impact analysis,
2. Stormwater – is our ordinance working, might want our engineer to attend a meeting, come up with questions for her, where did the ordinance come from,
3. Traffic
4. Tree ordinance

It was decided to have a special meeting to address the senior housing issues; the clerk will send out potential dates and coordinate. Planning Board requested Bill Duston provide any information from other communities or ordinances that might be helpful.

12. Adjourn
Chuck Adams motioned to adjourn, Michael Kenary seconded the motion.
The motion passed unanimously.

The meeting adjourned at 10:16 pm.

Respectfully submitted,

Cheryl Bennett, Village Clerk

Acting Chairman John Souza