

June 1, 2010

To: Lake County Planning, Building and Zoning Committee

Fr: Patrick Tierney, Principal Planner
Eric Waggoner, Zoning Administrator

Re: Timing Alternatives to Subdivision Assurances

Purpose: The purpose of this memorandum is to review alternative timeframes for the establishment of subdivision assurances, the legislative and/or administrative actions for each, along with their strengths and weaknesses. It is intended that this summary will assist the Committee in developing a policy staff can use in guiding developers who must provide subdivision assurances.

Background:

Current Standards: The Unified Development Ordinance (UDO) complies with the requirements of the Illinois State Statutes by requiring that a bond to cover the costs of the subdivision improvements be provided as part of final plat approval. Article 10 of the UDO provides standards for the regulation of subdivisions and assurances to insure the completion of subdivision improvements. The UDO requires that a final plat be recorded within 5 days of the approval of the plat unless other arrangements are made by the Planning, Building and Zoning Committee. The developer is also required to provide performance assurances to cover the cost of the subdivision improvements at the time of action on the final plat by the Committee. Upon final plat approval, Article 10 requires that performance requirements be satisfied within 2 years of final plat approval. An additional year extension is permitted by the Planning Director; extensions beyond the third year require a variance by the PB&Z Committee.

Recent Trends: The decline in the housing market over the last two years has given rise to the following circumstances: 1.) an increase in the number of subdivisions at or beyond the 3 year period established by the UDO necessitating an increase in the number of extension-related variations; 2.) requests by developers to utilize different forms of assurances to overcome lending restrictions and the costs associated with processing extensions from lending institutions, and 3.) developers decisions to delay the onset of construction activity until the housing market rebounds.

Policy Development: In evaluating this issue, it became apparent that the County should develop a policy that will address the economic issues that developers are experiencing, while at the same time satisfying the obligation of the developer to provide assurances for their subdivision.

In preparing this policy, staff has identified four scenarios that serve as a basis for the policy. Staff will explain each scenario, the review actions that relate to each, and what we view are the advantages and disadvantages of each. Following today's discussion, staff will prepare a draft of a formal policy that can be adopted by the Committee related to this issue.

Scenario 1: *Developer anticipates project delay prior to receiving Final Plat Approval - Upon Final Plat Approval, the PBZ Committee approves a **Delay of Recordation** (Committee establishes date the plat must be recorded) – Assurance posting is delayed until the approved deadline is reached or the developer is ready to construct the improvements.*

Actions:

1. Developer would need to request a delay recording of the final plat prior to approval of the Final Plat by the PB&Z Committee.
2. Plat would be retained by staff. The final plat would be recorded on or prior to the date established by the Committee. An extension of the recording date would be required to be approved by the PB&Z Committee.
3. Performance assurances would be required to be provided based on improvement costs at the time the subdivision is recorded – the costs would be based on staff's approval of the consulting engineer's estimate of costs for the improvements.

Advantages:

1. Enables the developer to move forward with obtaining Committee approval of the subdivision, yet postpone the construction of the improvements until market conditions warrant a demand for the improvements.
2. The developer can postpone the costs associated with acquiring assurances until assurances are needed. Administrative costs to developers should be reduced because extensions will be less likely.
3. Assures the timely completion of subdivision improvements.
4. Assures improvement costs and assurances reflect market prices at the time of construction.
5. Final Plat approval by the PB&Z Committee will lock in ordinances and agreements
6. This option is currently being used by other County jurisdictions.

Disadvantages:

1. Staff would need to retain the plat to secure recording timing and assurance acquisition timing.
2. Some agreements may need to be renewed depending on certain time-based clauses in the agreements. Burden is on developer to know and understand the implication of delaying the recording on these agreements.

Scenario 2: (Status Quo) The Committee approves the Final Plat and the subdivision is recorded – Assurances are posted by the developer and construction of the improvements commences. – Assurance adjustments (i.e. extensions and reductions) are permitted during the performance period.

Actions:

1. The PB&Z Committee would need to grant variances to extend the performance period beyond 3 years.
2. Staff would need to continue to monitor the subdivision progress and/or improvement status to determine if deficiencies exist in the subdivision.
3. Reductions in the subdivision assurance are possible from the Director.
4. Developers would need to renew assurances that are approaching expiration.

Advantages:

1. All lots in the subdivision may be sold; the developer would not need to wait to record the final plat until lots could be sold.
2. Improvements can be delayed; extensions in the assurances provide additional time for the developer to build funding source to complete the improvements.
3. Reductions free up funds for the developer.

Disadvantages:

1. Anticipates that the improvements will be completed within bonding timeframe. Developer must continue working on the improvements to meet bonding deadlines.
2. Extensions in the bond require additional costs to the developer from the lender and the County.
3. Some extensions may require a re-evaluation of the costs of the improvements and an increase in the amount of the assurances.
4. Staff must continue inspecting the subdivision improvements to evaluate their status and to assure no deficiencies exist.
5. Improvements are not accepted until performance obligations are met; this can cause a burden on homeowners' due to the timing of the completion of improvements.

Scenario 3: The Committee approves the Final Plat and the subdivision is recorded – Assurances are posted by the developer and they recognize that market conditions do not warrant construction of all the improvements. – The developer recognizing that the market for lots in the subdivision is declining, requests a **Plat of Resubdivision** to phase the subdivision so the improvements can be phased.

Actions:

1. The developer would need to request a resubdivision prior to them selling lots in the subdivision.

2. Staff would need to analyze the proposed phases to make sure open space and engineering elements (i.e. storm water, sanitary sewer) for each phase are self-sustaining (open space and engineering improvements must be located in the phase they are demanded).
3. The developer would need to update all agreements for each phase.
4. Assurances for each phase would need to be secured; each phase would be bonded independently.

Advantages:

1. Phasing would reduce financial burden on developer and bond exposure.
2. Phasing the subdivision would control timing of lot sales and improvement completion.
3. The timing of Improvements can be better managed and improvements for each phase accepted in a shorter time-frame.
4. The developer is more likely to withstand a decline in the housing market.
5. Once the subdivision amendment was approved, the bonds would be reduced to reflect the costs of the phase being platted.

Disadvantages:

1. The developer would need to incur additional administrative costs to re-plate the subdivision – plan review, engineering, agreement modifications etc.
2. The developer would need to time the market so lots would be in inventory for each phase.
3. The overall time for the subdivision would be longer than if the subdivision was platted at once.

Scenario 4: *The Subdivision is approved and the Final Plat is recorded – Assurances are posted but Improvements have not begun. The developer identifies a declining market seeks a **vacation of the recording of the final plat.***

Actions:

1. The developer will need to request the vacation of the recordation to the PB&Z Committee prior to the sale of any lot in the subdivision.
2. The Committee will need to establish a date within which the plat must be re-recorded.
3. To assure the developer of vested rights in subdivision approval, the Committee would sign a statement affirming that the withdrawal of the recordation does not rescind the Committee's approval of the Plat (the statement would be recorded against the property for notice purposes)
4. Assurances will need to be posted at the time of final plat recording based on improvement costs at that time.

5. Alternative must be accepted by the County Recorder's and title company representatives. (It has been generally approved by the States Attorney's Office)

Advantages:

1. Plat remains viable and approvals remain intact.
2. Withdrawal of recording or a Plat Vacation would allow assurances to be returned to the surety.
3. Releases of the assurances provide additional time for the developer to build funding source and complete improvements.

Disadvantages:

1. Further research is required on the reaction of the County Recorder and title companies on this alternative.
2. Requires a companion document to be drafted and recorded against the subdivision plat outlining the terms and conditions of recording the withdrawal.
3. A reestablishing the subdivision would require additional costs for the developer.