

The developer shall install such property monuments and markers, as are required by law and the standards of practice for land surveying in North Carolina.

ARTICLE V. LEGAL PROVISIONS

Section 5.1 Interpretation, Purpose, Conflict

In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any Easements, covenants, or other agreements between parties; provided, however, that where this Ordinance imposes a greater restriction or imposes higher standards than those required by other ordinances, rules, regulations, or by Easements, covenants, or agreements the provisions of this Ordinance shall govern so that, in all cases, the most restrictive limitation or requirement, or the requirement causing the highest standard of improvement, shall govern. Provided, however, in any case where the Zoning Ordinance specifically permits a development type not otherwise provided for in this Ordinance, the Zoning Ordinance shall prevail.

Section 5.2 Repeal and Reenactment of Existing Subdivision Regulations

The rewriting of this Ordinance in part carries forth by reenactment some of the provisions of the existing subdivision regulations of the Town of Forest City and it is not intended to repeal but rather to reenact and continue in force such existing provisions so that all rights and liabilities that have been accrued are preserved and may be enforced. All provisions of the subdivision regulations, which are not reenacted herein, are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of the subdivision regulations in effect, which are now pending in any of the courts of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this Ordinance, but shall be prosecuted to their finality the same as if this Ordinance had not been adopted; and any and all violations of the existing regulations, prosecutions for which have not been instituted, may be filed and prosecuted; and nothing in this Ordinance shall be so construed as to abandon, abate, or dismiss any litigation or prosecution now pending and/or which may have been instituted or prosecuted.

Section 5.3 Effect Upon Outstanding Preliminary Plats

- A. Nothing herein contained shall require any change in any Preliminary Plat which has received approval by the Town of Forest City prior to the time of the adoption of this Ordinance provided that such Preliminary Plat has been prosecuted to completion and a Final Plat recorded in the Office of the Register of Deed within twelve (12) months after the time of the adoption of this Ordinance. If the Final Plat of all or part of the area shown on any previously approved Preliminary Plat is not recorded in the Office of the Register of Deeds within two (2) years after the time of the adoption of this Ordinance, such non-recorded area shall be subject to all the provisions of this Ordinance in accordance with Section 5.4.
- B. After the effective date of this Ordinance, any Final Plat to be recorded based upon any outstanding Preliminary Plat shall follow the Final Plat approval procedures of this Ordinance.
- C. In addition, nothing herein contained shall require any change in any final plat, which has received approval by the Town of Forest City prior to the time of the adoption of this Ordinance provided that such final plat is prosecuted to completion in accordance with the

terms of approval. In the event of default or the failure of the subdivider to perform in accordance with the conditions as approved, the Town of Forest City may, at its option, take lawful action pursuant to the Subdivision Ordinance in existence at the time of the Final Plat approval or this Ordinance.

Section 5.4 Vested Rights

In accordance with NCGS 160A-385.1 the following shall apply:

5.4.1 Definition of Vested Right

A vested right is the right to undertake and complete the development and use of a property under the terms and conditions of an approved site specific development plan.

5.4.2 Establishment of Vested Right

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the Town with jurisdiction over the property. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments thereto. A town may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. A town shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phased development plan shall be deemed approved upon the effective date of the county's action or ordinance relating thereto.

5.4.3 Duration and Termination of Vested Right

- A. A right which has been vested as provided for in this section shall remain vested for a period of two (2) years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the Town.
- B. The Forest City Board of Commissioners may provide that rights shall be vested for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the County. This shall not apply to development agreements approved in accordance with NCGS 160A-400.20-32.

Section 5.5 Effect Upon New Territory Added to Jurisdiction

At any time when new territory is added to the Jurisdiction of this Ordinance, such new territory shall immediately become subject to the provisions of this Ordinance. Any proposed Subdivision or any Subdivision in progress within such new territory, shall proceed only in accordance with the following:

- A. Any Subdivision for which a Final Plat has been recorded in the Register of Deeds Office pursuant to the approval of another local government, but which is subject to an outstanding guarantee to such local government for the installation of Subdivision improvements, shall remain under the Subdivision control of such local government until such time as such Subdivision shall have been prosecuted to completion. Provided, however, the Town may not accept the dedication of any street or street improvements unless such street and street improvements meet the standards of this Ordinance and the Town's Policy for Acceptance of Streets for use and maintenance by the Town.
- B. All other Subdivisions shall meet all of the requirements of this Ordinance and it shall be the responsibility of the Subdivider of any proposed Subdivision or Subdivision in progress to receive approval as provided for in this Ordinance before proceeding with any development. The Subdivider shall arrange a conference with the Subdivision Administrator who shall determine the level and type of approval required and provide the Subdivider with an approval track for the particular case.

Section 5.6 Modifications

The Board of Commissioners may modify the requirements of this Ordinance wherein the Boards opinion equal or better performance will result. In modifying any standard or requirement the evaluation shall be made with regard to the overall performance in carrying out the purpose of this Ordinance. In granting Modifications, the Board of Commissioners may require such conditions as will secure, insofar as practicable, the objectives or requirements modified. In no case however, shall the Board of Commissioners, acting pursuant to this Section, modify the terms or requirements of the Zoning Ordinance or the Flood Damage Prevention Ordinance. Violation of any condition shall constitute a violation of this Ordinance. A Modification granted as part of a plan approval shall have the same duration as the plan approval.

Section 5.7 Amendments

The Board of Commissioners may from time to time amend the terms of this Ordinance after a public hearing has been held and notice given as required by North Carolina General Statutes 160A-364. However, any proposed Amendment shall be submitted to the Planning Board for review and recommendation prior to Board of Commissioners action. The Planning Board shall have forty-five (45) days from the date such Amendment is first submitted for review to the Board to make its recommendation. If the Planning Board fails to make its recommendation within the specified time, it shall be deemed to have recommended in favor of the Amendment.

Section 5.8 No Liability

Acceptance of dedication of lands or facilities located within the jurisdiction of this Ordinance but outside the Town limits shall not place on the Town any duty to open, operate, repair or maintain any Street, utility line, or other land or facility and the Town shall in no event be held to answer in any civil action or proceeding for failure to open, repair or maintain any street located outside its corporate limits.

Section 5.9 Violations: Penalty and Remedies

- A. After the effective date of this Ordinance, no Subdivision Plat of land within the Jurisdiction of this Ordinance shall be filed or recorded until it shall have been submitted to and approved by the appropriate approval authority.

- B. The Review Officer shall not certify for recording a Plat of Subdivision of land subject to this Ordinance that has not been approved in accordance with this Ordinance nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with the provisions of this Ordinance.
- C. After the effective date of this Ordinance, any person who, being the owner or agent of the owner of any land within the Jurisdiction of this Ordinance, thereafter subdivides his land in violation of this Ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a Subdivision of the land before the plat has been properly approved under this Ordinance and recorded in the Office of the Register of Deeds shall subject the violators to the penalties and remedies set forth in this Ordinance. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from such penalties and remedies.
- D. Violations of this Ordinance shall constitute either a misdemeanor, with a fine not exceeding fifty (50) Dollars or imprisonment not exceeding thirty (30) days, or, at the election of the Town, shall subject the offender to a civil penalty upon the issuance of a citation for said violations as hereinafter provided. The civil penalty, if not paid to the Town within fifteen days of the issuance of a citation, may be recovered by the Town in a civil action in the nature of debt. Said civil penalties shall be in the amount of \$50.00 (fifty dollars) for each violation and each day any single violation continues shall be a separate violation.
- E. In addition to the civil penalties set out above, any provision of this Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.
- F. In addition to the civil penalties set out above, any provision of this Ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by General Court of Justice. When a violation of such a provision occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.
- G. An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that abandoned or junked vehicles be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this Ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and material man's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an

amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

- H. The provision of this Ordinance may be enforced by one, all or a combination of the remedies authorized and prescribed by this section.
- I. Upon determination of a violation of any section of this Ordinance, the penalty for which is a civil penalty, the Subdivision Administrator shall cause a warning citation to be issued to the violator. Such citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated.
- J. An appeal from a warning citation shall be taken within ten (10) days from the date of said warning citation and the Board of Adjustment, in considering such appeal, shall, notwithstanding other powers as may be granted, have power only in the manner of administrative review and interpretation where it is alleged that the Enforcement Officer has made an error in the application of the Ordinance, in the factual situation as it relates to the application of the Ordinance, or both.
- K. Where the Subdivision Administrator determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or Consent Agreement, the Subdivision Administrator may amend the warning citation to provide for additional time. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.
- L. Upon failure of the violator to obey the warning citation a civil citation shall be issued by the Subdivision Administrator and either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the Town or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to pay the civil assessment within fifteen days of the date of the citation, or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.
- M. If the violator fails to respond to a citation within fifteen days of its issuance, and pay the penalty prescribed therein, the Town may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees, and such other relief as permitted by law.

Section 5.10 Validity

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

The Board of Commissioners hereby declares that it would have passed this Ordinance and each section, subsection, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 5.11 Effective Date

This Ordinance shall become effective upon its adoption by the Board of Commissioners of the Town of Forest City, North Carolina.

ADOPTED the 5th day of June, 2000, by the Board of Commissioners of the Town of Forest City, North Carolina, and

AS AMENDED through the 19th day of May 2008, by the Board of Commissioners of the Town of Forest City, North Carolina.

Attest:

Town Clerk

Mayor