



**ALBEMARLE COUNTY PLANNING
SUBDIVISION TEXT AMENDMENT
STAFF REPORT SUMMARY**

Project Name: STA 202100002 Maintenance of Private Improvements	Staff: Bill Fritz
Planning Commission (PC) Hearing: January 11, 2022	Board of Supervisors (BOS) Hearing: TBD
<p>Proposal(s): The proposed ordinance would (a) require a statement on final plats that private streets and other required improvements will not be maintained by any public entity and must be maintained by the affected lot owners, and that failure to maintain required improvements may constitute a violation of County ordinance(s) and (b) eliminate the existing requirement that subdividers receive County approval of maintenance agreements for private improvements.</p>	
<p>Factors Favorable:</p> <ol style="list-style-type: none"> 1. Places lot owners on notice that failure to maintain any required private improvement(s) may be a violation of County ordinance(s). 2. Eliminates the need for County review of a document that cannot be enforced by the County. 3. Better aligns ordinance with state law. 	<p>Factors Unfavorable:</p> <ol style="list-style-type: none"> 1. None identified.
<p>Recommendation: Staff recommends approval of the proposed ordinance to the Board of Supervisors.</p>	

STAFF CONTACT: William D. Fritz, AICP
PLANNING COMMISSION: January 11, 2022
BOARD OF SUPERVISORS: TBD

STA: STA 202100002 Maintenance of Private Improvements

ORIGIN: Planning Commission resolution of intent adopted on December 7, 2021. (Attachment A)

PROPOSAL: The proposed ordinance would (a) require a statement on final plats that private streets and other required improvements will not be maintained by any public entity and must be maintained by the affected lot owners, and that failure to maintain required improvements may constitute a violation of County ordinance(s) and (b) eliminate the existing requirement that subdividers receive County approval of maintenance agreements for private improvements.

PUBLIC PURPOSE TO BE SERVED: The proposed amendments are intended to reduce inefficient and unnecessary administrative procedures. The proposed amendments would also better align this ordinance with state law and the Zoning Ordinance.

BACKGROUND: If a subdivision contains privately-maintained improvements, the current ordinance requires (a) notation on the final plat only that private streets will not be publicly maintained and (b) submission of an "Instrument evidencing maintenance of certain improvements." This maintenance agreement is subject to review and approval by the County Attorney.

Privately-maintained improvements typically include not only streets, but also sidewalks, trails, and landscaping. This is not an all-inclusive list. Other features may be required by proffers or conditions. The proposed amendment impacts only subdivision-related private improvements. The maintenance of all stormwater system components is addressed by the Water Protection Ordinance. Improvements associated with site plans are addressed by the Zoning Ordinance.

STAFF COMMENT:

If private streets are within a subdivision, the ordinance currently requires a note stating:

"The streets in this subdivision may not meet the standards for acceptance into the secondary system of state highways and will not be maintained by the Virginia Department of Transportation or the County of Albemarle."

However, the current note requirement applies only to private streets. Staff is recommending a more comprehensive note that would cover all private improvements:

"Unless specifically denoted as public, the streets and other required improvements in this subdivision are private in nature and will not be maintained by either the Virginia Department of Transportation or any other public agency. The maintenance thereof is the mutual obligation of the affected lot owners. Failure to maintain the improvements in substantially the same condition as originally approved by the County may constitute a violation of County ordinance(s)."

The proposed note would state that failure to maintain any required private improvement may constitute a violation. Currently there is no notice or statement that maintenance is required.

The current ordinance has several drawbacks. As stated previously, the current ordinance requires the submission of a maintenance agreement for private improvements. The submitted maintenance agreement is reviewed by Community Development staff and then forwarded to the County Attorney for

review and approval. If revisions are required, which is often the case, the comments are given to the applicant and a revised agreement is submitted and the review process is repeated. It is not uncommon for multiple rounds of review to occur.

Once the maintenance agreement is approved, and all other conditions are met, the final plat is approved and may be recorded. The ordinance does not require that the agreement be recorded, but only that the agreement “shall be in a form and style so that it may be recorded.” Staff has identified the following issues associated with maintenance agreements:

1. Approval of the agreements is time and resource consuming for both applicants and the County.
2. The County is not a party to the agreement and cannot enforce or interpret the agreement.
3. The County cannot require the agreement to be recorded.

Maintenance of private improvements is necessary to satisfy the purposes of the subdivision ordinance contained in [Albemarle County Code § 14-101](#). The proposed amendments place the owners of lots within the subdivision on notice that they are responsible for the maintenance of improvements and that failure to maintain may be a violation. The Code of Virginia requires maintenance of private improvements in its [Property Owner’s Association Act](#) provisions. The proposed amendments would improve the County’s ability to ensure that private improvements are appropriately maintained, with the added benefit of reducing the administrative burden on applicants and the County during the subdivision approval process.

Ordinance Amendment Review Criteria

All ordinance amendments are reviewed under these three criteria previously established by the Board:

Administration/Review Process:

The proposed amendment would reduce the steps involved in the review process and establish clear and unambiguous requirements.

Housing Affordability:

The proposed amendments would have no direct impact on housing affordability.

Implications to Staffing/Staffing Costs:

The proposed amendments would improve efficiency in the review of subdivisions. The existing ordinance provisions consume significant resources in the Community Development Department and County Attorney’s Office.

RECOMMENDED ACTION: Staff recommends approval of the proposed ordinance to the Board of Supervisors.

ATTACHMENTS

Attachment 1 – [Resolution of Intent](#)

Attachment 2 – [Proposed Ordinance](#)