

ORDINANCE #12-23:

AN ORDINANCE AMENDING THE PINEHURST DEVELOPMENT ORDINANCE AS IT PERTAINS TO THE ADDITION OF SECTION 10.2.14.28 IMPROVEMENT GUARANTEES.

THAT WHEREAS, the Village Council of the Village of Pinehurst adopted a new Pinehurst Development Ordinance on the 24th day of May, 2005, for the purpose of regulating planning and development in the Village of Pinehurst and the extraterritorial area over which it has jurisdiction; and

WHEREAS, said Ordinance may be amended from time to time as circumstances and the best interests of the community have required; and

WHEREAS, a Public Hearing was held at 1:00 p.m. on July 24, 2012 in the Assembly Hall of the Pinehurst Village Hall, Pinehurst, North Carolina after due notice in The Pilot, a newspaper in Southern Pines, North Carolina, with general circulation in the Village of Pinehurst, and its extraterritorial jurisdiction, for the purpose of considering proposed amendments to the Pinehurst Development Ordinance, at which time all interested citizens, residents and property owners in the Village of Pinehurst and its extraterritorial jurisdiction were given an opportunity to be heard as to whether they favored or opposed the proposed text amendments; and

WHEREAS, the Planning and Zoning Board has recommended that the Village Council add Section 10.2.14.28 to the Pinehurst Development Ordinance; and

WHEREAS, the Village Council, after considering all of the facts and circumstances surrounding the proposed amendments in the text of the Pinehurst Development Ordinance, have determined that it is in the best interest of the Village of Pinehurst and the extraterritorial jurisdiction and that it is consistent with the 2010 Comprehensive Plan that the Development Ordinance be further amended, making the amendments as requested;

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Village Council of the Village of Pinehurst, North Carolina in regular session assembled on the 24th day of July, 2012, as follows:

SECTION 1. That the Pinehurst Development Ordinance of the Village of Pinehurst and its extraterritorial zoning jurisdiction be and the same hereby is amended by adding the following Section 10.2.14.28:

10.2.14.28 IMPROVEMENT GUARANTEES

- a) **Performance Guarantee:** In lieu of prior construction of the improvements required by this ordinance, the sub-divider shall guarantee that such improvements will be carried out according to Village specifications at his/her expense. Additionally, the sub-divider

shall submit a schedule for the completion of the remaining infrastructure improvements.

- b) **Types of Guarantees:** Such guarantee may be in the form of a surety bond made by a surety company licensed to do business in North Carolina or certified check drawn in favor of the Village, or cash deposited with the Village, or a letter of credit from a local bank. Such guarantees shall be in an amount of not less than one hundred fifty (150) percent of the cost of the construction of the required improvements as estimated by the Village Engineer.
- c) **Local Bank defined:** Any bank, savings and loan association, or trust company with a physical branch located in the state of North Carolina and within a 100 miles radius of the Village of Pinehurst.
- d) **Time Limit:** Improvements must be completed by the developer within five (5) years of the approval of the performance guarantee. The applicable guarantee shall be renewed at least 15 days prior to expiration or be self-renewing. Failure to renew the performance guarantee 15 days prior to the expiration shall be considered defaulting by the developer. Any renewal of the performance guarantee shall be done in the same fashion as the original performance guarantee.
- e) **Default by Developer**
 - 1. Upon default, meaning failure on the part of the developer or surety to make timely completion of the required improvements, the Village may require the developer, the surety, or the financial institution holding the escrow account to pay all or any portion of the bond or escrow account fund to the Village.
 - 2. Upon payment, the Village, in its discretion, may expend such portion of the funds as it deems necessary to complete all or any portion of the required improvements.
- f) **Release of Guarantee:** The Village Manager may release a portion of any security posted as the improvements are completed and recommended for approval by the Village Engineer. Such funds shall be released within thirty (30) days after approval of all improvements by the Village Engineer.
- g) **As-built drawings required.** As a condition of release of any Guarantee, as-built drawings and plans of all water system, sewer system, streets, sidewalks and storm drainage system facilities shall be prepared by the subdivider and submitted to the Village Engineer and Moore County Utilities at the time of request for Final Plat approval or release of any surety for required improvements, whichever comes later. These plans should show all easements and/or rights-of-way to demonstrate that the required improvements and facilities are properly placed. These drawings need not be placed on the final plat. Electronic copies of Final Plats, AutoCAD compatible, shall be submitted with all

as-built plans if so required by this ordinance, the Engineering Standards Manual or Moore County Utilities.

- h) Village Attorney Review.** All instruments for performance guarantees shall be reviewed by the Village Attorney and a recommendation regarding their sufficiency made to the Village Manager.
- i) Note on plat.** There shall be language placed on the final plat that states that all of the required improvements have not been installed for the development and that the lots being platted may not be buildable until such times as all required improvements have been made. The total amount of the performance guarantee shall also be placed on the plat.

10.2.14.28.1 Substitute Performance Guarantees

This ordinance applies only where all of the following requirements are met:

- a) A subdivision of land achieved final plat approval based on the posting of financial guarantees in lieu of completing required public infrastructure; and
- b) A financial guarantee was issued by a financial institution that has failed and been closed and the FDIC, as receiver, has disaffirmed and repudiated such financial guarantee(s); and
- c) The developer has failed or refused to provide a replacement financial guarantee(s) or to complete such required public infrastructure; and
- d) The developer sold and conveyed lots to third parties prior to the date on which the Village was notified by the FDIC that the financial guarantees were disaffirmed and repudiated ('Notification Date'); and
- e) Sufficient infrastructure has been installed by the developer in such phase or phases such that acceptable access is provided and adequate utilities are installed for fire protection, potable water and sewer service. This shall be determined by the village engineer and the fire marshal.

If all of the requirements set forth above are met, then, in such developments or phases thereof, lot owners who purchased lots before the notification date wishing to build new heated square footage or additions of heated square footage may provide a substitute financial guarantee (SFG) on a per lot basis. The SFG shall be determined by Council based on the amount of the repudiated letters of credit issued for phase of development and the number of undeveloped lots in that phase.

Once the SFG is determined, the Village may issue a building permit upon receipt of the SFG. Certificates of occupancy shall not be withheld by the Village based on incomplete public infrastructure or the failure to provide or maintain a financial guarantee if a SFG was provided for such lot, although other PDO requirements will continue to apply.

Half of the SFG will be collected at or prior to issuance of a building permit and half will be collected prior to the issuance of a certificate of occupancy. Such SFG shall be maintained by the Village and shall be used by the Village to complete the infrastructure in that particular phase of the subdivision. In the event the infrastructure in that phase of the development is completed by the developer or their successor without cost to the Village, or in the event the Village completes the infrastructure and discovers that it does not need all of the SFG funds provided for, the Village shall refund a proportionate share of such SFG's not needed to the persons who provided them.

This regulation shall not obligate the Village to complete public infrastructure for which SFG's have been provided until such time as adequate funds exist to complete the public infrastructure, although the Village, in its sole discretion, may undertake such completion at any time.

The Village reserves the right to transfer these funds to a third party to ensure completion and acceptance by the Village.

SECTION 2. That all ordinances or sections thereof in conflict herewith are hereby repealed and declared null and void from and after the date of adoption of this ordinance.

SECTION 3. That this Ordinance shall be and remain in full force and effect from and after the date of its adoption.

Adopted this 24th day of July, 2012.

(Municipal Seal)



VILLAGE OF PINEHURST
VILLAGE COUNCIL

By: Nancy Roy Fiorillo
Nancy Roy Fiorillo, Mayor

Attest:

Linda S. Brown
Linda S. Brown, Village Clerk

Approved as to Form:

Michael J. Newman
Michael J. Newman, Village Attorney