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RODNEY D. CAMPBELL
UTAH COUNTY RECORDER
2010 Nov 01 3:49 pm FEE 0.00 BY SW
RECORDED FOR UTAH COUNTY COMMISSIONERS

ORDINANCE NO. 2010- 24

**AN ORDINANCE AMENDING THE UTAH COUNTY LAND USE ORDINANCE,
SECTION 6-15-E, LARGE SCALE DEVELOPMENTS, PROCEDURES, SUBSECTIONS
17, 18, 19, AND 20, RELATED TO BONDING FOR REQUIRED IMPROVEMENTS**

WHEREAS, the Utah County Commission directed the Utah County Planning Commission to initiated a review of amending the UCLUO to more appropriately address the goals and policies of Utah County, including those contained in the Utah County General Plan; and

WHEREAS, the Planning Commission addressed the proposed amendments to the UCLUO, during their regularly scheduled agenda meeting of the Planning Commission, and scheduled and held a public hearing regarding the proposed amendments; and

WHEREAS, the Planning Commission recommended that the UCLUO be amended, in accordance with the amendments as set forth herein; and

WHEREAS, the Board of County Commissioners has received and carefully reviewed the recommendation from the Utah County Planning Commission regarding the proposed amendment to the UCLUO, including information found in the file and any public comments contained therein; and

WHEREAS, the Board of County Commissioners finds that the proposed amendment to the UCLUO will further the goals and policies of Utah County, including those contained in the General Plan; and

WHEREAS, the Board of County Commissioners finds that the proposed amendment to the UCLUO is in the best interest of the health, safety, and general welfare of the citizens of Utah County.

THE COUNTY LEGISLATIVE BODY OF UTAH COUNTY ORDAINS AS FOLLOWS:

Part I:

6-1: General Provisions

E. Procedures

17. Assuring Construction of Required Improvements

- a. After receiving final approval from the County Commission, the developer may either request that the final plat not be recorded for a period of time not to exceed one year, during which time it may install the improvements in the development, or it may post a bond before recording the plat, in an amount equal to 150% of the estimated cost of the required improvements as determined by the Public Works

Director to guarantee the installation and warranty of the required improvements without cost to Utah County. Said bond shall be a cash bond deposited with the County. The final plat shall not be recorded until the developer has executed a subdivision improvement agreement, in the form approved by the County, and the improvements are either constructed or the bond is delivered to and approved by the County. The bond, however, shall not limit the liability of the developer to install improvements, for the developer shall be obligated to the full extent of the cost of installing the improvements required by this ordinance. Private parties shall not be deemed third-party beneficiaries of the bond.

- b. All required improvements shall be constructed in accordance with approved plans and Utah County development standards and inspected by the County Public Works Department. The developer shall pay an inspection fee to the County in the amount set by the County.

18. Duration of Bond

The bond required under the provisions of this ordinance shall not expire.

19. Default

In the event the developer defaults, fails, or neglects to install satisfactorily the required improvements within the period required, or to pay all cost of materials and labor therefor, Utah County may send a notice of default, take action to collect the bond, and install or cause the required improvements to be installed, using the bond proceeds to defray the expense thereof.

20. Timing of Construction

All improvements required under the terms of the applicable type of large scale development shall be constructed by the developer within one (1) year from the date of the bond agreement. However, the County Commission may require the developer to install what it determines to be critical improvements on all or part of an approved large scale development within a time period which is less than the maximum time period specified. An extension of time may be granted by the County Commission upon application by the developer and good cause shown. If an extension of time is requested, the County Commission may require that the bond amount be increased due to inflation and/or increased estimates of the cost of improvements. In addition, the County Commission may, upon the written recommendation of the Public Works Director, allow for a period of time in excess of one (1) year, but not more than three (3) years from the date of the bond agreement, to relocate existing telephone or power poles from their current location to the newly created lot line, if the Public Works Director and the County Commission find that all of the following conditions exist:

- A. The large scale development is a one or two lot subdivision;
- B. Not more than 2 poles are required to be relocated;
- C. Prior to relocation, the pole line alignment has ten or more poles before the location of the subdivision and ten or more poles after the location of the subdivision which are in straight alignment with the poles to be relocated;

- D. The owner of the poles has provided a written statement to the County indicating a preference that the poles not be relocated at the present time;
- E. The Public Works Director has provided a written statement to the County that the delayed relocation of the poles will not constitute a hazard to public safety;
- F. The developer has posted a cash bond with the County in an amount of not less than 200% of the estimated cost to relocate the poles, if the poles were being relocated at the time that the poles prior to the subdivision location and after the subdivision location were also being relocated to a single alignment; and
- G. The developer has executed a Restrictive Covenant and Agreement, in a form acceptable to the County, agreeing to indemnify and hold County and its agents, officials, and employees harmless from any claim or liability related to or arising out of, directly or indirectly, the failure to relocate the poles, including defense costs and attorney's fees, and further agreeing to relocate the poles, at developer's sole expense, to the lot line within sixty (60) days of the date of written demand by the County to relocate the poles, but not later than three (3) years from the date of the bond agreement, which Restrictive Covenant and Agreement shall run with the land, shall be recorded in the records of the County Recorder, and shall be secured by a first position Trust Deed on the subdivision lots with the developer providing to Utah County a Lender's Extended Policy of Title Insurance in an amount not less than the fair market value of the lots.

Part II:

The Utah County Land Use Ordinance, as amended herein, is hereby adopted in book form and a copy of said Utah County Land Use Ordinance is hereby ordered to be filed in the office of the Utah County Clerk/Auditor.

Part III:

If any of the sections, sentences, clause or provisions of this ordinance shall for any reason be adjudged inapplicable or invalid by a court of competent jurisdiction, such shall not affect or invalidate the remaining portion contained herein.

Part IV:

This ordinance shall become effective fifteen (15) days after it is passed, and upon at least one (1) publication in a newspaper published in and having general circulation in Utah County.

PASSED and ordered published this 28th day of September, 2010.

UTAH COUNTY COMMISSION

VOTE

Steve White
STEVE WHITE, CHAIR

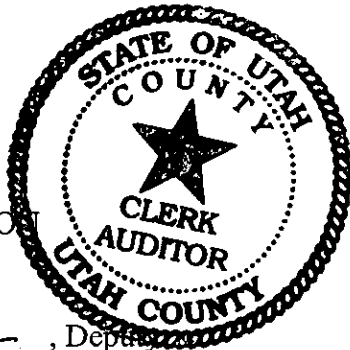
aye

Gary J. Anderson
GARY J. ANDERSON, COMMISSIONER

aye

Larry A. Ellertson
LARRY A. ELLERTSON, COMMISSIONER

aye



ATTEST:
BRYAN E. THOMPSON
County Clerk/Auditor

APPROVED AS TO FORM:
JEFFREY R. BUHMAN
County Attorney

By: *Ronnie Moran*, Deputy

By: *Paul [Signature]*, Deputy

Date of Publication: Once only, as soon as possible

September 21, 2010

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UTAH COUNTY PLANNING COMMISSION STAFF REPORT

- I. APPLICATION: - Public Hearing
- A. APPLICANT - Utah County Commission
- B. REQUEST - Proposed Land Use Ordinance amendments to Section 6-1-E, Large Scale Developments, Procedures; Subsections 17, Assuring Construction of Required Improvements; 18, Duration of Bond; 19, Default; and 20, Timing of Construction.
- C. LOCATION - Unincorporated Utah County, for all Large Scale Developments.

II. STAFF ANALYSIS:

At the request of the Utah County Commission, the Utah County Attorney's Office has prepared the following amendments to Sections 6-1-E-17 through 20 (deletions are shown as a ~~strikeout~~ and the additions are shown in highlighted):

6-1: General Provisions

E. Procedures

17. Assuring Construction of Required Improvements

- a. After receiving final approval from the County Commission, the developer may either request that the final plat not be recorded for a period of time not to exceed one year, during which time it may install the improvements in the development; or it may post a bond before recording the plat, in an amount equal to 150% of the estimated cost of the required improvements as determined by the Public Works Director to guarantee the installation and warranty of the required improvements without cost to Utah County. Said bond shall be a cash bond deposited with the County, ~~surety bond, or other fixed, liquid, secure asset which does not require the sale of bond assets to obtain funds for the improvements.~~ The final plat shall not be recorded until the developer has executed a subdivision improvement agreement, in the form approved by the County, and the improvements are either constructed or the bond is delivered to and approved by the County. The bond, however, shall not limit the liability of the developer to install improvements,

for the developer shall be obligated to the full extent of the cost of installing the improvements required by this ordinance. Private parties shall not be deemed third-party beneficiaries of the bond.

b. All required improvements shall be constructed in accordance with approved plans and Utah County development standards and inspected by the County Public Works Department. The developer shall pay an inspection fee to the County in the amount set by the County.

18. Duration of Bond

~~The bond duration of the bond and other assurance required under the provisions of this ordinance shall not expire. be for three (3) years from the date of bond approval by the County Commission. An extension of time may be granted by the County Commission upon application by the developers and good cause shown, provided the issuer of the bond is willing to extend the time of coverage. If an extension of time is requested, the County Commission may request an additional amount of value to be added to the bond due to inflation and due to revised estimates of the cost of improvements received from the County Public Works Director.~~

19. Default

In the event the developer defaults, fails, or neglects to install satisfactorily the required improvements within the period required, or to pay all cost of materials and labor therefor, Utah County may send a notice of default, take action to collect the bond, and install or cause the required improvements to be installed[!] using the bond proceeds ~~from the collection of the bond~~ to defray the expense thereof.

20. Timing of Construction

All improvements required under the terms of the applicable type of large scale development shall be constructed by the developer within one (1) year from the date of the bond agreement. However, the County Commission may require the developer to install what it determines to be critical improvements on all or part of an approved large scale development within a time period which is less than the maximum time period specified. An extension of time may be granted by the County Commission upon application by the developer and good cause shown. If an extension of time is requested, the County Commission may require that the bond amount be increased due to inflation and/or increased estimates of the cost of improvements. In addition, the County Commission may, upon the written recommendation of the Public Works Director, allow for a period of time in excess of one (1) year, but not more than three (3) years from the date of the bond agreement, to relocate existing telephone or power poles from their current location to the newly created lot line, if the Public Works Director and the County Commission find that all of the following conditions exist:

- A. The large scale development is a one or two lot subdivision;
- B. Not more than 2 poles are required to be relocated;
- C. Prior to relocation, the pole line alignment has ten or more poles before the location of the subdivision and ten or more poles after the location of the subdivision which are in straight alignment with the poles to be relocated;
- D. The owner of the poles has provided a written statement to the County indicating a preference that the poles not be relocated at the present time;
- E. The Public Works Director has provided a written statement to the County that the delayed relocation of the poles will not constitute a hazard to public safety;
- F. The developer has posted a cash bond with the County in an amount of not less than 200% of the estimated cost to relocate the poles, if the poles were being relocated at the time that the poles prior to the subdivision location and after the subdivision location were also being relocated to a single alignment; and
- G. The developer has executed a Restrictive Covenant and Agreement, in a form acceptable to the County, agreeing to indemnify and hold County and its agents, officials, and employees harmless from any claim or liability related to or arising out of, directly or indirectly, the failure to relocate the poles, including defense costs and attorney's fees, and further agreeing to relocate the poles, at developer's sole expense, to the lot line within sixty (60) days of the date of written demand by the County to relocate the poles, but not later than three (3) years from the date of the bond agreement, which Restrictive Covenant and Agreement shall run with the land, shall be recorded in the records of the County Recorder, and shall be secured by a first position Trust Deed on the subdivision lots with the developer providing to Utah County a Lender's Extended Policy of Title Insurance in an amount not less than the fair market value of the lots.

These proposed amendments would allow the owner or developer of a one or two lot subdivision plat to petition the County Commission to delay the relocation of not more than two power or utility poles from the clear zone of the dedicated road right-of-way. In many cases the power company does not approve of moving one to two power poles out of alignment with the poles on either side of the subdivision frontage. Relocating one or two poles is expensive due to the extra guy cables needed to meet the pull from the poles being out of alignment with the rest of the power line. Section 6-1-E-20 (A) through (G), as proposed, identify conditions that must exist for the delay in relocation of power poles to be granted by the County Commission.

STAFF RECOMMENDATION:

That if the Utah County Planning Commission recommend the above land use ordinance

amendments that would allow for delayed relocation of power poles within the dedicated road right-of-way of the frontage of one or two lot large scale development plats, based on the following findings:

1. The proposed amendment requires that six conditions be met prior to a petition to the County Commission for a delay in relocation of the power poles;
2. That the conditions consider public safety, increased bonding, and County liability, to protect Utah County until the power poles are relocated from the road right-of-way in the future; and
3. The proposed amendments provide the owner or developer of the large scale plat with an alternative to relocation within a one year period.