

**ARTICLE IV
PERMITS, CONDITIONAL USE REZONING, AND FINAL PLAT
APPROVAL**

**Part I. Zoning Permits, Major Development Permits, Conditional Use
Permits, and Variances**

Section 46 Permits Required.

- (a) Subject to Section 273 (Sign Permits), the use made of property may not be substantially changed (see Section 152), substantial clearing, grading or excavation may not be commenced if such activity is undertaken for purposes of preparing a lot for development other than a single-family detached residence, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits:
 - (1) A zoning permit issued by the land use administrator or his designee; or
 - (2) A major development permit issued by the planning board; or
 - (3) A conditional use permit issued by the Town Board of Commissioners.
- (b) Zoning permits, major development permits, conditional use permits and sign permits are issued under this ordinance only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided in Section 64, all development shall occur strictly in accordance with such approved plans and applications.
- (c) Physical improvements to land to be subdivided may not be commenced except in accordance with a major development permit issued by the planning board for major subdivisions or after final plat approval by the land use administrator for minor subdivisions (see Part II of this article).
- (d) A zoning permit, major development permit, conditional use permit, or sign permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit-issuing authority. All special and conditional use permits and major development permits (except permits for single-family and two-family residential uses) shall be recorded by the permit recipient in the Union County Registry after execution by the record owner as provided in Section 63.

Section 47 No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled.

Issuance of a conditional use, major development, or zoning permit authorizes the recipient to commence the activity resulting in a change in use of the land or, (subject to obtaining a building permit), to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures or to make necessary improvements to a subdivision. However, except as provided in Sections 60 and 61, the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this ordinance and all additional requirements imposed pursuant to the issuance of a special or conditional use permit have been complied with.

Section 48 Who May Submit Applications.

- (a) Applications for zoning, major development, conditional use, or sign permits or subdivision final plat approval or variances will be accepted only from persons having the legal authority to take action in accordance with the permit, or the plat approval. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this ordinance, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees).
- (b) The administrator may require an applicant to submit evidence of his authority to submit the application in accordance with subsection (a) whenever there appears to be a reasonable basis for questioning this authority.

Section 49 Applications To Be Complete.

- (a) All applications for zoning permits, major development permits, conditional use permits, sign permits, or variances must be complete before the permit issuing authority is required to consider the application.
- (b) Subject to subsection (c), an application is complete when it contains all of the information that is necessary for the permit issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this ordinance.
- (c) Detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more of the appendices to this ordinance. A site specific development plan shall be submitted only with a conditional use permit application. Other applications (zoning and variance) do not require the application to contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information to allow the permit issuing authority to evaluate the application in the light of the substantive

requirements set forth in the text of this ordinance. However, whenever this ordinance requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the administrator. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article VII.

- (d) The presumption established by this ordinance is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the planning board or Town Board of Commissioners or board of adjustment, the applicant may, on the recommendations of the land use administrator, determine as to whether more or less information than that set forth in Appendix A should be submitted.
- (e) The land use administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In classes of cases where a minimal amount of information is necessary to enable the land use administrator to determine compliance with this ordinance, such as applications for zoning permits to construct single-family houses or applications for sign permits, the administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

Section 50 Staff Consultation Before Formal Application.

- (a) To minimize development planning costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements of this ordinance, pre-application consultation between the developer and the staff is encouraged or required as provided in this section.
- (b) Before submitting an application for a major development permit authorizing a development that consists of, or contains, a major subdivision or an application for a conditional use permit, the developer shall submit to the land use administrator a sketch plan of such subdivision, drawn to scale. The developer shall submit the number of sketch plan copies (not to exceed ten) that the land use administrator deems reasonably necessary to facilitate the sketch plan review process. The sketch plan shall contain:
 - (1) Vicinity Map. A sketch vicinity map showing the location of the subdivision in relation to neighboring tracts, subdivisions, roads and waterways.

- (2) Boundaries. The boundaries of the tract and the portion of the tract to be subdivided.
 - (3) Acreage. The total acreage to be subdivided.
 - (4) Use of Land. The existing and proposed uses of the land within the subdivision and adjoining it.
 - (5) Street and Lot Layout. The proposed street and lot layout with lot sizes and widths.
 - (6) Owner Information. The name, address and telephone number of owner(s).
 - (7) Zoning. The zoning classification(s) of the tract and of adjacent properties.
 - (8) Property Identification Number (PIN), as provided by the Union County Tax Office.
 - (9) Demarcation of the 100-year floodplain, as derived from the most up-to-date floodplain maps produced by FEMA.
 - (10) Any other information the developer believes necessary to obtain the informal opinion of the planning staff as to the proposed subdivision's compliance with the requirements of this ordinance.
- (c) Following a review of the sketch plan and other materials by the land use administrator, the Union County Health Department, the Wingate Public Works Department, the Wingate Volunteer Fire Department, the Union County Schools System, and the Union County Soil Conservation Service, the land use administrator shall advise the developer of the results of this review. The application for a major development permit for a project requiring sketch plan review may not be submitted until after the land use administrator has provided the developer with comments and recommendations based upon this review.
- (d) Before submitting an application for any other permit, developers are strongly encouraged to consult with the land use administrator concerning the application of this ordinance to the proposed development.

Section 51 Staff Consultation After Application Submitted.

- (a) Upon receipt of a formal application for a zoning permit, conditional use permit, or major development permit, or minor subdivision plat approval, or a variance the land use administrator shall review the application and confer with the applicant to ensure

that he understands the administrator's interpretation of the applicable requirements of this ordinance, that he has submitted all of the information that he intends to submit, and that the application represents precisely and completely what he proposes to do.

- (b) If the application is for a conditional use permit, major development permit, or variance, the land use administrator shall place the application on the agenda of the appropriate board when the applicant indicates that the application is as complete as he intends to make it. However, as provided in Section 56, if the land use administrator believes that the application is incomplete, he shall recommend to the appropriate board that the application be denied on that basis.

Section 52 Zoning Permits.

- (a) A completed application form for a zoning permit shall be filed with the land use administrator.
- (b) The administrator shall issue the zoning permit unless he finds, after reviewing the application and consulting with the applicant as provided in Section 50, that:
 - (1) The requested permit is not within his jurisdiction according to the Table of Uses; or
 - (2) The application is incomplete; or
 - (3) If completed as proposed in the application, the development will not comply with one or more requirements of this ordinance (not including those requirements concerning which a variance has been granted or those the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations).

Section 53 Major Development Permits.

- (a) A completed application form for a major development permit shall be submitted to the planning board by filing the application with the land use administrator.
- (b) The planning board shall issue the major development permit unless it finds after reviewing the application that:
 - (1) The requested permit is not within its jurisdiction according to the Table of Uses; or
 - (2) The application is incomplete; or
 - (3) If completed as proposed in the application, the development will not comply with one or more requirements of this ordinance (not including those

the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations).

Section 54. Reserved.

Section 54A Parallel Conditional Use Zoning Districts

- (a) ~~Some land uses are of such a nature or scale that they have significant impacts on either the immediate surrounding area and/or on larger areas in the Town that cannot be predetermined and controlled by general zoning district standards. There are also circumstances in which a general district designation would not be appropriate for a particular property even though a particular use itself allowed in that district, if properly planned, would be appropriate for that location. The process established herein provides for the accommodation of such uses by reclassification of property to a "parallel conditional use" district.~~
- (b) ~~In order for a property owner to secure privileges for developing property under the parallel conditional use process, a two step process must be followed. The property owner must first have his property rezoned by the Town Board of Commissioners to a parallel conditional use district in accordance with Article XX. A site specific plan shall also be submitted as part of the rezoning application, detailing the proposed use of the property.~~
- (c) ~~The Town Board of Commissioners must then approve a conditional use permit (in accordance with Section 54B) that may contain fair and reasonable conditions to assure conformance with this Ordinance, other plans adopted by the Board of Commissioners and compatibility with surrounding properties.~~
- (d) ~~The Town Board of Commissioners can advertise and hold a combined public hearing regarding 1) the rezoning of the property to a CUD district and 2) the issuance of the conditional use permit. Since testimony and evidence will be provided throughout the public hearing, the Chairman shall swear in all witnesses and speakers at the beginning of the public hearing. The decision to approve or disapprove the conditional use permit shall be undertaken in a quasi-judicial manner, according to State Statutes.~~
- (e) ~~Any use permitted under this process must also conform to the development regulations for the corresponding general zoning district. Thus, if a property were rezoned to a "CUD B 2" Conditional Use District, and a conditional use permit approved authorizing the development of a particular use, that use must (1) be a use allowed in the B 2 district, (2) meet all dimensional, screening and related requirements of the B 2 district, (3) meet any listed supplemental requirements for that particular use in the B 2 zoning district, and (4) meet any additional requirements placed by the Town Board of Commissioners on the conditional use permit.~~

~~(f) Rezoning of property to any CUD parallel conditional use district is a voluntary procedure on the part of the property owner and is intended for firm development proposals. It is not intended or suited for securing early zoning for a tentative proposal that may be undertaken at some unknown time in the future.~~

~~(g) In order for a property owner to secure development privileges in accordance with the regulations contained in this Article, the Town Board of Commissioners must first rezone said property to a particular CUD district and then must issue a conditional use permit allowing the particular development to take place. Unlike requests for rezoning to a general zoning district, applications for CUD zoning (and associated approval for a conditional use permit) may only be filed by the owner of the property(ies) in question or the owner's authorized agent.~~

~~No CUD parallel conditional use district and associated conditional use permit shall be established until the owner(s) of the property(ies) in question (or his authorized agent) proposing the district has submitted an application for the rezoning of the property and an application for a conditional use permit, and the Town Board of Commissioners has approved both applications in accordance with the procedures stated in Article XX and this Article.~~

~~(g) The following CUD parallel conditional use districts are hereby established and the Town Board of Commissioners shall have the authority to rezone property to any of these districts, in accordance with the procedures set forth in this ordinance:~~

- ~~CUD-RA-40~~
- ~~CUD-RA-20~~
- ~~CUD-R-40~~
- ~~CUD-R-20~~
- ~~CUD-R-10~~
- ~~CUD-R-8~~
- ~~CUD-R-6~~
- ~~CUD-B-1~~
- ~~CUD-B-2~~
- ~~CUD-B-3~~
- ~~CUD-B-6~~
- ~~CUD-HC~~
- ~~CUD-LI~~
- ~~CUD-HI~~

Section 54A - Reserved

Section 54B. Conditional Use Permits.

(a) An application for a conditional use permit shall be submitted to the Town Board of Commissioners by filing a copy of the application with the land use administrator. There may be one public hearing for the Town Board of Commissioners to decide on the conditional use rezoning application and the conditional use permit.

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However, the hearing regarding the parallel conditional use rezoning shall be conducted in accordance with Article XX, while the issuance of the conditional use permit shall be conducted in accordance with the quasi-judicial procedures set forth in this Section.

- (b) The Town Board of Commissioners shall issue the conditional use permit, along with any fair and reasonable conditions to assure conformance with this Ordinance, other plans adopted by the Town Board of Commissioners, and compatibility with surrounding properties. All additional conditions imposed by the Town Board of Commissioners shall be agreed upon by the applicant prior to final consideration. The Board of Commissioners shall not issue the conditional use permit if it concludes, based on the evidence submitted at the hearing, that:
 - (1) The permit is not within its jurisdiction according to the table of uses; or
 - (2) The application is incomplete; or
 - (3) If completed as proposed in the application, the development will not comply with one or more requirements of this ordinance (not including those the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations).
- (c) Even if the Town Board of Commissioners finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not, will meet even one of the following findings:
 - (1) Will materially endanger the public health or safety; or
 - (2) Will substantially injure the value of adjoining or abutting property; or
 - (3) Will not be in harmony with the area in which it is to be located; or
 - (4) Will not be in general conformity with the land development plan, thoroughfare plan, or other plan.
- (d) Major alterations or amendments to an approved site plan must be resubmitted for full review by the Town Board of Commissioners. Minor changes or alterations not involving a significant impact on the site plan may be administratively approved by the land use administrator.

Section 55 Burden of Presenting Evidence; Burden of Persuasion.

- (a) The burden of presenting a complete application (as described in Section 49) shall be upon the applicant. However, unless the permit issuing board informs the

applicant at the hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application (either at that meeting or at a continuation hearing), the application shall be presumed to be complete.

- (b) Once a completed application has been submitted, the burden of presenting competent, substantial evidence to the respective Board to conclude that the application should be denied for any reasons stated in Sections 52, 53, 54 54A and 54B shall be upon the party or parties urging this position, unless the information presented by the applicant in his application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application.
- (c) The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this ordinance remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any of the reasons set forth in this Ordinance rests on the party or parties urging that the requested permit should be denied.

Section 56 Recommendations on Major Development Applications, Conditional Use Permit Applications, and Variance Applications.

- (a) When a complete application for a conditional use permit, major development permit or variance is submitted, it shall be accompanied by a report setting forth the land use administrator's proposed findings concerning the application's compliance with Section 49 (Application To Be Complete) and the other requirements of this ordinance, as well as any staff recommendations for additional requirements to be imposed by the board of adjustment, planning board or Town Board of Commissioners.
- (b) If the land use administrator or staff proposes a finding or conclusion that the application fails to comply with Section 49 or any other requirement of this ordinance, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

Section 57 Planning Board Action on Major Development Permits.

- (a) In considering whether to approve an application for a major development permit, the planning board shall proceed according to the following format:
 - (1) The planning board shall consider whether the application is complete. If no member moves that the application be found incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the Planning Board that the application is complete.
 - (2) The planning board shall consider whether the application complies with all of the applicable requirements of this ordinance. If a motion to this effect

passes, the Planning Board need not make further findings concerning such requirements. If such a motion fails or is not made then a motion shall be made that the application be found not in compliance with one or more of the requirements of this ordinance. Such a motion shall specify the particular requirements the application fails to meet. Separate votes may be taken with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the Planning Board to be unsatisfied through this process.

- (3) If the planning board concludes that the application fails to comply with one or more requirements of this ordinance, the application shall be denied. If the Planning Board concludes that all such requirements are met, it shall issue the permit.
- (b) In response to questions, suggestions or recommendations by the planning board, the applicant may agree to modify his application to include fair and reasonable conditions as suggested by the planning board. Unless such modifications are so substantial or extensive that the planning board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the planning board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.

Section 58 Action on Conditional Use Permits.

- (a) In considering whether to approve an application for a conditional use permit, the Town Board of Commissioners shall follow quasi-judicial procedures, as well as the following:
 - (1) The Town Board of Commissioners shall consider whether the application is complete. If the Board of Commissioners concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. A motion to this effect shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. If a motion to this effect is not made, this shall be taken as an affirmative finding by the Town Board of Commissioners that the application is complete.
 - (2) The Town Board of Commissioners shall consider whether the application complies with all of the applicable requirements of this ordinance. If a motion to this effect passes, the Board of Commissioners need not make further findings concerning such requirements. If such a motion fails or is not made, then a motion shall be made that the application be found not in compliance with one or more requirements of this ordinance. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the

application. It shall be conclusively presumed that the application complies with all requirements not found by the Board of Commissioners to be unsatisfied through this process. If the Board of Commissioners concludes that the application fails to meet one or more of the requirements of this ordinance, the application shall be denied.

- (3) If the Board of Commissioners concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Section 52, 53, 54A, and 54B. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Section 59 Additional Requirements on Conditional Use Permits.

- (a) Subject to subsection (b), in granting a conditional use permit, the Town Board of Commissioners may attach to the permit such reasonable requirements in addition to those specified in this ordinance as will ensure that the development in its proposed location:
 - (1) Will not endanger the public health or safety;
 - (2) Will not injure the value of adjoining or abutting property;
 - (3) Will be in harmony with the area in which it is located; and
 - (4) Will be in conformity with the land development plan, thoroughfare plan, or other plan officially adopted by the Board of Commissioners.
- (b) The Town Board of Commissioners may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.
- (c) Without limiting the foregoing, the Town Board of Commissioners may attach to a permit a condition limiting the permit to a specified duration.
- (d) All additional conditions or requirements shall be entered on the permit.
- (e) All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this ordinance.
- (f) A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in Subsections 54B(b) or (c).

Section 60 Authorizing Use, Occupancy, or Sale Before Completion of Development.

- (a) In cases when, because of weather conditions or other factors beyond the control of the zoning, conditional use, or major development permit recipient (exclusive of financial hardship) it would be unreasonable to require the permit recipient to comply with all of the requirements of this ordinance before commencing the intended use of the property or occupying any buildings, the permit issuing board or the administrator may authorize the commencement of the intended use or the occupancy of buildings (inso-far as the requirements of this ordinance are concerned) if the permit recipient provides a performance bond or other security established by the board or the land use administrator. The amount of such security shall be equal to 1.25 times the cost of installing all required improvements. Such amount, furnished by the subdivider, shall be verified by the appropriate Town staff.

- (b) When the board of adjustment imposes additional requirements upon the permit recipient in accordance with Section 59 or when the developer proposes in the plans submitted to any permit issuing authority (administrator, planning board, board of adjustment, or Town Board of Commissioners) to install amenities beyond those required by this ordinance, the permit issuing authority or the land use administrator may authorize the permittee to commence the intended use of the property or to occupy any building before the additional requirements are fulfilled or the amenities installed if he specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it or he concludes that compliance will be ensured as the result of any one or more of the following:
 - (1) A performance bond or other security satisfactory to the board or land use administrator is furnished. The amount of such security shall be equal to 1.25 times the cost of installing all required improvements. Such amount, furnished by the subdivider, shall be verified by the appropriate Town staff.

 - (2) The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Section 114 (Penalties and Remedies For Violations) and Section 115 (Permit Revocation).

- (c) With respect to subdivisions in which the developer is selling developed lots (i.e. lots with buildings on them), the planning board (for major subdivisions) or the land use administrator (for minor subdivisions) may grant final plat approval and authorize the sale of lots before the completion of all improvements required by this ordinance if it or he concludes that (i) completion of such improvements has been delayed because of weather conditions or other factors beyond the control of the developer and (ii) it would be unreasonable to require the completion of such

improvements before granting final plat approval. The planning board (for major subdivisions) or the land use administrator (for minor subdivisions) may grant final plat approval and authorize the sale of lots before all the requirements of this ordinance are fulfilled if the subdivider provides a performance bond or other security to ensure that all such improvements are completed within a reasonable period (not to exceed six months) after final plat approval. The amount of such security shall be equal to 1.25 times the cost of installing all required improvements. Such amount, furnished by the subdivider, shall be verified by the appropriate Town staff; or

- (d) With respect to subdivisions in which the developer is selling only undeveloped lots, the Board (for major subdivisions) or the land use administrator (for minor subdivisions) may grant final plat approval and authorize the sale of lots before all the requirements of this ordinance are fulfilled if the subdivider provides a performance bond or other security to ensure that all of these requirements will be fulfilled within not more than twenty-four months after final plat approval. The amount of such security shall be equal to 1.25 times the cost of installing all required improvements. Such amount, furnished by the subdivider, shall be verified by the appropriate Town staff.; or
- (e) A security instrument provided under this section shall not be acceptable if it expires less than one (1) year after the date of issuance. Any request to release such security shall be subject to approval by the land use administrator once it is determined that all improvements have been made and approved as provided for in this ordinance.

Section 61 Completing Developments in Phases.

- (a) If a development is constructed in phases or stages in accordance with this section, then, subject to subsection (c), the provisions of Section 47 (No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled) and Section 60 (exceptions to Section 47) shall apply to each phase as if it were the entire development.
- (b) As a prerequisite to taking advantage of the provisions of subsection (a), the developer shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this ordinance that will be satisfied with respect to each phase or stage.
- (c) If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of his application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit issuing authority, no land may be used, no buildings may be

occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit, provided that:

- (1) If the improvement is one required by this ordinance then the developer may utilize the provisions of Subsections 60(a), (c) or (d);
- (2) If the improvement is an amenity not required by this ordinance or is provided in response to a condition imposed by the board of adjustment, then the developer may utilize the provisions of Subsection 60(b).
- (3) Modifications in approved phasing schedules may be approved in the same manner as other permit modifications (see Section 64).

Section 62 Expiration of Permits.

- (a) Zoning, conditional use, and sign permits shall expire automatically if, within one year after the issuance of such permits:
 - (1) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
 - (2) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see Section 61), this requirement shall apply only to the first phase.
- (b) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire; provided, however, that no permit shall expire pursuant to this subsection (b) within the applicable period provided in subsection (a). Expiration of the permit shall not affect the provisions of Section 63.
- (c) The permit issuing authority may extend for a period up to six months the date when a permit would otherwise expire pursuant to subsections (a) or (b) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six months upon the same findings. All such extensions may be granted without resorting to the formal processes and fees required for a new permit.
- (d) For purposes of this section, the permit within the jurisdiction of the planning board or the board of adjustment is issued when such board votes to approve the

application and issue the permit. A permit within the jurisdiction of the land use administrator is issued when the earlier of the following takes place:

- (1) A copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant; or
- (2) The land use administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded if required under Subsection 64(b).

(e) Notwithstanding any of the provisions of Article VIII, Nonconforming Situations, this section shall be applicable to permits issued prior to the date this section becomes effective.

(e)(f) Conditional Use permits with a vested right established in accordance with the provisions of Section 69, Zoning Vested Rights shall expire at the end of the two-year vesting period establishing pursuant to Section 69 (f).

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Section 63 Effect of Permit on Successors and Assigns.

- (a) Zoning, conditional use permits, major development permits, and sign permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:
 - (1) No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and
 - (2) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain an interest in the property had actual or record notice (as provided in subsection (b)) of the existence of the permit at the time they acquired their interest.
- (b) Whenever a conditional use permit or major development permit is issued to authorize development (other than single-family or two-family residences) no

building permit may be issued until the record owner of the property has signed a written acknowledgment that the permit has been issued and the permit has been recorded by the permit recipient in the Union County Registry and indexed under the record owner's name as grantor.

Section 64 Amendments to and Modifications of Permits.

- (a) Insignificant deviations from the permit (including approved plans) issued by the planning board, the board of adjustment, the Town Board of Commissioners, or the land use administrator are permissible and the land use administrator may authorize such insignificant deviations to all permits. Insignificant deviations to major development permits and conditional use permits may be authorized by the land use administrator. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- (b) Minor design modifications in permits (including approved plans) are permissible with the approval of the land use administrator. Such permission may be obtained without a formal application, public hearing, or payment of any additional fee. For purposes of this section, minor design modifications are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- (c) All other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the board of adjustment, planning board, or the Town Board of Commissioners, new conditions may be imposed in accordance with Section 59, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.
- (d) The land use administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (a), (b), and (c).
- (e) A developer requesting approval of changes shall submit a written request for such approval to the land use administrator. Approval of all changes must be given in writing.

Section 65 Reconsideration of Board Action.

- (a) Whenever (i) the planning board disapproves a major development permit application, or (ii) the board of adjustment disapproves an application for a variance on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective board for a period of twelve

(12) months from the date of board action unless the applicant clearly demonstrates that:

- (1) Circumstances affecting the property that is the subject of the application have substantially changed; or
 - (2) New information is available that could not with reasonable diligence have been presented with the previous application. A request to be heard on this basis must be filed with the land use administrator within the time period specified for an appeal from the board's decision (See Sections 91 and 116). However, such a request does not extend the period within which an appeal must be taken.
- (b) Notwithstanding subsection (a), the planning board or board of adjustment may at any time consider a new application affecting the same property as an application previously denied. A new application is one that differs in some substantial way from the one previously considered.
- (c) Whenever the Town Board of Commissioners disapproves an application for a conditional use permit or a text or map amendment on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective board for a period of twelve (12) months from the date of board action unless the Town Board of Commissioners finds that there have been substantial changes in conditions or circumstances bearing on the application. The Town shall not accept for consideration a petition if the requirements of Section 321(d) apply.

Section 66 Applications to be Processed Expeditiously.

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the Town shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this ordinance.

Section 67 Maintenance of Common Areas, Improvements, and Facilities Not Dedicated.

- (a) The recipient of any zoning, conditional use, major development, or sign permit, or his successor, shall be responsible for maintaining all common areas, improvements or facilities required by this ordinance or any permit issued in accordance with its provisions, except those areas, improvements or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner

intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed. (See also Section 83 for provisions requiring security to ensure maintenance of streets and other facilities offered for dedication).

- (b) A developer may create a homeowners association or similar legal entity to succeed to its responsibilities under this section, so long as such homeowners association is established in accordance with Section 68. A developer may create a homeowners association or similar legal entity to succeed to its responsibilities under this section, so long as such homeowners association is established in such a manner that:
- (1) Provision for the creation of the association or similar entity is made before any lot in the development is sold or any building occupied;
 - (2) The association or similar legal entity has clear legal authority to maintain and exercise control over the common areas and facilities that must be maintained under this section; and
 - (3) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities.

Sections 68 through 75 - Reserved.

Section 68 Owner's Associations

(a) Establishment of Owner's Association

- (1) Creation – An Owner's Association shall be established to fulfill the requirement of the North Carolina Condominium Act or to accept conveyance and maintenance of all common areas and facilities with a development containing common areas.
- (2) Conveyance – Where development have common areas for facilities serving more than one dwelling unit, these areas shall be conveyed to the Owners' Association in which all owners of lots in the development shall be members. All areas other than public street right-of-way, other areas dedicated to the Town, and lots shall be shown and designated as common areas. The fee-simple title of the common area shall be conveyed by the subdivider or developer to the Owner's Association.
- (3) Subdivision or Conveyance of Common Area - Common areas shall not be subsequently subdivided or conveyed by the Owners' Association unless a revised preliminary plat and a revised final plat showing such subdivision or conveyance have been submitted and approved.

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(4) Owners' Association Not Required - Developments involving only two units attached by a party wall shall not be required to have common areas or an Owners' Association. Developments with only two units attached and not having an Owners' Association shall have an agreement between owners concerning maintenance of party walls.

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(b) Submission of Owner's Association Declaration

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Prior to or concurrently with the submission of the final plat for review and approval, the applicant shall submit a copy of the proposed Bylaws of the Owners' Association containing covenants and restraints governing the Association, plats, and common areas. The submitted documents shall be reviewed by the Town Attorney and a recommendation made to the Town Board as to their sufficiency. The restrictions shall include provisions for the following:

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(1) Existence before Any Conveyance - The Owners' Association declaration shall be organized and in legal existence prior to the conveyance, lease-option, or other long-term transfer of control of any unit or lot in the development.

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(2) Membership - Membership in the Owners' Association shall be mandatory for each original purchaser and each successive purchaser of a lot or unit. Provisions shall be made for the assimilation of owners in subsequent sections of the development.

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(3) Owners' Association Declaration

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a. Responsibilities of Owners' Association. The Owners' Association declaration shall state that the association is responsible for:

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(i) The payment of premiums for liability insurance and local taxes;

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(ii) Maintenance of recreational and/or other facilities located on the common areas; and

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(iii) Payment of assessments for public and private improvements made to or for the benefit of the common areas.

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b. Default of Owners' Association. Upon default by the Owners' Association in the payment to the Town of any assessments for public improvements or ad valorem taxes levied against the common areas, which default shall continue for a period of six months, each owner of a lot in the development shall become personally obligated to pay to the Town a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the Town by the total

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number of lots in the development. If the sum is not paid by the owner within thirty days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the owner, his heirs, devisees, personal representatives and assigns. The Town may either bring an action at law against the owner personally obligated to pay the same, or may elect to foreclose the lien against the property of the owner.

c. Powers of the Association. The Owners' Association is empowered to levy assessments against the owners of lots or units within the development. Such assessments shall be for the payment of expenditures made by the Owners' Association for the items set forth in this Section, and any assessments not paid by the owner against whom such assessments are made shall constitute a lien on the lot of the owner.

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d. Easements. Easements over the common areas for access, ingress, and egress from and to public streets and walkways and easements for enjoyment of the common areas, and for parking, shall be granted to each lot owner.

e. Maintenance and Restoration. Provisions for common area maintenance of and restoration in the event of destruction or damage shall be established.

(4) Nonresidential Condominiums

If the condominium is a nonresidential condominium, the declaration shall contain the following provision:

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a. Parking spaces shall be allocated among the individual lots or units in such a manner that each unit is entitled to a sufficient number of parking spaces to comply with this Ordinance for the use intended to be located therein.

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b. The Owners' Association shall maintain a register listing the total number of parking spaces in the development and the number of parking spaces allocated to each lot or unit. A copy of this register shall be available to the Town at the request of the Land Use Administrator.

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c. The Owners' Association shall not reduce the number of parking spaces allocated to an individual lot or unit without the express written consent of the owner thereof, and in no case shall the number of parking spaces allocated to an individual unit be reduced to a number below that required by this Ordinance.

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Section 69 Zoning Vested Rights

(a) A vested right shall be established, upon petition by the owner of the property, after the approval or conditional approval of a site specific development plan by the Town Board in accordance with the provisions outlined in this Section. A right which has been vested as provided for in this Section shall, as a general rule, remain valid for two years and shall attach to and run with the land.

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(b) Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this Section shall have the meaning indicated when used in this Section.

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(1) Landowner. Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan.

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(2) Property. All real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.

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(3) Site specific development plan. A plan which has been submitted to the Town of Wingate by a landowner describing in detail the type and intensity of use for a specific parcel or parcels of property. Such plan shall be in the form of a site plan required to obtain a conditional use permit. The information required by Section 49 and Appendix A, as applicable, shall be included. All site specific development plans shall be approved by the Town Board.

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(4) Vested right. The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

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(c) A vested right shall be deemed established, following the receipt of a petition from the property owner, upon the effective date of approval by the Town Board of a site specific development plan. Following the approval of a site specific development plan, the Land Use Administrator shall issue a vested right certificate to the landowner which indicates the duration of the vesting period, the conditions, if any, imposed on the approval of the site specific development plan, and any other information determined by the Land Use Administrator to be necessary to administer the vested right.

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(d) A vested right shall confer upon the landowner the right to undertake and complete the development and use of the property as delineated in the approved site specific development plan. The Town Board may approve a site specific development plan upon such terms and conditions, as may be determined necessary to protect the

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public health, safety, and welfare. Failure to comply with the approved terms and conditions shall result in a forfeiture of vested rights.

(e) Approval by the Town Board of a site specific development plan shall follow the procedural requirements for the issuance of a conditional use permit as outlined in Sections 54B and 58. Changes in or modifications to an approved site specific development plan shall be made only with the concurrence of the Town Board in accordance with the provisions of Section 64.

(f) A vested right obtained under this section runs with the land and is valid for two years from the effective date of approval by the Town Board of a site specific development plan. A vested right shall not be extended by any amendments or modifications to an approved site-specific development plan unless expressly provided for by the Town Board. A vested right shall expire at the end of two years if no building permit applications have been filed with the Town of Wingate to construct the use or uses proposed in the approved site specific development plan. If building permits are issued, the provisions of NCGS 160A-418 and NCGS 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the lack of progress during the two-year vesting period.

(g) A vested right, once established or provided for in this section, precludes any zoning action by the Town of Wingate which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the approved site specific development plan, except:

(1) With the written consent of the affected landowner;

(2) Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;

(3) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property, which is caused by such action;

(4) Upon findings, by ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the town of the site specific development plan; or

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- (5) Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site specific development plan, in which case the town may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a public hearing.
- (h) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.
- (i) Notwithstanding any provisions of this Section, the establishment of a vested right shall not preclude, change, or impair the authority of the town to enforce provisions of this Ordinance governing nonconforming situations or uses.
- (j) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such vested rights.
- (k) The town shall not require a landowner to waive his or her vested rights as a condition of developmental approval.

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Section 70 Development Agreements

- (a) To better structure and manage development approvals for large-scale, multiple-phase developments and to ensure their proper integration into local capital facilities programs, the Town Board may enter into development agreements with developers, subject to the procedures and requirements of Chapter 160A, Article 19, Part 3D.
- (b) A development agreement may specify that the developer furnish certain public facilities, but it must also provide that the delivery date of these public facilities will be tied to successful performance by the developer in completing the private portion of the development. A development agreement may specify that the project be commenced or completed within a certain period of time.
- (c) A development must provide a development schedule and include commencement dates and interim completion dates for intervals no greater than five years.
- (d) The property subject to a development agreement must be at least 25 acres in size.
- (e) The term of the development agreement may not exceed 20 years.
- (f) A development agreement must be approved by the Town Board by ordinance.

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- (g) Before entering into a development agreement, the Town Board shall conduct a public hearing following the same public hearing procedures and requirements delineated in Article XX for zoning text amendments.

Section 71 through 75 Reserved

Part II. Major and Minor Subdivisions

Section 76 Regulation of Subdivisions.

Major subdivisions are subject to a two step approval process. Physical improvements to the land to be subdivided are authorized by a major development permit as provided in Part I of Article IV of this ordinance, and sale of lots is permitted after final plat approval as provided in Section 79. Minor subdivisions only require a one step approval process: final plat approval (in accordance with Section 78).

Section 77 No Subdivision Without Plat Approval.

- (a) No person may subdivide his land except in accordance with all of the provisions of this ordinance. In particular, no person may subdivide his land unless and until a final plat of the subdivision has been approved in accordance with the provisions of Section 78 or Section 79 and recorded in the Union County Registry.
- (b) As provided in G.S. 160A-373, the Union County Register of Deeds may not record a plat of any subdivision within the Town and any extraterritorial planning area unless the plat has been approved in accordance with the provisions of this ordinance.
- (c) Notwithstanding, the provisions of this Ordinance shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved or recorded with the register of deeds, provided the contract does all of the following:
- (1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.
 - (2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.

- (3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.
 - (4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.
- (d) The provisions of this Ordinance shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision ordinance and recorded with the register of deeds.

Section 78 Minor Subdivision Approval.

- (a) The land use administrator or his designee shall have the authority to approve or disapprove minor subdivision final plats in accordance with the provisions of this section.
- (b) The applicant for minor subdivision plat approval, before complying with subsection (c), may submit a sketch plan to the land use administrator for a determination of whether the approval process authorized by this section can be and should be utilized. The land use administrator may require the applicant to submit whatever information is necessary to make this determination, including, but not limited to, a copy of the tax map showing the land being subdivided and all lots previously subdivided from that tract of land since February 14, 1978.
- (c) Before granting minor subdivision approval, the land use administrator shall refer the application to the Wingate Public Works Director for a recommendation as to the proposed water supply and sewage treatment systems as well as the other appropriate town departments and agencies for their review. All such agencies shall be given a reasonable period to submit their recommendations to the land use administrator.

- (d) Before an application is reviewed by the land use administrator, applicants for minor subdivision approval shall submit to the land use administrator a copy of a plat conforming to the requirements set forth in Subsections 79(b) and (c)(as well as three prints of such plat), and containing the endorsements set forth in Subsections 80(2), 80(3), and (if road or street improvements are involved) 80(4), and 80(5), 80(7), 80(8), as well as the following Certificate of Approval:

Certificate of Approval

I hereby certify that the minor subdivision shown on this plat is in all respects in compliance with the Wingate Land Use Ordinance, and that therefore this plat has been approved by the Wingate Land Use Administrator, subject to its being recorded in the Office of the Union County Register of Deeds within ninety days of the date below.

Date

Land use administrator

- (e) If the subdivision involves the installation of improvements, the minor subdivision approval process may not be used or if the subdivision results in the creation of more than a total of five lots out of one tract since February 14, 1978, regardless of whether the lots were created at one time or over an extended period of time.
- (f) The land use administrator shall approve the proposed subdivision unless the subdivision is not a minor subdivision as defined in Section 15 or the application or the proposed subdivision fails to comply with subsection (e) or any other applicable requirement of this ordinance.
- (g) If the subdivision is disapproved, the land use administrator shall promptly furnish the applicant with a written statement of the reasons for disapproval.
- (h) Approval of any plat is contingent upon the plat being recorded within ninety days after the date the Certificate of Approval is signed by the land use administrator.

Section 79 Major Subdivision Final Plan Approval Process.

- (a) The planning board shall have the authority to approve or disapprove major subdivision final plats in accordance with the provisions of this section.
- (b) The applicant for major subdivision final plat approval shall submit to the land use administrator a final plat, drawn to scale and otherwise acceptable to the Union County Register of Deed's Office for recording purposes. When more than one sheet is required to include the entire subdivision, all sheets shall be made of the same size and shall show appropriate match marks on each sheet and appropriate

references to other sheets of the subdivision. The applicant shall also submit six prints of the plat.

All major subdivision plats shall also be provided in digital format. Digital information shall satisfy the following criteria:

- (1) Files shall be submitted in AutoCAD DXF, DWG or ESRI ArcInfo Export format; or other acceptable means approved by the Land Use Administrator.
 - (2) Data submitted shall be exchanged on IBM formatted floppy disk, IBM formatted Zip Disk, or CD-ROM in ISSO 9660 format.
- (c) In addition to the appropriate endorsements, as provided in Section 80, the final plat shall contain the following information:
- (1) A vicinity map;
 - (2) The name of the subdivision, which name shall not duplicate the name of any existing subdivision as recorded in the Union County Registry;
 - (3) The name of the subdivision owner or owners;
 - (4) The township, county and state where the subdivision is located;
 - (5) The name of the surveyor and his registration number and the date of survey;
 - (6) The scale according to which the plat is drawn in feet per inch or scale ratio in words or figures and bar graph;
 - (7) The date of the survey and plat preparation;
 - (8) The location of all rights-of-way, easements and areas to be dedicated to public use with the purpose of each stated;
 - (9) The sections numbered consecutively throughout the entire subdivision and the lots numbered consecutively throughout each section; and
 - (10) The number of square feet or acreage of each lot shown on the plat;
 - (11) All of the additional information required by G.S. 47-30 (f).
 - (12) If the subdivision is located within a floodway or floodplain, the statement required under subsection 255(b) of this ordinance.
 - (13) Delineation of any on-site waste disposal areas.

- (14) The location of all existing buildings on the tract to be subdivided.
 - (15) If the subdivision is located in a drinking water supply watershed, the appropriate statement required per Section 339.
 - (16) The property identification number (PIN), as provided by the Union County Tax Office.
- (d) The planning board shall approve the proposed plat unless it finds that the plat or the proposed subdivision fails to comply with one or more of the requirements of this ordinance or that the final plat differs substantially from the plans and specifications approved in conjunction with the compliance permit that authorized the development of the subdivision.
 - (e) If the final plat is disapproved by the Planning Board, the applicant shall be furnished with a written statement of the reasons for the disapproval.
 - (f) Approval of a final plat is contingent upon the plat being recorded within ninety days after the approval certificate is signed by the land use administrator or his designee.

Section 80 Endorsements on Major Subdivision Plats.

All major subdivision plats shall contain the endorsements listed below in substantially the format indicated.

(1) Certificate of Approval

I hereby certify that all streets shown on this plat are within the Town of Wingate, all streets and other improvements shown on this plat have been installed or completed or that their installation or completion (within twenty-four months after the date below) has been assured by the posting of a performance bond or other sufficient surety, in the amount of \$ _____, and that the subdivision shown on this plat is in all respects in compliance with the Wingate Land Use Ordinance, and therefore this plat has been approved by the Wingate Planning Board, subject to its being recorded in Union County.

 Date

 Land use administrator

(2) Certificate of Ownership and Dedication

I (we) hereby certify that I (we) am/are the owner of the property described hereon, which property is located within the subdivision regulation jurisdiction of Wingate, that I hereby freely adopt this plan of subdivision and hereby establish all lots, with minimum building setback lines, and dedicate to public use all areas shown on this plat as streets, alleys, walks, parks, open space, and easements, except those specifically indicated as private, and that I will maintain all such areas until the offer of dedication is accepted by the appropriate public authority. All property shown on this plat as dedicated for a public use shall be deemed to be dedicated for any other public use authorized by law when such other use is approved by the Town Board of Commissioners in the public interest.

_____ Date

_____ Owner

(Note: All current owners must sign. Please include signature and date lines for all owners)

I, a notary public of _____ County, North Carolina, certify that _____, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official seal this ____ day of _____, 20__.

My commission expires _____

SEAL OR STAMP

NOTARY PUBLIC

(3) Certificate of Survey and Accuracy

I hereby certify that this map (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (a deed description recorded in Book____, Page____ of the____County Registry) (other); that the ratio of precision as calculated is 1:____; that the boundaries not surveyed are shown as broken lines plotted from information found in Book____, Page____, and that this plat was prepared in accordance with G.S. 47-30, as amended. Witness my original signature, registration number and seal this ___ day of _____, 20__.

Seal or Stamp _____
Registered Land Surveyor

Registration Number

(4) Street Construction Certificate

I hereby certify that the streets on this plat designated as public are or will be in accordance with the minimum right-of-way and construction standards established by the Town of Wingate for acceptance on the state highway system.

OR

I hereby certify that the streets on this plat designated as private do not satisfy the minimum right-of-way and construction standards established by the Town of Wingate and will not be accepted on the state highway system.

District Engineer

Date

(5) Certificate of Registration.

The foregoing certificates of _____, a Notary (or notaries) Public, are certified to be correct. Filed for registration on the _____ day of _____, and duly recorded in the Office of the Register of Deeds in Book of Deeds Number _____, Page _____.

Register of Deeds

By _____
Deputy

(6) Certificate of Major Plat Approval by the Wingate Planning Board.

This subdivision plat has been found to comply with the provisions of the Wingate Land Use Ordinance and is approved this date by the Wingate Planning Board for recording in the Union County Office of the Register of Deeds. The plat shall be recorded within thirty (30) days of this date.

Land Use Administrator

Date

(7) Certificate of Subdivision Type.

It is the duty of the surveyor, by a certificate, to certify to one of the following on the face of the plat:

- (1) That the survey creates a subdivision of land within the area of Wingate that is regulated by the Wingate Land Use Ordinance, that regulates the subdivision of parcels of land;
- (2) That the survey is of an existing parcel or parcels of land;
- (3) That the survey is of another category, such as recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision;
- (4) That the information available to the surveyor is such that the surveyor is unable to make a determination to the best of his/her professional ability as to the provisions contained in (1) through (3) above.

Section 81 Plat Approval Not Acceptance of Dedication Offers.

Approval of a plat does not constitute acceptance by the Town or other public agency of the offer of dedication of any streets, sidewalks, parks or other public facilities shown on a plat. However, the Town or other public agency may, to the extent of its statutory authority, accept such offer of dedication by resolution of the governing body or by actually exercising control over and maintaining such facilities.

Section 82 Protection Against Defects.

The Town shall not accept the offer of dedication of any facilities or improvements unless and until a competent professional has certified to the Town that such improvements or facilities have been constructed in accordance with the requirements of this ordinance and any other applicable Town standards. This certification may be made by a Town employee or by an architect or engineer retained by the developer.

Section 83 Maintenance of Dedicated Areas Until Acceptance.

- (a) Subject to subsection (c), all facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer of dedication is accepted by the appropriate public authority.

- (b) The developer of any development containing streets intended for public dedication shall post a performance bond or other sufficient surety to guarantee that such streets will be properly maintained until the offer of dedication is accepted by the Town of Wingate. The amount of the security shall generally constitute about fifteen percent of the cost of the improvements. The developer shall provide information sufficient to determine the cost of the improvements.
- (c) The Board of Commissioners may relieve the developer of the requirements of this section if it determines that a property owners association has been established for the development in accordance with section 67(b) and that this association has assumed and is capable of performing the obligations set forth in subsection (a).

Sections 84 through 90 Reserved Establishment of Private Deed Restrictions.

The subdivider is encouraged to prepare and record private deed restrictions (restrictive covenants) to establish development standards to address particular development and land use issues and/or to establish more desirable development standards that exceed the Town of Wingate requirements. For example, subdividers may establish deed restrictions that address such issues as architectural design, building materials, minimum building floor area, parking of recreational vehicles, home-based businesses, etc. Deed restrictions are private agreements between the subdivider and lot buyers. Enforcement of deed restrictions is a private matter and is solely the responsibility of the lot owners and/or a property owners' association. Deed restrictions can not be enforced by the Town of Wingate. The Land Use Administrator or any other official of the Town of Wingate will not be involved in the enforcement of private deed restrictions.

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Sections 85 through 90 Reserved