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MCDERMOTT, WILL & EMERY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 15, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Presentation; CS Docket No. 97-98, Amendment of Rules and Policies Governing Pole Attachments

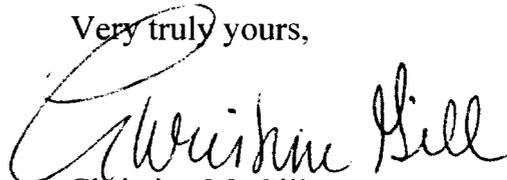
Dear Ms. Salas:

This is to notify the Secretary that Christine M. Gill and Thomas P. Steindler, counsel for American Electric Power Services Corporation, Commonwealth Edison Company and Duke Energy Corporation, met today with Kathleen Costello and Sherille Ismail of the Cable Services Bureau to discuss just compensation case law and market rate methodology in connection with the FCC's consideration of pole attachment issues in the above-referenced proceeding. Mr. Ismail and Ms. Costello were provided with a copy of a report by Christopher M. James (William H. Dial/SunBank Eminent Scholar in Finance, University of Florida), which sets out a methodology for determining just compensation for pole attachments. A copy of the report is submitted herewith for the record in this proceeding.

Also attached for inclusion in the record is a memorandum which addresses the just compensation case law.

Pursuant to the FCC's *ex parte* rules, an original and a copy of this letter and attachments are submitted for the record in this proceeding.

Very truly yours,


Christine M. Gill

Enclosures

cc: Kathleen Costello
Sherille Ismail

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FEB 15 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MCDERMOTT, WILL & EMERY
Washington, D.C.

MEMORANDUM

TO: Cable Services Bureau
Federal Communications Commission

DATE: February 15, 2001

FROM: Christine M. Gill
Thomas P. Steindler

RE: CS Docket No. 97-98; Just Compensation Case Law

The United States Court of Appeals for the Eleventh Circuit held in Gulf Power Co. v. FCC, 187 F.3d 1324 (11th Cir. 1999), that the Pole Attachments Act, 47 U.S.C § 224, effects a taking of utility property within the meaning of the Takings Clause of the Fifth Amendment. This holding was affirmed in Gulf Power Co. v. FCC, 208 F.3d 1263 (11th Cir. 2000) cert. granted, 2001 U.S. LEXIS 953 (U.S. Jan. 22, 2001) (limited to other questions). At issue, therefore, is what the Constitution requires as “just compensation” for pole attachments.

In giving content to the just compensation requirement, the Supreme Court has sought to put the owner “in as good a position as if his property had not been taken.” United States v. 564.54 Acres of Land, 441 U.S. 506, 510 (1979), quoting Olson v. United States, 292 U.S. 246, 255 (1934).¹ The Court has articulated this standard as requiring that the owner of the property taken must receive the “full monetary equivalent of the property taken.” United States v. Reynolds, 397 U.S. 14, 16 (1970). The Court has emphasized that it has never attempted to prescribe a rigid rule for determining what is just compensation in all circumstances. United States v. Commodities Trading Corp., 339 U.S. 121, 122 (1950). However, the Court has held that in most cases, the “fair market value” of the property at the time of the taking is the preferred measure used to achieve this goal. Id.; United States v. 564.54 Acres of Land, 441 U.S. 506; Kirby Forest Indus. v. United States, 467 U.S. 1 (1984). Fair market value is established by determining “what a willing buyer would pay in cash to a willing seller” at the time of the taking. United States v. 50 Acres of Land, 469 U.S. 24, 25 n.1, quoting United States v. Miller, 317 U.S. 369, 373 (1943); United States v. 564.54 Acres of Land, 441 U.S. at 511. The concept of fair market value is consistent with the “basic equitable principles of fairness” that underlie the Just Compensation Clause. United States v. 564.54 Acres of Land, 441 U.S. at 517, quoting United States v. Fuller, 409 U.S. 488, 490 (1973).

¹ Accord, Monongahela Navigation Co. v. United States, 148 U.S. 312, 326 (1893); United States v. Miller, 317 U.S. 369, 373 (1943); United States v. Virginia Elec. & Power Co., 365 U.S. 624, 633 (1961); United States v. Reynolds, 397 U.S. 14, 16 (1970); Almota Farmers Elevator & Warehouse Co. v. United States, 409 U.S. 470, 473-74 (1973).

Any and all factors which would cause a reasonable seller to ask a higher price for the property and which would induce a reasonable buyer to pay a higher sale price for the property should be considered in determining market value. Snowbank Enters. Inc. v. United States, 6 Cl. Ct. 476, 484 (Cl. Ct. 1984). An owner of property, therefore, is entitled to have the market value of his property determined by reference to its highest and best use. Id. at 485, citing Olson v. United States, 292 U.S. 246, 256-57 (1934). Since the concept of market value is intimately related to the anticipated selling price of a particular piece of property, courts have generally recognized that sales of comparable properties provide the best evidence of market value. Kimball Laundry Co. v. United States, 338 U.S. 1, 6 (1949) (Frankfurter, J.) (“If exchanges of similar property have been frequent, the inference is strong that the equivalent arrived at by the haggling of the market would probably have been offered and accepted, and it is thus that the ‘market price’ becomes so important a standard of reference.”); Snowbank Enters. Inc. v. United States, 6 Cl. Ct. at 485; United States v. Certain Parcels of Land, 327 F. Supp. 181 (W.D.N.Y. 1970), aff’d, 443 F.2d 375 (2d Cir. 1970).

While fair market value is the normal method of determining just compensation, the Supreme Court has “refused to make a fetish even of market value, since that may not be the best measure of value in some cases.” United States v. Cors, 337 U.S. 325, 332 (1949). Instead, the Court has held that when “market value is too difficult to find, or when its application would result in manifest injustice to the owner or public, courts have fashioned and applied other standards.” United States v. 564.54 Acres of Land, 441 U.S. at 512-513, quoting United States v. Commodities Trading Corp., 339 U.S. 121, 123 (1950).

This occurs, for example, in instances in which property of the type involved is so infrequently traded that we cannot predict whether the prices previously paid, assuming there have been prior sales, would be repeated in a sale of the condemned property. United States v. 564.54 Acres of Land, 441 U.S. at 513; United States v. Toronto, Hamilton & Buffalo Nav. Co., 338 U.S. 396, 402 (1949); United States v. Miller, 317 U.S. at 374 (“Where, for any reason, property has no market, resort must be had to other data to ascertain its value.”) Another circumstance is where the market price is inflated by the special needs of the buyer for that particular property. United States v. Cors, 337 U.S. 325, 333 (1949). This is described as a “forced-purchase” price or a “hold-up” price. 1 Lewis Orgel, Valuation Under Eminent Domain § 23 (2d ed. 1953) (“Forced-purchase or Hold-Up Prices”).

Most pole attachments are regulated by the Federal government under the Pole Attachments Act, 47 U.S.C. § 224, or by state public utility commissions under state pole attachment legislation. As such, generally speaking there is no true market for pole

attachments.² Under these circumstances, courts have turned to the “replacement cost” approach and the “income capitalization” approach as alternative methods to determine market value.³

² This is not true with respect to attachments of wireless equipment for which there is a thriving competitive market.

³ The cable television industry has argued that in the absence of government regulation, “market prices” for pole attachments would represent “hold-up” prices,” since, they allege, that utility poles are “bottleneck facilities” for cable company access to customers. While not directly pertinent to the just compensation analysis (since the market is already regulated and the comparable sales method is inappropriate for that reason), this allegation is factually incorrect. While utility poles and underground conduit systems may have been bottleneck facilities in the past and in some places, they are almost never bottleneck facilities today. Communications companies almost always have alternatives to existing utility poles and conduits. In many cases, there are wireless alternatives. For video, these include Direct Broadcast Satellite (DBS) and wireless cable. Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 6th Annual Report, 15 F.C.C.R. 978, 983-84 (Jan. 14, 2000); NCTA, Cable Television Industry 2000: Overview, at <http://www.ncta.com/pdf/yearendreview2000.pdf> (last visited Feb. 5, 2001) (“Cable Overview”). For high speed Internet, the wireless alternatives include satellite; fixed wireless, including both multichannel distribution service (aimed at residential subscribers) and local multipoint distribution service (offered to the business market), and terrestrial broadcast. Cable Overview at 12014. For telecommunications services, there is an even wider variety of wireless options. See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report & Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, 2000 FCC LEXIS 4372 (Aug. 18, 2000) (Mobile Communications); see also *id.* at Appendix E (Fixed Voice and Data Services).

In addition, the simplest and most widely-used alternative is direct burial. The most recent FCC statistics show that more than 5% of the wireline facilities of local exchange carriers are buried underground. FCC, 1999 Statistics of Common Carriers, at 15 (Aug. 11, 2000) available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC_State_link/SOCC/99socc.pdf (last visited Feb. 5, 2001). In cities across the country, from Tacoma, Washington to Washington, D.C., downtown streets are being cut to accommodate new fiber optic cable being laid. See, e.g., Marcelene Edwards, Need For Speed Faces Competition: MetroMedia and AT&T Join Others Laying Fiber Optic Cables For Internet Access Downtown, The News Tribune (Tacoma, Washington), July 26, 2000, at D1; Stephen C. Fehr, Road Kill on the Information Superhighway: Rise of Underground Cable Tears Up the District's Streets, The Washington Post, Mar. 21, 1999, at A1. In many cases, telecommunications providers insist on burying their fiber optic cable, rather than taking the risk of outages from hurricanes, ice and wind storms, vehicle accidents, and the like, associated with overhead facilities. This is particularly true in the case of long-haul fiber optic backbone connections.

Today, nearly all electric, cable and communications wires in new residential and commercial developments are buried directly underground, and do not use utility poles, ducts, conduits or rights-of-way. States and municipalities across the country require newly installed cable television transmission facilities to be constructed underground, and many areas of the country are taking steps to require the undergrounding of aerial facilities. A compendium of selected state and municipal ordinances requiring new and/or existing facilities to be placed underground is attached hereto at Exhibit A.

In short, today, utility poles and underground conduits are almost never bottleneck facilities for cable and telecommunications companies. These companies have real, practical alternatives.

The replacement cost approach produces a valuation by establishing the cost to replace the property, less depreciation, at a different but comparable site. See Jacques B. Gelin & David W. Miller, The Federal Law of Eminent Domain § 4.1, at 200 (1982). This alternative to the market data approach has been described (in the context of real estate condemnation) as follows:

Where a building is a specialty, and, in a sense, unique, constructed for a special purpose, the valuation cannot be predicated on the same basis as a building constructed for general or usual dwelling or commercial use. In the case of a specialty there is a limited market and the customary testimony of market prices is not available. It has been held under such circumstances that reproduction cost, or replacement cost, minus depreciation, may be considered. It may even be the only method in some situations.

4 Julius L. Sackman et al., Nichols on Eminent Domain § 12C.01[3] (3d ed. 1978). Another commentator writes:

In the absence of sales prices of similar property, the court must find some other criterion of value, and of these the most acceptable is the replacement cost of the property taken Accordingly, in these cases we find the courts estimating the value of the land separately on the basis of the sale price of other similar land in the vicinity and adding thereto the cost of reproducing less depreciation of the structure in order to arrive at the value of the entire property.

2 Lewis Orgel, Valuation Under the Law of Eminent Domain § 246 (2d ed. 1953); see also 1 Lewis Orgel, *supra*, § 38 at n.7 (citing cases “distinguishing between ‘market value in a strict sense’, which is lacking in the absence of an active market, and market value in a broad sense.”); Gelin & Miller, *supra*, § 4.1. Additionally, a standard appraisal manual discusses replacement value in the context of the three traditional approaches to valuation:

In assignments to estimate market value, the ultimate goal of the valuation process is a well-supported value conclusion that reflects the appraiser’s study of all factors that influence the market value of the property being appraised. To achieve this goal, an appraiser studies a property from three different viewpoints, which correspond to three traditional approaches to value.

1. The value indicated by recent sales of comparable properties in the market -- the sales comparison approach.
2. The current cost of reproducing or replacing the improvements, minus the loss in value from depreciation, plus land value -- the cost approach.

3. The value of the property's earning power based on the capitalization of its income -- the income capitalization approach.

American Institute of Real Estate Appraisers, The Appraisal of Real Estate 62 (9th ed. 1987); see also, id., at 349 ("The cost approach is also used to estimate the market value of proposed construction, special purpose properties, and other properties that are not frequently exchanged in the market.").

The other alternative to the market sales method, the income capitalization approach, involves the calculation of the present value of the income the property could be expected to generate over its useful economic life. See, e.g., United States v. 179.26 Acres of Land, 644 F.2d 367, 371-72 (10th Cir. 1981); 4 Julius L. Sackman et al., Nichols on Eminent Domain § 12C.01[3][c]. In their treatise on federal condemnation law, Gelin and Miller explain:

The income capitalization approach makes the basic assumption that the property's value is shown by the income realized from it and that the market value of the property can be arrived at by studying the income flow from the property and determining the capital necessary to give this income.

Gelin & Miller, supra, § 4.1 at 200. The authors further explain:

In some instances the "capitalization" approach is necessary. Some properties are traded too seldom to make the comparable sales approach feasible. United States v. 179.26 Acres of Land, 644 F.2d 367, 372 (10th Cir. 1981) (limestone deposits). And, where the investor buys primarily for the income flow from the property, a capitalization analysis is relevant.

Id. at 210.

The authorities discussed above set out the general rules for interpreting the Just Compensation Clause. In summary:

1. There is no rigid rule for determining what is "just compensation" under all circumstances and in all cases.
2. Fair market value is normally accepted as a just standard.
3. Where there is no true market, as in the case of pole attachments, value is determined by other methods.
4. The other methods are the replacement cost and the income capitalization methods.

Professor James' report, submitted herewith, sets out a methodology a combination of the replacement cost and income capitalization methods. It uses these alternate methods because there is no true market for pole attachments. It estimates market value by looking first at the replacement cost of the poles, less depreciation. In other words, it calculates the amount it would cost a cable or telecommunications company to build its own alternative network of poles or underground facilities, and accounts for the fact that the utility's network of poles or underground facilities is not new by making a deduction for the physical depreciation of the utility infrastructure.

In addition, the methodology calculates a premium over and above the replacement cost which reflects the value of ready-made network infrastructure. This premium, which Professor James calls "network value," is the result of the burgeoning demand for communications infrastructure in the midst of the communications explosion of the past decade and the substantial profitability of these businesses. While network value can be derived in a number of different ways, Professor James elects to estimate this premium by using the prices wireless telephone companies have paid at FCC auctions for PCS spectrum. As Professor James explains, the PCS auction prices will substantially undervalue the premium associated with cable and communications access to utility poles. Nonetheless, PCS auction prices provide a mechanism for calculating the additional value associated with access to ready-made network infrastructure.

The methodology set out in Professor James' report is a fair and reasonable method for calculating market value for pole attachments, given the absence of a true market. This methodology also disposes of cable industry complaints that a "market price" for pole attachments would actually be a "monopoly price," which is based on the theory that utility poles are "bottleneck facilities" for cable and communications companies. The price derived by Professor James' methodology is completely independent of any market power utility companies may possess with regard to poles and conduits. The replacement cost of the poles has nothing to do with whether the poles are bottleneck facilities -- it is simply the cost of constructing an alternative network. And network value is calculated from auction prices in the highly competitive wireless telephone market. In other words, even assuming, for purposes of argument, that utility poles were bottleneck facilities, the market value generated by Professor James' methodology is totally independent of any monopoly power utilities may possess over such facilities. Monopoly power would come into play as a theoretical matter only if one were to use the "comparable sales" method for calculating market value, which Professor James' methodology does not. Rather, Professor James uses the alternative methods traditionally employed in the absence of a free market to estimate market value. The hyperbolic allegations made by the cable industry that utility companies are seeking to collect monopoly rents are simply unfounded.

Cable Services Bureau
Federal Communications Commission
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We respectfully request that the Commission review the methodology contained in Professor James' report and permit utilities to collect compensation for pole attachments in a manner consistent with that methodology.



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CODE OF ORDINANCES City of ASHEVILLE, NORTH CAROLINA Codified through Ord. No. 2713, e
PART II CODE OF ORDINANCES
Chapter 7 DEVELOPMENT
ARTICLE XV. SUBDIVISION REGULATIONS

ARTICLE XV. SUBDIVISION REGULATIONS

Sec. 7-15-1. Subdivisions.

(a) *Purpose.* The regulations for the subdivision of land set forth below are established to promote orderly growth and development; provide for suitable residential and nonresidential subdivisions with adequate streets and utilities and appropriate building sites, provide for the coordination of streets within subdivisions with existing or planned streets and with other public facilities; provide for the dedication or reservation of rights-of-way or easements for streets and utility purposes; and provide proper land records for the convenience of the public and for better identification and permanent location of real property boundaries.

(b) *Exempt subdivisions.* The following subdivisions are exempt from the standards and requirements set forth in these regulations:

- (1) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the city as shown in this chapter or other applicable local ordinances;
- (2) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the city as set forth in this article;
- (3) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (4) The public acquisition by purchase of strips of land for the widening or opening of streets;

Nothing in this subsection or elsewhere in this chapter shall be interpreted to permit the consecutive subdivision of land into not more than three lots for residential use in order to avoid meeting the requirements for subdivisions set forth in this chapter. No such subdivision shall be approved or permitted by the city.

(c) *Determination of exemption.* Prior to the exemption of a subdivision from these regulations, the property owner shall submit to the planning and development director maps, deeds, or other materials as required to permit a determination of exemptions by the planning and development director. Upon a determination by the planning and development director that the proposed subdivision is exempt, it shall not be subject to these regulations.

(d) *Coordination with other requirements.* When applications for other approvals are required for the subdivision, applications for these approvals may be submitted simultaneously with the initiation of the subdivision approval process to reduce the time required to secure all necessary approvals. Application forms as required for other approvals may be obtained from the development and permitting center.

(e) *Plan submittal.* Applications for subdivision approval, including required plats, shall be submitted to the development and permitting center. Major subdivision plats shall be presented to the development and permitting center at least 14 days prior to the next scheduled meeting of the technical review committee. Subdivision plats for minor subdivisions may be submitted at any time. Application forms may be obtained from the development and permitting center.

(f) *Approval required.*

- (1) *Date of compliance.* After the effective date of this chapter, no plat for the subdivision of land within the planning and regulation jurisdiction of the City of Asheville shall be filed, accepted for recording, or recorded, nor shall the Clerk of Superior Court order the recording of a plat until it has been submitted to the planning and development director and approved as set forth herein. The signature of the planning and development director on the plat shall signify conformance with the requirements set forth in this chapter.

(2) *No conveyance without approval.* No real property lying within the planning and regulation jurisdiction of the City of Asheville as now or hereafter fixed shall be subdivided until it conforms with all applicable sections of this chapter. Violations of this article shall be subject to the penalties set forth in subsection 7-18-2. Any sale or transfer of land in a subdivision subject to these regulations by reference to an unapproved plat or the use of a metes and bounds description shall be considered a violation of this chapter.

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PART II CODE OF ORDINANCES
Chapter 7 DEVELOPMENT*
ARTICLE XV. SUBDIVISION REGULATIONS
Sec. 7-15-1. Subdivisions.

(3) *Designation of approval agency.* The City of Asheville Planning and Development Department is designated as a planning agency for the purposes of N.C. Gen. Stat. sec. 160A-373. The planning and development director or his/her designee shall be authorized to sign the plat signifying final approval of subdivisions.

(4) *Dedication and acceptance of public areas.*

a. *Rights-of-way and easements.* The approval of a final plat does not constitute acceptance by the city of the dedication of any street or other ground, public utility line or other public facility shown on the plat. When located within the corporate limits of the City of Asheville, such dedications may be accepted only by resolution of the Asheville City Council following inspection and approval or by the city actually exercising control over and maintaining such dedicated areas. Until the offer of dedication is accepted by the city in either of these manners, the developer shall be responsible for maintenance of those areas.

b. *Open space.* Land designated as public open space or a park on a plat shall be considered to be offered for dedication, but not accepted until the Asheville City Council has by express action done so. Until such dedication has been accepted, such areas may be used for open space purposes by its owner or by an association representing owners of lots within the subdivision. Land so offered for dedication shall not be used for any purpose inconsistent with the proposed public use without the approval of the Asheville City Council.

(g) *Street and utility construction.*

(1) *Plans.* Construction plans for all street, water, sanitary sewer, and storm sewer facilities shall be submitted to the planning and development director following preliminary plat approval. The street and utility construction plans for each subdivision, or portion thereof, shall include all improvements lying within or adjacent to the subdivision as well as improvements to all streets and water and sanitary sewer lines lying outside the subdivision which provide service to the subdivision. No final plat shall be approved until all improvements have been installed and approved or a guarantee accepted.

(2) *No construction without plan approval.* No improvement to or new construction of street, water, sanitary sewer, and storm sewer facilities shall be permitted until the street and utility construction plans for such improvements/construction have been reviewed and approved by the City of Asheville and appropriate governmental agencies. These agencies may include, but shall not be limited to, the Metropolitan Sewerage District, the Asheville-Buncombe Water Authority, the North Carolina Department of Transportation, and the Division of Environmental Management of the North Carolina Department of Environment, Health and Natural Resources, or their successors.

(3) *Inspection of construction.* All construction undertaken pursuant to approved street and utility construction plans shall be inspected and approved by the City of Asheville and/or the appropriate governmental agencies.

(4) *Guarantee in lieu of construction of improvements.* In lieu of completion of construction of the required improvements and utilities prior to final plat approval, the property owner may submit to the City a performance bond from a corporate surety, licensed in North Carolina to execute such bonds, or an irrevocable letter of credit payable to the City of Asheville, either of which shall be in an amount equal to 150 percent of the estimated cost of the installation of the required improvements, as determined by the city. The performance bond or the irrevocable letter of credit shall secure the completion of construction of the improvements shown on the approved preliminary plat.

The letter of credit or bond shall remain in full force and effect until such time as the construction of improvements and installation of utilities are completed and accepted by the City of Asheville.

Failure to maintain the required bond or irrevocable letter of credit shall result in the revocation of the approval of the preliminary plat and any permits issued as a result of the preliminary plat approval.

Failure to initiate construction of the improvements within one year of the date the bond or letter of credit was accepted by the city shall result in the city constructing the improvements, with the cost to be paid from the letter of credit or bond. In the event that the amount of the letter of credit on hand is insufficient to pay for the completion of the improvements, the property owner shall pay to the city the total amount of the insufficiency and if the city is not paid, the amount of the insufficiency shall constitute a lien on the property in favor of the city.

(h) *Maintenance of common areas.* Where subdivisions have common areas or facilities serving more than one dwelling unit, the developer shall be responsible for the maintenance of these common areas and facilities. This responsibility may be transferred to another entity, provided the developer prepares a document for recordation showing the transfer of the property and the maintenance responsibilities to a successor. A copy of the recorded document must be provided to the planning and development department. In such case, the successor shall be responsible for the maintenance of the common access and facilities.

(i) *Recordation of final plat.* A final plat must be recorded in the office of the Register of Deeds for Buncombe County within 30 days following approval by the city. No plat shall be considered as finally approved until such plat has been recorded. If the final plat of all or part of the area shown on the approved preliminary plat is not recorded in the office of the register of deeds within 24 months of approval of the preliminary plat, the preliminary plat shall be resubmitted to the planning and development director. Such resubmittal shall be in accordance with the requirements of this chapter.

Final plats for subdivisions developed in phases shall be recorded in accordance with the schedule presented by the applicant during the preliminary plat approval. The applicant may request, in writing, adjustments to the approved schedule and the planning and development director may grant extensions of up to 12 months for each phase. If the final plat for any phase of the subdivision is not submitted in accordance with the approved schedule, the preliminary plat shall be resubmitted to the planning and development director. Such resubmittal shall be in accordance with the requirements of this chapter.

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CODE OF ORDINANCES City of ASHEVILLE, NORTH CAROLINA Codified through Ord. No. 2713, e

PART II CODE OF ORDINANCESChapter 7 DEVELOPMENT*ARTICLE XV. SUBDIVISION REGULATIONSSec. 7-15-1. Subdivisions.**(j) Modifications.**

(1) *Approval authority.* The Asheville City Council, upon receiving the recommendation of the Asheville Planning and Zoning Commission, may approve modifications to the standards found in subsection 7-15-1(k).

(2) *Grounds for modifications.* Modifications from the standards of this article may be granted in cases of physical hardship. Cases of physical hardship shall be defined as those cases where because of the topography of the tract to be subdivided, the condition or nature of adjoining areas, or the existence of other unusual physical conditions, strict compliance with the provisions of this article would cause unusual and unnecessary hardship on the property owner. Financial hardship shall not be considered grounds for a modification.

(3) *Conditions.* The Asheville Planning and Zoning Commission, in recommending modifications, may suggest such conditions as will ensure the purposes of the standards or requirements waived.

(k) Subdivision standards.

(1) *General.* All proposed subdivisions, including those developed as part of a planned unit development, shall comply with this article.

(2) *Lot dimensions and standards.* The size, shape, and orientation of lots shall be appropriate for the location of the proposed subdivision and for the type of development contemplated and shall conform to the following:

a. *Conformance to other regulations.* Every lot shall have sufficient area, dimensions, and street access to permit a principal building to be erected thereon in compliance with all city ordinances.

b. *Lot lines and drainage.* Lot boundaries shall be made to coincide with natural and pre-existing manmade drainageways to the extent practicable to avoid the creation of lots that can be built upon only by altering such drainageways.

c. *Lots on thoroughfares.* Residential lots in subdivisions shall not be entered from major thoroughfare streets.

d. *Access requirements for residential lots.* All residential lots must abut a public street. Lots shall have a minimum street frontage of 25 feet.

INSET: Figure 15-1

A lot which abuts a public street with a narrow street frontage (flag lot) may be approved by the planning and development director if it meets the following requirements:

1. A flag lot shall serve only one single-family dwelling and its accessory buildings.

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PART II CODE OF ORDINANCES

Chapter 7 DEVELOPMENT

ARTICLE XV. SUBDIVISION REGULATIONS

Sec. 7-15-1. Subdivisions.

2. Minimum width for the flagpole portion of the lot shall be 25 feet.

3. The flagpole portion of the lot shall not be used to calculate compliance with minimum lot area, width, and depth or to provide off-street parking.

4. Where public water is available, any occupied building on the flag lot must be within 500 feet of a fire hydrant, as specified in the Asheville Fire Prevention Code. This distance shall be measured along the street, then along the flagpole portion of the lot, and then in a straight line to the building location.

5. Where public sewer is available, occupied buildings on the flag lot shall have a gravity sewer service line, or the sewer requirement shall be noted on the preliminary plat.

6. Use of a single driveway to serve a flag lot and an adjoining lot is permitted and encouraged.

7. Maximum length for the flagpole portion of the lot shall be 250 feet.

e. *Access requirements for non-residential lots.* Lots or parcels used for non-residential purposes are not required to abut a public street if all of the following requirements are met:

1. An easement or right-of-way with a minimum width of 30 feet connects the lot to a public street;

2. The easement or right-of-way is recorded in the Office of the Register of Deeds for Buncombe County;

3. A paved road with a minimum width of 20 feet (not including parking) provides access from the lot(s) or parcel(s) to a public street;

4. The access road is located within the recorded easement or right-of-way;

5. The access road shall be constructed to the standards, established by the City of Asheville for commercial streets;

6. A road maintenance agreement, which identifies the responsibilities for the maintenance of the access road and clearly states that the City of Asheville is not responsible for maintenance of the road, is prepared and recorded in the Office of the Register of Deeds for Buncombe County; and

7. Not more than five lots or parcels or more than ten acres shall be served by the easement or right-of-way.

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PART II CODE OF ORDINANCES
Chapter 7 DEVELOPMENT*
ARTICLE XV. SUBDIVISION REGULATIONS
Sec. 7-15-1. Subdivisions.

INSET: Figure 15-2

f. Lot boundaries must be contiguous with street right-of-way boundaries and shall not extend to the center of public streets. However, land to be subdivided which has existing property lines extending into street rights-of-way or into streets may continue to show the existing property lines extending into street rights-of-way or into streets.

g. Areas in the public right-of-way shall not be used to calculate compliance with minimum lot size requirements.

(3) Streets.

a. *Conformance with the Asheville Thoroughfare Plan.* The location and design of streets shall be in conformance with the Asheville Thoroughfare Plan, where applicable. Pavement widths and right-of-way widths in excess of the minimum street standards may be required if recommended by the thoroughfare plan.

b. *Conformance with adjoining street system.* The planned street layout of a proposed subdivision shall be compatible with existing or proposed streets on adjoining or nearby tracts.

c. *Street classification.* The final determination of the classification of streets in a proposed subdivision shall be made by the City of Asheville. Street classifications are defined in section 7-2-5 of this chapter.

d. *Street design criteria.* The minimum street design standards for the street classifications are contained in the City of Asheville's Standard Specifications and Design Manual, attached to this chapter as Appendix 7-D ("Manual"). Right-of-way dedication and paving of streets in and adjacent to the subdivision shall be in conformance with the right-of-way and pavement width requirements of the manual and the streets shall be designed in accordance with the manual.

e. *Street names.* Streets which are in alignment with existing streets shall bear the name of the existing street. Street names shall not duplicate or closely approximate phonetically the names of existing streets in the City of Asheville or its area of jurisdiction and shall otherwise comply with Chapter 16, Article 6 of the Code of Ordinances of the City of Asheville.

f. *Stub streets.* Where the property to be developed adjoins undeveloped property which can be accessed from the proposed street system, proposed streets shall be extended by dedication to the boundary of the undeveloped property.

g. *Private streets.* Private streets shall not be permitted in subdivisions, except as provided in subsection 7-15-1(k)(3)e. of this chapter.

(4) Block length. Blocks in subdivisions should not exceed 2,500 feet in length. Longer block lengths are appropriate in areas with topographical constraints which would make shorter block lengths difficult. There shall be a 400-foot minimum distance between intersections on collector or higher classification streets.

(5) Sidewalks. Sidewalks shall be provided in all subdivisions as required by and pursuant to the requirements for sidewalks as set forth in subsection 7-11-6 of this chapter. No irregularly shaped lots, strips, or flag lots shall be created for the purpose of avoiding the application of this section.

(6) *Phased development.* Subdivisions may be designed to be platted and constructed in phases. A plan for phased development must be approved by the planning and development director which provides for the provision of adequate public facilities to support each and any phase independent of the overall subdivision plan and provided that access and water supply for fire protection is present to the extent required by the Asheville Fire Prevention Code. In approving the phases, the planning and development director may require that additional streets, water and sewer facilities, or other required public facilities be constructed as part of the phase or phases to ensure that sufficient public facilities will be in place to support each phase or phases independent of any future subdivision development.

(7) *Landscaping and buffering.* Landscaping shall be provided in the proposed subdivision as required by section 7-11-2 of this chapter. Preservation of existing trees is encouraged.

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PART II CODE OF ORDINANCES

Chapter 7 DEVELOPMENT*

ARTICLE XV. SUBDIVISION REGULATIONS

Sec. 7-15-1. Subdivisions.

(8) *Open space.* Open space as required by section 7-11-3 of this chapter and other applicable ordinances and regulations of the City of Asheville shall be provided in the proposed subdivision.

(9) *Utilities.*

a. *Public water and sewer construction requirements.* Water and sewer lines, connections, and equipment shall be constructed in accordance with applicable state and local regulations.

b. *Water and sewer connection.* Connection of each lot to public water and sewer utilities shall be required if public service is available and connection is not impractical. Where public sewer is not available, lots shall meet applicable Buncombe County Environmental Health Division regulations. An initial letter from the environmental health division stating that the soils, and proposed lots, are suitable for septic systems shall be provided prior to preliminary plat approval. Final approval of the lot layout by the environmental health division shall be obtained after preliminary plat approval and before final plat approval.

c. *Utility easements.*

1. *Major subdivisions.* An appropriate easement, of the width required by the utility company/agency (but not less than 20 feet in width), shall be provided for utilities including, but not limited to, electric service, telephone service, cable television service, sewer lines, and water lines within the subdivision. The location of the easements and the physical relation of all utilities within the easement shall be approved by the City of Asheville, in consultation with the utility providers, prior to final plat approval. Placement of all utilities in a common easement is encouraged when such placement does not conflict with these requirements or others.

2. *Minor subdivisions.* Lots fronting on public streets with access to existing utilities are not required to have utility easements. All other lots shall have a utility easement along the front, rear, or side of each lot which is of the width required by the utility company/agency (but not less than 20 feet in width).

d. *Water supply for fire protection.*

1. Water supply for fire protection shall be provided as required by the Asheville Fire Prevention Code.

2. Size, type, and installation of hydrants shall conform to the specifications set forth in the manual.

(10) *Stormwater management.*

a. Design of the stormwater management system shall be consistent with the City of Asheville's stormwater runoff regulations, as set forth in section 7-12-5 of this chapter.

b. The stormwater management system design shall comply with the specifications set forth in the stormwater section of the manual.

(11) *Flood standards.*

a. All subdivision proposals within the City of Asheville shall be consistent with the requirements of the city's flood protection regulations set forth in section 7-12-1 of this chapter and with the need to minimize flood damage. Proposals for subdivisions located in the extraterritorial jurisdiction areas shall comply with Buncombe County's flood protection regulations.

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- b. All subdivision proposals shall have the public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- c. Adequate drainage shall be provided to reduce exposure to flood hazards.
- d. Base flood elevation data shall be provided for subdivision proposals whenever any portion of the project site is located within a designated flood hazard area.
- e. Preliminary and final plats shall note the location of floodplain and floodway boundaries and the 100-year flood elevation.

(12) *Electrical utilities.* Where not otherwise inconsistent with flood protection requirements, electrical lines shall be installed underground.

(13) *Placement of monuments.* The Standards of Practice for Land Surveying in North Carolina, as adopted by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, shall apply when conducting surveys.

(Ord. No. 2369, § 1, 5-27-97; Ord. No. 2428, §§ 19, 20, 11-11-97; Ord. No. 2664, § 1(v), 2-8-00)

**ARTICLE XVI. USES BY RIGHT, SUBJECT TO SPECIAL REQUIREMENTS AND
 CONDITIONAL USES**

Sec. 7-16-1. Uses by right, subject to special requirements.

(a) *Purpose.* Uses by right, subject to special requirements are uses permitted by right, provided that the specific standards set forth in this section are met. The specified standards are intended to insure these uses fit the intent of the districts within which they are permitted, and that these uses are compatible with other development permitted within the districts. All uses by right, subject to special requirements shall comply with the following:

- (1) Properties and structures containing uses by right, subject to special requirements shall be conforming to all applicable development standards; nonconforming lots or structures shall not be used for uses by right, subject to special requirements; provided, however, that wireless telecommunication facilities may be co-located on existing nonconforming structures if doing so would reduce visual impacts, or would be a preferable aesthetic alternative to location of a new telecommunication tower.
- (2) Uses by right, subject to special requirements shall comply with all applicable local, state, and federal regulations and standards and shall be properly licensed and permitted.

Approval procedures for uses by right, subject to special requirements are set forth in section 7-5-4.

(b) *Uses by right, subject to special requirements listed (by zoning district).*

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9-5-9 Public Improvements.

(a) Except as provided in subsection (b) of this section, subdivision plats shall comply with the solar access ordinance, Chapter 9-8, "Solar Access," B.R.C. 1981, and meet the following conditions:

(1) Lots meet the following conditions:

(A) Each lot has access to a public street.

(B) Each lot has at least thirty feet of frontage on a public street.

(C) No portion of a lot is narrower than thirty feet.

(D) Lots meet all applicable zoning requirements of Title 9, "Land Use Regulation," B.R.C. 1981, and Chapter 9-8, "Solar Access," B.R.C. 1981.

(E) Lots with double frontage are avoided, except where necessary to provide separation from major arterials or incompatible land uses or because of the slope of the lot.

(F) Side lot lines are substantially at right angles or radial to the centerline of streets, whenever feasible.

(G) Corner lots are larger than other lots to accommodate setback requirements of Section 9-3.2-1, "Schedule of Bulk Requirements," B.R.C. 1981.

(H) Residential lots are shaped so as to accommodate a dwelling unit within the setbacks prescribed by the zoning district.

(I) Lots shall not be platted on land with a ten percent or greater slope, unstable land, or land with inadequate drainage unless each platted lot has at least 1,000 square feet of buildable area, with a minimum dimension of twenty-five feet. The city manager may approve the platting of such land upon finding that acceptable measures, submitted by a registered engineer qualified in the particular field, eliminate or control the problems of instability or inadequate drainage.

(J) Where a subdivision borders an airport, a railroad right-of-way, a freeway, a major street, or any other major source of noise, the subdivision is designed to reduce noise in residential lots to a reasonable level and to retain limited access to such facilities by such measures as a parallel street, a landscaped buffer area, or lots with increased setbacks.

(K) Each lot contains at least one deciduous street tree of two-inch caliper in residential subdivisions, and each corner lot contains at least one tree for each street upon which the lot fronts, located so as not to interfere with sight distance at driveways and chosen from the list of acceptable trees established by the city manager, unless the subdivision agreement provides that the subdivider will obtain written commitments from subsequent purchasers to plant the required trees.

(L) The subdivider provides permanent survey monuments, range points, and lot pins placed by a Colorado registered land surveyor.

(M) Where an irrigation ditch or channel, natural creek, stream, or other drainage way crosses a subdivision, the subdivider provides an easement sufficient for drainage and maintenance.

(N) Lots are assigned street numbers by the city manager under the city's established house numbering system, and before final building inspection the subdivider installs numbers clearly visible and made of durable material.

(O) For the purpose of ensuring the potential for utilization of solar energy in the city, the subdivider places streets, lots, open spaces, and buildings so as to maximize the potential for the use of solar energy in accordance with the following solar siting criteria:

(i) Placement of Open Space and Streets: Open space areas are located wherever practical to protect buildings from shading by other buildings within the development or from buildings on adjacent properties. Topography and other natural features and constraints may justify deviations from this criterion.

(ii) Lot Layout and Building Siting: Lots are oriented and buildings sited in a way which maximizes the solar potential of each principal building. Lots are designed so that it would be easy to site a structure which is unshaded by other nearby structures and so as to allow for owner control of shading. Lots also are designed so that buildings can be sited so as to maximize the solar potential of adjacent properties by minimizing off-site shading.

(iii) Building Form: The shapes of buildings are designed to maximize utilization of solar energy. Buildings shall meet the solar access protection and solar siting requirements of Chapter 9-8, "Solar Access," B.R.C. 1981.

(iv) Landscaping: The shading impact of proposed landscaping on adjacent buildings is addressed by the applicant. When a landscape plan is required, the applicant shall indicate the plant type and whether the plant is coniferous or deciduous.

(2) Streets, curb and gutters, sidewalks, alleys, and the public rights-of-ways therefor, are provided in conformity with the standards in the City of Boulder *Design and Construction Standards*, as amended, and meet the following conditions:

(A) Streets are aligned to join with planned or existing streets.

(B) Streets are designed to bear a relationship to the topography, minimizing grade, slope, and fill.

(C) There are no dead-end streets without an adequate turnaround and appropriate barriers.

(D) Access to freeway, arterial, or collector street occurs only at intersections approved by the city manager, if the manager finds that the access provides efficient traffic movement and safety for drivers and pedestrians.

(E) A street of only one-half width is not dedicated to or accepted by the city.

(F) When the plat dedicates a street that ends on the plat or is on the perimeter of the plat, the subdivider conveys that last foot of the street on the terminal end or outside border of the plat to the city in fee simple, and it is designated by using an outlet.

(G) Streets are provided as prescribed by the Boulder Valley Comprehensive Plan, adopted subcommunity or area plans, or the Transportation Master Plan.

(H) Alleys are encouraged and should be provided. If they are provided, they are paved or otherwise appropriately surfaced with a material approved by the city manager for the specific application and location.

(I) Sidewalks are provided in all subdivisions, unless the city manager determines that no public need exists for sidewalks in a certain location.

(J) Signs for street names (subject to approval of the city manager), directions, and hazards are provided.

(K) Traffic control signs are provided, as required by the city manager for control of traffic.

(L) Pedestrian crosswalks are provided, as required by the city manager for traffic control and, at a minimum, between streets where the distance between intersecting streets exceeds one thousand feet.

(M) Bike paths or lanes are provided in conformity with the City of Boulder Comprehensive Plan for bicycle facilities and are dedicated to the city.

(N) Private streets are not permitted.

(3) Water and wastewater utilities are provided in conformity with the construction and design standards in the City of Boulder *Design and Construction Standards* , and meet the following conditions:

(A) Water and sanitary sewer mains are provided as necessary to serve the subdivision.

(B) Easements are provided for city utilities as prescribed by the City of Boulder *Design and Construction Standards* .

(C) For utilities other than city utilities are provided as required by the applicable private utility.

(D) Newly installed telephone, electric, and cable television lines and other similar utility service are placed underground. Existing utilities are also placed underground unless the subdivider demonstrates to the manager that the cost substantially outweighs the visual benefit from doing so. But transformers, switching boxes, terminal boxes, meter cabinets, pedestals, ducts, electric transmission and distribution feeder lines, communication long distance trunk and feeder lines, and other facilities necessarily appurtenant to such facilities and to underground utilities may be placed aboveground within dedicated easements or public rights-of-way.

(4) Flood control and storm drainage measures are provided as required by the city's master drainage plan and in conformity with the construction and design standards in the City of Boulder *Design and Construction Standards* , and meet the following conditions:

(A) The measures retain existing vegetation and natural features of the drainageway where consistent with the master drainage plan.

(B) Any land subject to flooding by a one-hundred-year flood conforms to the requirements of Chapter 11-5, "Storm Water and Flood Management Utility," B.R.C. 1981.

(C) Storm drainage improvements and storm sewers are maintained to collect drainage from

the subdivision and convey it off-site into a city right-of-way or drainage system without adversely affecting adjacent property.

(D) Bridges, culverts, or open drainage channels are provided when required by the flood control utility master drainage plan.

(E) All subdivisions shall be designed to minimize flood damage.

(F) All subdivisions shall have public utilities and facilities, including without limitation, sewer, gas, electrical, and water systems, located and constructed to prevent flood damage.

(G) All subdivisions shall have adequate drainage provided to reduce exposure to flood damage.

(5) Fire protection measures meet the following conditions:

(A) Fire hydrants are provided as required by the city fire prevention code, Chapter 10-8, "Fire Prevention Code," B.R.C. 1981.

(B) Fire lanes are provided where necessary to protect the area; an easement at least sixteen feet wide for fire lanes is dedicated to the city, remains free of obstructions, and permits emergency access at all times.

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PART II CODE OF THE CITY

Chapter 6 BUSINESS AND TRADES*

ARTICLE V. CABLE COMMUNICATIONS REGULATIONS*

DIVISION 5. DESIGN AND CONSTRUCTION

Sec. 6-77. Use of streets.

Sec. 6-77. Use of streets.

(a) All installations shall be underground in those areas of the city where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, the grantee may install its service above ground, provided that, at such time as those facilities are required to be placed underground by the city or are placed underground, the grantee shall likewise place its services underground without additional cost to the city or to the individual subscriber so served. Where not otherwise required to be placed underground by this article or the franchise agreement, the grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All new cable passing under the roadway shall be installed in conduit no less than eighteen (18) inches from the top of the conduit to the surface of the ground.

(b) *Interference with persons, improvements, public and private property and utilities.* The grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the city, county or state may deem proper to make;
- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and
- (5) Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities located within the city.

(c) *Restoration to prior condition.* In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the city, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, in as good a condition as, or better than, before said work was commenced and in a good workmanlike, timely manner in accordance with standards for such work set by the city. Such restoration shall be undertaken within no more than ten (10) days after the disturbance is incurred and shall be completed as soon as possible thereafter.

(d) *Relocation of the facilities.* In the event that at any time during the period of this franchise the city, county or state shall lawfully elect to alter or change the grade of any street, alley or other public ways, the grantee, upon reasonable notice by the proper authority, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(e) *Cooperation with building movers.* The grantee shall, on the request of any person holding a building moving permit issued by the Charlotte department of transportation, temporarily raise or lower its wire to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance.

The grantee shall be given not less than fifteen (15) working days advance notice to arrange for such temporary wire changes.

(f) *Tree trimming.* The grantee shall have the authority, except when in conflict with existing city ordinances, to trim any trees upon and overhanging public rights-of-way so as to prevent the branches of such trees from coming in contact with system facilities, except that at the option of the city, such trimming may be done by it, or under its supervision and direction, at the expense of the grantee.

(g) *Easements.* All necessary easements over and under private property shall be arranged for by the grantee.

(h) *Work within right-of-way.* Consistent with the city's policy for temporary street closings dated October 1, 1985, the closing of any part of a publicly maintained street or right-of-way must be approved by the department of transportation and shall be prohibited during peak travel hours, 7–9 a.m. and 4–6 p.m., Monday through Friday. During repairs or improvements, traffic on streets must be maintained. Where full closing of the street is required, the request for approval must be submitted to the department of transportation at least ten (10) days in advance. Closings will not be permitted in the central business district during the holiday shopping season. Where emergency closings are necessary, the department of transportation is to be notified as soon as possible. All closings are to be protected and signed in accordance with the city's Work Area Traffic-Control Handbook (WATCH).

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5H. Block Layout

The length, width, and shape of blocks shall be determined with due regard to: provision of adequate building sites suitable to the special needs of the type of use contemplated; needs for vehicular, transit, and pedestrian circulation, control, and safety; and constraints of topography and existing land use patterns and facilities.

1. *Block Lengths*: Blocks shall not normally exceed 1,000 feet in length.
2. *Block Widths*: Blocks widths shall be sufficient to allow two tiers of lots except where single tiers of lots will facilitate non-residential developments, or the separation of residential and non-residential developments, or the separation of residential development from through traffic.

5I. Alleys

Alleys may be required along the rear lot line of commercial or industrial property, along the rear lot line of lots fronting on thoroughfares, or where the lots are less than 50 feet wide. Alley widths shall be determined by their proposed use.

5J. Sidewalks and Trails

Sidewalk, walkway and trail systems sufficient to serve both existing and projected pedestrian and bicyclist needs shall be reflected in all subdivision design. Such systems may include either conventional sidewalks along street rights-of-way or walkways and trails in alternative locations as appropriate. Design, location, dimensions, dedications, easements, and reservations, shall conform to applicable City and/or County Urban Growth Area policies and plans for sidewalks and trails.

Unless an alternate walkway is approved, conventional sidewalks within the Urban Growth Area shall be located as follows:

1. On both sides of major and minor thoroughfares (as defined by the adopted Thoroughfare Plan) except on freeways;
2. On one side of collector streets and nonresidential streets with existing or projected traffic of 2,000 or more vehicles per day;
3. On one side of residential streets of all types that are not cul-de-sacs;
4. On one or both sides of local streets in non-residential areas where review indicates that sidewalks are, or will be, needed to accommodate pedestrian traffic.

Alternate walkway and trail systems, located outside of street rights-of-way, shall be planned to serve pedestrian and bicycle traffic circulation as satisfactorily as would conventional sidewalks, and to reach locations which would otherwise be inaccessible. Such walkways and trails shall be designed to maximize the safety of users and the security of adjoining properties with respect to location, visibility, and landscaping.

5K. Easements: Utility, Storm Drainage, Stream Buffers and Other

Utility easements for water, sanitary sewer, electricity, gas and communications improvements shall be provided in the location and to the width as required by the utility. Where economically feasible electricity and communications lines should be placed underground. Easements for storm drainage improvements and stream buffers shall be provided as required by City/County policies and regulations. Easements for other purposes, including but not limited to trails and greenways, scenic views, historic preservation, cemetery access, and unique natural sites, shall be designed for reservation or dedication as appropriate. *All plats shall exhibit standard easement notes stating the type and purpose of the easement along with a list of prohibited uses/activities within the easement.*

5L. Lot Layout

14.60.117 UNDERGROUNDING OF CABLE.

The undergrounding of cable is encouraged. In any event, cables shall be installed underground at Grantee's cost where utilities are already underground, or where required by law. Previously installed aerial cable shall be undergrounded and relocated in concern with other utilities, when such other utilities convert from aerial to underground construction. (Ord. 1165).

14.60.118 NEW DEVELOPMENT UNDERGROUNDING.

In cases of new construction or property development where utilities are to be placed underground, upon request by the Grantee, the developer or property owner shall give Grantee at least seventy-two (72) hours notice of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults within five (5) working days of the date of the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by Grantee. (Ord. 1165).

14.60.119 UNDERGROUND AT MULTIPLE-DWELLING UNITS.

In cases of multiple dwelling units serviced by aerial utilities, Grantee shall make every effort to minimize the number of individual aerial drop cables giving preference to undergrounding of multiple drop cables between the pole and the dwelling unit. (Ord. 1165).

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CODE OF ORDINANCES

Chapter 7 CABLE COMMUNICATIONS*

ARTICLE V. DESIGN AND CONSTRUCTION PROVISIONS

Sec. 7-65. System construction schedule.

The franchise shall specify the rebuild or the initial construction timetable. The timetable shall be a monthly schedule.

(Ord. No. 94-109, § 1, 10-24-94)

Sec. 7-66. Extension of service.

The grantee shall provide service to all dwelling units and commercial entities requesting service within the city and any areas annexed to the city within six (6) months of such request under such line extension provisions as provided for in the franchise.

(Ord. No. 94-109, § 1, 10-24-94)

Sec. 7-67. Use of streets.

(a) *Underground installation.* All installations shall be underground in those areas of the city where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, the grantee may install its service above ground, provided that at such time as those facilities are required to be placed underground by the city or are placed underground, the grantee shall likewise place its services underground without additional cost to the city. Where not otherwise required to be placed underground by the provisions of this chapter or the franchise, the grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable passing under the roadway shall be installed in conduit.

(b) *Pedestals.* In any case where enclosures housing mini-hubs, switching, or other such equipment are to be utilized along streets and sidewalks, such equipment must be vaulted or otherwise contained in an underground enclosure so as to conform to existing city and utility equipment installation requirements. A certificate of approval from the city, which approval will not be unreasonably withheld, may be required for the location of any pedestal in a public right-of-way.

(c) *Permits.* Prior to construction or alteration of aerial or underground construction in the public right-of-way, however, the grantee shall in each case file plans with the appropriate city agencies, complete use agreements with the utility companies if necessary, obtain all construction permits and receive written approval of the city before proceeding and, if applicable, certificate of appropriateness in the historic district.

(d) *Construction notice.* The grantee shall give appropriate notice to the city and residents within a reasonable period of time of proposed construction, excavation, laying or stringing of cable under streets or on poles, but in no event shall such notice be given less than fourteen (14 days) before such commencement.

(e) *Interference with persons, improvements, public and private property and utilities.* The grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

- (1) Not endanger or interfere with the health, safety or lives of persons;
- (2) Not interfere with any improvements the city, county or state may deem proper to make;
- (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;
- (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; and

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TABLE 30-6-13-4				
MINIMUM PRIVATE ALLEY STANDARDS FOR TRADITIONAL NEIGHBORHOOD DISTRICTS				
CLASSIFICATION	ROW (ft.)	PAVEMENT WIDTH (ft.)	STOPPING SIGHT DISTANCE (ft.)	CENTERLINE RADIUS (ft.)
Alley	20	15	73	50

30-6-13.4 Block Length

In all zoning districts except the TN1 Traditional Neighborhood District, block length shall not exceed one thousand, five hundred (1,500) feet, for a maximum block perimeter of six thousand (6,000) feet, except that a block length of up to three thousand (3,000) feet may be approved in the Watershed Critical Area. In the TN1 Traditional Neighborhood District the length of a new block shall not exceed six hundred (600) feet. For reasons of topography, block length in the TN1 Traditional Neighborhood District may be a maximum of 800 feet as long as a pedestrian pathway traverses the block near its midpoint.

30-6-13.5 Sidewalks

(A) Generally: Except along controlled access facilities, sidewalks shall be required on all thoroughfare streets, and at other locations on collector, subcollector and local residential streets where a pedestrian traffic generator requires separation of pedestrian and vehicular traffic. Sidewalks shall have a minimum width of five (5) feet and be constructed on one side of the right-of-way as determined by the Technical Review Committee.

(B) In Traditional Neighborhood Districts: All streets in the TN1 Traditional Neighborhood District shall have sidewalks on both sides. Sidewalks on a commercial block or a mixed use block containing first-floor commercial uses shall have a width a minimum of from six (6) to sixteen (16) feet as appropriate to allow adequate room for pedestrians, awnings, streetscape and landscape elements.

30-6-13.6 Utilities

(A) Public Water and Sewer Construction Requirements: Water and sewer lines, connections, and equipment shall be constructed in accordance with State and City regulations within the City and within and in conjunction with developments provided with City water or sewer service pursuant to the City and County Consolidated Water and Sewer Line Agreement.

(B) Water and Sewer Connection: Connection of each lot to public water and sewer utilities shall be required if the proposed subdivision is within three hundred (300) feet of the nearest adequate line of a public system, provided that no geographic or topographic factors would make such connection infeasible. Where public sewer is not available, lots shall meet applicable County Environmental Health Division regulations. Approval of the Environmental Health Division shall be obtained after Preliminary Plat approval. The Final Plat shall show the Certificate of Approval from the Environmental Health Division as shown in Appendix 2 (Map Standards).

(C) Underground Utilities: Electrical, community antenna television, and

telephone utility lines installed within major subdivisions shall be underground unless the Technical Review Committee determines underground installation is inappropriate.

(D) Utility Easements

1) **Width and Location:** To provide for electric, telephone, gas, and community antenna television services; conduits; and sewer or water lines within a subdivision; appropriate utility easements not to exceed thirty (30) feet in width shall be provided. The location of such easements shall be reviewed and approved by the City, with advice from utility providers, before Final Plat approval.

2) **No Buildings or Improvements:** Utility easements shall be kept free and clear of any buildings or other improvements that would interfere with the proper maintenance or replacement of utilities. The City shall not be liable for damages to any improvement located within the utility easement area caused by maintenance or replacement of utilities located therein.

30-6-13.7 Drainage

(A) General Requirements:

1) Refer to Section 27-22 (Stormwater management control requirements) of the Greensboro Code of Ordinances for additional requirements that apply citywide and to Sections 30-7-1 (Water Supply Watershed Districts), 30-7-2 (General Watershed Areas), and 30-7-3 (Watershed Critical Areas for additional requirements that apply in GWA and WCA areas.

2) All watercourses that lie within the city or within or adjacent to developments provided with City water or sewer service pursuant to the City and County Consolidated Water and Sewer Line Agreement will carry a flow of five (5) cubic feet per second or more during a ten-year storm, as calculated in accordance with the City's storm sewer design manual, shall be treated in one or more of the three ways listed in Sections 30-6-13.7(B), (C), and (D) below. Except where Section 30-6-13.7(A)2) below leaves the determination to the developer, the City Technical Review Committee shall determine the treatment(s) to be used, based upon the pipe size necessary to handle drainage and adopted drainage and open space plans or maps. Open drainage channel requirements shall be based upon a one-hundred-year storm; enclosed systems shall be based upon a ten-year storm. If the area is identified on the drainageway and open space map or would require a pipe size of sixty-six (66) inch diameter or greater, the determination of drainage treatment(s) shall be made by the Technical Review Committee. In determining the drainage treatment(s), the Technical Review Committee shall consider the following factors:

a) The type of development;

b) The drainage treatment(s) employed by nearby developments;

Sec. 7-129. Street occupancy.

(a) A grantee shall utilize existing poles, conduits and other facilities whenever possible and shall not construct or install any new, different or additional poles, conduits or other facilities, whether on public property or on privately owned property, until the written approval of the county is obtained. Such approval shall not be unreasonably withheld. However, no location of any pole or wire-holding structure of the grantee shall be a vested interest, and such poles or structures shall be removed or modified by the grantee at its own expense whenever the board of supervisors determines that the public convenience would be enhanced thereby.

(b) Where the county or a public utility serving the county desires to make use of the poles or other wire-holding structures of a grantee but agreement therefor with the grantee cannot be reached, the board of supervisors may require the grantee to permit such use for such consideration and upon such terms as the board of supervisors shall determine to be just and reasonable if the board of supervisors determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operation. The board of supervisors shall consider in its determination of just and reasonable terms and consideration any amount charged the grantee for similar use of facilities.

(c) All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and appearance and reasonable convenience of property owners who adjoin on any street, and at all times shall be kept and maintained in a safe, adequate and substantial condition and in good order and repair. A grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by a grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

(d) A grantee shall remove, replace or modify, at its own expense, the installation of any of its facilities as may be deemed necessary by the county to meet its proper responsibilities.

(e) Wherever all electrical and telephone utility distribution wiring is located underground, either at the time of initial construction or subsequently, at the direction of the county, the television cable shall also be located underground, at a grantee's own expense. If the distribution facilities of either the electric or the telephone utility are aerial, the cable television facilities may be located underground at the request of a property owner; provided that the excess cost of the installation, labor and materials of underground over aerial location shall be paid by the property owner making the request to a grantee.

(f) A grantee shall, at its own expense and in a manner approved by the county, restore to county standards and specifications any damage or disturbance caused to the public way as a result of its operations or construction on its behalf. A grantee shall guarantee and maintain such restoration for a period of one year against defective materials or workmanship except in instances involving acts of God.

(g) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the county manager, the director of public safety, the fire chief or the chief of police to remove or damage any of a grantee's facilities, no charge shall be made by the grantee against the county for restoration and repair.

(h) At the request of any person holding a valid building moving permit issued by the county and upon at least 48 hours' notice, a grantee shall temporarily raise, lower or cut its wires as may be necessary to facilitate such move. The direct expense of such temporary changes, including standby time, shall be paid by the permit holder, and a grantee shall have the authority to require payment in advance.

(i) A grantee shall have the authority to trim trees on public property at its own expense as may be

necessary to protect its wires and facilities, subject to the supervision and direction of the county.
Trimming of trees on private property shall require consent of the property owner.