

ORDINANCE NO. 2021-010

AN AMENDMENT TO THE LAND DEVELOPMENT ORDINANCE TO REVISE CERTAIN SECTION IN ARTICLES 3, 4, AND 5 RELATED TO THE PRESERVATION OF TREES, THE INSTALLATION OF REQUIRED PUBLIC IMPROVEMENTS, AND OPEN SPACE STANDARDS

WHEREAS, Town Staff and the Planning Commission is recommending changes certain provisions of the Town's Land Development Ordinance ("LDO") to amend various sections in Articles 3, 4, and 5 in the LDO in order to revise standards, regulations, and requirements related to the preservation of trees; the installation of required public infrastructure; fence standards; and open space standards.

WHEREAS, the Planning Commission has reviewed these proposed changes and has recommended that the Board of Mayor and Aldermen adopt the amendments to the LDO as proposed herein; and

WHEREAS, the Board of Mayor and Aldermen has reviewed the Land Development Ordinance and has determined, based upon the recommendations of Town Staff, the Planning Commission, and the record as a whole, that the proposed amendments are consistent with the General Plan, will not have a deleterious effect on the Town, makes improvements to the LDO, and are in the best interest of the Town.

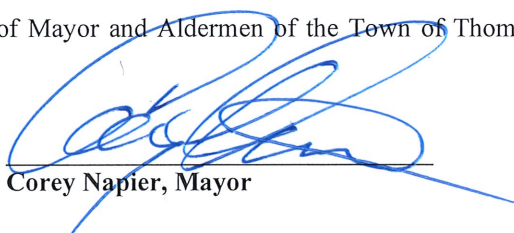
NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen of the Town of Thompson's Station, Tennessee, as follows:

Section 1. That the Town of Thompson's Station's Land Development Ordinance is hereby amended by adopting the changes as set out in Exhibit A attached hereto and incorporated herein by reference. After final passage, Town Staff is directed to incorporate these changes into an updated, codified Land Development Ordinance document with the date of BOMA approval and said document shall constitute the Zoning Ordinance and Subdivisions Regulations of the Town.

Section 2. If any section or part of the Land Development Ordinance, including any amendments thereto, is determined to be invalid for any reason, such section or part shall be deemed to be a separate and independent provision. All other sections or parts shall remain in full force and effect. If any section or part of the Land Development Ordinance is invalid in one or more of its applications, that section or part shall remain in effect for all other valid applications.

Section 3. This ordinance shall take effect immediately upon the publication of its caption in a newspaper of general circulation after final reading by the Board of Mayor and Aldermen, the public welfare requiring it.

Duly approved and adopted by the Board of Mayor and Aldermen of the Town of Thompson's Station, Tennessee, on the 2nd day of August, 2021.


Corey Napier, Mayor

ATTEST:


Regina Fowler, Town Recorder

Passed First Reading: 6/8/2021

Passed Second Reading: 8/2/2021

Submitted to Public Hearing on the 2nd of August ²⁰²¹, at 7:00 p.m., after being advertised in the *Williamson AM* Newspaper on the 20th day of June, 2021.

Recommended for approval by the Planning Commission on May 25th, 2021.

APPROVED AS TO FORM AND LEGALITY:



John Vandivort

Town Attorney

EXHIBIT "A"

Words noted with a ~~strikethrough~~ are to be deleted and words in **red text** includes new language to be added.

Section I. UPDATES TO TREE PROTECTION STANDARDS

Section 3.3.14 Tree Protection- revise entire section

- a. ~~The resource inventory map must identify all non-invasive trees of 18 inches in caliper and greater measured at 4½ feet above the natural grade of the tree. All clusters of trees and tree rows must also be identified on the inventory map. Removal of mature, indigenous trees in healthy condition is discouraged. During the preliminary plat process, trees that are proposed for removal shall require tree removal approval from the Planning Commission for all trees 18 inches in caliper and greater and replacement trees shall be required at a 1.5:1 ratio for each inch removed. Replacement or relocated trees must be planted on site or Planning Commission approval is required for an off-site location.~~
- b. ~~Approval of removal of trees shall be considered through the preliminary plat process. A licensed arborist or other licensed professional shall prepare a protection plan and mitigation and/or re- placement of removed trees. The protection plan shall include a tree inventory which shall document all trees that are 18 inches or greater in diameter that are indigenous to the region.~~
- e. ~~Trees that are designated to remain shall be subject to the following requirements to minimize disturbance to the tree:~~
 - i. ~~All trees that will remain on site shall have protective fencing installed be installed around the dripline of the tree to protect the root system for the tree.~~
 - ii. ~~If earthwork is necessary within the dripline of the protected tree, hand digging shall be re-quired.~~
 - iii. ~~No equipment, supplies or any other material shall be stored within the dripline of any protected trees.~~
 - iv. ~~No dirt or other fill material shall be stockpiled within the dripline.~~
 - v. ~~No signage shall be permitted on any protected tree.~~
 - vi. ~~Any protected trees that are damaged by any construction, demolition, grading or other development work shall be evaluated by a licensed arborist or other licensed professional for treatment of the impacted trees. In the event that the tree cannot be saved the tree shall be replaced. All replacement trees shall be similar in size and species approved by the Planning Commission.~~

a. **Purpose**

The purpose for this section is to establish a series of standards and measures necessary to retain and protect portions of the existing tree canopy cover and other significant trees, in order to:

- o **Prevent clear cutting;**
- o **Protect existing tree canopy on developing sites;**
- o **Maintain a minimum level of tree canopy cover on developed sites larger than one acre;**
- o **Preserve specimen trees;**

- Maintain and enhance the quality of life in the Town;
- Ameliorate the impact of incompatible land uses;
- Reduce glare, heat, and noise;
- Preserve and enhance air and water quality;
- Prevent soil erosion; and
- Minimize flooding.

b. Applicability
i. General

Unless specifically exempted, the standards in this section are applicable to all lots or sites and types of development in the Town. Table 3.1, Tree Protection Applicability, summarizes how the standards in this section shall be applied.

TABLE 3.1 TREE PROTECTION APPLICABILITY			
“X” = associated standards apply; Shaded cell = standards do not apply			
Type of Lot	Tree Canopy Retention Requirements	Tree Removal on Existing Lots	Protection of Specimen Trees
Platted Residential Lot of one acre or less (with or without an existing use)			
Platted Residential Lot Larger than 1 Acre (with or without an existing use)		X	X
Vacant Nonresidential Lot of Any Size	X		X
Nonresidential Lot of Any Size with Existing Use			X
Developing Residential or Nonresidential Lands/Uses	X		X

a) Tree Removal Permit Required

No removal or disturbance of existing trees on a parcel or development site shall occur prior to approval of a Tree Removal Permit, Building Permit, or Grading Permit, which shall be approved only in accordance with the standards in this section. The Tree Removal Permit shall be issued by the Community Development Department and may be issued simultaneously with the Grading Permit for a site.

b) Review for Compliance

The standards in this section shall apply at the time of Tree Removal Permit review and shall also be considered during the review of a Preliminary Plat, Final Plat, Site Plan, Building Permit, Grading Permit, or any other plan/permit as specified by Town Staff.

c) Removal Without a Permit

Removal of any trees without a Tree Removal or Grading Permit shall be subject to the mitigation and/or replacement standards as specified in this section.

c. Exemptions

The following tree removal activities are exempt from the standards of this section:

1. Tree removal activities not requiring a Tree Removal Permit as specified in Subsection 3.3.14(b)(i)(a), Tree Removal Permits;
2. Removal of trees that are determined to be unhealthy by the Town Staff (or with written verification of the tree's condition as dead or dying as prepared by a qualified arborist);
3. Removal of trees that are determined by Town Staff to be nuisance trees or a threat to an existing structure, underground utility, or to the public health, safety, or welfare;
4. Removal of trees listed in the current edition/list of *Invasive Exotic Pest Plants*, published by the Tennessee Exotic Pest Plant Council; and
5. Removal, by the owner or their authorized agent, of trees on Town owned land and/or within public rights-of-way.

d. Tree Canopy Retention

i. Where Required

Except where exempted by the section, the standards in this section shall apply to any Preliminary Plat, Final Plat, Site Plan, Grading Plan, Permit, or approved use.

ii. Tree Inventory

Prior to the issuance of a Tree Removal Permit, the applicant shall submit an aerial photograph, tree inventory, or professionally prepared tree survey (as appropriate) that clearly depicts the:

1. Lot lines of the parcel(s) involved;
2. Location and extent of the existing on-site tree canopy, including an estimate of the total percentage of the parcel(s) covered by the existing on-site tree canopy; and
3. The exact location, health, and size of all specimen trees located on the parcel(s) involved; however, the Department of Community Development may accept an approximation of the location, health, and size of specimen trees if the trees are not being counted towards the landscape requirements of this chapter, or if the trees are located within a designated Tree Protection Zone.

e. Tree Canopy Retention Standards

A percentage of the existing tree canopy shall be retained on a site or parcel in accordance with the Table 3.2, Tree Canopy Retention Standards.

TABLE 3.2: TREE CANOPY RETENTION STANDARDS

Existing Tree Canopy Cover (as a percentage of the total site size)	Minimum Required Tree Canopy Retention by Zoning District [1] (as a percentage of the total tree canopy cover)		
	TC, T1, T2, T3, D-1, D-2, & D-3	NC, CC, T4, T4O, & T5	IL & IM
80% - 100%	30%	15%	12%
60% - 79%	36%	18%	13%
40% - 59%	45%	22%	14%
20% - 39%	48%	24%	15%
19% or less	54%	26%	16%

NOTES:

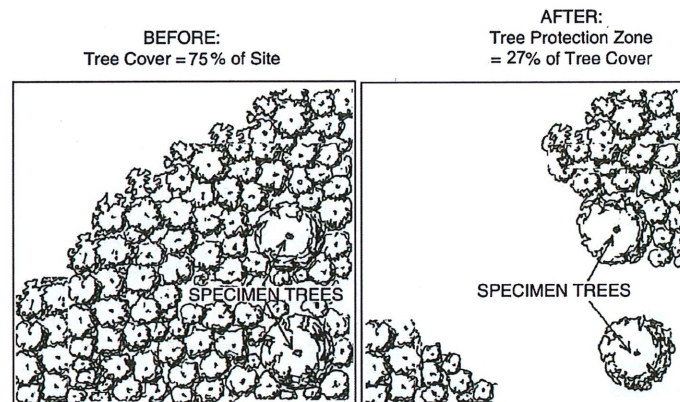
1. Lots smaller than one acre, and lots with lawfully established existing uses are exempt from the tree canopy retention standards but may be subject to the specimen tree and other tree protection requirements in this subsection as determined by the Town.

Illustrative example:

The aerial tree inventory reveals that the existing tree canopy on a hypothetical 100,000 square foot lot covers 75 percent of the lot. The site is proposed for use as a residential subdivision. The minimum required tree canopy retention for this hypothetical site is 27 percent of the site's total area (0.75 [existing tree cover percentage] \times 0.36 [required retention percentage] = 27 percent), yielding a Tree Protection Zone of 27,000 square feet (0.27 [tree save area as a percentage of the site] \times $100,000$ [site size]).

- i. **Tree Protection Zone**
The trees that compose the existing tree canopy to be retained on a lot or development site shall be located within an area referred to as the "Tree Protection Zone", which shall include the area occupied by the critical root zone of all healthy trees being retained in accordance with this subsection.
- ii. **Designation of Tree Protection Zone**
All Tree Protection Zones shall be identified for protection in a form acceptable to Town Staff (e.g., open space lot, a platted lot subject to a deed restriction, a conservation easement, dedication to the Town, etc.), and shall be areas where the existing tree canopy will be maintained, and where buildings shall not be located. The Tree Protection Zone shall be depicted on the Preliminary Plat, Site Plan, or Grading Plan, whichever is appropriate. The Tree Protection Zone shall also be depicted on the Final Plat, if required prior.
- iii. **Retention Areas**
In determining the location of the Tree Protection Zone, the Department of Community Development shall require trees to be retained based on the quality of natural and cultural resources on the site, the condition of the trees, and similar considerations. The following locations shall be considered as priority areas by the Department of Community Development in establishing the location of the Tree Protection Zone (in no particular order of importance):

- Woodland forests containing specimen trees and their associated critical root zones (especially those areas greater than five acres);
- Areas containing specimen trees and their associated critical root zones;
- Lots or sites within the Ridgeline and Hilltop Protection Area (RHPA);
- Hillcrest setback areas and hillsides with slopes of 20 percent or greater;
- Areas containing hedgerows or fencerows and their associated critical root zones;
- Areas needed to buffer historic structures;
- Riparian buffers, wetlands, or natural drainage courses;
- Habitat used by endangered or threatened species;
- Scenic corridors, gateways, and views;
- Areas that could serve to extend existing greenways, trails, parks, or recreation areas; and
- Areas needed for required landscape (e.g., buffers, perimeter landscape strips around vehicular use areas, etc.).



iv. Credit Towards Open Space and Landscape Requirements

- a) The geographic area occupied by a Tree Protection Zone shall be credited towards the open space standards in Section 3.5, Civic and Open Space Standards.
- b) Only those trees meeting the location, species, health, and minimum size requirements applicable to new landscape materials shall be credited and the applicant shall be responsible for demonstrating how retained trees meet the standards of this ordinance.
- c) Existing viable trees meeting the minimum size requirements for new plantings that are located inside a Tree Protection Zone and within 30 feet of a lot line shall be credited towards the planting requirements for a buffer along that same lot line.
- d) Existing viable trees meeting the minimum size requirements for new plantings that are located in the Tree Protection Zone and within 20 feet of the perimeter edge of an off-street parking lot shall be credited towards the parking lot area perimeter landscape requirements.

- e) Existing viable trees meeting the minimum size requirements for new plantings that are located within a Tree Protection Zone and are not credited towards buffer or parking lot area requirements may be credited towards the site landscape requirements in Subsection 4.14, Landscaping Standards.
- v. Damage or Destruction of Trees

Damage or destruction of trees due to excessive pruning or topping shall constitute a violation of the ordinance and result in the prescribed replacement and/or mitigation of the damaged trees.
- vi. Removal of Trees in a Tree Protection Zone

Except as allowed by this section, removal, damage, or destruction of trees within a Tree Protection Zone shall be a violation of this ordinance. Removal, damage, or destruction of trees in a Tree Protection Zone shall require mitigation in accordance with the following standards:

 - a) Replacement Trees Required

Any tree that is damaged or removed from the Tree Protection Zone shall be replaced with one or more trees having a diameter of at least two inches in caliper and a cumulative caliper measurement equal to or greater than the tree that is damaged or removed. If the caliper inches removed cannot be determined, the area subject to tree removal shall be replanted at the rate of 80 trees an acre for each acre disturbed, or portion thereof. Replacement trees shall not be used to meet any other landscape requirements.
 - b) Location of Replacement Trees

Replacement trees for trees removed from the Tree Protection Zone shall be either planted in the Tree Protection Zone or, in cases where adequate room is not available, planted elsewhere on the lot or development site. In cases when adequate room on the lot or development site is not available, mitigation may take the form of an agreement as approved by the Town Attorney.
 - c) Landscape Requirements Increased

In cases where land disturbing activity removes or damages trees on a lot or site that is part of a larger development (such as the first phase in a multi-phase development), the planting rates for all required landscape areas associated with any subsequent development on the site or in the same Development Plan, Preliminary Plat, or Site Plan shall be 150 percent of the minimum requirements specified in Section 4.14, Landscaping Standards.
 - d) Temporary Stay on Approvals

Following notice of violation related to this subsection by the Department of Community Development, all reviews and/or approvals of development permit applications for the site from the date of the violation until:

 - A replacement plan has been approved by the Department of Community Development and a schedule for replacement has been approved by Town Staff; or
 - An agreement issued by the developer/property owner for replacement has been approved by the Town Attorney.
- f. Tree Removal on Lots with Existing Uses/Not Developing Uses

i. Purpose and Intent

The standards in this subsection are intended to regulate the removal of trees on lots of record larger than one acre that contain an existing lawfully established attached residential or nonresidential uses that may have existing vegetation meeting the landscape requirements from previous versions of this ordinance. The standards in this subsection are also intended to address tree removal on platted residential lots larger than one acre (with or without an existing use). A Tree Protection Zone shall not be established on such lots.

ii. Where Required

The standards in this subsection shall be applied during review of applications for Tree Removal Permits on lots of record containing lawfully established existing attached residential and nonresidential uses and on platted residential lots larger than one acre in size (with or without an existing use). These standards shall not be applied to lots containing detached residential uses smaller than one acre in size.

iii. Removal Standards

Except as allowed by this section, trees proposed for removal shall:

- o Be located on the same lot as a legally established use;
- o Not be within a Tree Protection Zone or on an open space lot;
- o Not be a part of required landscape material or contribute to the screening function of a required landscape area;
- o Not be the subject of a condition of approval requiring their retention; and
- o Not be a specimen tree.

iv. Replacement

Replacement trees shall be required at a 1:1 ratio for each caliper inch removed.

g. Protection of Specimen Trees

Specimen trees are considered to be: (1) any canopy tree with a diameter of 24 inches or greater or (2) any understory tree with a diameter of eight (8) inches or more measured four-and one-half feet above grade (Diameter at Breast Height, DBH). All specimen trees shall be protected on all lots in accordance with the following standards:

i. General Protections

All specimen trees shall have the following protections, whether located on public or private land:

a) Cutting, Removal, or Harm Prohibited

Except as allowed by this section, specimen trees shall not be cut, removed, pushed over, killed, or otherwise harmed; and

b) Disturbance Prohibited

The area within the critical root zone of any specimen tree shall not be subject to any disturbance unless, the disturbance is based on an ISA certified arborist report stating that the proposed construction shall cause no harm to the tree, and as approved by the Community Development Department.

c) Single-family residential lots of one acre or less in size and used as a single-family residence shall be exempt from this section.

ii. Removal

Except in cases where a tree is determined by the Department of Community Development as diseased, dying, or structurally unsound, the Town shall allow removal of specimen trees only if the Planning Director or designee, has reviewed and approved a Development Plan, Site Plan, or Infrastructure Plans in conjunction with a plat that satisfactorily documents the tree canopy cover and associated proposed specimen tree preservation, removal, and replacement or the landowner demonstrates all of the following standards are met:

- o The site is otherwise in compliance with this subsection;
- o The specimen tree is outside a Tree Protection Zone;
- o The specimen tree is an obstacle to access on the lot or site and no alternative exists for relocating such access; and
- o Replacement trees are provided in accordance with this subsection.

iii. Replacement

Except in cases where a specimen tree has been determined as diseased, dying, or structurally unsound, the following standards shall be applied following removal of a specimen tree:

a) Replacement Trees Required

Two (2) caliper inches of replacement trees shall be provided for each caliper inch of specimen tree removed. Each replacement tree shall be a minimum of two (2) caliper inches and shall either be replanted within 12 months of the removal of the specimen tree, or within a timeframe approved by the Department of Community Development. Replacement trees shall not be used to meet any other landscape requirements.

b) Location of Replacement Trees

Replacement trees shall be either planted on the lot or site where the specimen tree was removed; however, in cases where space on the lot or site is insufficient, mitigation may take the form of an agreement approved by the Town Attorney.

h. Tree Protection During Construction

i. Owner's Responsibility

During development, the owner or developer shall be responsible for the erection of all barriers necessary to protect any existing or installed trees from damage both during and after construction in accordance with the standards of this subsection.

ii. Tree Protection Fencing

- a) Where Required

All specimen trees, trees in a Tree Protection Zone, and trees intended for use as credit towards the landscaping standards of this ordinance shall be fenced in accordance with this subsection before grading or other land-disturbing activity begins. Fencing shall extend at least one foot in distance from the edge of the tree for each inch of DBH, so that, at a minimum, each tree's critical root zone is protected, but no case shall the tree fence be less than ten feet from the trunk. The Department of Community Development shall consider existing site conditions in determining the exact location of any tree protection fencing.
- b) Type of Fencing

All fencing required by this subsection shall be chain link fencing at least four feet in height and secured using appropriate posts spaced not more than ten feet apart.
- c) Signage

Signs shall be installed on the tree protection fence visible on all sides of the fenced-in area at a rate of at least one sign for every 150 linear feet. The size of each sign must be a minimum of two feet by two feet and shall contain the following language in English and Spanish: "TREE PROTECTION ZONE: KEEP OUT. ZONA DE LA PROTECCION DEL ARBOL. NO SE PERMITE ENTRAR".
- d) Trenching Prior to Clearing Activities

The removal of trees adjacent to tree save areas can cause inadvertent damage to the protected trees. Prior to clearing activities, trenches with a minimum width of one-and-one-half inches and a minimum depth of 30 inches shall be cut along the limits of land disturbance, so as to cut, rather than tear tree roots.
- e) Inspection

All tree protection measures shall be inspected and approved by the Department of Community Development prior to start of any land disturbing activities. Failure to have tree protection measures prior to the commencement of construction is a violation of this ordinance.
- f) When Required

The tree protection fencing shall be clearly shown on the Site Plan, Grading Plan, or other plan, as required by Town Staff. No construction, grading, equipment or material storage, or any other activity shall be allowed within the fenced area except in accordance with the standards of this subsection. Fencing shall be maintained until the land disturbance activities are complete.
- iii. Encroachments into Root Zones

Encroachments within the root zones of trees protected in accordance with this subsection shall occur only in rare instances, such as required for the installation of streets, vehicular drives, sidewalks, utilities; and no alternatives exist, or alternative exist, but are impractical. If such an encroachment is anticipated, the following preventive measures shall be employed prior to the encroachment:

a) **Arborist Report**

Written verification is prepared by a qualified arborist of the tree's condition before and after the encroachment, including preventive measures that shall be employed prior to, during, and after the encroachment to insure the viability of the tree.

b) **Soil Compaction**

Where compaction might occur due to traffic or materials through the protection area, the area shall first be mulched with a minimum four-inch layer of wood chips or a six-inch layer of pine straw. Equipment or materials storage shall not be allowed within the Tree Protection Zone.

c) **Effluent**

In no instance shall any effluent associated with construction process, including fueling, concrete mixing, pouring, or rinsing processes, drain onto lands protected by tree protection fencing or other control measures.

i. **Monitoring and Maintenance of Tree Protection**

Owners of land shall be responsible for the preservation and maintenance of all trees required to be saved and protected under this section.

Throughout Article 3

Renumber Tables 3.1-3.20, according to the addition of two (2) new tables in Section 3.1.1, which shall be new Tables 3.1 and 3.2.

Section 4.14 Landscape Standards

4.14.1 General to all zoning districts

...

f. **Tree protection and removal for all sites shall comply with Section 3.3.14 of this ordinance.**

Section II. UPDATES TO THE BOND/PUBLIC IMPROVEMENT ACCEPTANCE & DEDICATION PROCESS

Section 5.2.9 Surety Required

Prior to recording the final subdivision plat, the applicant shall provide a surety conforming to §5.2.10. The amount and form of such surety shall be sufficient to guarantee to the Town, satisfactory construction, installation, and dedication, free and clear of any encumbrances, of the ~~incomplete portion of~~ **the** required improvements. If a development agreement has not already been approved as specified in § **5.2.8** Development Agreement Required Prior to Preliminary Plat, such an agreement shall be provided at this time. The approval of the development agreement shall follow the same procedure as set forth in § 5.2.8. Such surety instruments shall comply with all statutory requirements and shall be satisfactory to the Town Attorney as to form, sufficiency, and manner of execution, as set forth in these regulations.

The required public improvement that are guaranteed by surety shall be completed within two (2) years from the date of approval of the final plat. After the two (2) year period, the Planning Commission may, upon proof of difficulty, extend the completion date for an additional one (1) year. If extended, the bond amounts shall be revised to account for increases in cost for the completion of the public improvements.

...

(c) **Time to post surety and Planning Commission Review**

The Surety Bond ~~must~~ shall be posted prior to the affixation of signature by the Secretary of the Planning Commission to the approved final plat ~~within 60 days of the Planning Commission action establishing the surety amount.~~ Failure to post the surety prior to the expiration of the final plat ~~within the allotted time period~~ will require re-approval of the final plat. All review fees will apply.

The Planning Commission shall review the progress of each public improvement guaranteed by surety at least one (1) time during the calendar year, as near the original approval date of the final plat as practicable.

Section 5.2.13 Reduction of Bonds and the Dedication and Acceptance of Public Improvements

- a. The Town's Dedication of Public Improvements and Release of Sureties Policy ("Policy") shall be the guiding document for all processes and procedures for public improvements held under bond. The extension, reduction, or release of a bond shall occur according to this ordinance and said Policy. The dedication and acceptance of public improvements shall occur according to this ordinance and said Policy. The Developer shall issue to the Town an Engineer's Certification form to initiate any action request for the extension, reduction, or release of any surety held for a required public improvement. The Engineer of Record shall sign and affix their seal to the Engineer's Certification for all requests for release or reduction of an established bond amount.
- b. The surety instruments guaranteeing installation of improvements may be reduced upon completion of the base asphalt and again upon completion, dedication and acceptance of such improvements and then only to the ratio that the cost of the public improvements dedicated bears to the total cost of public improvements included in said plat. As a general rule, a bond will not be reduced below fifteen (15) percent of the total estimated cost of the required improvements.

Section 5.2.18 Acceptance of Streets and Other Approval of Dedication of Public Improvements

The Planning Commission shall review the performance surety based on Town Staff's Bond Report. If the public improvement is determined to be complete, the Planning Commission shall release the performance surety and make a recommendation to BOMA to accept the public improvement. Acceptance of streets and other public improvements for public maintenance, ~~except utilities,~~ shall be by action of BOMA. ~~Town Staff shall return the surety upon BOMA's vote to accept the improvement.~~ The Planning Commission may require the plat to be endorsed with appropriate notes to this effect.

Section 5.2.19 Maintenance of Public Improvements

The applicant shall be required to maintain all improvements for at least one (1) year after acceptance of the public improvements by the governing authority BOMA, or until such time thereafter when the applicant requests, through an Engineer's Certificate, signed and sealed by the Engineer of Record, release of the maintenance surety. ~~A portion of the developer's bond shall be retained to guarantee said maintenance. The amount retained shall be set by the Town Engineer.~~ The Town Engineer shall recommend to Planning Commission the amount of the maintenance surety. Planning Commission shall set the maintenance surety at the same time and in the same vote that releases the performance surety in order to continue the developer's guarantee. The performance surety shall be exchanged by Town Staff for the maintenance surety after BOMA approves the dedication of the public improvement.

5.2.20 Release of Maintenance Bond and Approval of Acceptance the Public Improvements

Upon completion of the one (1) year maintenance/warranty period, and based upon the favorable recommendation in the Town Staff's Bond Report, ~~correction of any and all defects in the required~~

~~improvements, the remaining bond shall be released by the Planning Commission shall recommend release of the maintenance surety upon the BOMA's approval of acceptance of the public improvement Town Engineer. Upon BOMA's acceptance of the public improvement, it shall become the Town's asset and Town Staff shall return the maintenance surety to the applicant.~~

Section III. REMOVED BY PLANNING COMMISSION

Section IV. RESIDENTIAL OPEN SPACE AMENITY PERMIT REQUIREMENT

Section 3.5.3 Residential Open Space Amenity Permit

The addition of any amenity (e.g. playgrounds, pools, trails, basketball courts, tennis courts, etc.) within a Residential Open Space lot specified in any plat, site plan, or other similar document filed with the Department of Community Development shall require a Residential Open Space Amenity Permit, approved by the Planning Commission and issued by the Department of Community Development. Said permit is designed to ensure compliance with this ordinance and other Town law and to ensure that any use within an approved residential open space lot conforms to approved preliminary plat specifications and overall policy in accordance with the Town General Plan. The Planning Commission shall deny any such application for permit if the amenity described therein would:

- a) create a nuisance to surrounding residences,
- b) violate this ordinance or any other Town, State, or Federal law, or
- c) be in disharmony with the Town's General Plan.

The application for a Residential Open Space Amenity Permit shall include a site plan to be reviewed by the Planning Commission that fully depicts and describes the amenity proposed; shows the location of the amenity and its accessories; and demonstrates that the amenity meets all LDO requirements. The Planning Commission may require further information of the applicant in order to properly evaluate the application.