

# THE VILLAGE OF TAOS SKI VALLEY

## ORDINANCE NO. 10-25

### AN ORDINANCE ADOPTING COMPREHENSIVE SUBDIVISION REGULATIONS FOR THE VILLAGE OF TAOS SKI VALLEY, NEW MEXICO

BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF TAOS SKI VALLEY (HEREINAFTER "THE VILLAGE"):

#### PART 1: GENERAL PROVISIONS.

##### SECTION 1-1 TITLE.

These regulations shall be known as the "Subdivision Ordinance" of the Village of Taos Ski Valley, New Mexico and shall be referred to herein as "this Ordinance."

##### SECTION 1-2. PURPOSE AND INTENT.

This Ordinance is adopted pursuant to the authority delegated to Municipalities under sections 3-19-6 through 3-19-7, 3-20-1 through 3-20-16 NMSA 1978, and to promote good planning practice. This Ordinance is intended to help achieve the goals and objectives of the comprehensive Plan and is viewed as a vital tool for accomplishing that plan. Thus, the regulations and restrictions of this Ordinance are designed to avoid congestion in the streets and public ways; to secure safety from fire, flood, and other dangers; to promote the general welfare of the community; to preserve and conserve local water resources; to prevent the overcrowding of land; to facilitate adequate provisions for transportation, water, sewerage, schools, parks and other community requirements; to conserve the value of property; and to encourage the most appropriate use of land throughout the Village of Taos Ski Valley.

##### SECTION 1-3. ORDINANCE.

No Subdivision shall be commenced or continued within the Village of Taos Ski Valley except as authorized by this Ordinance. All use within a Subdivision will comply with Ordinance No. 10-30 (Zoning Ordinance) and all other pertinent Village ordinances.

##### SECTION 1-4. JURISDICTION.

A. The provisions in this Ordinance are applicable to lands in the Village of Taos Ski Valley Planning and Platting jurisdiction. Every person who desires to subdivide

land shall furnish a preliminary plat (if required) and a final plat of the proposed subdivision in accordance with this Ordinance.

- B. Territorial Jurisdiction - This Ordinance shall govern the subdivision of land within the corporate limits of the Village, as now or hereafter established, and within the area of the Village's extra territorial planning and platting jurisdiction as established by statute. Subdivisions partially or wholly within the platting jurisdiction of both the County and the Village shall be approved in accordance with the terms of applicable Village and County ordinances, regulations, and rules, as well as applicable New Mexico statutes, before the plat is recorded in the Office of the County Clerk.

### **SECTION 1-5. ADMINISTRATION**

- A. Administrative Official - A Village Planning Officer shall be appointed by the Council to administer the provisions of this Ordinance. The Village Planning Officer may also serve in some other capacity as an employee or appointed official of the Village of Taos Ski Valley.
- B. Inspection - The Village Planning Officer has the authority to conduct inspections of the sketch plans and the subdivision land to determine compliance with this Ordinance. The Village Planning Officer shall provide for on-site inspections and other relevant information which may be requested by the Council or Commission as necessary to carry out the purpose of this Ordinance.
- C. Information and Records - The Village Planning Officer shall maintain an office to supply the public with information concerning this Ordinance. A "Subdivision File" shall be maintained and shall contain records which include the following:
1. Subdivision Applications;
  2. Variances allowed under this Ordinance;
  3. Application for Amendments;
  4. Sketch Plats, Preliminary Plats, and Final Plats;
  5. Appeals; and
  6. Violations.
- D. Violations - Complaints and Notification. The Village Planning Officer may institute any appropriate actions or proceedings whenever there is probable cause to believe there is a violation of this Ordinance. Any person aggrieved by

an apparent violation of this Ordinance may file a written complaint with the Village Planning Officer who shall investigate such complaint to determine if probable cause that a violation of this Ordinance exists. Whenever the Village Planning Officer finds probable cause to believe a violation of this Ordinance exists, whether acting on independent initiative or in response to a complaint, the Village Planning Officer shall notify the person responsible for the alleged violation in writing. Such notification shall order the necessary correction to be made within 60 days following the date of notification. Any person who fails to comply with the notification order shall be subject to penalties as stated in this Ordinance.

### **SECTION 1-6. DEFINITIONS.**

A. Word Forms - For the purpose of this Ordinance, certain words or phrases used herein shall be interpreted as follows:

1. The word "person" includes any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity.
2. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
3. The words "shall" and "must" are mandatory, the word "may" is permissive.

B. Definitions - For the purpose of this article, all definitions of the Village of Taos Ski Valley Zoning Ordinance are incorporated herein by reference, in addition the following definitions shall apply unless the context clearly indicates or required a different meaning:

1. **AVALANCHE** - A fall or slide of a large mass of material, as snow, rock, or earth, down a mountain side.
2. **BENCHMARK** - See **MONUMENT**.
3. **BLOCK** – A tract or parcel of land bounded by public streets or lands, streams, railroads, un-platted lands or a combination thereof.
4. **BUILDING OR SETBACK LINE** - A line on a plat between which line and a street no building may be erected. A line indicating the minimum horizontal distance required between a building or structure and a street right-of-way line. In the case of a cul-de-sac, the building line shall be measured around the curvature of the street line. "Setback" means the minimum allowable distance between any Building and the nearest lot line of the Lot upon which it is located, consisting of open space, unoccupied by any Structure except as otherwise provided in this Ordinance.

5. **CAPITAL IMPROVEMENT PLAN** - The two-year Capital Improvement Plan which is adopted by the Village.
6. **CERTIFICATE OF COMPLETION AND ACCEPTANCE** - A document issued by the Village Planning Officer which certifies that the public infrastructure improvements required for a subdivision have been satisfactorily completed or scheduled for construction as a condition of approval and are accepted by the Village, upon approval of the final plat for maintenance and/or public use.
7. **CLUSTER** or **CLUSTERING** means a site-planning technique that concentrates buildings and structures in specific areas on a lot, site, or parcel to allow the remaining land to be used for recreation, open space, and/or preservation of features and/or structures with environmental, historical, cultural, or other significance. The techniques used to concentrate buildings may include, but shall not be limited to, reduction in lot areas, a change in setback requirements and a change in other zoning requirements, with the resultant open space being devoted by deed restrictions for one or more uses.
8. **CLUSTER DEVELOPMENT, RESIDENTIAL** means a land development project in which the site planning technique of clustering dwelling units is employed.
9. **COMMON OPEN SPACE** means the portion of the site set aside in perpetuity as open space. This area may include wetlands, floodplains or flood-hazard areas, stream corridors, agricultural lands, habitats of wildlife, scenic views, historical or cultural features, archaeological sites, or other elements to be protected from development, as well as easements for public utilities other than road and access easements. The open space may be open to the public.
10. **COMPREHENSIVE PLAN** - The Comprehensive Plan of the Village of Taos Ski Valley, New Mexico.
11. **COUNTY** - Means Taos County, New Mexico.
12. **CUL DE SAC** - A short street intersecting another street at one end and terminating at the other end normally with a vehicular turn around.
13. **DESIGN STANDARDS** - The specific minimum standards for the design of subdivision contained in Section 3 of this Ordinance.
14. **DEVELOPMENT** means the construction, reconstruction, conversion, structural alternation, relocation, or enlargement of any structure; any

mine, excavation, landfill or land disturbance; and/or any change in use, or alteration or extension of the use, of land.

15. **DEVELOPMENT AGREEMENT** – An agreement between the Village and Subdivider whereby the Subdivider guarantees to complete all improvements and terms of payment for same.
16. **DRAINAGE COURSE** - A natural water course or indenture for the drainage of surface waters.
17. **DRIVEWAY** - Entrances to Residential or Commercial lots, which shall not exceed 30 feet in width.
18. **EASEMENT** - A liberty, privilege, right or advantage which one has over the land of another.
19. **FLOODPLAIN** - Any area which will be flooded by water from a 100-year frequency storm.
20. **FLOOD FRINGE** - Any area that will be flooded by water from a 50-year frequency storm.
21. **FLOODWAY** - Any area that will be flooded by water from a 25-year frequency storm.
22. **FUTURE STREET LINE** - A line, established by the developer, for the purpose of delineating the future boundaries of public right of way to be used for street purposes.
23. **INFRASTRUCTURE** - Streets, sanitary sewer and water system facilities, lines, and appurtenances, drainage facilities, street lighting, structures for electrical power, and other improvements used by the public or used in common by owners of lots within a subdivision.
24. **INFRASTRUCTURE, PRIVATE** - Infrastructure owned by a non-governmental entity.
25. **LAND SURVEYOR** - A person who engages in the practice of land surveying and is a registered, licensed land surveyor in the State of New Mexico.
26. **LOT** - A parcel of land, exclusive of public right of way, placed on the County Clerk's records in accordance with this Ordinance, the Taos County Subdivision ordinance or predecessor ordinances, whose legal description is tied to a monument.

27. **MASTER PLAN** - The Village's plan for the physical development of the Village that includes, but is not limited to, the existing and proposed general location, character and extent of streets, public and private utilities and other public ways, grounds or spaces.
28. **MONUMENT** - One or more of the following:
  - a. **PERMANENT SURVEY MONUMENT** - A cap referenced to the New Mexico Coordinate System having the land surveyor's registration number inscribed thereon.
  - b. **SUBDIVISION CONTROL MONUMENT** - A metal stake pipe or other approved marker which identifies position within a subdivided area and which is referenced to a permanent survey monument.
29. **PERFORMANCE AND PAYMENT BOND** A surety bond for performance and payment made with the Village of Taos Ski Valley as beneficiary in an amount equal to one hundred twenty-five percent (125%) of the estimated full cost of all improvements promised by subdivider or required by the Commission. The costs shall be estimated by the Village Planning Officer. In lieu of the performance bond, a dedicated, irrevocable escrow deposit or irrevocable letter of credit, may be made in the amount of one hundred twenty-five per cent (125%) of the estimated cost. The Surety Bond or escrow deposit shall secure that said improvements will be constructed in accordance with this Ordinance and that all costs of said improvements will be paid.
30. **PLANNING COMMISSION** - The Village of Taos Ski Valley Planning and Zoning Commission.
31. **PLAT** - Map, chart, survey, plan or re-plat certified by a licensed, registered land surveyor which contains a description of the subdivided land with ties to permanent monuments.
32. **PRIVATE WAY** - An area or easement which is not public right of way and which contains a road providing access between public right of way and one or more lots. The term may include easements for public and private infrastructure when such are established through a suitable legal document, along with the access rights, for utility service and fire and rescue services.
33. **PUBLIC AREA** - An area of land owned by or intended to be owned by a governmental entity or over which a governmental entity enjoys an easement, whether deeded, dedicated, or otherwise acquired, and which is generally, but not required, to be used to serve the public with some service or benefit, including public infrastructure.

34. **RECREATIONAL TRAIL** - Single track or narrow two track trail. A thoroughfare or track across land or snow, used for recreational purposes such as, but not limited to, snowshoeing, bicycling, skiing, day hiking, equestrian activities, trail biking, overnight and long-distance backpacking, snowmobiling, aquatic or water activities and vehicular travel or motorcycle, four-wheel drive or all-terrain off-road vehicles, etc.
35. **RIGHT-OF-WAY**- A strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates curbs, lawn strips, sidewalks, lighting, and drainage facilities, and may include special features such as grade separation, landscaped areas, viaducts and bridges. "Public Right-of-Way" means a street which has been dedicated to the public by deed, or reserved by plat, acquired by prescriptive easement, or otherwise acquired by the Village, County, State , Federal Government or other governmental entity.
36. **ROADWAY** - That portion of the street available for vehicular traffic and where curbs or ditches might be laid.
37. **RURAL ACCESS ROAD** - Agriculturally related road existing or constructed outside of a subdivision, only for private service use. May be included in a recreational trail corridor.
38. **SIDEWALK**- a walk consisting of a graveled, paved or cemented area for pedestrians, usually beside a street or roadway but within the right-of-way.
39. **SITE PLAN** means the development plan for one or more lots on which is shown the existing and/or the proposed conditions of the lot. "Site Plan" is a graphic representation of any existing or proposed development on a lot which includes a survey boundary to scale and depicts the spatial relationship to surrounding properties and public rights-of-way
40. **SNOW STORAGE EASEMENT** - Twenty (20) feet set back for snow storage from street.
41. **STREET** - All properties dedicated, acquired by prescriptive use or intended for public or private use for access to abutting lands or subject to public easements therefore, and whether designated as a street, highway, thoroughfare, parkway, thruway, expressway, road, avenue, boulevard, lane, place, circle, or however otherwise designated.
42. **STREET WIDTH** - Shall be the distance between the lot lines measured at right angles to the street center line and does not include snow removal storage easements.

- 43. SUBDIVIDER** - Any person who, by reason of his power, authority, and/or interest with respect to a specific parcel of land, effects, brings about, causes, or proposes, the subdivision of that parcel.
- a. **SUBDIVIDE** or **SUBDIVISION** means:
- 1.) For the area of land within the corporate boundaries of the municipality, the division of land into two or more parts by platting or by metes and bounds description into tracts for the purposes set forth in Subsection B of this section; and
  - 2.) For the area of land within the municipal extraterritorial subdivision and platting jurisdiction, the division of land into two or more parts by platting or by metes and bounds description into tracts of less than five acres in any one calendar year for the purposes set forth in Subsection B of this section.
- b. The division of land pursuant to Paragraph 1.) or 2.) of Section a of this section shall be for the purpose of:
- 1.) Sale for building purposes;
  - 2.) Laying out a municipality or any part thereof;
  - 3.) Adding to a municipality;
  - 4.) Laying out suburban lots; or
  - 5.) Re-subdivision.
- 44. SUBDIVISION IMPROVEMENTS AGREEMENT** - An agreement entered into between the Village and a subdivider by which the subdivider agrees to assure construction of required infrastructure improvements.
- 45. VACATION** - The act which rescinds all or part of a recorded subdivision plat including legal dedications and grants of easements.
- 46. VARIANCE** - Modification or waiver of the regular subdivision design standards.
- 47. VILLAGE ATTORNEY** - The chief attorney for the Village
- 48. VILLAGE PLANNING OFFICER** - A Village employee who is designated by the Mayor.



**49. ZONE** - One of the zones created by the Ordinance 10-30, except where used in the context of the water system pressure zones.

C. All definitions included in Village of Taos Ski Valley Ordinance 10-30 apply.

**SECTION 1-7. RECORDS.**

The Village Planning Officer shall keep public records of findings, decisions, and recommendations relative to all subdivision plats recorded with it for review.

**SECTION 1-8. INTERPRETATION.**

The provisions of this Ordinance shall be held to be minimum requirements to meet the intent expressed in Section 1-2 of this Ordinance. Where the provisions of this Ordinance impose greater restrictions than those of any other ordinance or regulation, the provisions of this Ordinance shall prevail. Where the provisions of any other ordinance or local regulation impose greater restrictions than those of this Ordinance, the provisions of such other ordinance or local regulation shall prevail.

**PART 2: FUNDAMENTAL CONSIDERATIONS.**

**SECTION 2-1. DEDICATIONS.**

A. Dedications Required - Dedication of land for public use or purposes may be required for the following in accordance with the appropriate policy and/or other policies set from time to time by the Village:

1. Streets and other access.
2. Parking areas.
3. Drainage facilities.
4. Snow storage areas.
5. Sidewalks.
6. Parks or other recreational areas.
7. Other public infrastructure, i.e., sewer and water main extensions.

B. Method of Dedication:

1. Dedication of Public Areas shall be free and clear of any liens or encumbrances and in fee simple unless:

- a. The subdivider demonstrates that fee simple dedication is legally not feasible; or
  - b. The Planning and Zoning Commission and the Village Attorney find that a different type of dedication better accomplishes Village policy or is provided for by specific ordinance.
2. If dedication in other than fee simple is approved, the nature of the property interest dedicated shall be clearly indicated on the plat.
  3. When parks are dedicated, a deed to the land shall be delivered to the appropriate governmental entity.
- C. Acceptance of Dedications - The procedure for accepting dedications of public areas and improvements is specified in Section 3-5 of this Ordinance. When in the extraterritorial planning and platting jurisdiction, dedications shall be accepted by the County in accordance with its subdivision requirements.

#### **SECTION 2-2. EASEMENTS FOR UTILITIES.**

Except when alleys are provided for the purpose, utility easements not less than fifteen (15) feet in width shall be provided along front, rear and side lot lines where necessary for use in erecting, constructing and maintaining utilities. Front easements may also be used for snow storage.

#### **SECTION 2-3. WATER AND SANITARY SEWER SERVICE.**

- A. All developments shall be connected to the Village's water and sewer systems at subdivider's expense. All extensions and connections shall be paid for by developer and conform to the Village's standards and must be inspected and approved by the Village.
- B. All water and sewer service lines shall be installed in the road right of way or appropriate easements accessible to each lot.

#### **SECTION 2-4. MINIMUM LOT SIZE.**

The minimum lot size for any subdivided parcel shall be 0.50 acres.

#### **SECTION 2-5. CLUSTER DEVELOPMENT**

##### **A. Purpose**

(1) It is the purpose of this ordinance to permit residential cluster development in all subdivisions and to encourage its use. Cluster development should:

- (a) encourage creative and flexible site design that is sensitive to the land's natural features and adapts to the natural topography;
- (b) protect environmentally sensitive areas of a development site and preserve on a permanent basis open space, natural features, and prime agricultural lands;
- (c) decrease or minimize non-point source pollution impacts by reducing the amount of impervious surfaces in site development;
- (d) promote cost savings in infrastructure installation and maintenance by such techniques as reducing the distance over which utilities, such as water and sewer lines, need to be extended or by reducing the width or length of streets; and
- (e) provide opportunities for social interaction through recreational trails promoting walking, biking, hiking, skiing and equestrian activities in open space areas.

**B. Applicability; General Provisions**

(1) Cluster developments shall be permitted in any subdivision.

(a) All principal and accessory uses authorized in the applicable zoning district(s) shall be allowed in the cluster development. In addition, multifamily dwellings, duplexes, and townhouses may be permitted for a cluster development located in a residential zone that does not otherwise allow attached dwelling units.

(b) Maximum lot coverage, floor area ratios, building height, and parking requirements for the applicable zoning district shall apply to the cluster development. Maximum lot coverage, floor area ratios, and parking requirements, however, shall be applied to the entire site rather than to any individual lot.

(2) The following provisions shall apply to any residential cluster development, regardless of the general requirements of the applicable residential zoning ordinance:

(a) No minimum width or depth of a lot shall apply.

(b) A minimum separation of 15 feet shall be provided between all principal buildings and structures.

(c) A minimum yard or common open space of a least 25 feet in depth shall be provided, as measured from all public streets and from the side and rear lot lines of the entire cluster development.

(d) Each lot shall have access to it with a maximum width of 15 feet to a public or private street. Such access may be shared with other lots.

(e) More than one principal building or structure may be placed on a lot.

(f) Twenty five percent (25%) of the site may be conveyed as common open space in the manner provided for in Section 2-5 H below and in accordance with the Village of Taos Ski Valley Zoning Ordinance.

**C. Contents of Site Plan**

(1) The preliminary and final site plan for a residential cluster development shall include, but shall not be limited to, the following information:

(a) The maximum number and type of dwelling units proposed.

(b) The areas of the site on which the dwelling units are to be constructed or are currently located and their size (this may take the form of the footprint of the dwelling unit or a building envelope showing the general area in which the dwelling unit is to be located).

(c) The calculations for the permitted number of dwelling units, derived pursuant to Section 2-5 D below.

(d) The areas of the site on which other proposed principal and accessory uses may be located and their size.

(e) The areas of the site designated for common open space and their size.

(f) The areas of the site designated for parking and loading and the size of individual spaces

(g) The location of any recreation trails to be dedicated for public use including but not limited to hiking, biking, skiing, snowshoeing and equestrian activities.

(h) The number of acres that are proposed to be conveyed as common open space.

(i) A topographical map as required in Section 3-4 (B ) (2) (e) that is a shaded relief map showing areas of slope greater than 15% and less than 25% and a separate shading showing slopes greater than 25%. The remaining un-shaded areas will show areas of slope less than 15%.

**D. Changing Minimum Lot Size**

If the developer dedicates 25% of the acreage of the subdivision to open space with a public recreational trail and cluster develops the remaining acreage, the minimum lot size shall be 0.33 acres. If the developer dedicates 40% of the acreage of the subdivision to open space with a public recreational trail and cluster develops the remaining acreage, the minimum lot size will be less than 0.33 acres with the minimum lot size to be negotiated with the Planning Officer and approved by the Planning Commission.

**E. Procedures for Review**

The Planning Commission shall review and approve a residential cluster development and any amendments thereto in the manner provided for in this ordinance, together with any zoning ordinances and regulations adopted pursuant thereto.

**F. Review Criteria**

(1) In reviewing a residential cluster development, the Planning Commission shall determine whether:

(a) the site plan satisfies the requirements of Sections 2-5 B, 2-5 C and 2-5 D above, the requirements of Section 3-4 C and that the site plan complies with any requirements contained in its Certificate of Compatibility issued pursuant to the Village Zoning Ordinance;

(b) To allow for reductions in lot sizes buildings and structures may be adequately grouped so at least [25] percent of the total area of the site is set aside as common open space. To the greatest degree practicable, common open space shall be designated as a single block and not divided into unconnected small parcels located in various parts of the development;

(c) To allow for further reductions in lot sizes, cluster development principles as well as the dedication of a public recreational trail shall be incorporated into cluster development design.

(d) individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography;

(e) existing scenic views or vistas are permitted to remain unobstructed, especially from public streets;

(f) floodplains, wetlands, and areas with slopes in excess of twenty five (25%) percent are protected from development;

(g) the cluster development advances the purposes of this ordinance as stated in Section 2-5 A above.

(2) The Planning Commission may, in its opinion, apply such special conditions or stipulations to its approval of a residential cluster development as may be required to maintain harmony with neighboring uses and to promote the objectives and purposes of the comprehensive plan and the zoning and subdivision ordinances.

(3) If the Planning Commission finds that the requirements of paragraph (1) above are satisfied, it shall approve the residential cluster development, subject to any special conditions or stipulations pursuant to paragraph (2) above, any reductions in lot size

requirements pursuant to Section 2-5 D above, and any reductions pursuant to Section 2-5 G below.

**G. Reduction of Certain Physical Design Requirements**

(1) In approving a residential cluster development, the Planning Commission may reduce the pavement width of any public or private streets that would otherwise be required by the subdivision regulations or other design specifications for roads to [22] feet.

(2) An applicant who wants the reduction of pavement width of public or private streets as provided for in paragraph (1) above, shall submit a statement of justification for the reduction along with the final site plan.

**H. Conveyance of Open Space**

(1) Common open space provided by a residential cluster development shall be conveyed as follows:

(a) To the Village of Taos Ski Valley and accepted by it for park, open space, agricultural, or other specified use or uses, provided that the conveyance is approved by the Planning Commission and is in a form approved by the Village attorney; or

(b) To a nonprofit organization whose principal purpose is the conservation of open space, to a corporation or trust owned or to be owned by the owners of lots or dwelling units within the residential cluster development, or to owners of shares within a cooperative development. If such a corporation or trust is used, ownership shall pass with the conveyances of the lots or dwelling units. The conveyance shall be approved by the Planning Commission and shall be in a form approved by the Village attorney.

(2) In any case, where the common open space in a residential cluster development is conveyed pursuant to subparagraph (1)(b) above, a deed restriction enforceable by the Village shall be recorded that provides that the common open space shall:

(a) be kept in the authorized conditions(s); and

(b) not be developed for principal uses, accessory uses (e.g., parking), or roadways.

**PART 3: PROCEDURES AND SUBMISSION  
REQUIREMENTS FOR PLATS.**

**SECTION 3-1. PRE-APPLICATION CONFERENCE.**

Prior to submission of a plat, the subdivider shall, by attendance at the Pre-Application Conference required in the Village Zoning Ordinance, Section 4, discuss with the Village Planning Officer the procedure and requirements for approval of the plat. The requirements of the Certificate of Compatibility of the Village Zoning Ordinance will be set out. In addition, the Village Planning Officer shall provide guidance to the subdivider as to the appropriateness of the proposal in relation to current applicable Village plans, policies, and zoning. The Village Planning Officer shall advise the subdivider as appropriate regarding requirements for general layout of streets, for dedications of land, for provision of infrastructure improvements, drainage considerations, fire protection and similar matters as well as the availability of existing services. The Village Planning Officer shall also advise the subdivider whether to schedule a review session with the Planning and Zoning Commission when appropriate.

**SECTION 3-2. CLASSIFICATION OF SUBDIVISION AND OUTLINE OF PROCEDURE.**

- A. The following procedure will apply to all subdivisions:
  - 1. Sketch plat review;
  - 2. Preliminary plat review and approval; and then
  - 3. Final plat review and approval
- B. Certain subdivisions may be subject to the Alternate Summary Procedure (Sec.3-9).

**SECTION 3-3. SKETCH PLAT.**

- A. Purpose and Intent - The purpose of the sketch plat review is to obtain necessary information and describe the proposed subdivision, lot sizes, street arrangement, and purpose of the proposed subdivision. The subdivider shall describe the overall concept in the sketch plat with all components set out in the Village's Zoning Ordinance Sections 8(B) and 8(C) contained thereon. The Village shall advise the subdivider of community goals, plans, available date, and policies pertinent to the site that might affect the potential development (including off-site considerations, whether the property can be served by community facilities), whether infrastructure is available, and shall advise the subdivider as to the general acceptability of the proposed subdivision concept.
- B. Procedure:
  - 1. Application - Review and advice on sketch plat subdivision proposals are initiated by application to the Village Planning Officer. The application shall be accompanied by the number of copies of a sketch plat together with other supplementary material as specified in this ordinance. Subdividers shall bring in at the sketch plat stage a concept for all the

contiguous land subject to their control, within 1000 feet, if any. However, the preliminary and final plat may encompass only a portion of such land.

2. Review - The Village Planning Officer shall review the sketch plat and supplemental material submitted for conformity to this Ordinance and the Village's Zoning Ordinance. Within 15 days following receipt by the Village of complete required submittals, the Village Planning Officer shall inform the subdivider whether the proposal appears to meet the requirements of this Ordinance and the Village's Zoning Ordinance. If it is determined that the proposal does not appear to meet the requirements, the Village Planning Officer shall state in writing all the deficiencies found in the sketch plat submittal and advise the subdivider as to any special analyses or other materials which must be submitted with a preliminary plat.

C. Required Submittals - A sketch plat and supporting data shall include the following:

1. Proposed subdivision name.
2. Location map - A location map shall show the relationship of the proposed plat to existing community facilities which serve it and to developments and improvements within 500 feet of the proposed subdivision.
3. Sketch - A sketch, on a current topographic survey, shall show in simple form the proposed plat boundary, the proposed layout of streets, lots, and other features in relation to existing conditions.
4. Written information - General sketch plat information shall list the name and address of the subdivider and his agent, if any, the total area of the proposed plat, the area of each proposed use, and a description of the existing conditions of the site and the proposed development as necessary to supplement the sketch plat.
5. All documentation required in the Village Zoning Ordinance Sections 8(B) and 8(C).
6. No tree cutting will be allowed on any parcel until the Planning Officer has approved the sketch plat for preparation of a Preliminary Plat or a Final Plat.

#### **SECTION 3-4. PRELIMINARY PLAT.**

- A. Purpose and intent - The preliminary plat details the development concept worked out as a result of the sketch plat review. The preliminary plat stage is the substantive decision point in the subdivision approval process. Any changes



from the approved preliminary plat shall be submitted as for preliminary plat review and approval.

B. Procedure:

1. Application - The application to the Planning and Zoning Commission shall be accompanied by ten copies of the preliminary plat.
2. Review - The Planning and Zoning Commission shall review the preliminary plat and supplemental data submitted. The Planning and Zoning Commission may request comments from Village departments, other governmental agencies and franchised utilities as may be appropriate.
3. Hearing and Notice:
  - a. Public Hearing - Decision upon a completed and filed application for preliminary plat approval shall be rendered after a public hearing thereon, which public hearing shall be held not later than 30 days after the Village has received subdivider's completed application and completed preliminary plat material as determined by the Village Planning Officer.
  - b. Public Notice:
    - 1.) At least 15 days prior to the date of the hearing, notice shall be posted and sent by first class mail to the owners of property within 100 feet of the proposed subdivision by the Village Planning Officer. The mailing shall use the ownership records of the County Assessor. The notice shall contain:
      - a.) The location of the proposed subdivision, the size of the subdivision, the approximate number of proposed lots, and the fact that a terrain management plan is proposed for approval;
      - b.) When and where interested persons may examine the preliminary plat;
      - c.) When and where interested persons may file written comment; and
      - d.) The time and place of the public hearing.
    - 2.) Sign Posting - The applicant shall post and maintain one or more signs in locations specified by the Village Planning

Officer. The applicant is responsible for posting and maintaining such signs for at least 15 days before the date of the public hearing and shall remove them within five days after the hearing is completed. Failure to properly post signs is grounds for deferral of the request. No one except the applicant or the Village shall remove or tamper with any required sign during the period it is required to be maintained.

4. Decision:

- a. A decision on the preliminary plat shall be made by the Planning and Zoning Commission within 60 days of the date the application, plat and other required supplemental data are deemed complete by the Village Planning Officer.
- b. A written decision shall be made a part of the record, along with any conditions or findings necessary to make clear any agreement or policy interpretation. A conditional approval shall state the conditions and a disapproval shall state the reason therefor. A copy of the decision shall be sent to the subdivider and any other persons shall be mailed a copy of the decision after submitting a fee for said copies.
- c. Approval of a preliminary plat constitutes approval to proceed with design of any required master plan Village utilities or facilities, unless stated otherwise in the preliminary plat approval.

C. Information required for the preliminary plat review:

1. Purpose - The document required for the preliminary plat review is intended to provide sufficient information for the Planning and Zoning Commission to make a determination about whether the subdivision has:
  - a. Roads that meet the standards of the Village to each parcel, including ingress and egress for emergency vehicles, and utility easements to each parcel; and
  - b. Terrain management to protect against flooding and avalanche; inadequate drainage and erosion; and
  - c. Whether the subdivision will conform with the requirements of this Ordinance.
2. Existing Conditions - The preliminary plat shall be at a scale of 100 feet to one inch (100:1) or larger, and shall show all existing conditions as follows:

- a. Boundary lines - bearing and distances
  - b. Existing easements - location, width and purpose
  - c. Streets on or adjacent to the site - name and right-of-way width and location; type and width of surfacing; culverts, etc.
  - d. Utilities - on or adjacent to the site
  - e. Natural Resources Inventory which includes:
    - 1. Existing vegetation areas, including forest and woodlands
    - 2. Wetlands and wetland vegetation;
    - 3. Geological features, such as rock outcrops;
    - 4. Existing streams, ponds, drainage swales, run-off settling areas; and
    - 5. All land within any Flood Plain
    - 6. Springs, perennial or intermittent
  - f. Ground elevations on the site - show contours with an interval of not more than ten (10) feet, if such information is sufficient for planning purposes, or show contours with an interval of not more than 2 feet, if necessary because of irregular land or need for more detailed data for preparing plans and construction drawings.
  - g. Conditions on adjacent land significantly affecting design of subdivisions as follows: approximate direction and gradient of ground slope, character and location of development, existing platting and tract boundaries.
  - h. Proposed public improvements: streets or other major improvements planned by public authorities for future construction on or near the site.
  - i. Location map showing location of the site in relation to well-known landmarks.
  - j. Title and Certificates - subdivision name, names and addresses of owners.
  - k. Scale, north arrow, name of registered land surveyor and date.
3. Subdivision Proposal - The preliminary plat shall be at a scale of 100 feet to one inch (100:1) or larger and shall show all existing conditions required in Subsection (2) above and shall show all proposals, including the following:

- a. Location and approximate dimensions of streets and alleys, and proposed street names.
  - b. Other right-of-way or easements: location, width and purpose.
  - c. Location and type of utilities.
  - d. Approximate lot lines, lot and block numbers, typical and minimum lot sizes.
  - e. Location and dimensions of all existing buildings and proposed building envelopes, if any.
  - f. Locations, dimensions and extent of any land to be dedicated to the public use including any improvements to be made to that land.
  - g. Locations, dimensions and extent of any buffer areas or open space clearly indicating whether such areas are intended to be offered for dedication to the public or to remain privately-owned.
  - h. Location of any proposed landscaping or other feature.
  - i. Site data, including number of residential lots, total length of streets and total acreage in the subdivision.
  - j. Legal description indicating the range, township and section within which the subdivision is located.
  - k. Title, scale, north arrow and date.
  - l. Location of all easements, including snow storage easements.
  - m. Any other item from Section 2-5 C that the Planning Officer deems necessary for proper review.
4. Construction Schedule - The subdivider shall provide an estimated schedule of infrastructure construction and lot development.
6. Terrain Management Plan - Information must be submitted for the terrain management of the proposed subdivision.
- a. A vicinity map drawn to a scale of not less than 2,000 feet to one inch showing contours at ten foot intervals, the relationship of the site to its general surroundings, and the location of all existing drainage channels, historic avalanche paths, water and erosion

- control structures, water courses and water bodies within 1000 feet of the subdivision;
- b. A subdivision map drawn to a scale of not less than 100 feet to one inch showing:
- 1.) the boundaries of the area to be subdivided;
  - 2.) the existing contours with intervals of not more than ten feet.
  - 3.) the locations of all proposed lots, roads, bridges, water and erosion control structures and utility easements in relation to the existing contours;
  - 4.) the finished contours of the subdivision after the subdivider's proposals have been implemented using contour intervals equal to or less than those on the existing contour map;
  - 5.) the location of all cuts and fills and method of stabilization - embankment, compaction and/or revegetation;
  - 6.) the location of all historic avalanche paths, drainage channels, watercourses, wetlands, water bodies, floodways, flood fringes and floodplains;
  - 7.) storm drainage computations of the estimated runoff from the subdivision following completion of development;
  - 8.) sufficient runoff information on the areas contributing runoff to the subdivision to show existing drainage patterns and drainage courses that may affect the subdivision or be affected by the subdivision;
  - 9.) quantities of water carried by major drainage courses and proposed treatment of major drainage courses;
  - 10.) all appropriate design details to clearly explain the construction of all necessary drainage control structures and the location, type and size of proposed drainage erosion control structures;
  - 11.) the location of major drainage and water course easements;
  - 12.) all appropriate design details necessary to clearly explain the construction of all subsurface structures;
  - 13.) the location of all trees the subdivider intends to remove;

- 13.) the location of all areas which the subdivider intends to revegetate;
  - 14.) a soil survey for the subdivision including the various soil types drawn to the scale of the preliminary plat showing the location of each different soil type;
- c. Estimated Schedule of Construction - including the following:
- 1.) start and finish of all clearing and grading operation;
  - 2.) duration and exposure of disturbed areas;
  - 3.) stabilization of disturbed areas;
  - 4.) installation of storm drainage systems;
  - 5.) installation of all roads; and
  - 6.) installation of each utility to be provided.

D Expiration of Approval:

1. Approval of a preliminary plat is effective for two years from the date of the Planning and Zoning Commission decision to approve, unless a request for extension is made by the subdivider and granted by the Planning and Zoning Commission. A decision to grant an extension shall be based on the finding that the extension is not detrimental to the public interest and that the preliminary plat, as approved, is not in significant conflict with current Village Policies. The Time of any extension must be set by the Planning and Zoning Commission, but in no case may each extension exceed one additional year.
2. Preliminary plat approval is null and void if final plat approval and filing with the Taos County Clerk are not both accomplished within the period of two years of preliminary plat approval plus any approved extensions, as provided in D(1) above.

**SECTION 3-5. FINAL PLAT.**


A. Purpose and Intent:

1. The final plat when recorded is the legal instrument which will allow transfer of land within the subdivision to take place. Legal commitments, dedications, assurances, and any other special agreements must be explicitly stated either upon the plat or by separate instrument to which

reference is made on the subdivision plat. All agreements between the subdivider and the Village shall be in writing and recorded as appropriate.

2. The final plat shall be approved by the Planning and Zoning Commission if it conforms to the preliminary plat as approved including any modifications and conditions specified in the preliminary plat approval, and the required submittals are filed and approved.

B. Procedure:

1. Application - Final plat approval is initiated by application to the Planning and Zoning Commission. The application shall be accompanied by an original and the specified number of copies of the final plat together with an executed subdivision improvements agreement and lien or financial guaranty or a certificate of completion and acceptance of infrastructure signed by the Village Planning Officer. 
2. Notice - Public notice shall be given as specified in Section 3-4 of this Ordinance.
3. Decision - The Planning and Zoning Commission shall:
  - a. Review the final plat and other material submitted for consistency with the preliminary plat as approved, including any conditions specified, and for conformity to this Ordinance and related rules and regulations.
  - b. If the final plat is substantially in conformance with the preliminary plat as approved, conforms with this Ordinance, and if infrastructure improvements have either been accepted by the Village or a satisfactory subdivision improvements agreement, together with either a completed lien form or financial guaranty, has been executed by the subdivider and the Village, the final plat shall be approved by the Planning and Zoning Commission.
  - c. The Planning and Zoning Commission shall report to the subdivider in writing of its decision that the final plat is approved or disapproved. If the final plat is not approved, the Planning and Zoning Commission shall state the reasons for such disapproval. The approval or disapproval shall be within 35 days of the date of submission of the final plat unless a deferral, in writing, is requested by the subdivider and accepted by the Planning and Zoning Commission. If the final plat is approved, approval shall be recorded on the original drawing of the final plat and shall be dated and endorsed by the signature of the chairman of the Planning and Zoning Commission.

4. Acceptance of Dedications - All parks and other public areas shown on the final plat, within which construction of improvements by the subdivider is not required, are accepted by the Planning and Zoning Commission on behalf of the Village by approval of the final plat. All streets and other public areas shown on the plat, within which construction of improvements by the subdivider is required, are not accepted until the Village Planning Officer issues a certificate of completion and acceptance. Streets and other public areas requiring infrastructure improvements are not accepted for maintenance and public use until the issuance of such certificate and approval of the final plat (if the certificate is issued prior to such approval). After acceptance, dedicated land is public property and the fee or other property interest dedicated vests in the appropriate governmental entity.

C. Required Submittals:

1. Assurance of Improvements - A subdivision improvements agreement shall be provided together with a performance and payment bond or escrow deposit, or irrevocable letter of credit if required.
2. Final Plat - The final plat shall be prepared in accordance with Village requirements and meet any conditions or modifications specified in the preliminary plat approval.
  - a. Name of subdivision.
  - b. Location and description of all monuments found or set, or to be set within the plat area.
  - c. Plat boundary lines, subdivision layout including all dedications, easements, rights of way, and street names.
  - d. Location map.
  - e. Consent, warranty of title, and dedication statements signed by the owner or an agent of the owner (as demonstrated by an authorizing document signed by the owner and recorded) that:
    - 1.) The subdivision is with the free consent and in accordance with the desire of the owner of the land;
    - 2.) Those signing as owner(s) warrant that they hold among them complete and indefeasible title to the land subdivided;
    - 3.) The public right of way and other public areas shown on the plat are dedicated to the Village (if the subdivision is within the Village boundaries) or the County (if the subdivision is



- not within the Village boundaries) or to another appropriate governmental entity as specified on the plat; and
- 4.) The easements as shown on the plat are granted for the specified use, showing to whom they are granted and any conditions associated therewith.
- f. A statement by the preparer of the plat that he/she is currently a registered, land surveyor in the State of New Mexico.
  - g. Certifications by the:
    - 1.) Land surveyor who prepared the plat that the plat is in accordance with the laws of the State of New Mexico and applicable subdivision ordinances.
    - 2.) Authorized representatives of the local water and sanitary sewer, electric, gas, and telephone utilities certifying that their system needs have been met.
    - 3.) Village Planning Officer that the water and sewer system requirements, have been or will be met; and
    - 4.) Village Planning Officer that the design is appropriate for the zoning and that the proposed subdivision is consistent with all applicable plans and policies, and the plat is approved for recordation.
  - h. By affixing their signatures to a final plat, each of those representatives mentioned in division (g) above shall be certifying respectively as set forth in those divisions, just as though such certification were set forth verbatim on the plat.

### **SECTION 3-6. SUITABILITY OF THE LAND.**

No lot a portion of which is within the Village historic avalanche overlay zones; or within set areas located in a floodway, flood plain or flood fringe, shall be sold, leased or otherwise disposed of unless the following language appears in the purchase agreement, real estate contract or Warranty Deed:

"Notice: All or a portion of the above-described lands may not be suitable for construction. Buyer or grantee acknowledges that such conditions exist and accepts the lands"

The notice shall be in 12 point bold type.

### **SECTION 3-7. DESIGN STANDARDS.**

**MINIMUM REQUIREMENTS FOR IMPROVEMENTS WITHIN A SUBDIVISION.**


A. Conformity to each of the Village Master Plans - The location of all improvements including all streets and utilities shall conform to the latest pertinent Master Plan and to the provisions therein.

B. Street Requirements and Design.

1. Purpose. The purpose of establishing street design requirements is to ensure that the circulation system is a beneficial element in the hillside setting and maintains, to the greatest extent possible, the natural characteristics of a hillside environment. Through these requirements, the Village recognizes that the placement and alignment of the road system must be designed to exemplify the features present in the neighborhood and enhance the visual character of a hillside community resulting in a more pleasant living environment, and allows opportunities for landscaping and panoramic views.

The minimum street right-of-way width shall not be less than thirty (30) feet wide, with twenty (20) feet snow storage easement on each side excluding driveways. Street grades shall not exceed 12%.

2. The maximum length of any cul-de-sac street shall be 600 feet.
3. All streets shall contain two clear 12-foot travel lanes.
4. There shall be a minimum of two points of vehicular access to the subdivision. One of which may be established for emergency access only, as determined by the Fire Chief or Planning Director.
5. Private roads are not permitted within a platted subdivision.

 C. Utilities - All proposed water, sewer, and drainage improvements shall be designed and installed in accordance with the water and sewage facilities construction standards of the Village and all other utilities must meet all Village requirements. All utility lines must be underground.

**SECTION 3-8. RECORDING.**

- A. The final plat is in full force and effect only after having been duly recorded in the office of the County Clerk. The final plat shall be recorded by the Village Planning Officer within ten (10) working days after approval by the Planning and Zoning Commission.
- B. The Village Planning Officer shall record the final plat and lien together. Alternatively, if the subdivider elects to provide satisfactory financial guaranty, the

final plat shall be recorded by the Village Planning Officer only after satisfactory financial guaranties have been received. In such case the final plat shall be recorded by the Village Planning Officer within ten (10) days of receipt of such guarantees.

- C. After having recorded one copy of the final plat and lien, if applicable, with the County Clerk, which copy shall be the official copy, the Village Planning Officer shall return a stable base reproducible copy to the surveyor, as recorded and properly stamped by the County Clerk, and copies of the stamped plat to the Planning and Zoning Commission.

### **SECTION 3-9 ALTERNATIVE SUMMARY SUBDIVISION PROCEDURE**

- A. The subdivision of land into three (3) or fewer parcels may be accomplished by the use of this summary subdivision process.
- B. A sketch plat showing the proposed subdivision shall be submitted to the Planning Officer. The sketch plat shall meet the requirements of Section 3-3 above. After reviewing the sketch plat with the developer, the Planning Officer may require that the developer submit a final plat for submission to the Planning and Zoning Commission for their approval.
- C. The final plat shall meet all requirements of Section 3-5, except as waived by the Planning Officer or the Planning and Zoning Commission.

### **PART 4: CONSTRUCTION OF REQUIRED IMPROVEMENTS.**

#### **SECTION 4-1. IMPROVEMENTS REQUIRED.**

The subdivider shall install and construct such improvements, if any, as are required by this Ordinance in the manner and to the standards provided in this Ordinance. Required improvements shall be installed and constructed as specified in the subdivision improvements agreement between the subdivider and the Village, and as shown on the approved preliminary plat. The requirement to construct improvements in accordance with the provisions of this Ordinance applies to areas within the Village and to areas outside the Village within the jurisdiction of this Ordinance. However, the Village may accept commitments by the County and/or by franchised and/or private utility systems where such acceptance is deemed appropriate by the Planning and Zoning Commission.

**SECTION 4-2. INFRASTRUCTURE DESIGN AND SPECIFICATIONS.**

- A. In the case of subdivisions requiring construction of improvements after approval of the preliminary plat, the subdivider shall present construction plans and specifications for all improvements to the Village Planning Officer for approval, together with a proposed subdivision improvements agreement between the subdivider and the Village specifying all infrastructure proposed for construction.
- B. The plans and specifications shall:
  - 1. Conform to the preliminary plat as approved by the Planning and Zoning Commission;
  - 2. Be certified by a professional engineer registered in the State of New Mexico; and
  - 3. Include a provision running from the Subdivider to the Village holding the Village harmless for any liability resulting from negligent acts, errors, or omissions of the subdivider or his/her agents.

**SECTION 4-3. SUBDIVISION IMPROVEMENTS AGREEMENT.**

Upon approval of plans and specifications by the Village Planning Officer, the subdivider shall execute a subdivision improvements agreement which guarantees completion of required infrastructure or provides for the construction prior to recording. The subdivision improvement agreement shall specify the time period within which the improvements are to be completed. If the preliminary plat approval should lapse without final plat having been approved, the subdivision improvements agreement automatically lapses and no such improvements are thereafter required or approved. After execution of a satisfactory subdivision improvements agreement, the subdivider may proceed with the construction of all such improvements.

**SECTION 4-4. ASSURANCE OF COMPLETION OF IMPROVEMENTS.**

- A. One hundred twenty-five per cent (125%) of the estimated cost of construction of all infrastructure required by the Planning and Zoning Commission shall be a statutory lien against the real property shown upon the approved preliminary plat as provided in Section 3-36-2 NMSA 1978. The estimated cost of construction of required infrastructure shall be calculated using Village Planning Officer unit prices, including taxes, surveying, inspection, and testing, and such cost shall include all lot improvements that are essential for access to and the delivery of Village services or utilities to the individual lots of the subdivision as well as adjacent properties. The lien established hereby shall be recorded in the office of the County Clerk if the subdivider desires final plat approval prior to construction of required infrastructure improvements, and, if necessary, shall be foreclosed in the manner provided in Section 3-36-1 to 3-36-6 NMSA 1978 or as

otherwise may be provided by law. The lien established herein shall be a first and prior lien on the property.

- B. In the subdivision improvements agreement, the subdivider may agree to either:
1. Construct all improvements, and obtain a certificate of completion and acceptance for maintenance therefore prior to unconditional approval of the final plat by the Planning and Zoning Commission; or
  2. Assure construction after final plat approval. If the subdivider wishes to submit final plat for recording prior to completion of all improvements, the subdivider may post suitable improvements guaranty in an amount approved by the Village Planning Officer, which will accompany the subdivision improvements agreement. The financial guaranty permitted herein shall be an alternative to the lien established in this Section 4-4-A of this Ordinance. If the subdivider elects to provide a financial guaranty acceptable to the Village, the Village shall not file its lien against the subdivision. The guaranty shall be not less than one hundred twenty-five per cent (125%) of the cost of completing the improvements as estimated by the Village Planning Officer. The improvements guaranty shall also secure all lot improvements that are essential to access to and delivery of Village services or utilities to the individual lots of the subdivision. Such guaranty may be by bond, letter of credit, escrow deposit, or other method, and acceptable to the Village Attorney as to form.

#### **SECTION 4-5. TEMPORARY IMPROVEMENTS.**

The subdivider shall build and pay for all costs of temporary improvements specified in the subdivision improvements agreement and shall maintain same for the period specified any applicable Village ordinance or as specified by the Village Planning Officer. Costs for removal of temporary improvements may be included if specified in the subdivision improvements agreement.

#### **SECTION 4-6. COSTS OF IMPROVEMENTS.**

All improvements required in the subdivision improvements agreement shall be made by the subdivider at his/her expense unless cost sharing with the Village or other governmental entity is appropriate pursuant to adopted Village policy and is agreed upon in writing in the subdivision improvements agreement prior to making any such improvements.

#### **SECTION 4-7. IMPROVEMENTS SERVING OFF-SITE AREAS.**

If any infrastructure improvements which will ultimately serve lots in addition to those included in the proposed subdivision are to be constructed, and the subdivider proposes to construct said improvements prior to final plat approval, the subdivider shall prepare

a separate final plat or other suitable legal instrument dedicating to the appropriate governmental entity sufficient property interests to accommodate said improvements. This plat may be approved by the Planning and Zoning Commission at the meeting at which it considers the preliminary plat for the subdivision as a whole. Such separate final plat shall be approved pursuant to Sect 4-2 of this Ordinance prior to the Village Planning Officer's granting approval to proceed with construction of any such improvements. The subdivider may also post an improvements guaranty as specified in Section 4-4 of this Ordinance sufficient to ensure completion of any such improvements, in lieu of the recordation of a lien by the Village against the subdivision.

**SECTION 4-8. INSPECTION.**

The Village Planning Officer shall insure the improvements are properly inspected during construction and upon completion.

**SECTION 4-9. ACCEPTANCE AND MAINTENANCE OF IMPROVEMENTS.**

- A. All improvements shall be completed to the satisfaction of the Village Planning Officer, and all public infrastructure shall be dedicated to the appropriate governmental entity free and clear of any liens and encumbrances. Upon a determination by the Village Planning Officer that all improvements have been satisfactorily completed, the subdivider shall furnish the Village Planning Officer as-built plans for such improvements. The Village Planning Officer shall thereupon issue a certificate of completion and acceptance, accepting such improvements and the associated public areas dedicated on the final plat on behalf of the Village. Where a final plat has not yet been approved, the Village Planning Officer's acceptance shall become effective only upon such approval, and the certificate shall so specify.
- B. Maintenance of all public infrastructure improvements and public areas shown on the preliminary or final plat shall be the responsibility of the subdivider and his/her agents until acceptance by the Village or other governmental entity pursuant to this ordinance. The Village shall issue a certificate of completion and acceptance within 15 days after a final inspection thereof by appropriate Village personnel, when it has been determined upon such inspection that all installations have been constructed and/or installed in accord with approved plans and specifications for the subdivision. The Certificate of Completion and Acceptance shall also release the subdivider's financial guarantee, if any, for the completion of the infrastructure improvements and any liens on the property created under Section 4-4 of this Ordinance.
- C. The subdivider shall be required to record a bond or cause a bond to be executed by the contractor with the Village Planning Officer prior to dedication, in an amount considered adequate by the Village Planning Officer and in a form satisfactory to the Village Attorney, in order to assure the qualities of materials and workmanship of the required improvements for a period of one year after the date of their acceptance.

**SECTION 4-10. PARTIAL COMPLETION AND REDUCTION OF GUARANTIES.**

The Village, may, upon approval of the Village Planning Officer and the Planning and Zoning Commission, execute a partial release of its lien upon the subdivision if the Village Planning Officer and the Planning and Zoning Commission determine that the improvements constructed are complete and are capable of adequately serving the lot(s) to be released. If the subdivider has provided a financial guaranty and if the Village Planning Officer and the Planning and Zoning Commission determines it is appropriate to release some of the subdivider's improvement guaranty, the Village Planning Officer shall authorize a reduction in the amount of the guaranty to an amount which is estimated by the Village Planning Officer to be no less than approximately one hundred twenty-five per cent (125%) of the estimated cost of completing the remaining required improvements, based on the subdivision improvement agreement.

**SECTION 4-11. FAILURE TO COMPLETE IMPROVEMENTS.**

- A. Improvements which are to be constructed prior to submission of the final plat for review shall be completed prior to expiration of the preliminary plat. If the improvements are not completed prior to the preliminary plat expiration date, and if there is not satisfactory assurance of completion in lieu thereof, as provided by Section 4-4 of this Ordinance, the preliminary plat approval shall be deemed to have expired.
  
- B. If improvements to be constructed after final plat approval (including improvements serving off-site areas as specified in Section 4-7) have not been installed within the terms of the subdivision improvements agreement, the Village may declare the agreement to be in default and, after 30 days notice by certified mail, return receipt requested, to the subdivider, may commence foreclosure of its lien. Alternatively, if the subdivider has provided a financial guaranty and the Village has declared the subdivision improvements agreement to be in default, after 30 days notice by certified mail, return receipt requested, to the subdivider and his surety, the Village may demand and receive payment from the surety and subdivider who shall be jointly and severally liable for said payment and thereafter, cause the improvements to be installed. If constructed within public right of way or public easement or other public area, such improvements shall thenceforth be owned by the appropriate governmental entity without further dedication.

**PART 5: VARIANCES FROM MINIMUM STANDARDS.**

**SECTION 5-1. GENERAL.**

- A. The Planning and Zoning Commission may vary the provisions of Section 3-7 of this Ordinance (Minimum Standards for the Design of Subdivisions) in cases:

1. Where varying from the normal requirements will encourage flexibility, economy, effective use of open space, or ingenuity in design of a subdivision, in accordance with accepted principles of site planning; or
  2. Where extraordinary hardship or practical difficulty may result from strict compliance with the minimum standards.
- B. In the case of the subdivisions governed by an approved site development plan, the Planning and Zoning commission may grant a variance to assure conformance with that approved development plan.

**SECTION 5-2. CONDITIONS.**

- A. In approving variances, the Planning and Zoning Commission may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of this Ordinance.
- B. Any waiver of provisions of Part 4 of this Ordinance shall require notice of waiver as approved by the Planning and Zoning Commission to be placed on the final subdivision plat and on a separately recorded document.

**SECTION 5-3. FINDINGS.**

- A. If the variance is required pursuant to Section 5-1 (A) and (B) the Planning and Zoning Commission shall not approve variances unless it shall make findings, based upon the evidence presented to it at a public meeting, after notice as provided in Sec. 3-4 3)b that:
1. The variance will not be injurious to the public safety, health or welfare, or to adjacent property, the neighborhood or the community; and
  2. The variance will not conflict significantly with the goals and provisions of any Village and/or County adopted plan or policy, Ordinance 97-16, or any other Village code or ordinance; and
  3. The variance will not hinder future planning, public right-of-way acquisition, or the financing or building of public infrastructure improvements.

**PART 6: RE-SUBDIVISION, AMENDMENT AND VACATION OF PLATS, RIGHTS OF WAY, PRIVATE WAYS AND EASEMENTS.**

**SECTION 6-1. RE-SUBDIVISION OR AMENDMENT OF PREVIOUS PLAT.**

- A. Any final plat recorded in the office of the county Clerk may be amended or vacated (voided) either:



1. By recording a new subdivision plat (a re-subdivision) covering all or a portion of the previous plat sought to be amended or vacated or by recording an amended plat covering such area. In either case, the new plat or amended plat shall be processed as an original subdivision action under Part 3 of this Ordinance and recorded as specified therein.
  2. Upon a finding at a public hearing by the Planning and Zoning Commission that the plat was obtained by misrepresentation or fraud, the plat may be vacated by the Planning and Zoning Commission. A statement approved by the Planning and Zoning Commission shall be filed in the office of the County Clerk. The County Clerk shall mark the original plat with the words "VACATED" or "PARTIALLY VACATED" and refer on the plat to the volume and page on which the statement of vacation is recorded.
- B. In approving the amendment of or vacation of all or a part of a plat, the Planning and Zoning Commission shall evaluate whether the amendment or vacation action will adversely affect contiguous land, any owner of land within the subdivision being vacated, or the interests of the Village
- C. In approving the amendment of all or a portion of the plat, the Planning and Zoning Commission may require that streets dedicated to a governmental entity in the original plat continue to be dedicated.
- D. The rights of any public or private utility, including drainage, existing prior to the re-plat, total or partial, of any plat are not affected by the re-plat unless an authorized representative of the utility involved agrees by signing the plat to have the rights modified or terminated.
- E. Amendment or vacation of all or a portion of a subdivision outside the municipal limits of the Village, but within its platting and planning jurisdiction, requires approval of both the Village and the County.

**SECTION 6-2. VACATION OF PUBLIC RIGHTS OF WAY, PRIVATE WAYS AND EASEMENTS.**

- A. Public rights of way, private ways, and easements (as shown on recorded plats) may be vacated (voided) by recording a new subdivision plat or by plat amendment, as described in Part 3 of this Ordinance. In addition, where nothing except vacation of public rights of way, private ways, and easements is proposed, it may be initiated by a request to vacate filed by all the owners or property directly affected by the proposed vacation or filed by the Village Planning Officer (where he finds vacation to be in the public interest).

- B. The vacation of public rights of way, private ways, or easements, whether by new plat, plat amendments, or request to vacate, shall be approved only when it is determined that:
1. The public welfare is in no way served by retaining the way or easement; or
  2. There is a net benefit to the public welfare because the development made possible by the vacation is clearly more beneficial to the public welfare than the minor detriment resulting from the vacation; and in addition to divisions (1) or (2) of this division (B):
  3. There is no convincing evidence that any substantial property right is being abridged against the will of the owner of the right.
- C. In approving the vacation, the Planning and Zoning Commission may require that some or all of the public rights of way or easements be retained by the appropriate governmental entity as shown on the original plat.
- D. The Planning and Zoning Commission may require that barriers be placed, at the expense of the applicant, so as to effectively halt the vacated area being used as public way. It may also be necessary to remodel or otherwise reconstruct existing public improvements in order to solve problems created by the vacation, and the Planning and Zoning commission may so require. Costs involved shall be borne by the applicant.
- E. Procedure:
1. In all cases where public right of way, private ways, or easements are sought to be vacated, whether by new subdivision, plat amendment, or request to vacate, the following procedures shall be followed in addition to the basic procedures specified in Section 3-2 of this Ordinance;
  2. Notice and request for Comment.
    - a. The Village Planning Officer shall mail letters to franchised utilities and to the owner of record of all lots adjacent to the right of way, private way, and/or easement to be vacated, informing them of the nature of the proposed vacation, and notifying them of the date, time, and place of the public hearing by the Planning and Zoning Commission on the proposed vacation. For notifying property owners, the name and address of the owners shown in the records of the County Assessor shall be used.
    - b. Prior to the hearing, the Village Planning Officer shall request interested Village departments and other agencies to comment on the application. Comments received shall be submitted to the

Planning and Zoning Commission. Comments from the affected parties shall be requested before vacation of any drainage easement or public right of way within their respective areas of jurisdiction.

- c. If the public right of way, private way, and/or easement proposed for vacation appears to be in use for vehicular access, the applicant shall post and maintain one or more signs, as provided and where instructed by the Village Planning Officer, at least 15 days before the date of the hearing. The applicant is responsible for removing such signs within five days after the hearing is completed. Failure to properly post signs is grounds for deferral of the request. No one except the applicant, the agent of the applicant, or the Village shall remove or tamper with any such required sign during the period it is required to be maintained under this division.
  - d. Public notice shall be posted and published as required by Village Resolution 97-1, at least 15 days before date of the hearing; the notice shall indicate the location of the proposed vacation, where a map of the proposed vacation may be viewed, and information on the date, time, and place of the hearing.
3. Hearing and Decision - A decision on Village approval of vacations shall be made by the Planning and Zoning Commission at a public hearing. Approval or disapproval shall be given in writing, expressing the reasons and any conditions, and a copy shall be sent to the applicant and any other persons who have indicated interest in the matter.

### **SECTION 6-3. TECHNICAL CORRECTIONS.**

- A. Technical corrections to approved, but as yet unrecorded, final plats shall be approved by the Village Planning Officer before being recorded with the County Clerk.
- B. Technical corrections to recorded final plats shall be made by a correction plat approved by the Village Planning Officer. The plat shall include only the area affected by the correction and shall clearly indicate the correction. Correction plats for technical corrections shall be recorded in the same manner as a final plat.

## **PART 7. APPEAL**

### **SECTION 7-1. RIGHT TO APPEAL.**

With respect to decisions and other matters within the jurisdiction of this Ordinance, the subdivider and others commenting on a plat shall be informed of the right to appeal, which appeal shall apply only insofar as the jurisdiction of this Ordinance.

**SECTION 7-2. STANDING.**

The following persons may be considered aggrieved and may file appeals of decisions within the jurisdiction of this Ordinance being deemed to have a personal or pecuniary interest or property right adversely affected by the decision, which right or interest is more than merely nominal or remote.

- A. Persons who own a property interest within 100 feet of the subject site, excluding any public right of way which would not be altered by the action being appealed.
- B. Organized neighborhood associations which have filed their articles of incorporation, bylaws, or other documents indicating their existence which includes key contact people, organizational structure, current boundaries, and preferred mailing address.

**SECTION 7-3. BASIS OF APPEAL.**

Notice of an appeal shall clearly articulate the reasons for the appeal; appellants shall specifically cite and explain one or more alleged errors, as follows:

- A. Error in applying adopted Village plans, policies, and ordinances in arriving at the decision;
- B. Error in the appealed action or decision, including its stated facts;
- C. Error by acting arbitrarily or capriciously or by abuse of discretion.

**SECTION 7-4. APPEAL TO PLANNING COMMISSION.**

Any person aggrieved by any determination of the Planning and Zoning Officer acting pursuant to this ordinance may appeal to the Planning and Zoning Commission by submitting a written application which is received by the Village Planning Officer within 15 days after the date of the Officer's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday, or holiday, the next working day is considered as the deadline for filing the appeal. Such appeal shall be heard and decided by the Planning and Zoning Commission within 60 days of its filing.

**SECTION 7-5. APPEAL TO VILLAGE COUNCIL.**

Any person aggrieved by any determination of the Planning and Zoning Commission acting pursuant to this article may appeal to the Village Council by submitting a notice of appeal to the Village Council within fifteen (15) days of the Planning and Zoning Commission's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday, or holiday, the next working day is considered as the deadline for filing the

appeal. The Village Council may direct that a hearing officer hear the appeal and make a recommendation to the Council. Such appeal shall be heard and decided by the Village Council within 90 days of its filing.

### **SECTION 7-6 APPEAL TO DISTRICT COURT**

Any person aggrieved by any decision of the Village Council may appeal to the District Court of the Eighth Judicial District in the manner provided by law.

### **SECTION 7-7. BENEFICIAL USE DETERMINATION.**

In the event that a property owner subject to this ordinance believes that all beneficial use of his/her property has been denied, or "taken" by the application of this Ordinance, then he/she shall submit an application for a beneficial use determination under the provision of this Section. The procedures provided herein shall be used prior to seeking relief from the courts in order that any denial of beneficial use of property may be remedied through a non-judicial forum.

The purpose and intent of this Ordinance is that every property owner subject to this ordinance should enjoy a beneficial use of his/her property. A beneficial use determination is a process by which the Village evaluates the allegation that there is no beneficial use, and can provide relief from the regulations by granting additional development potential to permit a beneficial use of the property. It is also the intent of this Section that such relief shall not increase the potential for damaging the health, safety, or welfare of future users of the property of neighbors that might reasonably be anticipated if the property owner were permitted to subdivide.

## **PART 8: VIOLATIONS: ENFORCEMENT: PENALTY.**

### **SECTION 8-1. VIOLATIONS AS TO THE ACT OF SUBDIVIDING.**

No subdivision within the territorial and subject matter jurisdiction of this Ordinance shall hereafter be effected except in accordance with the provisions of this Ordinance. No plat shall be recorded with the County Clerk in Violation of the provisions of this Ordinance.

### **SECTION 8-2. VIOLATIONS AS TO TRANSFERRING REAL PROPERTY.**

No parcel created by subdivision within the territorial and subject matter jurisdiction of this Ordinance after the effective date of this Ordinance or predecessor ordinances shall be transferred or conveyed unless a final plat of such subdivision has been duly approved by the Village and recorded with the County Clerk.

**SECTION 8-3. VIOLATIONS AS TO CONSTRUCTION OR SITE ALTERATION.**

No grading or other alteration of a site shall take place prior to approval of a preliminary plat, if the grading or site alteration is related to a proposed subdivision, or as allowed by the Planning Officer.

**SECTION 8-4. ISSUANCE OF BUILDING PERMIT.**

Building permits shall not be issued or allowed by the Village, unless the applicant presents both:

- A. Evidence of a proper lot, constituted by either:
  - 1. A print of the final plat as recorded with the County Clerk and approved as provided for in this Ordinance or any predecessor ordinance governing at the time and parcel was created, showing the parcel for which application for building permit is being made; or
  - 2. Satisfactory evidence that this Ordinance is not applicable to the parcel upon which the building is to take place, either because the parcel is a lot which existed prior to the enactment of this Ordinance or any predecessor ordinances or because the parcel is outside the jurisdiction of this Ordinance as specified in Section 1-4 of this Ordinance; and
- B. Approval by the Village Planning Officer that:
  - 1. The alteration of the natural topography, or drainage pattern, of any lot resulting from the intended construction and prior or planned site preparation complies with a previously submitted and approved Terrain Management Plan, or that no Terrain Management Plan is required; and
  - 2. Adequate provision has been made for connection of the lot to water and sanitary sewer lines if these are necessary for reasonable use of the structure.
- C. After approval and recording of a final plat with the County Clerk and required improvements have been completed and accepted by the Village (where the construction of improvements are required), building permits for structures within the subdivision may be issued. The Planning and Zoning Commission may permit the issuance of building permits prior to completion of all improvements where sanitary sewer, water, and storm drainage facilities have been completed and other improvements are to be completed within six months.

**SECTION 8-5. SEVERABILITY.**

The provisions of this Ordinance shall be deemed to be severable, and should any section, paragraph, or provision hereof be declared by the Courts to be unconstitutional

or invalid, such holdings shall not affect the validity of this Ordinance as a whole or any part hereof, other than the part so declared to be unconstitutional or invalid.

**SECTION 8-6. PENALTY.**

Any person who violates this Ordinance shall, upon conviction, be punished by a fine of not more than \$500 or \$100 for each lot in violation of Section 8-2 of this Ordinance whichever is more, or by imprisonment for not more than 90 days, or by both such fine and imprisonment. This Ordinance may be enforced by the Village through appropriate legal process.

**SECTION 8-7. EFFECTIVE DATE.**

This Ordinance shall be in full force and effect after its adoption, approval and publication as provided by law.

**PASSED, APPROVED, AND ADOPTED** this

Vote: For \_\_\_\_\_, Against \_\_\_\_\_.

\_\_\_\_\_  
Mayor Neal King

ATTEST:

\_\_\_\_\_  
Village Clerk Vanessa Chisholm