

**Minutes  
Regular Meeting of the  
Elon Planning Board**

**March 19, 2019  
Tuesday, 6:00 p.m.**

**Elon Municipal Building  
Elon, North Carolina**

Attendees: Jim Beasley, Ralph Hardwood, Diane Gill, Mark Podolle, Monti Allison, Clark Bennett

Staff Present: Pamela Graham

**Item A** - Chairman Beasley called meeting to order at 6:00 pm and welcomed the attendees.

**Item B-i – Review and Recommendation of Rezoning Request #2019-03 Submitted by Paul Sparks Sr. and Paul Sparks Jr. for Property Located 514 and 522 E. College Avenue and an Adjacent Unaddressed Parcel on N. Oak Avenue**

**Item B-ii - Review and Recommendation of Elon Land Development Ordinance Text Amendment LDO #2019-01 Regarding Performance Guarantees**

Chairman Beasley introduced the item. Ms. Graham began by stating that she and the Town Manager have discussed on several occasions the need for updates to the LDO and because the project to rewrite the LDO is planned for, many of the updates were put on hold for incorporation into that project. She stated that there have been some more pressing needs, and it was decided that this item should be brought forward immediately due to the protection that it provides to the Town that is currently lacking. She then presented a series of slides describing the proposed amendment to address performance guarantees for subdivisions. Information in the presentation included:

1. The text amendment will provide a framework for the acceptance of performance guarantees, a process by which the Town may require that a developer provide funds to the Town for the completion of subdivision infrastructure in case the developer is unable or unwilling to complete the work.
2. When a subdivision is approved and the work to develop the land has begun, the developer cannot sell lots or commence the use until a final plat has been approved by staff. However, we can give them an option to guarantee some of this work. Ms. Graham described a common scenario where the construction of sidewalks may be scheduled on a lot-by-lot basis to prevent damage during construction of the lots. If the developer wished to sell the lot to a builder and pass on the responsibility of installing the sidewalk to the builder, who most likely would schedule this as one of the last items for construction, he could put up a guarantee that would allow the Town to complete the sidewalk construction if for some reason the builder does not. She went on to state that another common use for performance guarantees is for the final coat of asphalt on the roads because heavy construction activity can be tough on the roads and the developer may want to clean things up a bit with delaying this work until later in the project. Also, stormwater and erosion control measures are

sometimes converted to a post-construction condition and the performance guarantee would insure that the conversion takes place per the approved plans.

3. Elon has accepted performance guarantees in the past, but there are no specific provisions in the LDO that guide their use. The proposed amendment is guided by statutory standards and create the necessary provisions and guide staff and the governing board in the procedures.
4. Ms. Graham then referenced the draft amendment that was in the packet, and described the red, underlined text as the new language that is being proposed. She summarized the text as follows:
  - a. The guarantee shall cover a period not to exceed twelve (12) months from the date of acceptance. The Board may opt to renew the guarantee if requested at that time.
  - b. The guarantee shall be payable to or in favor of the Town and shall be in an amount equal to 125% of the estimated cost of the improvement(s).
  - c. The guarantee may be in any form allowed by statute (surety bond, letter of credit, or any other form that provides equivalent security to a surety bond or letter of credit).
  - d. The guarantee is to be used only for the completion of the required improvement(s) and not for repairs or maintenance after completion.
5. Regarding Plan Consistency, Elon's Future Comprehensive Land Use Plan, adopted in February, lists among its Goals and Objectives on page 27 the following:
  - a. Goal: Promote and ensure quality governance, stewardship of public resources, and sustainability of services.
    - i. Objective: Provide adequate public services and public infrastructure.
  - b. Goal: Ensure adequate plans are in place to support existing and future development.
  - c. Goal: Promote wellness, active living, and multi-modal transportation opportunities throughout the Town of Elon community.
  - d. Additionally, the Plan recommends that the Town's Bicycle, Pedestrian, and Lighting Plan be implemented. This Plan highlights existing Town ordinances that require the dedication of right-of-way and sidewalk construction for new and infill development.
  - e. Based on these factors, the proposal is considered by staff to be consistent with the Land Use Plan.

Ms. Graham then pointed out that she had left a comment in the right margin of the draft text amendment that she needed a decision from the Planning Board on. In Section #2 on the first page, the draft shows that our existing language includes the following: "the final plat must constitute all portions of the approved preliminary plat. No final plat will be approved unless and until the applicant has installed all improvements required by this ordinance ...". The new language goes on to say: "... or until a performance guarantee has been offered and accepted by the LDO Administrator, with authorization from the Board of Aldermen". Ms. Graham then stated that she discussed this portion of the ordinance with Town Attorney Joe Kalo, who reviewed the amendment. She stated that her experience was that her governing board always accepted, released, and/or renewed performance guarantees, and Joe advised her that he has seen this handled by the governing board and by the LDO Administrator, but that he thinks in larger communities it is most often handled at the staff level so that the board's agendas are not tied up. She told the

Board that this item is a decision point for them before making a recommendation, and she would revise the language accordingly before taking the amendment to the Board of Aldermen.

Chairman Beasley asked for opinions from Planning Board members regarding the Board of Aldermen delegating this duty to a staff member. Mr. Bennett stated that because staff works with the developers more often, so perhaps it could go to staff. Ms. Gill pointed out that the language includes “with authorization from the Board of Aldermen”, so would they still weigh in? Chairman Beasley and Mr. Bennett clarified that the language would mean that the Board of Aldermen gives the authorization to staff to make the decision. Chairman Beasley discussed a scenario such as in 2008, where a developer might pull out of a project and turns it over to the Town. He would think that an elected official would want to make that decision. Mr. Allison stated that it is more transparent and takes the burden off of staff if the Board makes the decision. It puts it in the court of the people who were elected to make financial decisions for the Town. Ms. Graham stated that the ultimate decision will be for the Board of Aldermen, and they may make a change. Mr. Podolle said that he had complete faith and with the language about authorization from the Board of Aldermen would she still go to them. Ms. Graham replied that she reads the phrase as meaning the Board is giving blanket authority to her, but that she has no problem with the responsibility being on the Board. She further stated that the draft could remove the words “the LDO Administrator, with authorization from” and the offer and acceptance would be for the Board of Aldermen instead, with a recommendation from staff. Ultimately, if we don’t have something in place, we could be stuck with an unfinished development. Mr. Bennett stated that in his experience with developers, a letter of credit means a lot, and it protects the Town. He added that banks don’t like to hold up capital with letters of credit. Ms. Graham said that she would take to the Board of Aldermen any language that the Planning Board suggested.

Chairman Beasley then addressed the motions provided, as follows.

**Motion #1** – LDO #2019-01 is or is not consistent with comprehensive plans adopted by the Town of Elon. The proposal is considered by staff to be consistent with the adopted Land Development Plan. Mr. Allison made the motion that the amendment is consistent with the plan. Mr. Bennett seconded the motion. Vote was 6-0 in favor of this motion.

**Motion #2** – LDO #2019-01 is or is not reasonable and in the public interest. Mr. Allison made the motion that the amendment is reasonable and in the public interest. The motion was seconded by Ms. Gill. Vote on the motion was 6-0 in favor of this motion.

**Motion #3** - The Town of Elon Planning Board recommends approval or denial of the LDO #2019-01. Mr. Bennett moved to recommend approval of the request. Ms. Graham clarified if they wished the amendment to state that the Board of Aldermen has the decision authority on accepting or releasing the guarantees and Mr. Bennett stated “yes”. The motion was seconded by Ms. Gill. Vote was 6-0 in favor of a recommendation for approval of the request.

**Motion #4** – Ms. Graham read the consistency statement recommended by staff, in order to comply with NC General Statutes, as follows: “The proposal is consistent with the Future Comprehensive Land Use Plan, including Goals and Objectives in the Plan that address the need for adequate public infrastructure to support development projects, and to the sustainability of

services that promote wellness and multi-modal transportation. Additionally, the Plan calls for implementation of the Bicycle, Pedestrian, and Lighting Plan, which specifically references the Town's requirements for dedication of right-of-way and sidewalk construction for new and infill development". Ms. Graham stated that this language from the Plan support a recommendation of approval. A motion to adopt the provided statement was offered by Mr. Bennett, and seconded by Mr. Harwood. The motion was approved by unanimous vote.

**Item C – Items from Board Members**

There were no items from Planning Board Members for discussion.


**Item D – Items from Alderman Davis Montgomery**

Ms. Graham noted that an update of action taken by the Board of Aldermen was included in the packet. She stated that she was so glad to see that Planning Board members were able to attend the Retreat sessions to discuss the upcoming LDO project, especially since they will be tasked with putting the new ordinances to work once it is adopted. She also advised that she has received an application from someone from the Ball Park Community for service to the Planning Board. She added that she expects to bring that to the Planning Board for their April meeting and will invite the applicant to attend if the Board wishes. The Planning Board expressed pleasure and asked that she be invited. Ms. Graham then gave a brief update of activities related to the Shallowford Church Road subdivision and the neighboring Spanish Oak community. She stated that a public hearing is being scheduled with the Board of Aldermen on April 1<sup>st</sup>. Mr. Harwood asked about the gas station on University Drive and was that coming back to them. Ms. Graham stated that it does not because the square footage was below the threshold for a major development plan. She assured the Planning Board that the project had been thoroughly reviewed by the TRC.

**Item E – Motion to Adjourn**

A motion to adjourn was offered by Mr. Harwood and seconded by Mr. Bennett. The motion was approved by unanimous vote.

Meeting was adjourned at 7:28 p.m.

  
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Pamela Graham, Planning Director  
Minutes were completed in  
Draft form on May 3, 2019

  
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Jim Beasley, Planning Board Chair  
Minutes were approved on  
August 20, 2019