

SUBDIVISION ORDINANCE

Floyd County, Virginia

Effective Date: June 8, 1978 Amended
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Revised October 10, 2017
Revised August 21, 2018

An Ordinance to regulate the subdivision of property into lots and streets and other public areas; to provide for the making and recording of the plats of such subdivisions and the certification of same; and to provide for the approval of plats.

AUTHORITY

Whereas, by act of the General Assembly of Virginia as recorded in the Code of Virginia, 1950, as amended, as Article 6, §15.2-2240 through §15.2-2279, requires the Board of Supervisors of Floyd County, Virginia to adopt an ordinance to assure the orderly subdivision of land and its development; and

Whereas, the Subdivision Ordinance, by law, "shall include regulations and provisions" to ensure the coordination of streets within subdivisions with other existing or planned streets, for adequate open spaces for traffic, recreation, light and air;

Therefore, be it ordained by the Board of Supervisors of Floyd County, Virginia, that the following regulations are hereby adopted for the subdivision of land within the jurisdiction of Floyd County, Virginia, and from and after the effective date of this Ordinance, every owner or proprietor of any tract of land to which these regulations apply who subdivides such tract as provided in these regulations shall cause a plat of such subdivision to be developed and prepared in accordance with these regulations, with reference to known or permanent monuments, to be made and recorded in the office of the Clerk of the Court wherein deeds conveying such land are required by law to be recorded.

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SECTION 1

PURPOSE AND TITLE

1-1 Purpose

The purpose of this Ordinance is to establish certain subdivision standards and procedures for Floyd County, Virginia, and such of its environs as come under the jurisdiction of the Board of Supervisors as provided for by §15.1-2240 through §15.2-2279 inclusive of, 1950 Code of Virginia, as amended.

This Ordinance is a part of a long-range plan for the orderly and beneficial growth of the community, and to promote the public health, safety, convenience, comfort, prosperity and general welfare. More specifically, the purpose of these standards and procedures is to provide a guide for the change that occurs when lands and acreage are converted from open space or rural uses as a result of development for residential, business, or industrial purposes; to provide assurance that the purchasers of lots are buying a commodity that is suitable for development and use; and to make possible the provision of public services in a safe, adequate and efficient manner. Subdivided land sooner or later becomes a public responsibility in that roads and streets must be maintained and numerous public services customary to developed areas must be provided. This Ordinance assists the community in meeting these responsibilities.

1-2 Title

This Ordinance is known and may be cited as the "Subdivision Ordinance of Floyd County, Virginia".

1-3 Non-Exclusionary Intent

It is not the intent of these regulations to exclude any economic, racial, religious, or ethnic groups from enjoyment of residence, land ownership, or tenancy within Floyd County; nor is it the intent of this Ordinance to use public powers in any way to promote the separation within Floyd County of economic, racial, religious, or ethnic groups, except as may be an incidental result of meeting the purpose outlined in Section 1-1, herein.

1-4 Severability

Should any article, section, subsection, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, or unconstitutional, such decision shall not affect the validity or constitutionality of this Ordinance as a whole or of any other part thereof other than the part so declared to be invalid or unconstitutional.

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SECTION 2

DEFINITIONS

For the purpose of this Ordinance, certain words and terms used herein shall be interpreted or defined as follows: Words used in the present tense include the future, words in the singular number include the plural, and the plural the singular, unless the natural construction of the word indicates otherwise; the word "lot" includes the word "parcel"; the word "shall" is mandatory and directory; the word "approve" shall be considered to be followed by the words "or disapproved"; any reference to this Ordinance includes all ordinances amending or supplementing the same; all distances and areas refer to measurements in a horizontal plane. The definitions of §15.2-2201 Code of Virginia, as amended shall apply to this Ordinance.

2-1 Access Easement

A means of private access to a Family Division or Agricultural Division resulting from the right of the use of a portion of property for vehicular traffic given or sold by a property owner to another person or entity.

2-2 Affidavit of Family Subdivision

A restrictive covenant placed on property subdivided in order to convey property to an immediate family member that would prohibit the transfer of the property to a nonmember of the immediate family for a period of time specified in Section 4-2.

2-3 Agent

The representative of the Board of Supervisors who has been appointed to serve as the Agent in reviewing and approving the specific subdivision plats authorized by this ordinance if such plats are in compliance with this Ordinance and in the enforcement of this Ordinance. The Agent may appoint such assistants to assist him as he determines necessary. Such Agent and assistants shall have all authority, rights and responsibilities as provided by this Ordinance or the Code of Virginia.

2-4 Agricultural Purposes or Production

The use of Property for the active operation devoted to the bona fide production of crops, or animals, or fowl, including, but not limited to the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts tobacco, nursery and floral products; forestal production, including the production of forestal products, including, but not limited to saw timber, pulpwood, posts, firewood, Christmas trees and other tree and wood products for sale or for farm use; and the production and harvest of products from silviculture activity.

2-5 Alley

A thoroughfare through middle of a block giving access to the rear of building or lots.

2-6 Approving Authority

The Floyd County Planning Commission or the Agent has been given the authority to approve specific types of plats.

2-7 AOSE/PE

Means an authorized onsite soil evaluator or duly licensed professional engineer working in consultation with an authorized onsite soil evaluator.

- 2-8 Area
- Unless otherwise specifically provided herein, all lots created in any subdivision shall be of that size as provided in §2-41 of this Ordinance.
- 2-9 Authorized Onsite Soil Evaluator (AOSE)
- Means a person possessing the qualifications specified by the Board of Health who has successfully completed the course and testing to be authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for traditional onsite sewage disposal systems.
- 2-10 Block
- A unit of land bounded by streets or a combination of streets and public lands or other barrier to the continuity of development.
- 2-11 Board of Supervisors
- The elected officials who constitute the governing body of Floyd County and whose official title is the Board of Supervisors of Floyd County, Virginia.
- 2-12 Cemetery, Private
- A family burying ground in which no lots are sold to the public.
- 2-13 Civil Engineer
- A Civil Engineer licensed by the Commonwealth of Virginia.
- 2-13-1 Clerk
- The Clerk of the Circuit Court having jurisdiction in Floyd County.
- 2-14 Commission, Planning
- The Floyd-Floyd County Planning Commission.
- 2-15 Condominium
- A building or group of buildings, in which units are owned individually, and the structures, common areas, and facilities which are owned by all the owners on a proportional, undivided basis.
- 2-16 Cul-De-Sac
- A street with only a single means of ingress and egress and having a fifty (50) foot turnaround for a safe and convenient reverse traffic movement.
- 2-17 Driveway
- A means of internal circulation on a parcel which may connect no more than two adjacent addresses to the thoroughfare. For means of internal circulation that serves more than two (2) addresses, see definition for *Street, Private*.

- 2-18 Easement
A right given or sold by the owner of land to another person or entity for specific limited use of that land.
- 2-19 Family, Immediate Member
Any person who is a natural or legally defined offspring, spouse, sibling, grandchild, grandparent or parent of the owner.
- 2-20 Frontage
All lots located along a street shall have a minimum of fifty (50) feet of the lot coextensive with the edge of the right-of-way or easement of the street upon which the lot fronts. Of the two sides of a corner lot, the front shall be deemed to be the shorter of the two sides. For lots located on a cul-de-sac, the Frontage shall be a minimum of thirty (30) feet coextensive with the edge of the right-of-way of the cul-de-sac.
- 2-21 Health Officer (or Official)
The Regional Health Director or Environmental Health Specialist of Floyd County, Virginia.
- 2-22 Highway Engineer
The Resident Engineer employed by the Virginia Department of Transportation.
- 2-23 Jurisdiction
The area or territory subject to the legislative control of the Board of Supervisors.
- 2-24 Lot
A numbered and recorded portion of a subdivision intended for transfer of ownership.
- 2-25 Lot, Corner
A lot abutting upon two (2) or more streets at their intersection; the shortest side fronting upon a street shall be considered the front of the lot, and the longest side fronting upon a street shall be considered the side of the lot.
- 2-26 Lot, Depth of
The distance from the front lot line to the rear lot line (at the deepest point) as measured at a right angle (or projection thereof).
- 2-27 Lot, Double Frontage
An interior lot having frontage on two (2) streets.
- 2-28 Lot, Interior
A lot other than a corner lot.
- 2-29 Lot, substandard
A lot that does not meet the current requirements of this ordinance.

2-29-1 Lot of Record

Any lot which was recorded prior to the adoption of all Floyd County Subdivision Ordinances or any lot which has been approved and recorded under the provisions of the applicable Floyd County Subdivision Ordinance. A building permit may be issued for any such lot of record provided the minimum requirements of the Virginia Statewide Building Code and the Virginia Department of Health are met.

2-30 Person

Means individual, firm, corporation, association, etc.

2-31 Plat

A drawing or map prepared by a duly licensed Professional Engineer or Land Surveyor which depicts land divided or to be divided. When used as a verb, "plat" is synonymous with "subdivide".

2-32 Professional Engineer in consultation with an AOSE

Means that a Professional Engineer has communicated with an AOSE regarding the site and soil conditions present where the system is proposed, in a manner sufficient to assure compliance with the Department of Health regulations and policies implementing those regulations.

2-33 Property

Any tract, lot, parcel, or several of the same collected together for the purpose of subdividing. Any real estate in Floyd County, Virginia.

2-34 Reserve Area

An area set aside on each parcel using onsite wastewater treatment of equal size to the approved on site disposal system for use in the event the onsite disposal system fails. Nothing shall be constructed within the reserve area.

2-34-1 Reserve Strip

A strip or parcel of land not deeded with a lot, limiting access.

2-35 Right-of-Way (R.O.W.)

The total width of the street designated for travel, drainage, utility lines, curbs, gutter, landscaping, and the like.

2-36 Service Drive

A street parallel and contiguous to a major highway, primarily designed to promote safety by eliminating dangerous ingress and egress to the major highway by providing safe and orderly points of access to the highway.

2-37 Setback

A line thirty-five (35) feet from and generally parallel with the front lotline where the lot is located on, or proposed to be located on, a publicly maintained street having dedicated right-of-way or 60 feet from center line of streets maintained by the Virginia Department of Transportation located on a prescribed easement. No building or structure may be built within the setback area and the width of the lot is measured at the setback.

2-38 Soil Consultant

A person other than an AOSE or Certified Professional Soil Scientist doing soil evaluations and abbreviated system designs for subdivisions. The soil consultant will be phased out by the Department of Health by July 1, 2004 and only AOSE and AOSE/PE work will be acceptable.

2-39 Street, Private

Streets or roads that are privately owned and maintained for providing direct access to more than two (2) individual addresses, including streets owned and/or maintained by a Homeowner's Association or other private entity.

2-40 Street, Publicly Maintained Street or Public Street

Any thoroughfare which is maintained by the Virginia Department of Transportation, and streets for which plans have been approved and bonds for the improvements and maintenance shall have been posted in accordance with provisions in this Ordinance.

2-41 Street, Discontinued

A street or road upon which the Virginia Department of Transportation has discontinued maintenance, however the Department continues to hold any rights it may have had in the easement or right-of-way.

2-42 Subdivider

An owner including the executor(rix) or personal representative of the owner's estate, of property being subdivided, whether or not represented by another person or firm.

2-43 Subdivision

Any division of Property. In determining the number of parcels in the subdivision, the residual shall count as one parcel. For purposes of this Ordinance and regulations contained herein, subdivisions are further restricted and defined as follows:

2-43-1 Standard Subdivision

The division of Property into more than three (3) lots or parcels including retained parcels, all of which front on an existing public street, whether for sale, development or to be held by the Subdivider; or when a proposed new street, or right-of-way is involved, any division of Property. The minimum lot size in Standard Subdivisions shall be two (2) acres unless on new street or public water and/or wastewater service is available. The term includes re-subdivision and, when appropriate, to the process of subdivision or to the land subdivided.

2-43-2 Family Subdivision

The one-time division of a single lot or parcel of property from an original Lot of Record for the purpose of sale or gift to a member of the immediate family of the owner. Only one (1) such division shall be allowed per family member per parcel, and shall not be for the purpose of circumventing the provisions of the Subdivision Ordinance. The division shall result in each lot, including the residual parcel, containing one (1) acre or more. Lots must be a minimum of 100-foot in width.

2-43-3 Agricultural Subdivision

The division or partition of agricultural property for agricultural purposes. Each lot shall be twenty-five (25) acres or more except that the owner may retain a parcel less than twenty-five (25) acres. Such retained parcel shall be two (2) acres or more.

2-43-4 Lot Subdivision

The division of a single parcel of property into three (3) or less lots including the retained parcel, all of which have frontage on a public street. Each lot must be two (2) acres or more in size unless on a new street or public water and/or wastewater service is available.

2-43-5 Townhouse or Condominium Subdivision

The development of a parcel of property into lots supporting townhouse or condominium developments, the master lot shall be two (2) acres or more in size and have frontage on a public street. The Subdivision Plat shall serve as a site plan for the development.

2-43-6 Business and Industrial Subdivision

The development of a parcel of property into lots supporting business or industrial developments, the master lot shall be two (2) acres or more in size and have frontage on a public street. The Subdivision Plat to serve as a site plan for the development.

2-44 Lotline Revision

A change in the lotline of an existing parcel of property which will not create an additional lot or substandard lot, and will not be built upon as a separate parcel or effect any drainfield or well placement.

2-45 Re-subdivision

The term "subdivision" includes the re-subdivision of lots of record or the vacation of plats. The term shall apply either to the process of subdivision or the land subdivided.

2-46 Subdivision Includes Subdivide

The word "subdivide" and any derivative thereof shall have reference to the term "subdivision" as herein defined.

2-47 Compliance with Requirements

All divisions of property shall comply with the platting and approval provisions of this Ordinance.

2-48 Subdivision Approval Letter

A letter issued by the Virginia Department of Health, in lieu of a construction permit, which identifies a specific site and recognizes the appropriateness of the site for an onsite wastewater disposal system and/or well-site location.

2-49 Surety

A document issued by an insurer and approved by the Agent with the consent of the County Attorney, promising to pay upon default of a contract or agreement or breach of this Ordinance.

2-50 Thoroughfare.

See Street, Publicly Maintained Street or Public Street

2-51 Townhouse

A single-family dwelling forming one (1) of a group or series of three (3) or more attached single-family dwellings separated from one another by party walls without doors, windows, or other provisions for human passage or visibility through such walls from basement to roof and having roofs which may extend from one (1) such dwelling unit to another.

2-52 Width

The minimum width of a lot (horizontal distance) between the side lot lines shall be measured at the Setback line, thirty-five (35) feet from the front property line where the Virginia Department of Transportation (VDOT) owns the right-of-way or sixty (60) feet from the centerline of "streets" for which VDOT holds a prescriptive easement.

SECTION 3

ADMINISTRATION

3-1 Statutory Provisions

Under the authority to establish subdivision regulations and the purposes, the regulations established herein constitute minimum requirements which shall apply to all subdivisions, except as herein provided. The following statutory provisions shall be effective in Floyd County.

3-1-1 Platting and Approval Required, Enforcement and Penalties

- (a) No person shall subdivide land without making and recording a plat of the subdivision and without fully complying with the provisions of Article 6, Chapter 22 of Title 15.2 of the Code of Virginia, 1950, as amended, and this Subdivision Ordinance.
- (b) No plat of any subdivision shall be recorded unless and until it has been submitted to and approved by the Floyd County Planning Commission or the Agent as herein provided.
- (c) No person shall sell or transfer any land of a subdivision before a plat has been duly approved and recorded as herein provided unless the subdivision was lawfully created prior to the adoption of this Ordinance, however nothing herein contained shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties of the instrument.
- (d) Any person in violation the foregoing provision of this section shall be subject to a fine of not more than \$500 for each lot or parcel of land so subdivided, transferred or sold. The description of the lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties or remedies herein provided. All other violations of this Ordinance shall be enforced as a Class 1 misdemeanor and subject to the penalties as imposed by §18.2-11 of the Code of Virginia, 1950, as amended.
- (e) No Clerk of any court shall file or record a plat of a subdivision required by this Ordinance or Article 6, Chapter 22 of Title 15.2 of the Code of Virginia, 1950, as amended, to be recorded until the plat has been approved as required herein.
- (f) All departments, officials and public employees of the County of Floyd which are vested with the duty or authority to issue permits or approvals under this Ordinance. Any such approvals or permits if issued in conflict with the provisions of this Ordinance shall be null and void.
- (g) No building permit shall be granted for the construction on any lot created in violation of this Ordinance or any lot created in violation of any previously adopted Subdivision Ordinance of Floyd County or on any lot in a subdivision which is not covered by current performance agreements and guarantees as required by Section 7 hereof.
- (h) The Planning Commission shall have the authority to bring any action in the appropriate court to restrain, correct, or abate any violation of this Ordinance by injunction or otherwise.

3-1-2 (Reserved)

3-1-3 (Reserved)

3-1-4 (Reserved)

3-1-5 Private Contracts

This Ordinance bears no relation to any private covenant, agreement or restriction which may be recorded with any subdivision plat nor shall any public official have responsibility for enforcing said private contract. When this Ordinance calls for more restrictive standards than are required by private contract the provisions of this Ordinance shall control.

3-1-6 (Reserved)

3-1-7 (Reserved)

3-1-8 Mutual Responsibility

There is a mutual responsibility between the Subdivider and the County of Floyd to divide the land so as to improve the general use pattern of the land being subdivided.

3-1-9 Fees

There shall be a charge for the examination and the approval or disapproval of every plat reviewed by the agent. Such fees shall be established and from time to time amended by ordinance of the Board of Supervisors of Floyd County.

3-1-10 Land Must Be Suitable

The subdivision of land may not be approved if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public the site is not suitable for platting and development purposes of the kind proposed.

3-1-11 Changes

No change, modification or revision shall be made on any preliminary or final plat, nor in any accompanying data sheets after approval of the agent has been endorsed in writing on the plat or sheets, unless authorization for such changes shall be received from the agent.

3-1-12 Flooding

Land subject to flooding and land deemed to be topographically unsuitable shall not be used for residential occupancy, nor for such other uses as may increase danger of health, life or property, or aggravate erosion or flood hazard. Such land within the subdivision shall be designated on the plat for such uses as shall not be endangered by periodic or occasional flooding or shall not produce conditions contrary to public welfare.

3-1-13 Relationship to Erosion and Sediment Control Laws

The General Assembly has determined that the lands and waters comprising the watersheds of the State are great natural resources which are being adversely affected by rapid shift in land use from agricultural to nonagricultural uses. The General Assembly found it necessary to establish and implement the Virginia Erosion and Sediment Control Law to control erosion and sedimentation from land-disturbing activities. In addition to these requirements, the developer shall comply with the Erosion and Sedimentation Control Ordinance of Floyd County.

3-1-14 Subdivision Development Included as Land Disturbing Activity

The Code of Virginia includes the term subdivision development along with other activities disturbing ten thousand (10,000) or more square feet of land for commercial or noncommercial uses.

3-1-15 Erosion and Sedimentation Plan Required

Where required by this Ordinance, at the time of filing the Preliminary Plat, an erosion and sedimentation control plan approved by the Skyline Soil and Water Conservation District shall also be filed in accordance with the provisions of the Virginia Erosion and Sedimentation Control Handbook.

3-1-16 Approval by Virginia Department of Transportation

At the time of filing with the Agent for approval of the Preliminary Plat involving a new street and/or rural road, the preliminary plat shall be submitted by the Subdivider to the Virginia Department of Transportation for approval. No plat shall be approved until Virginia Department of Transportation has submitted comments to the agent and the plat has been revised to conform to such comments.

3-1-17 Approval by Health Department

As detailed elsewhere in this document, the local health department must approve all subdivisions whenever private well and/or onsite sewage disposal systems are to be used.

3-1-18 Approval by Public Service Authority

As required by §5-4-15-2 and §5-4-16-2 herein, all subdivisions within five hundred (500) feet of public water or wastewater service shall be approved by the Floyd County Public Service Authority.

3-2 Agent

The Subdivision Agent of Floyd County shall be appointed by the Board of Supervisors. The Agent is authorized to approve subdivisions involving not more than three (3) lots. The Floyd County Planning Commission is appointed to review and approve Standard, Townhouse, or Condominium Subdivision Plats, any plat proposing a new street and any Subdivision plat involving four (4) or more parcels. In the event of the extended absence of the Agent, the Board of Supervisors shall appoint a Substitute Subdivision Agent to perform the duties of the Agent until the Agent's return or until a new Agent is appointed.

3-3 Duties

The Agent shall perform such duties as regards subdivisions and subdividing in accordance with this Ordinance and the Land Subdivision and Development Act of the Code of Virginia.

3-4 Consultation and Information

In the performance of such duties, the Agent shall receive, review all plats, and submit all Standard Subdivision plats to the Planning Commission. The Agent and Commission also may consult with other departments or agencies and shall require the developer to secure approval of the County's E-911 Coordinator, Resident Highway Engineer and the Health Official, as necessary where access and individual water and/or waste-water systems are proposed prior to accepting the plat. The Agent may ask for review and/or decision by the Planning Commission on any specified plat.

3-5 Authority to Approve or Disapprove

The Planning Commission shall approve or disapprove all Preliminary Plats and all Final Plats for Standard and Townhouse or Condominium Subdivision Plats, any plat proposing a new street, and any Subdivision plat involving four (4) or more lots.

3-6 Agent Authorized to Review and Approve or Disapprove Certain Divisions

The Agent is authorized to review and approve or disapprove any Subdivision Plat with three (3) or fewer parcels, except Townhouse Divisions or if a new street is proposed in any Division.

3-7 Additional Authority

In addition to the regulations herein contained for the platting of the subdivisions, the Agent and the Planning Commission may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this Ordinance.

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SECTION 4

SUBDIVISION REQUIREMENTS BY TYPE OF SUBDIVISION

There are seven types of subdivisions recognized by this Ordinance. The responsibilities assigned the Subdivider and the Agent vary with the type of subdivision as described in the following.

4-1 Lot Subdivision

The Agent may approve the division of a tract of land into three (3) or fewer parcels (residual counts as one parcel). The requirements are as follows:

4-1-1 It is not in conflict with the general meaning, purpose, and requirements of this Ordinance, no new streets are required to serve the parcel, all lots meet the general meaning, purpose, and requirements of this Ordinance, and each new lot has at least fifty (50) feet of frontage on a public street or thirty (30) feet of frontage in the event that the new lot(s) are located on a cul-de-sac. The original reproducible and three (3) first generation copies with original signatures of the proposed plat have been signed by representatives of the Health Department, E-911 Coordinator, and the Virginia Department of Transportation prior to final action. All lots (except those located in a Family Subdivision) located and not served by public water and public waste water disposal shall be two (2) acres or more and are to be at least one hundred seventy-five (175) feet in Width, measured horizontally, at the Setback line, and have a Depth greater than the Width. The minimum size of lot may be increased upon a finding by the Health Department that there is insufficient land to support water supply and waste water disposal systems. In addition to the area requirements, lots shall be arranged in order that the considerations in Section 5-2 are satisfied.

Provided that:

- (a) For developments not proposing the use of public water supply and wastewater disposal, subdivision approval letter from the Virginia Department of Health shall be required by the Agent. The Subdivider shall submit the proposed Subdivision to the Health Department for approval. Once approval of the Health Department is obtained, the Agent shall confirm compliance of the subdivision with these regulations;
- (b) Subdividers must use the services of an Authorized Onsite Soil Evaluator (AOSE), Certified Professional Soil Scientist (CPSS), or Soil Consultant to determine the suitability of the soil and do appropriate system designs for the lots on the plat. The use of AOSE is preferred since they will be the only ones allowed to submit work to the Health Department after July 1, 2004;
- (c) Access to the lots must be provided by a publicly maintained street; and,
- (d) All lots must comply with the Area, Width, Frontage and Setback requirements of this Ordinance.

4-1-2 Any sketch plat prepared and discussed with the Subdivision Agent which is marked with required improvements shall be included with the filing of the Preliminary Plat.

4-1-3 A plat meeting the requirements of a Preliminary Plat is submitted to the Subdivision Agent.

4-1-4 A final plat is provided which includes the signatures of the Health Department and the E-911 Coordinator for final approval and signature. VDOT shall sign all plats involving the planned construction or a new street and/or road.

4-1-5 (Reserved)

4-1-6 The drainfield and reserve areas and well site will be shown to scale on the final plat.

4-1-7 An additional lot subdivision may be permitted after a period of five (5) years.

4-2 Family Subdivisions

A division of a lot or parcel is permitted for the purposes of sale or gift to a member of the immediate family of the property owner, and subject only to any express requirement contained in the Code of Virginia and the following provisions:

4-2-1 Only one such division per parcel shall be allowed per family member, and shall not be made for the purpose of circumventing this Ordinance. Once a family lot is created, it may not be conveyed to a person other than a member of the immediate family for a period of at least three (3) years from the date of original transference from the grantor to the grantee, except for the purpose of financing purchase and /or improvements to the lot created by a deed of trust or mortgage. The Planning Commission may allow a waiver of time requirements for family ownership when changed circumstances so require, including the event of an involuntary transfer due to circumstances including but not limited to:

- (a) death;
- (b) marital status change;
- (c) condemnation by power of eminent domain;
- (d) judicial sale;
- (e) foreclosure; or
- (f) bankruptcy.

The Planning Commission procedure for waiver of time requirements shall be the same as the procedure for deciding an exception as specified in Section 10-3. An additional lot may be granted per immediate family member after a period of five (5) years.

4-2-2 Before a County building permit will be issued for any habitable structure created by this division, approval of the Health Department of the well, drainfield and reserve area alternate means of service is required. Such approval will be provided to the Building Official at the time a permit is requested.

4-2-3 Each lot or parcel or property shall:

- (a) Have the required Frontage and Width upon a public street; or,
- (b) Front upon an access easement twenty (20) feet or greater in Width. Such right-of-way shall remain private and any drive or road within it shall be maintained by the adjacent property owners in a condition passable in all weather by emergency vehicles.

4-2-4 (Reserved)

4-2-5 Comply with the minimum lot area of one (1) acre, with the minimum lot width of one hundred (100) feet as measured at the setback when the lot is on a publicly maintained road and the width to depth requirements of this Ordinance.

4-2-6 For every parcel not served by public water or sewer, or when an individual well or septic tank permit has not been issued, a statement must be included on the final plat confirming that: ***“this site has not been approved for a private water and/ or wastewater system.”***

- 4-2-7 The Preliminary Subdivision plat shall be submitted by the Subdivider to the Agent for consideration as provided for in this Ordinance. Said plat shall indicate that the subdivision is a Family Subdivision. If approved, one copy bearing certification of such approval shall be returned to the Subdivider. The original reproducible plat shall be signed by all officials before recordation. If disapproved, all papers shall be returned to the Subdivider with the reason for disapproval in writing. In the event no action is taken in sixty (60) days, such subdivision shall be deemed approved.
- 4-2-8 All deeds from the Subdividers to purchasers of such lots shall contain the following language: "This lot is not being sold for purposes of residential development or the erection of any structure which requires a sewage disposal system and has not been approved for the installation of a sewage or septic disposal system. Prior to the issuance of any building permit for a structure which requires a sewage disposal system, the owner of this lot will be required to obtain a water and/or sewage disposal construction permit from the Virginia Department of Health or provide for permit from the Virginia Department of Health or provide for connection to an approved public wastewater system." The failure of the Subdivider to include such language in any deed shall constitute a violation of this Ordinance.
- 4-2-9 Notwithstanding any other provision of this Ordinance, the residual parcel of a Family Subdivision need not be surveyed or shown upon the plat, provided the plat of the Family Subdivision contains a notarized statement by the Subdivider that the residual parcel contains one (1) acre or more and has the required Frontage on a public street or on an access easement of twenty (20) feet or greater in Width.
- 4-2-10 The subdivider (grantor) and all grantees shall sign and have notarized an affidavit for family subdivision stating the family relationship and that the newly created family lot/s shall not be conveyed to a person other than a member of the immediate family for a period of at least three years from the date of original transference from the grantor to the grantee, except for the purpose of financing purchase and /or improvements to the lot created by a deed of trust or mortgage. Such affidavit shall be recorded with the plat and referenced within all subsequent deeds of conveyance.
- 4-2-11 Family Subdivisions of Property Held in Trust

A division of a lot or parcel held in trust is permitted for the purposes of sale or gift to a member of the immediate family of the beneficiaries of the trust, provided that each trust beneficiary must be an immediate family member of each other trust beneficiary, each grantee must be an immediate family member of each other grantee and at least one grantee(s) must be an immediate family member of at least one trust beneficiary. For divisions of land held in trust, each and every requirement of Section 4-2 of this Ordinance shall apply, except that the following additional conditions shall apply:

1. Each beneficiary of the trust must agree that the land is to be subdivided;
2. Each beneficiary of the trust must agree to place a restrictive covenant on the property that would prohibit the transfer of the property to a nonmember of the immediate family of at least one trust beneficiary for a period of fifteen (15) years. The fifteen (15) year holding period may be reduced in the event of unusual circumstances in accordance with Section 4-2-1. The limitations on transfers contained in the restrictive covenant may be waived by the Planning Commission when changed circumstances so require, including the event of an involuntary transfer due to circumstances including but not limited to:
 - (a) death;
 - (b) marital status change;
 - (c) condemnation by power of eminent domain;
 - (d) judicial sale;
 - (e) foreclosure; or

- (f) bankruptcy.

4-3 Standard Subdivision

The Planning Commission may permit the division of land into four (4) or more lots. Such subdivisions shall meet all of the applicable requirements outlined in this Ordinance. Such subdivisions must provide each lot with Frontage on a public street or a street proposed to become public as required by this Ordinance and further must comply with the following requirements:

- (a) It is not in conflict with the general meaning, purpose, and requirements of this Ordinance, new streets which are required to serve parcels, and all lots meet the general meaning, purpose, and requirements of this Ordinance, and each new lot has at least fifty (50) feet of Frontage on a public street or thirty (30) feet of Frontage in the event that the new lot(s) are located on a cul-de-sac;
- (b) For developments not proposing the use of public water supply and wastewater disposal, a letter of certification from the Virginia Department of Health shall be available. To obtain the certification, subdivision approval must be requested by Floyd County. Applicants must use the services of an Authorized Onsite Soil Evaluator (AOSE), Certified Professional Soil Scientist (CPSS), or Soil Consultant to determine the suitability of the soil and do appropriate system designs for the lots on the plat. The use of AOSE's preferred since they will be the only ones allowed to submit work to the Health Department after July 1, 2004;
- (c) Preliminary subdivision plat must provide the information specified in 12 VAC 5-610-360.B. This includes all information required by this Ordinance, and includes the following if not required: proposed streets, utilities, storm drainage, water supplies, onsite sewage facilities, easements, lot lines, neighboring property lines (within 200 feet), existing and proposed water supplies for each of the proposed lots and within 200 feet of the outermost property lines, and original topographic contour lines by detailed survey. Each plat shall contain abbreviated design calculations. Each lot shall have the house, well and onsite sewage disposal system indicated and contain the Certification of compliance;
- (d) Access to the lots must be provided by a publicly maintained street; and,
- (e) All lots must comply with the Area, Frontage, Width and Setback requirements of this Ordinance.

4-3-1 A sketch plat is prepared and discussed with the Subdivision Agent. If the sketch is marked with required improvements, it shall be included with the filing of the Preliminary Plat.

4-3-2 A plat meeting the requirements of a Preliminary Plat is submitted to the Subdivision Agent for review by the Planning Commission.

4-3-3 A final plat is provided which includes the signatures of the Health Department, Virginia Department of Transportation, and the E-911 Coordinator for final approval and signature.

4-3-4 Additional documentation as may be required to be submitted along with the final plat i.e.: soil and erosion control plan, an estimate of the cost of providing utilities, roads, and other improvements which require surety, proposed surety, etc.

4-3-5 (Reserved)

4-3-6 The corners of drainfield and reserve areas and well site will be shown to scale on the final plat

and staked on the ground to allow for finding the drainfield and well area. The method and/or figures must be on or with the final plat that is given to the local Health Department. An approximate location of the house will be shown on the final plat.

4-3-7 Required notes on the final plat if it is not served with public water and/or public wastewater:

- (a) If a well other than IIC is required, the class of well and lot number will be noted;
- (b) If a well cannot be separated from the house by the required distance for termite treatment, note appropriate lot number;
- (c) If an onsite sewage disposal system other than a gravity flow system is required, the type system and lot number will be noted; and,
- (d) If no provisions for a basement sewer drain were considered in the onsite sewage disposal system design, it will be noted.

4-3-8 Final action shall be taken by the Planning Commission. Such approval shall be of the subdivision as well as the surety.

4-4 Townhouse and Condominium Subdivisions

Townhouse and Condominium Subdivisions shall meet the requirements outlined for Standard Subdivisions. However, the Planning Commission may approve such subdivisions with:

4-4-1 Reduced side yard requirements for structures interior to main lot;

4-4-2 Reduced lot size restrictions, requires 50% open space, land associated with any dwelling is dependent upon undivided interest;

4-4-3 Side lot lines that are not perpendicular or radial to the street line; and,

4-4-4 Reduced lot Width at the Setback requirements (Lot Width is dependent upon dwelling stile and undivided interest).

4-4-5 Townhouse and condominium subdivisions must also meet the following requirements:

- (a) The plat clearly indicates that the subdivision is a Townhouse or Condominium Subdivision;
- (b) Adequate parking areas are provided and shown on the plat (Minimum of 2.5 parking spaces per unit); and,
- (c) Adequate water and wastewater treatment facilities are available.

4-5 Agricultural Subdivision

The Agent may approve the division of land into three (3) or fewer parcels for the purpose of agricultural production or the sole purpose of a single-family residence and agricultural production.

4-5-1 Parcels in such subdivisions shall not be less than twenty-five (25) acres, except that the owner may retain a parcel of two (2) acres or more, provided that if the retained parcel fronts on a public street, it shall meet the Frontage and Width requirements of this Ordinance.

4-5-2 Access need not be constructed for agricultural subdivisions, but the plat must include a fifty (50) foot wide access easement(s) for use as access roads by all parcels shown upon the plat. The access easement(s) shall be surveyed and shown upon the plat with either a boundary or a center line metes and bounds description.

4-5-3 Notwithstanding any other provision of this Ordinance, provisions for onsite sewage disposal systems are not required for lots in agriculture subdivisions not intended to be used for residential purposes or for lots which are intended to be used for construction of improvements which do not require wastewater disposal. Any plat proposing such lots shall clearly contain provisions which inform prospective purchasers that lots have not been approved for sewage disposal systems and that residential structures or other structures requiring a sewage disposal system may not be constructed on any lot until such time as the lot has been approved by the Virginia Department of Health for the installation of a sewage disposal system. All deeds from the Subdividers to purchasers of such lots shall contain the following language: "This lot is not being sold for purposes of residential development or the erection of any structure which requires a sewage disposal system and has not been approved for the installation of a sewage or septic disposal system. Prior to the issuance of any building permit for a structure which requires a sewage disposal system, the owner of this lot will be required to obtain a water and/or sewage disposal construction permit septic system construction permit from the Virginia Department of Health or provide for permit from the Virginia Department of Health or provide for connection to an approved public wastewater system." The failure of the Subdivider to include such language in any deed shall constitute a violation of this Ordinance.

4-6 Industrial Subdivisions

Industrial subdivisions of property owned or developed by the Floyd County Board of Supervisors or the Floyd County Industrial Development Authority may be approved by the Agent under such terms and conditions as determined by the Floyd County Board of Supervisors. Action of the Board of Supervisors shall be based on the promotion of the public health, safety and welfare.

4-7 Public Utility Lots

The Agent may approve the creation of a lot upon which will be constructed facilities used to provide public utilities. The creation of such lot shall not be deemed to be a subdivision as defined in this Ordinance, provided that such approved lots may not be used for other purposes. Plats for such lots shall be required show that the lot is only to be used for a public facility only and shall be approved by the subdivision Agent. A minimum of a twenty (20) foot right of way shall be required for access to any public facility lot from a publicly maintained roadway unless the lot has a minimum of twenty (20) feet of Frontage on a public road. Lots creation hereunder shall have a Setback of thirty-five (35) foot and fifteen (15) foot side yards.

4-8 Re-subdivision of an Existing Parcel

The Agent may approve the re-subdivision of a parcel which was platted in an existing subdivision, prior to December 11, 2001, which meets all the requirements of this Ordinance, in particular, the requirements of Setback and Frontage, and provided that it does not impact well or onsite sewage disposal system.

4-9 Lot Line Revision

The Agent may approve a lot line revision which meets all the requirements of this Ordinance, and identifies the parcels being exchanged and the Area of the adjustment under the following terms and conditions:

- (a) A lot line on an existing parcel may be revised as long as an additional lot will not be created; a substandard lot will not be created or such action does not involve the

relocation or alteration of streets, alleys, easements for public passage, or other public areas, and provided further that no easements or utility rights-of-way shall be relocated or altered without the express consent of all persons holding any interest therein, and the revision will not be in conflict with any provisions of the Floyd County Subdivision Ordinance;

- (b) The property owner or proprietor of a tract of land in Floyd County shall file with the Agent a plat meeting the requirements of Section 6 and 7; and,
- (c) Provided that it does not impact well or onsite sewage disposal system.

SECTION 5

PROCEDURE FOR MAKING AND RECORDING PLATS

This section provides the requirements for the preparation of various elements of the platting process. Proposals to subdivide lands within Floyd County must meet the minimum requirements contained in Section 4, prepared to the standards contained in this section.

5-1 Survey and Plat Standards

Any owner or developer of any tract of land situated within Floyd County, Virginia, who subdivides the same shall cause a plat of such subdivision, with reference to known or permanent monuments, be made and recorded in the office of the Clerk of the Circuit Court. No such plat shall be recorded unless and until it shall have been submitted, approved, and certified in accordance with the regulations set forth in this Ordinance. No lot shall be sold in subdivision before the plat shall have been recorded.

5-1-1 Draw and Certify

Every plat which is intended for recording, shall be prepared by a duly licensed professional Civil Engineer or Land Surveyor, duly licensed by the State of Virginia, who shall endorse upon each plat a certificate signed by him setting forth the source of the description of the land subdivided, and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat, within an inset block, or by means of a dotted boundary line upon the plat, all adjoining property owners names, and the source and description of the land subdivided.

5-1-2 Property Markers

The corners of all lots created shall be marked with iron pipes or other standard permanent material by a duly licensed Professional Engineer or Land Surveyor.

5-1-2 Owner's Statement

Every plat shall contain, in addition to the above mentioned signatures, a statement to the effect that: "The above and foregoing subdivision of (here insert correct description of the land subdivided) as appears in this plat is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any."

The statement shall be signed by the owners, proprietors, and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds prior to submittal of the preliminary plat. When thus executed and approved as herein specified the plat shall be filed and recorded in the office of the Clerk of the Circuit Court, and indexed under the names of the land owners signing such statement and under the name of the subdivision.

5-1-3 Plat Approval Process

The process for obtaining plat approval is outlined in Exhibit 1 attached at the end of this document.

5-2 Lot Characteristics

5-2-1 Shape

The lot arrangement, design, and shape shall be such that lots will provide satisfactory and desirable sites for buildings, and be properly related to topography, and conform to requirements of this Ordinance. Lots shall not contain peculiarly shaped elongations solely to provide necessary square footage of Area or meet minimum width requirements which would be unusable for normal purposes.

5-2-2 Location

Each lot, except those in Agricultural and Family Divisions, shall abut on an existing street or on a proposed and platted street designed to meet the provisions of this Ordinance, or on a street which has become public by right of use as directed by a court of competent jurisdiction.

5-2-3 Corner Lots

The shortest side of a corner lot fronting a street shall be considered the front of the lot and the longest fronting upon a street shall be considered the side of the lot. Corner lots shall have extra width sufficient for maintenance of any required setback line on both streets.

5-2-4 Lot Lines

Side lines of lots shall be approximately at right angles, or radial to the street line.

5-2-5 Remnants

All remnants of lots below minimum size left over after subdividing of a tract or unusable lots must be added to adjacent lots, or otherwise disposed of rather than allowed to remain as unusable parcels.

5-2-6 Separate Ownership

Where the land covered by a subdivision includes two (2) or more parcels in separate ownership, and lot arrangement is such that a property ownership line divides one or more lots, the land in each lot so divided shall be transferred by deed to single ownership, simultaneously with the recording of the final plat. Said deed is to be deposited with the Clerk of the Court and held with the final plat until the Subdivider is ready to record same, and they both shall then be recorded together.

5-2-7 Business or Industrial Lots

Lots intended for business or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities.

5-2-8 Setback Line

Structures shall be located thirty-five (35) feet or more from any street right-of-way and sixty (60) feet or more from the center of Right-of-Way where the public street is in an easement.

5-2-9 Frontage

Frontage for all lots except for those created by Agricultural Divisions and for lots abutting a cul-de-sac shall be a minimum of fifty (50) feet at the street, or greater if determined necessary for lot access purposes by the Highway Engineer. For lots abutting a cul-de-sac, the minimum Frontage shall be thirty (30) feet.

5-2-10 Exceptions

Greater lot Areas may be required where individual onsite sewage disposal or individual wells are used if the Health Official determines that there are factors of drainage, soil condition or other conditions to cause potential health problems.

5-3 Blocks

Where created by the subdivision of land, all new blocks in a Standard Subdivision shall comply with the following general requirements:

5-3-1 Length

Generally, the maximum Length of blocks shall be twelve hundred (1,200) feet, and the minimum Length of blocks upon which lots have Frontage shall be five hundred (500) feet.

5-3-2 Orientation

Where a proposed subdivision will adjoin a major road, the approving authority may require that the lots back upon such major thoroughfare to avoid unnecessary ingress or egress (so that Frontage is on another road or Right-of-Way).

5-4 Improvements

All required improvements shall be installed by the Subdivider at his cost, including improvements as may be required pursuant to §15.2-2400 through §15.2-2413 of the Code of Virginia, 1950, as amended. In cases where specifications have been established either by the Virginia Department of Transportation for thoroughfares, curbs, etc., or by local ordinances and codes, such specifications shall be followed.

5-4-1 Plans and Specifications

Eight (8) blue or black line prints of the plans and specifications for all physical improvements to be installed, shall be prepared by a duly licensed Professional Engineer and shall be submitted with the Preliminary Plat or with the final plat where no preliminary plat is proposed. Two (2) copies of Erosion and Sedimentation Plans shall also be provided.

5-4-2 Thoroughfare Design and Standards

All streets and access easements in the proposed subdivision shall be designed and constructed in accordance with this Ordinance.

5-4-3 Standard Subdivisions

For all Standard Subdivisions all streets shall be designed and constructed to "Virginia Department of Transportation Subdivision Street Requirements" (VDOT) standards. Such streets shall be the responsibility of the Subdivider until accepted into the highway system.

5-4-4 Family Divisions

For all Family Divisions, access may be provided in the form of streets, discontinued streets, or access easements. Where access easements are proposed, they shall be a minimum of twenty (20) feet in width to provide ingress and egress to a public street. While not required, consideration should be given to creating access easements of fifty (50) feet. Plats showing access ways that are not public streets shall contain a statement that access ways are not streets constructed to meet the standards necessary for inclusion in the secondary system of highways and will not be considered for inclusion in the highway system. All deeds of Family Divisions shall contain a statement advising that the streets in the subdivision do not meet state standards and will not be maintained

by the Department of Transportation or Floyd County. Where public streets are proposed, they shall be designed and constructed to "Virginia Department of Transportation Subdivision Street Requirements" (VDOT) standards. Such streets shall be the responsibility of the Subdivider until accepted into the highway system.

5-4-5 Agricultural Divisions

For all Agricultural Divisions, access may be provided in the form of streets, or access easements. There are no design standards for access easements in Agricultural Divisions. Plats showing access ways that are not public streets shall contain a statement that access ways are not streets constructed to meet the standards necessary for inclusion in the secondary system of highways. All deeds of Agricultural Divisions shall contain a statement advising that the streets in the subdivision do not meet state standards and will not be maintained by the Department of Transportation in Floyd County. Where public streets are proposed, they shall be designed and constructed to "Virginia Department of Transportation Subdivision Street Requirements" (VDOT) standards. Such streets shall be the responsibility of the Subdivider until accepted into the highway system.

5-4-6 Street Alignment and Layout

The arrangement of all streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas. The road arrangement must be such as to cause no hardship to owners of adjoining property when they plat their own land and seek to provide for convenient access to it. Where in the opinion of the Planning Commission it is desirable to provide for access to adjoining property, proposed streets shall be extended to the boundary line of such property. Half streets along the boundary of land proposed for subdivision may not be permitted. Wherever possible, streets shall intersect at right angles. There shall be a cul-de-sac with at least a fifty (50) foot radius at the end of all dead-end streets.

5-4-7 Service Drives

Whenever a proposed subdivision contains or is adjacent to a limited access highway or expressway, provision shall be made for a service drive approximately parallel to such street at a distance suitable for an appropriate use of the land between such highway and the proposed subdivision. Such distances shall be determined with due consideration of the minimum distance required for ingress and egress to the main highway. The Right-of-Way of any street projected across a limited access highway or expressway shall be of adequate Width to provide for the cuts or fills required for any future separation of grades.

5-4-8 Alleys

Alleys should be avoided wherever possible. Where unavoidable, design and construction shall be at the developers discretion. Dead end alleys, if unavoidable, shall be provided with adequate turn-around facilities. Plats indicating secondary access ways (alleys) which are not public streets shall contain a statement that the access ways are not streets constructed to meet the standards necessary for inclusion in the secondary system of state highways, specifically, "the subdivision plat and all approved deeds of subdivision, or similar instruments, must contain a statement advising that the streets in the subdivision do not meet state standards and will not be maintained by the Department of Transportation or the county enacting the ordinance. Grantors of any subdivision lots to which such statement applies must include the statement on each deed of conveyance thereof."

5-4-9 Private Streets and Reserve Strips

Every subdivided property except for family and agricultural divisions shall front on a public street. There shall be no reserve strips controlling access to streets.

5-4-10 Names

Proposed streets which are obviously in alignment with other streets already existing or shown on a plat that has been recorded under this Ordinance, shall bear the names of the existing street. In no other case shall the names of proposed streets duplicate existing street names irrespective of the use of the suffix street, avenue, boulevard, drive, place, lane, road or court. Street names shall be indicated on the Preliminary and Final plats, and shall be approved by the E-911 Coordinator. Names of existing streets shall not be changed except by approval of the Board of Supervisors.

5-4-11 Identification Signs

Street identification signs of a design approved by the County shall be installed by the developer at his expense at all intersections as required by the County E-911 Coordinator or his Agent.

5-4-12 Monuments

As required by this Ordinance, all monuments and lot corner markers must be installed by the Subdivider and shall meet the minimum specifications. Upon completion of subdivision streets, sewers, and other improvements, the Subdivider shall make certain that all monuments required are clearly visible for inspection and use. Such monuments shall be inspected and approved by the Agent before any improvements are accepted by the Board of Supervisors.

5-4-13 Location

Location monuments shall be of approved commercial design or concrete four (4) inches in diameter or square, three (3) feet long, with a flat top, shall be set at all public street corners, at all points where the street line intersects the exterior boundaries of the subdivision, and at right angle points, and points of curve in each street. The top of the monument shall have an appropriate mark to identify properly the location and shall be set flush with the finished grade.

5-4-14 Location at Lot Corner Markers

All lot corners shall be marked by duly licensed Professional Engineer or Land Surveyor with rods of permanent material or iron pipe, not less than three-fourths (3/4) inch in diameter and twenty-four (24) inches long and driven so as to be flush with the finished grade. When rock is encountered, a hole shall be drilled four (4) inches deep in the rock, into which shall be cemented a steel rod one-half (1/2) inch in diameter, the top of which shall be flush with the finished grade line.

5-4-15 Water Facilities

5-4-15-1 Any subdivision proposing a central public water supply and distribution system which is to serve at least fifteen (15) connections shall be approved by the State Health Department.

5-4-15-1.1 Where a private water system serving at least fifteen (15) connections is proposed, the service shall be bonded. In addition, there shall be developed a Home Owners Association, included in the bonding, which is responsible for the continued provision of service.

5-4-15-2 Where public water is within five hundred (500) feet of a subdivision, the Public Service Authority may require service be extended by the developer to all lots within

a subdivision, including fire hydrants, in accordance with the Design Standards and Specifications for Water, Construction, and Improvements in Floyd County, Virginia. All Plats within five hundred (500) feet of the PSA system or those proposing to utilize public water and/or wastewater services shall be submitted to the Floyd Public Service Authority for approval.

- 5-4-15-3 Where public water is not available, the developer may propose utilizing an individual water source to serve each lot subject to the approval of the Virginia Health Department and the Department of Environmental Quality, Water Division, where applicable.

5-4-16 Sewerage Facilities

- 5-4-16-1 If sewage disposal for the subdivision is to be provided by any means other than by public wastewater system, the Subdivider shall cause to be performed at his expense, percolation tests or equivalent method of soil evaluation on any lot(s) in the subdivision. Such tests shall conform to all applicable regulations of the Health Department. For each lot so tested, the Subdivider shall cause the test to be completed, and shall obtain written approval of the test by the Health Official and by the Agent, prior to approval of the plat. Where public water and waste water services are not proposed, all lots shall be of at least the minimum size as required by this Ordinance or shall be of such greater size so as to include Area in such lot for a house, water source, and a reserve area of equal size to the approved onsite sewage disposal system. Any onsite sewage disposal system including any reserve area shall be located on the same parcel or lot as the structure or structures to be served by such system. No permanent structure shall be constructed over the onsite sewage disposal system including any reserve areas. The types of onsite sewage disposal systems, if other than Type I shall be noted on the plat.

- 5-4-16-2 Where public wastewater service is within five hundred (500) feet of a subdivision the Public Service Authority may require service be extended to all lots within the subdivision by the developer. The type of sewer facilities available shall be noted on the plat. Easements and utility lots which are required for the proposed systems operation shall be defined on the plat. All Plats within five hundred (500) feet of the PSA system or those proposing to utilize public water and/or wastewater services shall be submitted to the Floyd Public Service Authority for approval.

- 5-4-16-3 Where a private, central wastewater disposal is proposed, the service shall be bonded. In addition, there shall be developed a Home Owners Association, included in the bonding, which is responsible for the continued provision of service.

5-4-17 Fire Protection

The installation of adequate fire hydrants in a subdivision shall be provided by the developer where adequate public water is available. Location of the hydrants shall be in compliance with Public Service Authority regulations and fire department requirements. Where there exists or is developed a lake, stream, or other source of water, the developer shall make provisions of other means of fire protection, such as dry hydrants, and shall be indicated on final plat.

5-4-18 Easements

Easements shall be indicated on the plat and shall clearly provide unobstructed access to the utilizer of such easements. The right-of-way for any subdivision street proposed for addition to the secondary system shall have a clear and unencumbered right-of-way, dedicated to public use. To assure the unencumbered dedication of the right-of-way for subdivision street additions,

easements or other interests within the platted right-of-way shall be quit-claimed of any prior rights therein. In exchange, a permit may be issued by the Virginia Department of Transportation for a utility to occupy the Area involved. Where sufficient Area for water, wastewater, power lines, and other utilities is not provided in conjunction with access easements or street right-of-way, additional easements of not less than fifteen (15) feet in Width shall be required. Easements for storm drainage to an acceptable channel shall be indicated on the plat. Easements through adjoining property shall be provided by the Subdivider and indicated on the plat.

5-4-18-1 Utility Easements

Utility easements of fifteen (15) feet must be shown on the plat outside of the roadway easements. Plats should indicate that the easement includes a construction Width of twenty (20) feet.

5-4-18-2 Electric and Telephone Utilities

While not required, electric and telephone utilities in subdivisions are encouraged to be installed underground.

5-5 Exemption for Certain Public Entities

The following provisions shall apply to any and all of the following: (a) U. S. Government; (b) Commonwealth of Virginia; (c) counties, cities, and towns, or municipal corporations thereof; (d) public utilities as defined in §56-232 of the Code of Virginia (1950) as amended; (e) cable television systems as defined in §15.1-23.1 of the Code of Virginia, 1950, as amended; and, (f) the Virginia Department of Transportation (VDOT).

5-5-1 Sections Exempted

Any such public service entity which, in the course of performing its public service functions, stands in need of completing a subdivision of land contrary to the provisions of this Ordinance, shall for purposes of such subdivision only, be exempt from the provisions of this Ordinance, except that a plat must be prepared for the parcel created and containing a notation that the parcel is for public utilities only and the lot cannot be used for other purposes at any time.

5-5-2 Plat Approval for Exemptions

The Agent is authorized to approve plats for Utility lots.

5-6 Exemption for Private Cemeteries

The following provisions shall apply to any privately owned and maintained cemetery:

5-6-1 Determination of Cemetery's Extent

Extent of such cemeteries shall be measured to include only: (a) the area occupied at the time of subdivision request by grave sites, funerary monuments, or structures indicating a place of interment; (b) any land adjacent to the above which may reasonably be needed for future expansion of the above uses; and, (c) the Area to be set aside for the purpose of privately owned and maintained cemeteries.

5-6-2 Sections Exempted

The owner(s) of any land upon which a private cemetery as defined herein is located, who wishes to subdivide such land so that such cemetery is created as a separate parcel, shall for purposes of such subdivision only, be exempt from the Area provisions of this Ordinance.

5-6-3 Access to Cemeteries

Notwithstanding any provision to the contrary elsewhere in this Ordinance, access to any cemetery subdivision proposed under Section 5-9 may be provided either by street or by a minimum easement of twenty (20) feet access easement. There are no design standards for access easements to cemetery subdivisions.

5-6-4 Plat Approval for Cemetery Subdivisions

Notwithstanding any provision to the contrary elsewhere in this Ordinance, any subdivision proposed under this Section shall be treated as an Agricultural Division under this Ordinance. Cemetery lots shall be at least one hundred (100) feet from existing water supplies.

SECTION 6

MINIMUM LOT AND PLATTING REQUIREMENTS

6-1 Lot Size

The residential lot requirements.

6-2 Lots Located Along Existing Public Streets (Highways) and Not Served with Public Utilities

All lots (except those located in a Family Subdivision) located and not served by public water and public waste water disposal shall be two (2) acres or more and are to be at least one hundred seventy-five (175) feet in Width, measured horizontally, at the Setback line, and have a Depth greater than the Width. The minimum size of lot may be increased upon a finding by the Health Department that there is insufficient land to support water supply and waste water disposal systems. In addition to the area requirements, lots shall be arranged in order that the considerations in Section 5-2 are satisfied.

6-3 Lots Located Along New Street and Not Served with Public Utilities

All lots so located and not served by public water and public wastewater disposal shall be one hundred (100) feet wide, measured horizontally, at the Setback line and contain a minimum of one (1) acre. The minimum size of lot may be increased upon a finding by the Health Department that there is insufficient land to support water supply and waste water disposal systems. In addition to the Area requirements, lots shall be arranged in order that the considerations in Section 5-4 are satisfied.

6-4 Lots Served with Public Water or Public Wastewater

All lots served by either public water or public wastewater disposal shall be one hundred (100) feet wide, measured horizontally, at the Setback line and contain a minimum of 21,780 square feet (0.5 acre). The minimum size of lot may be increased upon a finding by the Health Department that there is insufficient land to meet water supply and wastewater disposal requirements. In addition to the area requirements, lots shall be arranged in order that the considerations in Section 5-4 are satisfied.

6-5 Lots Served with Public Utilities

All lots served by public water and public wastewater disposal shall be a minimum lot Width of seventy-five (75) feet, measured horizontally, at the Setback line and contain a minimum Area of eleven thousand two hundred fifty (11,250) square feet (0.26 acre). In addition to the Area requirements, lots shall be arranged in order that the considerations in Section 5-4 are satisfied.

6-5-1 Plat Required - Approval Before Sale

No lot shall be sold until a Final Plat for the subdivision has been approved and recorded. Whenever any subdivision of land is proposed, and before any permit for the erection of a structure shall be granted, the Subdivider or his representative shall submit the subdivision plat to the Approving Authority for review and approval.

6-6 Sketch Plat Required Where New Streets Are Involved

The Subdivider shall submit a Sketch Plat of each proposed subdivision for review by the Agent and the sketch plat may be submitted to the Planning Commission for their advice. A Sketch Plat for a Standard Subdivision shall be submitted prior to preparing the engineered preliminary and final plats. The purpose

of the sketch plat is to permit the Agent to advise the Subdivider whether the plans are generally in accordance with the requirements of this Ordinance.

The Planning Commission, upon submission of any preliminary sketch, by the Agent, shall study it and advise where it appears that changes would be necessary. The Agent shall mark the preliminary sketch indicating the types of changes that would be required for inclusion in the preliminary plat.

6-6-1 Contents of a Sketch Plat

The plat should accurately depict the general location and configuration, including terminus, of each street proposed within the development. The location and area of each type of permitted use within the subdivision. The location of any proposed transportation facility within the subdivision's boundaries which is identified in the County's Comprehensive Plan.

6-6-2 Sketch Plat Submitted to Determine Street Classification

The developer shall submit the sketch plat to the Virginia Department of Transportation for the determination of street classification. The Subdivision Street Standards contain a definition of "Tertiary Subdivision Streets" which has been added to the road standards. The review by the Department will advise the developer of the standards that will be required for the streets in the development. This information shall be provided to the Agent as soon as it is available to the developer.

6-6-3 Purpose of Preliminary Sketch for Standard Subdivisions

The purpose of the Preliminary Sketch is to permit the Planning Commission to advise the Subdivider whether or not his plans, in general, are in accordance with the requirements of this Ordinance.

6-7 Preliminary Sketch Contents - All Subdivisions Except Agricultural and Family

The Preliminary Sketch shall be drawn on white paper or on a print of a United States Geological Survey (USGS) topographic map of the property. It shall be drawn at an appropriate scale. It shall show the name, location and dimensions of all streets entering the property, adjacent to the property, or terminating at the boundary of the property to be subdivided. It shall show the location of all proposed streets, lots, parks, playgrounds and other proposed uses of the land to be subdivided and shall include the approximate dimensions.

6-7-1 Part of Tract - Standard Subdivision

Whenever part of a tract is proposed for platting and it is intended to subdivide additional parts in the future, a Preliminary Sketch for the entire tract shall be submitted with the Preliminary Plat. This sketch is merely for informational purposes and is not binding on the Subdivider or the Planning Commission.

6-7-2 Review by Planning Commission and Agent - All Subdivisions except Family and Agriculture

The Planning Commission and Agent shall have sixty (60) days to review and act on each Preliminary Sketch submitted. Review period begins when following acceptance of a complete application by the Agent. If Planning Commission or Agent must forward plat to one or more State Agency for review, the Agent shall have thirty-five (35) days to review plat after State Agency Approval; Planning Commission shall have forty-five (45) days. After reviewing the proposed subdivision, the Agent shall indicate necessary changes and return one copy to the Subdivider.

6-8 Preliminary Plat Required

If the Subdivider so chooses, a Final Plat may be submitted without first submitting a Preliminary Plat, except in case of a new street in which case a preliminary plat is required. Such Final Plat shall contain all of the information required for both the Preliminary and Final Plats. If the Final Plat, as the first plat submitted, does not conform with the requirements of this Ordinance, such plat will be marked "Preliminary Plat", and be treated as such.

6-9 Preliminary Plat for Agricultural Divisions and Family Divisions

The purpose of the Preliminary Plat is to define the extent of the division of property and indicate that each Division is a bona fide division and not an attempt to circumvent the requirements of this Ordinance. Such plat, developed to the standards of a Preliminary Plat may serve as the Final Plat except in cases where public services may be required.

6-9-1 Preliminary Plat Contents - Agricultural Divisions and Family Divisions

The Preliminary Plat shall be drawn to meet the requirements of Sections 4-2, 4-5, 5-4-4, 5-4-5 and 6-10.

6-9-2 Number of Copies

If there are three (3) or fewer parcels (including retained parcel) in the proposed subdivision, a minimum of three (3) copies of each Agricultural or Family Division Preliminary Plat shall be submitted to the Agent for review. If there are four (4) or more parcels in the proposed subdivision, ten (10) copies of each Preliminary Plat shall be submitted to the Agent for the Planning Commission to review.

6-9-3 Review and Approval or Disapproval of Agricultural or Family Divisions

The Agent shall have sixty (60) days to review and act on each Agricultural or Family Division that has three (3) or fewer parcels. The Planning Commission shall have sixty (60) days to review and act on each Agriculture or Family Division with four (4) or more parcels. Approval or disapproval shall be indicated on the Preliminary Plat. Review period begins when following acceptance of a complete application by the Agent. If Planning Commission or Agent must forward plat to one or more State Agency for review, the Agent shall have thirty-five (35) days to review plat after State Agency Approval; Planning Commission shall have forty-five (45) days. Reasons for disapproval shall be noted on the disapproved Preliminary Plat and returned to the Subdivider. For approved Preliminary Plats, one (1) copy shall be retained by the Agent, one (1) copy shall be forwarded to the Commissioner of Revenue, and one (1) copy shall be returned to the Subdivider.

6-9-4 Appeals on Decision by Board - Agricultural or Family Divisions

If the Agent disapproves an Agricultural or Family Division and the Subdivider contends that such disapproval was not properly based on the Ordinance applicable thereto, or was arbitrary and capricious, he may submit a written appeal to the Planning Commission within sixty (60) days of the written disapproval by the Agent. If such appeal is disapproved, the Subdivider may submit a written appeal to the Board of Supervisors within thirty (30) days and/or to the Circuit Court of Floyd County within sixty (60) days of the written disapproval by the Commission.

6-10 Preliminary Plat

The original Preliminary Plat and ten (10) first generation copies of the Preliminary Plat shall be submitted to the Agent for transmittal to the Planning Commission at least five (5) working days prior to the Planning

Commission Meeting. The Preliminary Plat shall be drawn at an appropriate scale, e.g. one hundred (100) feet to the inch, and shall include the following information:

6-10-1 Subdivision Information

Name of subdivision, magisterial district, town, state, owner, north point, scale, and the number of sheets. If shown on more than one (1) sheet, match lines clearly indicating where the sheets join shall be provided. An oblong space 3" X 5" shall be reserved for the appropriate signatures.

6-10-2 Location

Location of proposed subdivision by an inset map at a scale of not less than one (1) inch equals two thousand (2000) feet showing adjoining streets, their names, adjacent towns, subdivisions, and other landmarks.

6-10-3 Survey

The boundary survey or existing survey of record provided such survey shows a closure with an accuracy of not less than one in ten thousand; total acreage, location and dimensions (Width and Depth) of all proposed lots, acreage of subdivided Area (including any residual property), number and approximate Area and Frontage of all building sites, existing buildings within the boundaries of tract, names of owners, tax map parcel number(s) for existing parcels, and their property lines within the boundaries of the tract and adjoining such boundaries.

6-10-4 Streets

All existing, platted and proposed public and private streets, their names and dimensions; existing utility or other easements, public areas and parking spaces; culverts, drains and water courses, their names and other pertinent data.

6-10-5 Street Cross Section

A cross section showing the proposed street construction, depth and type of base, type of surface, etc. subject to Virginia Department of Transportation standards.

6-10-6 Street Profile

A profile or contour map showing the proposed grades for the streets and drainage facilities including elevations of existing and proposed ground surface at all road intersections and at points of major grade change along the center line of streets together with proposed grade lines connecting therewith.

6-10-7 Accurate Data

The accurate location and dimensions by bearings and distances with all curve data on all lots, street lines and center lines of streets, boundaries of all proposed or existing easements, parks, school sites or other public areas, the number and area of all building sites, locations of streets, their names, state highway numbers and widths, existing utilities, and those to be provided such as sanitary sewers, storm drains, water mains, manholes and underground conduits including their size and type, water courses and their names, names of owners and their property lines, both within the boundary of the subdivision and adjoining said boundaries. Distances and bearings must balance and close with an accuracy of not less than one in ten thousand.

6-10-8 Curve Data

The data of all curves along the street Frontage shall be shown in detail at the curve or in a curve data table containing the following: Delta, radius, arc, tangent, chord and chord bearings.

6-10-9 Connections to Utilities

Proposed connections with existing wastewater service and existing water supply or alternate means of sewage disposal and water supply.

6-10-10 Drainage

The complete drainage layout, including all pipe sizes, types, drainage easements and means of transporting the drainage to a well-defined open stream which is considered natural drainage.

6-10-11 Dedicated Property

All parcels of land to be dedicated for public use or designated for common use and the conditions of such dedication and/or designation.

6-10-12 Floodplain

Designation of all land lying in the 100-year floodplain as identified by the Federal Emergency Management Agency shall be identified on the plat by cross hatch or shading. Where no land on the plat lies within the 100-year floodplain, the same shall be noted on the plat.

6-10-13 Cost of Improvements

A letter stating the cost of the required improvements certified by a duly licensed Professional Civil Engineer. In reviewing the cost of improvements submitted by the Subdivider, the Agent may consult with a duly licensed professional Civil Engineer to ensure that the types of materials and amounts are adequate.

6-10-14 Procedure for Review of Preliminary Plat

The Planning Commission shall review the Preliminary Plat in order to determine whether or not it conforms to the requirements of the Subdivision Ordinance. The Subdivider shall then be advised in writing within forty-five (45) days, which may be formal letter or by legible markings on his copy of the Preliminary Plat, concerning any additional data that may be required.

6-10-15 Approval by Other Agencies

All original Preliminary plats submitted for review and approval shall contain signatures, where necessary, by the Health Department certifying that requirements have been met for the subdivision. In the event a new road is involved, Virginia Department of Transportation approval is required. Where necessary, the signatures of the Superintendent of the Public Service Authority, the E911 Coordinator and the Skyline Soil and Water Conservation District shall indicate that the requirements of these agencies, if any, have been met. All plats proposing developments within a half mile of the Blue Ridge Parkway or other Federally owned lands shall be submitted to the National Park Service or other responsible agency for review. Verification that the developer submitted the proposal shall be filed with the Agent.

6-10-16 Six Months Limit

The Subdivider shall have not more than six (6) months after receiving official notification concerning the Preliminary Plat to file with the Agent a Final Plat in accordance with this Ordinance. Failure to do so shall make preliminary approval null and void. The Planning Commission may, on written request by the Subdivider and recommendation by the Agent, grant an extension of this time limit.

6-11 Final Plat

An original, first generation copy with required signatures and ten (10) copies of each Final Plat shall be submitted to the Agent. The plat shall be clearly and legibly drawn at an appropriate scale e.g., one hundred (100) feet to the inch on sheets having a size of seventeen (17) inches by twenty-two (22) inches. Plat details shall conform to Virginia State Library Board Classification Number 440-01-137.6 as follows:

6-11-1 Statement of Applicability

These standards shall apply to all plats and maps submitted to recordation in the circuit courts of the Commonwealth.

6-11-2 Recording Medium

Documents size shall be between 8 ½ X 11 and 17 X 22 inches, and the scale shall be appropriate to the cover of the paper. Original plats shall be inscribed on either translucent or opaque paper, polyester or linen. The background quality for opaque paper shall be uniformly white, smooth in finish, unglazed, and free of visible watermarks or background logos. A first generation copy, which meets the quality inscription standards noted below and has the stamp and signature of the preparer, shall be submitted for recordation.

6-11-3 Quality Inscription Standards:

Color of original inscription shall be black and be solid, uniform, dense, sharp, and unglazed. Signatures shall be in dark blue or black ink. Lettering shall be no less than 1/10 inch or 2.54 mm. in height. Lettering and line weight shall be no less than .013 inches or .3302 mm. Letter and line spacing for control pencil drawings shall be no less than .050 inches and for ink drawings no less than .040 inches. Drawing substance must be either wet ink or control pencil but not a combination thereof. Good drafting practices shall be followed when eliminating ghost lines and when doing erasures, and all shading and screening shall be eliminated over written data. Inscriptions shall meet standards established herein, and Line Conventions and Lettering (ANSI Y14.2M-1979), Drawing Sheet Size and Format (ANSI Y14.1-1975), and Modern Drafting Techniques for Quality Microreproduction (NMA Reference Series No. 3) shall be consulted as guidelines.

6-11-4 Format for Copies

Margins shall be at least 1/4 inch on all sides, and inscriptions are to be made on only one side of the paper. All drawings shall have centering marks on each side. Match lines or grid tics delineating 8 ½ X 11 inch sections shall be inscribed on all plats larger than 8 ½ X 11 inches. Continuation sheets of drawings shall be the same size as the first sheet.

6-11-5 Recording Standards

Recordation inscriptions shall be by Clerk's printed certificate, stamping, typing or handwriting and shall conform to the quality inscription standards noted above.

6-11-6 Exclusion

A first generation copy of an original plat drawing dated prior to the adoption of these standards shall be admitted to record.

6-12 Additional Requirements of Final Plat

In addition to the requirements of the Preliminary Plat, the Final Plat shall include the following:

6-12-1 Source of Description

Certificates signed by the duly licensed Professional Civil Engineer or Land Surveyor setting forth the source of description of the land subdivided and the place of record of the last instrument in the chain of title and a certificate that all facilities are designed to requisite standards. This includes lot line revision plats.

6-12-2 More Than One Parcel

When the subdivision consists of land acquired from more than one parcel, the outlines of the various tracts shall be indicated by dashed lines or an inset block, and identification of the respective tracts shall be placed on the plat.

6-12-3 Owner's Statement

A statement as required by Section 5-1-2 of this Ordinance to the effect that the subdivision as it appears on this plat is with the free consent and in accordance with the desires of the owners, proprietors and trustees, if any, which shall be signed by the owners, proprietors and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds.

6-12-4 Recordation Statement

The following statement shall be placed on all plats, including lot line revisions: "The recordation of this plat does not constitute a conveyance of land. Any lot, parcel or tract of land that is intended for sale and/or conveyance must be conveyed by a deed and said deed must be recorded in the Floyd County, Virginia Circuit Court Clerk's Office."

6-12-5 Before and After Table

For all plats where the acreage of a parcel changes, a table shall be provided on the plat to show the acreage of each parcel before the lot line revision or subdivision, and after such revision or subdivision.

6-12-6 Virginia Department of Transportation Statement

The following statement shall be placed on all plats that show discontinued street(s), private street(s) and/or driveway(s): "The streets in this subdivision do not meet the standards necessary for inclusion in the system of state highways and will not be maintained by the Department of Transportation or the County approving the subdivision and are not eligible for rural addition funds or any other funds appropriated by the General Assembly and allocated by the Commonwealth Transportation Board."

6-13 Advertising

A Subdivider when advertising a subdivided tract of land for sale shall be specific as to whether or not public water and sewage facilities are available at each lot or the status of non-public facilities.

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SECTION 7

CONSIDERATION OF PLATS

7-1 Approval or Disapproval of Plat

The plat shall not be approved until the Subdivider has complied with the general requirements and minimum standards of design in accordance with this Ordinance, and has made satisfactory arrangements for performance sureties to the satisfaction of the Board of Supervisors. Approval of the Final Plat shall be indicated on the face of the plat by a signature of the Chairman of the Planning Commission, in the case of Standard Subdivisions or any subdivision with four (4) or more lots, or by the Agent in the case of Lot Subdivisions or Family or Agricultural Divisions of three or fewer parcels.

7-1-1 Sixty Days to Approve or Disapprove

The Planning Commission shall act on proposed Final Plats for Standard Subdivisions within sixty (60) days after it has been officially submitted for approval by either approving or disapproving such plat in writing, and giving with the latter specific reasons therefore. The specific reasons for disapproval may be contained in a separate document or may be written on the plat itself, and shall relate in general terms such modifications or corrections as will permit approval of the plat.

7-1-2 Failure to Act on Proposed Plat

If the Planning Commission fails to act on the proposed plat within sixty (60) days after it has been officially submitted for approval, the Subdivider, after ten (10) days written notice to the Commission may petition the Circuit Court to decide whether the plat should or should not be approved. The Court shall hear the matter and make and enter such order with respect thereto as it deems proper.

7-1-3 Appeal on Disapproval of a Plat

If the Planning Commission disapproves a plat and the Subdivider contends that such disapproval was not properly based on the Ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the Board of Supervisors within thirty (30) days or the Circuit Court having jurisdiction of such land, and the Court shall hear and determine the case as soon as possible, provided that an appeal is filed with the Circuit Court within sixty (60) days of the written disapproval by the Planning Commission.

7-1-4 Approval by Other Agencies

All Preliminary and Final plats submitted for review and approval shall contain signatures, by the Health Official certifying that the requirements of the Health Department have been met for the subdivision. In the event a new road is involved, Virginia Department of Transportation approval is required. Where necessary, the signatures of the Superintendent of the Public Service Authority, the E-911 Coordinator and the Skyline Soil and Water Conservation District shall indicate that the requirements of these agencies, if any, have been met. All plats proposing developments within a half mile of the Blue Ridge Parkway or other Federally owned lands shall be submitted to the National Park Service or other responsible agency for review. Verification that the developer submitted the proposal shall be filed with the Agent.

7-1-5 Performance guarantees

The purpose of this section is to insure the appropriate and timely completion of improvements made in connection with a subdivision, to provide resources to complete such improvements when the Subdivider fails to provide them, to insure that once accepted, the improvements are not defective, and to provide for the maintenance of such improvements until they are finally accepted by the appropriate governmental entity.

- (a) Before any subdivision plat will be finally approved, the Subdivider shall construct all required public improvements in accordance with the approved plans and all applicable state and local requirements.
- (b) In lieu of construction, a performance agreement or performance agreements shall be executed between the County and all parties to the subdivision. The agreement or agreements shall be on forms supplied by the Agent and shall provide that all improvements required and all improvements shown on the Final Plat of subdivision shall be completed within twenty-four (24) months from the date of approval. This provision includes the construction of roads and their acceptance into the State Highway System. All performance agreements shall require approval as to form by the County Attorney.

Any performance agreements shall contain release provisions governing the complete and partial release of any bond, escrow, or letter of credit or other performance guarantee. The release provisions shall provide for the complete or partial release of the performance guarantee within thirty (30) days after receipt of written notice by the Subdivider of completion of part or all of any facility required to be constructed, unless the governing body notifies the Subdivider in writing of any specified defects or deficiencies in construction and suggests corrective measures prior to the expiration of the said thirty (30) day period; however, the governing body shall not be required to release any performance guarantee in an amount to exceed ninety percent (90%) of the actual cost of construction for which the guarantee was taken until such facilities have been completed and accepted by the governing body or state agency.

The performance agreement shall be accompanied by surety to the County in an amount sufficient to provide for the improvements identified in the performance agreement. Surety shall consist of either (1) a certified check or cash escrow to the County in the amount of the estimated costs of construction or (2) a bank or savings and loan association's letter of credit to the County on certain designated funds in the amount of the estimated cost of construction, said letter of credit to be approved by the County Attorney, or (3) a personal, corporate, or property bond to the County with surety satisfactory to the County Attorney in an amount satisfactory for and conditioned upon the construction of such improvements or a contract for construction of such improvements and a contractor's bond to the County with like surety in the like amount and so conditioned.

- (c) Upon completion of the required improvements, they shall be inspected and approved for acceptance. Prior to the release of any surety posted in connection with a performance agreement, the Subdivider shall post a defect bond or other approved guarantee to the County in the amount of ten percent (10%) of the cost of the improvements. Said bond to guarantee the correction by the Subdivider of any defects in materials or workmanship in the installation of the required improvements for one (1) year subsequent to the approval of the installation and acceptance by the County.
- (d) In the event the governing body has accepted the dedication of any street for public use and such street due to factors other than its quality of construction, is not acceptable into the State Highway System, the Subdivider shall furnish to the governing body a maintenance and indemnifying agreement with surety in the form of a bank or savings and loan association's letter of credit or a certified check or cash escrow in an amount sufficient for and conditioned

upon the maintenance of such street until such time as it is accepted into the State Highway System.

- (e) Whenever the improvements required by an approved final subdivision plat and identified in a performance agreement executed under this section have not been completed within the time limits established for such completion, the Agent shall move to obtain the funds or property provided as security under such agreement and shall cause such improvements to be completed. If any funds remain after all improvements are completed and accepted with all necessary fees paid, and no defects are found therein which must be repaired, such funds shall be returned to the Subdivider. If the funds available from the surety are not sufficient to complete the improvements, the Agent shall proceed to secure such funds from the Subdivider. In unusual cases where the Agent finds that substantial progress has been made towards the completion of the improvements prior to the expiration of the limit and where the Agent finds that factors (other than general economic conditions) beyond the control of the Subdivider have contributed substantially to delay, and where the Agent finds that the improvements could be completed within an additional twelve (12) month period, the Agent may execute a new performance agreement requiring completion of all improvements within a twelve (12) month period. Such agreement shall comply with all provisions of this section and shall be accompanied by the required surety. The amount of the surety shall be adjusted to take into account the actual cost of the work remaining to be done and shall take into account any inflation in such costs. Once the time limit for completion of improvements has been extended through the execution of a new performance agreement, they shall not thereafter again be extended.

- (f) Upon written request by the Subdivider or developer, the governing body or its designated administrative agency shall be required to make periodic partial releases of bond, escrow, letter or credit, or other performance guarantee in a cumulative amount equal to no less than ninety percent (90%) of the original amount for which the bond, escrow, letter of credit, or other performance guarantee was taken, and may make partial releases to such lower amounts as may be authorized by the governing body or its designated administrative agency based upon the percentage of facilities completed and approved by the governing body, local administrative agency, or state agency having jurisdiction. Periodic partial releases may not occur before the completion of at least thirty percent (30%) of the facilities covered by any bond, escrow, letter of credit, or other performance guarantee. The governing body or administrative agency shall not be required to execute more than three (3) periodic partial releases in any twelve (12) month period. Upon final completion and acceptance of the facilities, the governing body or administrative agency shall release any remaining bond, escrow, letter of credit, or other performance guarantee to the Subdivider or developer. For the purpose of final release, the term "acceptance" means: when the public facility is accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority which is responsible for maintaining and operating such facility upon acceptance.

- (g) For the purposes of this section, a certificate of partial or final completion of such facilities from either a duly licensed Professional Engineer or Land Surveyor, as defined in and limited to §54.1-400, or from a department or agency designated by the locality may be accepted without requiring further inspection of such facilities.

7-1-6 (Reserved)

7-1-7 (Reserved)

7-1-8 Recordation

The recordation of such plat shall operate to transfer, in fee simple, to the County of Floyd such portion of the premises platted as is on such plat set apart for public streets or other public use and to transfer to the County or any utility company shown on the plat the ability to utilize any easement indicated on such plat and to create public right of passage over the same, provided, however, that the County shall be under no duty or obligation to construct or maintain such improvements but shall require the Subdivider or its surety to construct and maintain the same.

7-1-9 Time Limit on Recordation

The Subdivider shall have not more than six (6) months after receiving final approval to file the original plat of the subdivision for recordation. If a plat is not filed for recordation within the time limit such approval shall be withdrawn and the plat marked void and returned.

In cases where construction of facilities to be dedicated for public use has been commenced pursuant to an approved plan or permit with surety approved by the governing body or its designated administrative agency, or where the developer has furnished surety to the governing body or its designated administrative agency by certified check, cash escrow, or bond, the plat shall be valid for a period of five (5) years from the date of approval.

SECTION 8

VACATION OF PLAT AND INTEREST GRANTED TO GOVERNING BODY

8-1 Vacation of a Plat Before Lots Have Been Sold

Where no lot has been sold the recorded plat, or part thereof, may be vacated according to either of the following methods:

- 8-1-1 With the consent of the governing body, or its authorized Agent, of the county or municipality where the land lies, by the owners, proprietors and trustees, if any, who signed the statement required by §15.2-2264 of the Code of Virginia, 1950, as amended, at any time before the sale of any lot therein, by a written instrument, declaring the same to be vacated, duly executed, acknowledged or proved and recorded in the same Clerk's Office wherein the plat to be vacated is recorded and the execution and recordation of such writing shall operate to destroy the force and effect of the recording of the plat so vacated and to divest all public rights in, and to reinvest such owners, proprietors and trustees, if any, with the title to the streets, alleys, easements for public passage and other public areas laid out or described in such plat; or
- 8-1-2 By Ordinance of the governing body of the county or municipality in which the property shown on such plat or part thereof to be vacated lies, provided that no facilities for which bonding is required pursuant to §15.2-2241 of the Code of Virginia, 1950, as amended, have been constructed on such property and no such facilities have been constructed on any lot five (5) years following the date on which the plat was first recorded.

Such Ordinance shall not be adopted until after notice has been given as required by §15.2-2204. Said notice shall clearly describe the plat or portion thereof to be vacated and state the time and place of the meeting of the governing body at which the adoption of the Ordinance will be voted upon. Any person may appear at said meeting for the purpose of objecting to the adoption of the Ordinance. An appeal from the adoption of the Ordinance may be filed within thirty days of the adoption of the Ordinance with the circuit court having jurisdiction of the land shown on the plat or part thereof to be vacated. Upon such appeal the court may nullify the Ordinance if it finds that the owner of the property shown on the plat will be irreparably damaged. If no appeal from the adoption of the Ordinance is filed within the time above provided or if the Ordinance is upheld on appeal, a certified copy of the Ordinance of Vacation may be recorded in the Clerk's Office of any court in which the plat is recorded.

The execution and recordation of such Ordinance of Vacation shall operate to destroy the force and effect of the recording of the plat, or any portion thereof, so vacated, and to divest all public rights in and to such property and reinvest such owners, proprietors and trustees, if any, with the title to the streets, alleys, and easements for public passage and other public area laid out or described in such plat.

8-2 Vacation of Plat Where Lots Have Been Sold

In cases where any lot has been sold, the plat or part thereof may be vacated according to either of the following methods: (a) By instrument in writing agreeing to said vacation signed by all the owners of lots shown on said plat and also signed on behalf of the Board of Supervisors in which the land shown on the plat or part thereof to be vacated lies for the purpose of showing the approval of such vacation by the Board of Supervisors. The word "owners" shall not include lien creditors except those whose debts are secured by a recorded deed of trust or mortgage and shall not include any consort of an owner. The instrument of

vacation shall be acknowledged in the manner of a deed and filed for record in the Clerk's Office of any Court in which said plat is recorded; or, (b) By Ordinance of the County of Floyd Board of Supervisors on motion of one of its members or on application of any interested person. Such Ordinance shall not be adopted until after notice has been given as required by §15.2-2204 of the Code of Virginia, 1950, as amended. Said notice shall clearly describe the plat or portion thereof to be vacated and state the time and place of the meeting of the Board of Supervisors at which the adoption of the Ordinance will be voted upon. Any person may appear at said meeting for the purpose of objecting to the adoption of the Ordinance. An appeal from the adoption of the Ordinance may be filed within thirty (30) days with the Circuit Court having jurisdiction over the land shown on the plat or part thereof to be vacated. Upon such appeal the Court may nullify the Ordinance if it finds that the owner of any lot shown on the plat will be irreparably damaged. If no appeal from the adoption of the Ordinance is filed within the time provided or if the Ordinance is upheld on appeal, a certified copy of the Ordinance of vacation shall be recorded in the Clerk's Office of any Court in which the plat is recorded.

8-3 Vacation of Interests Granted to the Governing Body as a Condition of Plat Approval

Any interest in streets, alleys, and easements, for public rights of passage, easements for public rights of passage, easements of drainage, and easements for a public utility granted to a locality as a condition of the approval of a site plan may be vacated according to either of the following methods:

- 8-3-1 By a duly executed and acknowledged written instrument of the owner of the land which has been or is to be developed in accordance with the site plan, declaring the interest or interests to be vacated, provided the governing body or authorized agent of the locality where the land lies consents to the vacation. The instrument shall be recorded in the same Clerk's Office wherein is recorded the written instrument describing the interest in real property to be vacated. The execution and recordation of the instrument shall operate to divest all public rights in, and to reinvest the owner with the title to the interests which formerly were held by the governing body; or,
- 8-3-2 By Ordinance of the governing body in the locality in which the property which is the subject of an approved site plan lies, provided that no interest shall be vacated in an area in which facilities, for which bonding is required pursuant to §15.2-2241 through §15.2-2245 of the Code of Virginia, 1950, as amended, have been constructed.

The Ordinance shall not be adopted until after notice has been given as required by §15.2-2204 of the Code of Virginia, 1950, as amended. The notice shall clearly describe the interest of the governing body to be vacated by reference to the recorded instrument on which it was created and state the time and place of the meeting of the governing body at which the adoption of the Ordinance will be voted upon. Any person may appear at the meeting for the purpose of objecting to the adoption of the Ordinance. An appeal from the adoption of the Ordinance may be filed within thirty (30) days of the adoption of the Ordinance with the circuit court having jurisdiction of the land over which the governing body's interest is located. Upon appeal, the court may nullify the Ordinance if it finds that the owner of the property, which has been developed or is to be developed in accordance with the approved site plan, will be irreparably damaged. If no appeal from the adoption of the Ordinance is filed within the time above provided or if the Ordinance is upheld on appeal, a certified copy of the Ordinance of Vacation may be recorded in the Clerk's Office of any court in which the instrument creating the governing body's interest is recorded.

The execution and recordation of an Ordinance of vacation shall operate to destroy the effect of the instrument which created the governing body's interest so vacated and to divest all public rights in and to the property and vest title in the streets, alleys, easements, for a public utility as may be described in, and in accordance with, the Ordinance of Vacation.

SECTION 9

EFFECTUAL CLAUSES

9-1 Copies of Ordinance

Certified copies of this Ordinance and all amendments to it shall be filed in the Office of the County Administrator and in the Office of the Clerk of the Circuit Court of Floyd County, Virginia.

9-2 (Reserved)

9-3 Validity

Should any article, section, subsection or provision of this Subdivision Ordinance be declared by a Court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this Subdivision Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

9-4 Repeal

All ordinances or portions of ordinances in conflict with this Ordinance are hereby repealed to the extent of their conflict.

9-5 Amendments

This Ordinance may be amended in whole or in part by the Board of Supervisors, provided that any such amendment shall either originate with or be submitted to the Planning Commission for recommendation; and further provided that no such amendment shall be adopted without a public hearing having been held by the Board of Supervisors. Notice of the time and place of the hearing shall be in accordance with §15.2-2201 of the Code of Virginia, 1950, as amended.

9-6 Appeals

If a local commission or other Agent disapproves a plat and the Subdivider contends that such disapproval was not properly based on the Ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the Circuit Court having jurisdiction of such land and the court shall hear and determine the case as soon as may be, provided that his appeal is filed with the Circuit Court within sixty (60) days of the written disapproval by such local commission or other Agent.

SECTION 10
EXCEPTIONS

In cases in which the Subdivider can demonstrate to the satisfaction of the Planning Commission, the Planning Commission may authorize an exception to the requirements of this Ordinance.

10-1 Procedure for Requesting Exception

A Subdivider requesting an exception shall file with the Agent a written request for same. Such request shall specify the following: (1) the particular section(s) of the Ordinance from which the exception is desired; and (2) the reason(s) for which the Subdivider wishes to exception to be granted. Such request shall be accompanied by either a Preliminary Plat or a preliminary sketch, which plat or sketch shall meet the requirements of this Ordinance. Such request may be withdrawn by the Subdivider at any point in the process without prejudice.

10-2 Procedure for Deciding Upon Exception

10-2-1 Planning Commission to Recommend Action

Following the Agent's receipt of the request for exception, the Planning Commission shall consider the request. The Planning Commission shall subsequently have sixty (60) days during which to vote to approve, approve with conditions, or deny the request for exception; or it shall return the request to the Subdivider for clarification or provision of additional information. The Subdivider shall provide such clarification or additional information to the Agent prior to the next scheduled meeting of the Planning Commission. At such meeting, the Planning Commission shall vote to recommend approval, approval with conditions, or denial of the request for exception.

10-2-2 Appeal to Board of Supervisors

The Planning Commission's decision may be appealed to the Board of Supervisors within thirty (30) days of Planning Commission decision. Within forty five (45) days of receipt of such appeal, the Board of Supervisor shall vote to approve, approve with conditions, or deny the Exception.

10-2-3 Appeal of Board Decision

If the Board of Supervisors votes to deny a request for exception and the Subdivider contends that such denial was not properly based on this Ordinance, or was arbitrary or capricious, he may appeal to the Circuit County of Floyd County. The Circuit Court shall hear and determine the case as soon as possible, provided that the appeal is filed with the Circuit Court within sixty (60) days of the written disapproval by the Board of Supervisors.

10-3 Criteria for Deciding Upon Exceptions

The following criteria shall be used by the Planning Commission and the Board of Supervisors in reaching their decisions regarding requests for exceptions:

- (a) An unusual situation or when strict adherence to the general regulations would result in substantial injustice or hardship. Hardship is defined in physical terms and not in financial terms;
- (b) The authorization of the exception will not create a substantial detriment to adjacent or nearby property;

- (c) The situation is not of so general or recurring a nature as to make reasonably practicable the formulation of general regulations to be adopted as amendment(s) to this Ordinance; and,
- (d) The hardship is created by the physical character of the property or of the property immediately adjacent thereto. Personal, pecuniary (financial), or self-inflicted hardship shall not be considered grounds for the authorization of an exception. In accordance with Section 4-2-1, a waiver of the time requirements for a family subdivision may be granted when changed circumstance so require.

10-4 Written Reasons for Exception

Any exception thus authorized by the Planning Commission and/or Board of Supervisors shall be stated in writing, with the reasoning on which the exception was justified set forth.

10-5 Conditions May be Attached

The Planning Commission or Board of Supervisors may attach such conditions and safeguards to the exception, as they deem necessary to protect the general public interest.

Adopted: June 8, 1978

Amended: December 11, 2001

Revised: October 22, 2002

Revised: August 21, 2018

EXHIBITS

EXHIBIT 1 Administration of Subdivision Ordinance
EXHIBIT 2 Schedule of Fees

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