

**III.**

\*Amended  
1/3/89

**APPLICATION AND APPROVAL PROCEDURES**

**III-A.**

**General Provisions**

From the time that this Ordinance is filed with the Register of Deeds of Orange County, no subdivision plat of land within the County's jurisdiction may be filed or recorded until it has been submitted to and approved by the Planning Department as set forth in Section III-D-3-c of this Ordinance, and until such approval is entered in writing on the face of the plat by the Planning Director or his/her designated representative.

The Register of Deeds shall not file or record a plat of a subdivision of land located within the territorial jurisdiction of Orange County without signature of approval from the Orange County Planning Department in accordance with these provisions.

The owner of land shown on a subdivision plat submitted for recording, or his/her authorized agent, shall sign a statement on the plat stating whether any land shown thereon is within the subdivision- regulation jurisdiction of Orange County.

Except where specifically exempted by this Section, no building permit shall be issued to develop any subdivided lot or parcel until a Final Plat of such subdivision has been approved and recorded in accordance with the provisions of this Ordinance.

**\*III-B.**

\*Amended  
9/5/89  
5/16/00

**Classification of Subdivisions**

All subdivisions shall be considered major subdivisions except those defined as minor subdivisions in this Section.

A "minor subdivision" is defined as the division of a tract of land that does not:

- (1) Create more than five (5) lots, including the residual acreage, from any one tract of land in any ten (10) year period.
- (2) Dedicate or improve any new public street other than widening an existing public street;
- (3) Extend public water and/or sanitary sewerage systems other than laterals to serve individual lots; and
- (4) Necessitate the installation of drainage improvements which would require easements through one (1) or more lots to serve other lots.

Minor subdivisions shall be reviewed in accordance with the provisions of Section III-C. Major subdivisions shall be reviewed in accordance with the procedures set forth in Section III-D.

**III-B-1.**  
Amended  
3/14/00

### **Determination of Classification**

All proposed subdivisions shall be reviewed by the Planning Department for initial determination as to whether the proposed subdivision is to be classified as a minor subdivision, a major subdivision or exempt from the provisions of this Ordinance as specified in the definition of "subdivision" in Section II. In making such determination, the Planning Department shall review the proposal, considering, among others, the following:

- (a) The pattern of existing land uses in the area;
- (b) The number and pattern of lots to be created;
- (c) The current use of the tract to be subdivided;
- (d) The topography of the tract, and the soil types and applicability of same for the stated purpose of the subdivision;
- (e) Any site improvements proposed as a part of the subdivision; and
- (f) The affidavit of the subdivider who is requesting classification as to the proposed use of the tract to be subdivided and the nature and reason for the division; i.e., probate, division among heirs, partition among co-tenants, continuing agricultural use, sale, building development, gift, lease, etc.

Where a public street is to be created and platted as part of the subdivision, the subdivision shall not be exempt from the provisions of this Ordinance regardless of any other factors. All transfers or sales, exempt or not, of an interest in any property within a tract subdivided pursuant to this Ordinance shall be made by express reference, plat book and page number, to the recorded plat thereof.

If the Planning Department shall determine that the proposed subdivision is a minor or major subdivision, it shall notify the subdivider of the applicable approval procedures as set forth in this Section.

If the Planning Department shall determine that the proposed subdivision is exempt from the provisions of this Ordinance, the Final Plat shall be endorsed as specified in Section V-D-6-3 of this Ordinance and may be recorded in the Office of the Register of Deeds.

**III-C. Approval Procedures for Minor Subdivision**

**\*III-C-1. Concept Plan Submission**

\*Amended  
8/6/90  
9/4/90  
3/14/00

Submittal of a Concept Plan is not mandatory but is advisable in most cases, particularly where access easements are needed. Concept Plan review can reveal any aspects of the project which are inconsistent with standards of the Subdivision Regulations. In addition, complete information on what will be required for Final Plat approval can be provided through the review process. The review process also permits reconsideration or redesign of the project prior to significant investment by the subdivider.

Prior to the submission of the Final Plat, the subdivider may submit to the Planning Department two (2) copies of the Concept Plan of the proposed minor subdivision. If submitted, the Concept Plan shall be prepared in accordance with the specifications for Concept Plan drawings as set forth in Section V-B of this Ordinance.

Upon submission of a Concept Plan, the Planning Department shall review the Concept Plan for general compliance with the requirements of this Ordinance and the Zoning Ordinance, if applicable, including the presence of any sites identified in *"An Inventory of Sites of Cultural, Historic, Recreational, Biological and Geological Significance in the Unincorporated Portions of Orange County"* and *"Inventory of the Natural Areas and Wildlife Habitats of Orange County, North Carolina"* and the Planning Department shall advise the subdivider or his/her authorized agent of the regulations pertaining to the proposed subdivision, of any changes required in order to comply with the provisions of this Ordinance, and the procedures to be followed in the preparation and submission of the Final Plat.

**\*III-C-2.      Application Requirements**

\*Amended

10/1/90    4/1/96  
9/4/90    10/1/96

Upon approval of the Concept Plan by the Planning Department, the subdivider may proceed with the preparation of the Final Plat.  
(See Section II - Definitions)

Applications for minor subdivision Final Plat approval shall be filed with the Planning Department and shall contain the following information:

- (a) Minor subdivision application form as prescribed by the Planning Department;
- (b) Original mylar of the Final Plat and eight (8) copies thereof prepared in accordance with Section V-D of this Ordinance;
- (c) A copy of the Final Plat indicating Health Department approval/denial for each lot shown thereon;
- (d) Minor subdivision application fees as established by the Board of Commissioners;
- (e) Auxiliary documents prepared in accordance with Section III-E of this Ordinance which assure completion and/or maintenance of improvements required by this Ordinance. Such documents may include, but not be limited to, a private road maintenance agreement; escrow agreement or letter of credit by an approved institution; and guarantee of installation of any required road signs;
- (f) An Orange County Tax Map showing the location of the parcel to be subdivided;
- (g) A copy of the Final Plat indicating approval of the plan to control sedimentation and erosion during construction of any required improvements. Where an erosion control plan is required, it shall comply with the provisions of the Orange County Sedimentation and Erosion Control Ordinance. If an erosion control plan is not required, the copy of the Final Plat must be signed by the Orange County Erosion Control Officer certifying that a plan waiver has been approved or the amount of land disturbance on the site is not subject to the provisions of the Sedimentation and Erosion Control Ordinance; and
- (h) A statement describing the methods proposed to protect environmental resources identified in *"An Inventory of Sites of Cultural, Historic, Recreational, Biological and Geological Significance in the Unincorporated Portions of Orange County"* or *"Inventory of the Natural Areas and Wildlife Habitats of Orange County, North Carolina"*.

The Planning Department shall not accept any application unless it is complete in form and content, and the plat complies with the specifications for Final Plat drawings as contained in Section V-D of this Ordinance. An incomplete application shall be returned to the applicant within five (5) working days with notification of its deficiencies.

**\*III-C-3.**

\*Amended  
1/6/92  
3/14/00

**Review and Approval Procedures**

Upon acceptance of a minor subdivision application, the Planning Department shall determine if the plat and application conform with all applicable regulations, including any applicable conditions of an approved Special Use Permit. Auxiliary documents as required by Section III-C-2 above shall be submitted by the Planning Department to the County Attorney for his/her review and recommendation.

After receiving a complete Final Plat, the Planning Department may submit copies of the Final Plat and accompanying material to the officials and agencies listed in Section III-D-2-b for their review and comment. The officers or agencies to which the plan is submitted shall provide a certification to the Planning Department as to the suitability, provisional suitability, or unsuitability of the proposal. Recommendations of the review officers or agencies may be incorporated as conditions of approval of the subdivision.

The Planning Department shall take action on an application solely on its findings as to compliance with applicable regulations and conditions and shall:

- (a) Approve the application;
- (b) Approve the application subject to conditions; or
- (c) Deny the application.

The Planning Department shall notify the applicant of its action in writing.

**III-C-4.**

Amended  
9/3/96  
9/18/01

**Action Subsequent to Approval**

From the date of approval of a Final Plat, with or without conditions, by the Planning Department, the applicant shall have one (1) year in which to submit to the Planning Department for endorsement a reproducible mylar original of the Final Plat. The Planning Director or his/her authorized agent shall grant, upon written request from the applicant, an extension of this time limit to one-year from the original date of expiration.

The Planning Director or his/her designated representative shall endorse approval on a reproducible mylar original of the Final Plat if the Planning Department approves an application either with or without conditions. The applicant shall record such plat and any associated documents necessary to assure conformance with regulations in the Office of the Register of Deeds within ninety (90) days after the Planning Director's endorsement of approval. If such plat is not recorded within the specified time period, the minor subdivision plat is void. The Planning Director may extend this deadline provided the applicant can demonstrate a good faith effort to comply with the deadline, but for reasons beyond his/her control, fails to meet the requirements for recordation within that period. All such plats shall conform to drawing specifications and certification requirements for Final Plats contained in Section V-D of this Ordinance.

Recordation of the approved final plat, and auxiliary documentation as required in the conditions of preliminary plat approval shall be with the advice and consent of the Planning Department.

**III-C-5.**

Amended  
3/14/00

**Appeal Procedures**

The decision of the Planning Department regarding a minor subdivision application may be appealed to the Board of County Commissioners. The Board of County Commissioners shall have final approval authority, and, where applicable, all Final Plats shall contain information and/or conditions approved by the Commissioners.

The Board of County Commissioners in all such appeals shall make findings of fact in support of its decision. The subdivider shall be notified, in writing, of the Commissioner's decision.

**III-D.**

Amended  
7-1-96  
10-1-96

**Approval Procedures for Major Subdivisions**

**III-D-1.**

Amended  
2/24/03

**Concept Plan Approval**

**III-D-1-a. Pre-Application Review**

To promote better communication and avoid unnecessary expense in the design of acceptable subdivision proposals, each subdivider is encouraged to meet with the Planning Department staff prior to filing an application for Concept Plan approval. The purpose of this informal meeting is to introduce the applicant to the provisions of this Ordinance and discuss his/her objectives in relation thereto.

**III-D-1-b. On-Site Visit**

Prior to the submission of a Concept Plan, the applicant shall schedule a mutually convenient time to walk the property with the Planning Department staff. The purpose of this visit is to familiarize the Planning Department staff with the property's special features, and to provide them an informal opportunity to offer guidance to the applicant regarding the tentative location of Secondary Conservation Areas, and potential house locations and street alignments.

Prior to scheduling the on-site visit, the applicant shall have prepared the Site Analysis Map as required in Section V-B-2 below. If the on-site visit is not scheduled before the Concept Plan submission, it should occur prior to the Public Information Meeting described below.

**III-D-1-c. Application Requirements**

Amended  
2/24/03

Applications for Concept Plan approval shall be submitted to the Planning Department prior to the submission of a Preliminary Plat and shall contain the following information:

An Orange County Tax Map showing the location of the parcel to be subdivided.

Twenty-five (25) copies of a Concept Plan of the proposed major subdivision prepared in accordance with the specifications for Concept Plan drawings as contained in Section V-B of this Ordinance. A Concept Plan shall include the following:

- A Site Analysis Map;
- A Conventional Development Option; and
- A Flexible Development Option.

In lieu of a three-part Concept Plan, one Concept Plan may be submitted if the applicant is seeking approval only of a Flexible Development Plan. The applicant may also combine the Site Analysis Map and the Flexible Development Option into a single plan, provided the information required in Section V-B is displayed in a clear and legible form. If an applicant chooses this option, he/she shall comply with the provisions for determining density as set forth in Section IV-B-10-E.1.

Concept Plan application form as prescribed by the Planning Department in a form which provides:

A comparison of the impacts of the Flexible Development Option to those that would result from the Conventional Development Option.

A checklist identifying consistency with applicable design guidelines as set forth in Section IV-B-10-G.

Stamped envelopes addressed to each owner of property within 500 feet of the property proposed to be subdivided. The names and addresses of property owners shall be based on the current listing as shown in the Orange County Land Records System.

**III-D-1-d.**

Amended  
3/14/00  
2/24/03

**Neighborhood Information Meeting**

Upon receipt and acceptance of the Concept Plan application, the Planning Department shall schedule a Neighborhood Information Meeting (NIM) and mail notices of the meeting to each owner of property within 500 feet of the property proposed to be subdivided. Additionally, the staff shall place a sign on the property indicating the total number of lots proposed, the date, the time, the location of the NIM, and the Planning Department telephone number. The sign shall be posted on the property at least seven (7) days prior to the NIM. The NIM shall be held a minimum of 14 days prior to the Planning Board meeting at which the concept plan is scheduled to be heard. Notices of the NIM shall be mailed by first class mail at least ten (10) days prior to the date of the meeting.

At the meeting, the applicant will be available to answer questions about the proposed subdivision, and comments from neighboring property owners for the purpose of improving the proposed subdivision design may be made. The Planning Department staff will explain the County's subdivision approval process and identify meeting dates of the Planning Board and Board of Commissioners at which neighboring property owners may speak with regard to specific concerns and/or issues.

**III-D-1-e.**

Amended  
3/14/00  
5/16/00

**Planning Department Review Procedures**

The Planning Department shall submit to the Planning Board its recommendation, including a written analysis of the Concept Plan; its general compliance with the requirements of this Ordinance, the Comprehensive Plan, and other applicable codes and ordinances; and the comments of neighboring property owners expressed at the Neighborhood Information Meeting. The Planning Staff shall recommend to the Planning Board which Development Option Plan is recommended for eventual Preliminary Plan processing.

The Planning Staff shall be allowed to defer the application and its recommendation for one (1) meeting beyond the Planning Board meeting at which the application is scheduled to be heard.

**III-D-1-f.**  
Amended  
3/14/00  
5/16/00

### **Planning Board Review and Approval Procedures**

After receiving the Planning Department's report or, if applicable, the expiration of the time period prescribed in Section III-D-1-e, the Planning Board shall consider the Concept Plans, including both the Conventional Development Option and the Flexible Development Option, and take action on the proposals. The Planning Board shall base its action on its findings as to the conformity of the proposals with all applicable regulations and shall:

Approve one Development Option; or  
Approve one Development Option subject to conditions; or  
Deny the Development Option.

The Planning Board shall vote on whether the development should proceed as a Conventional Development Option or as a Flexible Development Option. If that vote approves the Development Option recommended by the Planning staff, the vote by the Planning Board is the final decision on whether the development proceeds as a Conventional Development Option or as a Flexible Development Option. If the Planning Board vote is other than one approving the Development Plan Option recommended by the Planning Staff, the application shall be forwarded to the Board of County Commissioners for a decision by the Board of County Commissioners on whether the development shall proceed as a Conventional Development Option or as a Flexible Development Option.

If the Planning Board approves a Development Option subject to conditions, such conditions shall be reasonable and shall seek to insure compliance with applicable regulations. If the Planning Board denies both Development Options, the reasons for such decision shall be stated in writing to the applicant and entered into the minutes of the meeting at which such action was taken.

If the Planning Board fails to take action within two regularly scheduled meetings, or extension thereof, the application shall be forwarded to the Board of County Commissioners with the Planning Board minutes and the Planning Staff recommendation and conditions, if any.

**III-D-1-g.**  
Amended  
3/14/00  
5/16/00

### **Action Subsequent to Approval**

If a Concept Plan Development Option is approved or approved with conditions, the Planning Board Chair shall endorse the approval on three (3) copies of the approved Development Option. Two (2) copies of the approved Development Option shall be retained by the Planning Department, and one (1) copy shall be returned to the subdivider or his/her authorized agent. One copy of the unapproved Development Option shall be retained by the Planning Department for its files. The unapproved Development Option shall be stamped "NOT APPROVED".

Upon approval of a Concept Plan Development Option by the Planning Board, the subdivider may then proceed with the preparation of a Preliminary Plat that is consistent with the approved Concept Plan.

From the date of approval of the Concept Plan Development Options by the Planning Board, the applicant shall have two (2) years in which to prepare and file an application for Preliminary Plat approval. If a Preliminary Plat for subdivision has not been submitted within the specified time limit, the Concept Plan Development Options shall become null and void.

**III-D-1-h.**  
Amended  
3/14/00

**Appeal Procedures**

The decision of the Planning Board regarding Concept Plan Development Options may be appealed to the Board of Commissioners. Any notice of appeal shall be filed, in writing, with the Planning Director within 15 days after the date of the Planning Board's decision. If the appeal involves a plan/map approval, sixteen (16) copies of the plan/map shall be submitted along with the written appeal. The Board of Commissioners shall have final approval authority, and, where applicable, all Concept Plan Development Options shall contain information and/or conditions approved by the Board of Commissioners.

The Board of Commissioners in all such appeals shall make findings of fact in support of its decision. The applicant shall be notified, in writing, of the Board of Commissioners' decision within ten (10) days after said decision is made.

**III-D-1-j.**

**Approval Procedures of Subdivisions in the Economic Development, Commercial and Industrial Nodes as Identified in the Orange County Comprehensive Plan**

Amended  
4/17/01

Initial review of all subdivisions in the Economic Development, Commercial and/or Industrial nodes shall be performed by the Orange County Planning Staff. Following review by the Orange County Planning Staff all subdivisions shall follow the preliminary plan major subdivision approval procedures as specified in Section III-D-3. All subdivisions shall submit the application in accordance with requirements as specified in Section III-D-3-a. All roads in these zoning districts are required to be public and constructed to North Carolina Department of Transportation standards.

Final plat approvals shall follow the final plat approval procedures in Section III-D-4 of the Orange County Subdivision Regulations.

**III-D-2.**  
Amended  
2/24/03

**Reserved**

**\*III-D-3.**

\*Amended

10/7/9

10/1/96

11/5/03

**Preliminary Plat Approval**

Application and approval procedures specified in this Section apply to all Preliminary Plats except and to the extent that applicable Orange County Zoning Ordinance application and approval procedures pertain. The applicant of a major subdivision not otherwise classified as a Major Subdivision, Class A Special Use (Rural Designated or Urban Designated) or a Major Subdivision, Planned Development (Rural Designated or Urban Designated) may choose to vest the Preliminary Plat for a longer time period than is otherwise provided by this Section. If he/she wishes to exercise this option, the application approval procedures required for Class A Special Uses shall apply as specified in Article 8 of the Orange County Zoning Ordinance for a Site Specific Development Plan Special Use.

Those subdivisions of land which are a Class A Special Use under this Ordinance and under the Orange County Zoning Ordinance shall comply with the requirements of the Orange County Subdivision Regulations and the Orange County Zoning Ordinance.

**III-D-3-a.**

**Application Requirements**

For every subdivision within the territorial jurisdiction established by Section I of this Ordinance, and which does not qualify for minor subdivision approval procedures, the subdivider shall submit a Preliminary Plat which shall be reviewed by the Planning Board and approved by the Board of Commissioners before any site disturbance, construction or installation of improvements may begin.

Applications for major subdivision Preliminary Plat approval shall be filed with the Planning Department and shall contain the following information:

- (1) Major subdivision checklist form as prescribed by the Planning Department;
- (2) Twenty-five (25) copies of the Preliminary Plat of the proposed subdivision prepared in accordance with Section V-C of this Ordinance;
- (3) An Orange County Tax Map showing the location of the parcel to be subdivided;
- (4) Major subdivision application fees for Preliminary Plats as established by the Board of Commissioners;
- (5) A copy of the Preliminary Plat indicating Health Department soils analysis approval/denial for each lot shown thereon;
- (6) Where a private road is proposed a written statement by the applicant or his/her authorized representative which sets forth the justification for a private road; and

- (7) Auxiliary documents, in draft form, prepared in accordance with Section III-E of this Ordinance which assure completion and/or maintenance of improvements required by this Ordinance. Such documents may include, but not be limited to, a private road maintenance agreement, and articles of incorporation and restrictive covenants pertaining to a homeowner's association. These documents may be required as necessary as evidence that the ordinance requirements are being met.

\*Amended  
9/04/90

- (8) A statement describing the methods proposed to protect environmental resources identified in "*An Inventory of Sites of Cultural, Historic, Recreational, Biological and Geological Significance in the Unincorporated Portions of Orange County*" and "*Inventory of the Natural Areas and Wildlife Habitats of Orange County, North Carolina*".

The Planning Department shall not accept any application unless it is complete in form and content, and the plat complies with the specifications for Preliminary Plat drawings as set forth in Section V-C of this Ordinance. An incomplete application shall be returned to the applicant within five (5) working days with notification of its deficiencies.

**III-D-3-b.**  
Amended  
3/14/00

#### **Planning Department Review Procedures**

Upon acceptance of a preliminary plat application, the Planning Department shall determine if the plat and application conform with all applicable regulations, including any applicable conditions of an approved Special Use Permit. Auxiliary documents as required by Section III-D-2-a above shall be submitted by the Planning Department to the County Attorney for his/her review and recommendation.

After having received a complete Preliminary Plat application from the subdivider, the Planning Department shall submit copies of the Preliminary Plat and any accompanying material to other officials and agencies for review and comment. Officers and agencies to which the Preliminary Plat shall be submitted include, but are not limited to, the following:

- (1) The District Engineer of the N.C. Department of Transportation as to proposed public streets, highways and drainage systems;
- (2) The Orange County Health Department as to proposed on-site water supply and sewage disposal systems;
- (3) The Board of Education of the appropriate school district as to the reservation of proposed school sites and the impact of the proposed subdivision on school enrollment capacities;
- (4) The Orange County Erosion Control Officer as to the erosion control and stormwater management plan;
- (5) The Orange County Recreation and Parks Advisory Council as to the location, suitability and facilities proposed for required recreation areas;

- (6) The Planning Department and/or Planning Board of the appropriate municipality where a courtesy review procedure has been established by agreement between the County and the municipality;
- (7) The appropriate utility provider where public or community water and/or sanitary sewerage systems are proposed to serve the subdivision;
- (8) The Orange Soil and Water Conservation District as to a general soils description and interpretation; and
- (9) The County Attorney as to the format and appropriateness of proposed restrictive covenants, homeowners association agreements, road maintenance agreements, performance bonds and other similar documents.

The officers and agencies designated above shall review the Preliminary Plat and shall provide a certification to the Planning Department on the basis of the suitability, provisional suitability or unsuitability of the proposal.

Where it is determined that alternative measures are required in order for the proposal to be classified as "suitable", a certification of "provisionally suitable" shall be provided. If agency approval is withheld on this basis, the agency shall identify the reasons for such classification and recommend measures through which the proposal may be made suitable. The Planning Board may recommend, and the Board of Commissioners may approve, such measures as conditions of approval of the Preliminary Plat; provided, however, the recommending agency shall have the authority to enforce such measures.

Where no alternatives are available to address the concerns of the agency or officer, a classification of "unsuitable" shall be provided. The agency or officer shall provide a list of the reasons which resulted in such designation.

Upon receipt of the comments and recommendations from review officers and agencies, the Planning Department shall submit to the Planning Board a written analysis of the application and its recommendation. The Planning Staff shall be allowed to defer the application and its recommendation for one (1) meeting beyond the Planning Board meeting at which the application is scheduled to be heard.

**III-D-3-c.**

Amended  
1/8/90  
3/14/00

**Planning Board Review Procedures**

The Planning Board shall review the application and the Planning Department's report and shall prepare a written recommendation to the Board of Commissioners. All interested persons shall be given the opportunity to speak and ask questions regarding the application. The Planning Board may place reasonable and fair limitations on comments, arguments and questions to avoid undue delay.

The Planning Board shall take action on the application solely on its findings as to compliance with applicable regulations and conditions and shall:

- (1) Recommend approval of the application;
- (2) Recommend approval subject to conditions; or
- (3) Recommend denial of the application.

If the Planning Board fails to take action within two regularly scheduled meetings, or extension thereof, the application shall be forwarded to the Board of County Commissioners with the Planning Board minutes and the Planning Staff recommendation and conditions, if any.

If the Planning Board approves the application subject to conditions, such conditions shall be reasonable and shall seek to insure compliance with applicable regulations and the provision of utilities and/or other facilities needed to serve the proposed development. If the Planning Board recommends approval of the application with conditions, the applicant may amend his/her application to conform to all or some of the conditions, provided the Planning Department reviews the amended application for compliance with applicable regulations and certifies that the amendments conform to the conditions of the Planning Board recommendation. In such cases, the Planning Department may amend its report to conform to any or all of the Planning Board's recommendations. The Planning Department shall then forward its report and the Planning Board's recommendation to the Board of Commissioners at its next available regularly scheduled meeting.

### **III-D-3-d.**

Amended  
1/8/90  
3/14/00

#### **Board of Commissioners Review and Approval Procedures**

The Board of Commissioners shall receive the Planning Department's report and the Planning Board's recommendation.

After receiving the Planning Department's report and the Planning Board's recommendations, the Board of Commissioners shall consider the application and take action on the proposal. All interested persons shall be given the opportunity to speak and ask questions regarding the application. The Board of Commissioners may place reasonable and fair limitations on comments, arguments and questions to avoid undue delay.

The Board of Commissioners shall base its action on its findings as to conformity with all applicable regulations and shall:

- (1) Approve the application;
- (2) Approve the application subject to conditions; or
- (3) Deny the application.

The application shall be placed on the Board of County Commissioners agenda within 90 days of the Planning Board recommendation. The Board of County Commissioners shall consider the application within a reasonable amount of time. During deliberations and consideration of the application the Board may include the reasons for the need for additional analysis and review.

If the Board of Commissioners approves the application subject to conditions, such conditions shall be reasonable and shall seek to insure compliance with applicable regulations and the provision of utilities and/or other facilities needed to serve the proposed development. If the Board of Commissioners approves the application with conditions or denies the application, the reasons for such decision shall be stated in writing to the applicant and entered into the minutes of the meeting at which such action was taken.

**\*III-D-3-e.**

\*Amended  
1/8/90  
2/19/91

**Action Subsequent to Approval**

Upon approval of the Preliminary Plat by the Board of Commissioners, the subdivider may proceed with the preparation of the Final Plat, and the installation of or arrangement for required improvements in accordance with the approved Preliminary Plat and the requirements of this Ordinance.

If the application is approved or approved with conditions, the Planning Department may issue applicable development permits required to construct, install and use improvements approved as part of the Preliminary Plat approval. Except for the above improvements, no building permits shall be issued to develop any lot or parcel shown on the approved Preliminary Plat until a Final Plat showing such lot or parcel is approved and recorded under this Section.

Except as provided in Section III-D-2-c, the applicant shall submit an amended application for review as an original application if he/she proposes to substantially amend or modify his/her application after the Board of Commissioners have approved the Preliminary Plat.

The approval of a Preliminary Plat shall be effective for a period of one (1) year from the date of approval by the Board of Commissioners. By the end of that time period, approval of the Final Plat must have been obtained from the Planning Department, although the plat need not have been recorded in the Office of the Register of Deeds. Any plat or portion thereof not receiving final approval within the time period set forth herein shall be null and void except under the following conditions:

- (1) The subdivision is built in sections or phases, and a phasing plan was approved as part of the Preliminary Plat;
- (2) The period between the approval date of the Preliminary Plat and the approval date of the Final Plat for the first phase does not exceed one (1) year; and
- (3) The period between the approval date of the Final Plat of the first phase and the approval date(s) of the Final Plat(s) of any subsequent phase(s) does not exceed the time limits specified in the phasing plan of the Preliminary Plat. If no phasing plan is indicated, then the period between Final Plat approvals shall not exceed six (6) months.

Where a phasing plan for construction of the subdivision is approved, and construction may not begin until required utilities and/or other facilities are available to serve the development, the expiration date of the Preliminary Plat shall be governed by the time period(s) approved as part of the phasing plan.

**\*III-D-3-f.**

\*Amended  
8/20/91

**Administrative Re-Approval**

The Planning Director or his/her authorized agent may, within one year of the expiration of a Preliminary Plat, re-approve the expired Preliminary Plat or portions thereof, as long as the subdivision design and conditions of approval are in compliance with subdivision and zoning regulations (where applicable) in effect at the time of application for re-approval, and changes to the original design or conditions of approval are considered minor.

A change may be considered a minor change if it does NOT involve any of the following:

- a) any substantive change in a condition of approval.
- b) an increase in the number of building lots proposed.
- c) any substantial change in the location of or any decrease in the amount of open space, buffers, or area reserved for recreation use.
- d) any substantial change in pedestrian and/or vehicular access or circulation including road classification.
- e) any change in the provision of services such as water supply and wastewater disposal.
- f) any substantial change in the location of utilities or other easements.

The subdivision shall be subject to review by all applicable review agencies as is required for original preliminary plat approval. If all changes from the original approval are considered minor changes, the Planning Director or his/her authorized agent may re-approve the preliminary plat, with condition of approval stated in a format which substantially conforms to the Resolution of Approval adopted by the Board of Commissioners when approving a preliminary plat.

**\*III-D-3-g.**

\*Amended

8/20/91

**Further Time Extensions**

Only one administrative re-approval may be approved for any subdivision. If a re-approved Preliminary Plat expires, the developer shall be required to resubmit a new Preliminary Plat for the tract or portion thereof for which approval has expired. The new plat shall be subject to all applicable regulations in existence at the time of resubmittal. Provided, however, the development phasing plan approved as part of the Preliminary Plat (hereafter "the phasing plan") may be amended by the Board of Commissioners upon application by the subdivider. In determining whether to approve an amended phasing plan, the Board of Commissioners shall consider:

- (1) whether or not approval of other diligently pursued regulatory requirements can be obtained before the expiration of the time periods established in the phasing plan; and
- (2) the quality of and length of time of the experience of the subdivider in managing development projects; and
- (3) whether factors other than market conditions and beyond the control of the subdivider caused a delay in meeting the phasing plan; and
- (4) whether the development project, if completed consistent with the approved Preliminary Plat, will tend to aid or meet an important public policy goal established by the Board of County Commissioners; and
- (5) whether the application for an amended phasing plan was submitted before the previously approved time limit(s) has lapsed; and
- (6) the possibility of and practicality of the subdivider and developer completing the development project consistent with Orange County regulations applicable if the phasing plan amendment is not granted; and
- (7) whether the time by which improvements must be completed or installed would not be extended by the revised phasing plan.

After consideration of the evidence submitted by the applicant concerning each of the factors listed above, the Board may, in its discretion and for good cause shown, grant the amendment to the phasing plan unless it concludes that to do so would not maintain or promote, in some specific manner, the general health, safety and welfare. If the Board approves an amendment to the phasing plan, it may require reasonable additional conditions of approval of the unapproved final plat(s).

**III-D-4. Final Plat Approval**

**III-D-4-a. Application Requirements**

Amended  
10/1/96

Prior to approval of a Final Plat, the subdivider shall have installed the improvements specified in this Ordinance or guaranteed their installation as provided in Section III-E. No Final Plat will be accepted for review by the Planning Department unless accompanied by written documentation acknowledging compliance with the improvement and guarantee standards of Section III-E. The Final Plat shall constitute only that portion of the Preliminary Plat which the subdivider proposes to record and develop at that time. Such portion shall conform to all requirements of this Ordinance.

Applications for major subdivision Final Plat approval shall be filed with the Planning Department and shall contain the following information:

- (1) Original mylar of the Final Plat and five (5) copies thereof prepared in accordance with Section V-D of this Ordinance;
- (2) Auxiliary documents, in final form, prepared in accordance with Section III-E of this Ordinance which assure completion and/or maintenance of improvements required by this Ordinance. Such documents may include, but not be limited to, a private road maintenance agreement, articles of incorporation and restrictive covenants pertaining to a homeowner's association, and a letter of credit or an escrow agreement; and
- (3) Major subdivision application fees for Final Plats as established by the Board of Commissioners.

The Final Plat of the subdivision or any portion thereof shall be submitted not more than one (1) year after the date on which the Preliminary Plat was approved unless the subdivision is being developed in accordance with an approved phasing plan under Section III-C-2-e above. Otherwise, such Preliminary Plat approval shall be null and void, and the subdivider shall be required to resubmit a new Preliminary Plat for the tract or portion thereof for approval in accordance with the provisions of Section III-D-2.

The Planning Department shall not accept any application unless it is complete in form and content, and the plat complies with the specifications for Final Plat drawings as set forth in Section V-D of this Ordinance. An incomplete application shall be returned to the applicant within five (5) working days with notification of its deficiencies.

**III-D-4-b.**  
Amended  
3/14/00

### **Review and Approval Procedures**

Upon acceptance of a Final Plat application, the Planning Department shall determine if the plat and application conform with all applicable regulations, including any applicable conditions of an approved Special Use Permit. Auxiliary documents as required by Section III-D-3-a above shall be submitted by the Planning Department to the County Attorney for his review and recommendation.

Upon receipt of the recommendation of the County Attorney, the Planning Department shall take action on an application solely on its findings as to conformity with all applicable regulations and shall:

- (1) Approve the application;
- (2) Approve the application subject to conditions; or
- (3) Deny the application.

If the Planning Department approves the application subject to conditions, such conditions shall be reasonable and shall seek to insure compliance with applicable regulations. If the Planning Department approves the application with conditions or denies the application, the reasons for such decision shall be stated in writing to the applicant.

**III-D-4-c.**  
Amended  
9/3/96

### **Action Subsequent to Approval**

If the application is approved or approved with conditions, the Planning Director or his/her designated representative shall endorse his/her approval on a reproducible mylar original of the Final Plat. The applicant shall record the Final Plat in the Office of the Register of Deeds within ninety (90) days after the Planning Director's endorsement of approval. If such plat is not recorded within the specified time period, the Final Plat is void. The Planning Director may extend the time period, provided the applicant can demonstrate a good faith effort to comply with the deadline, but for reasons beyond his/her control, fails to meet the requirements for recordation within that period. All such plats shall conform to drawing specifications and certification requirements for Final Plats contained in Section V-D of this Ordinance.

Recordation of the approved final plat, and auxiliary documentation as required in the conditions of preliminary plat approval shall be done with the advice and consent of the Planning Department.

**III-D-5.**  
Amended  
3/14/00

### **Appeal Procedures**

The decision of the Planning Department regarding a Major Subdivision Final Plat application may be appealed to the Board of Commissioners. The Board of Commissioners shall have final approval authority, and where applicable, all Final Plats shall contain information and/or conditions approved by the Board of Commissioners.

The Board of Commissioners in all such appeals shall make findings of fact in support of its decision. The applicant shall be notified, in writing, of the Board of Commissioners' decision.

### **III-E**      **Improvements**

Improvements proposed by the subdivider or required by this Ordinance, such as street pavement, curb and gutter, and sidewalks, shall be constructed in accordance with the standards and requirements as provided in this Ordinance, provided that where said improvements are to be constructed subsequent to the approval of the Final Plat, plans and specifications for said improvements shall be approved by the appropriate agency and reference to said improvements shall be made part of the Final Plat as provided in Section V-D-7-a.

#### **III-E-1**      **Financial Guarantee**

Before a final plat of a subdivision shall be approved, improvements shall be installed, inspected and approved, or an escrow agreement or a satisfactory, irrevocable letter of credit by an approved institution and as approved by the Orange County Attorney shall be posted with Orange County by the subdivider to provide for the completion of the required improvements.

The financial guarantee shall be effective for 372 days after the Certificate of Improvements is signed by the County Manager. The amount of the letter of credit, or escrow agreement shall be 110 percent of the construction cost estimate described in Section III-E-2.

#### **III-E-2**      **Construction Cost Estimate**

The financial guarantee shall be accompanied by an itemized estimate for the cost of construction which includes quantities and unit prices for construction materials and activities such as clearing and grading. The estimate shall be prepared by an engineer, contractor, or other individual qualified to calculate the cost to complete the improvements according to approved plans and specifications, who has no direct or indirect ownership interest in the subdivision. The construction cost estimate shall include a ten percent (10%) construction contingency to account for unanticipated conditions or circumstances discovered during the development process.

#### **III-E-3**      **Maintenance of Improvements**

Improvements installed as a requirement of subdivision approval shall be maintained by the developer until they are accepted for maintenance by, (1) for a public road, the North Carolina Department of Transportation; (2) for utilities, the utility provider-, (3) for landscaping, the homeowners; and (4) for a private road and other community facilities such as recreation and stormwater management improvements, the homeowners or a neighborhood or homeowners association or similar legal entity.

Where a neighborhood or homeowners association or similar legal entity is to be responsible for the maintenance and control of any improvements required as part of subdivision approval, the subdivider shall file, with the Planning Department and record with the final plat, a declaration of covenants and restrictions, articles of incorporation, where required, and/or by-laws as approved by the County Attorney that will govern the maintenance and control of such improvements. Provisions shall include but not be limited to the following:

- (a) The association shall be established before any homes are sold and any building occupied;
- (b) Membership shall be mandatory for each home buyer and all successive buyers
- (c) The association shall be responsible for liability insurance, local taxes and maintenance of recreation and other facilities, including streets and utility lines;
- (d) The homeowners must pay their pro rate share of the costs, and any sums levied by the association that remain unpaid shall become a lien on the individual homeowner's property which shall be subordinate only to tax and mortgage liens;
- (e) If all or any portion of the property held by the association is being disposed of, or if the association is dissolved, adequate recreation space shall be deeded to Orange County or the appropriate unit of local government to satisfy the requirements for public recreation space under Section IV-B-7-b of this Ordinance;
- (f) The lot owner of each dwelling unit or lot shall have voting rights in the association; and
- (g) The homeowners association shall be able to adjust any assessments to meet changed needs.

When articles of incorporation are required, they shall be submitted in the form in which they will be filed with the North Carolina secretary of State and, upon filing, a copy of the articles of incorporation shall be provided to the Planning Department.