AN ORDINANCE ADDING "COMMON AREA DEVELOPMENT REQUIREMENTS" TO LAND DEVELOPMENT REGULATIONS, LOGAN MUNICIPAL CODE, 1989,

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF LOGAN, UTAH, AS FOLLOWS:

SECTION 1: Logan Municipal Code, 1989, Table 17.36.160, "Common Area Development Requirements" is hereby created to read as follows.

§17.36.020. Common Area Development Requirements
A. All developments with common areas or common facilities shall be owned and managed by a "homeowner association" as defined in U.C.A §57-8a-102.
B. The homeowner association shall adopt City approved covenants, conditions and restrictions (CC&Rs), bylaws and rules for the association. The bylaws and rules for the association shall provide for enforcement of the CC&Rs, including the assessing of fines for violations.
C. Prior to the issuance of any permits, the developer shall file a lien in favor of the homeowner association against each residential lot equal to the pro rata share of ten percent of the total cost of the common area and facility improvements. Upon payment of the liens, the homeowner association shall place the proceeds in a restricted fund to be used solely for the maintenance, repair and replacement of the common area and facility improvements.

SECTION 2: Effective Date. This ordinance shall become effective upon publication.

ADOPTED BY THE LOGAN MUNICIPAL COUNCIL THIS 15th DAY OF MAY, 2007, BY THE FOLLOWING VOTE:
AYES: 
NAYS: 
ABSENT: 

Steven C. Taylor, Chair

Lois Price, City Recorder
PRESENTATION TO MAYOR

The foregoing ordinance was presented by the Logan Municipal Council to the Mayor for approval or disapproval this day of May, 2007.

Steven C. Taylor, Chair

MAYOR'S APPROVAL OR DISAPPROVAL

The foregoing ordinance is hereby approved this day of May, 2007.

Randy Watts, Mayor
REPORT SUMMARY...

Project: Proposed text changes to the Land Development Code regarding Common Area Development Requirements

Proponent: City of Logan

Type of Action: Legislative

Staff Recommendation: Recommend approval of the proposed text changes to the Land Development Code to the Municipal Council

Code Amendment Summary

The applicant has requested the addition to Land Development Code that will be inserted as §17.36.160: Common Area Development Requirements. The proposed change would govern development standards for common areas within developments. There are currently no specific requirements of the Land Development Code that govern Common Areas (private roads, detention basins, etc) within development projects. The proposed text insertion would provide such requirements as Home Owners Associations, Codes Covenants and Restrictions (CC&Rs), bylaws, articles of incorporation, and a reserve fund for maintenance of such common areas. At the Planning Commission meeting of March 22, 2007, revision to the proposed subsection C was requested. Based on the input from the Planning Commission, the proposed text/Code section would be:

§17.36.020. Common Area Development Requirements

A. All developments with common areas or common facilities shall be owned and managed by a "homeowner association" as defined in U.C.A §57-8a-102.

B. The homeowner association shall adopt City approved covenants, conditions and restrictions (CC&Rs), bylaws and rules for the association. The bylaws and rules for the association shall provide for enforcement of the CC&Rs, including the assessing of fines for violations.

C. Prior to the issuance of any permits, the developer shall file a lien in favor of the homeowner association against each residential lot equal to the pro rata share of ten percent of the total cost of the common area and facility improvements. Upon payment of the liens, the homeowner association shall place the proceeds in a restricted fund to be used solely for the maintenance, repair and replacement of the common area and facility improvements.
AGENCY AND DEPARTMENTAL COMMENTS
No departmental comments were received for this project.

PUBLIC COMMENTS
A newspaper advertisement was published as public notice for the proposed amendment to the Land Development Code. No comments were received by the Department of Community Development as of the date this staff report was prepared.

STAFF RECOMMENDATION
Staff recommends that the Planning Commission approve a motion to recommend that the Municipal Council create Land Development Code §17.36.160: Common Area Development Requirements as presented above.

RECOMMENDED FINDINGS
The Planning Commission bases its decision on the following findings supported in the administrative record for this project.

1. Utah state law authorizes local planning commissions to recommend ordinance changes to the legislative body (Municipal Council) that are consistent with the role of the Planning Commission.

2. Proposed §17.36.160 provides adequate requirements for maintenance of private roads and other common areas within developments.

3. The proposed change to the Land Development Code is consistent with the intent of the Land Development Code.

4. The proposed changes to the Land Development Code will enable the Planning Department to fulfill its obligations and make land use decisions that are consistent with the General Plan and the Land Development Code.

Respectfully submitted,

Tavis J. Austin, AICP
Senior Planner
PC Docket #07-029
Amendments to the Land Development Code
Regarding Common Area Development Requirements

REPORT SUMMARY...

Project: Proposed text changes to the Land Development Code regarding Common Area Development Requirements
Proponent: City of Logan
Type of Action: Legislative
Staff Recommendation: Recommend approval of the proposed text changes to the Land Development Code to the Municipal Council

Code Amendment Summary

The applicant has requested the addition to Land Development Code that will be inserted as §17.36.160: Common Area Development Requirements. The proposed change would govern development standards for common areas within developments. There are currently no specific requirements of the Land Development Code that govern Common Areas (private roads, detention basins, etc) within development projects. The proposed text insertion would provide such requirements as Home Owners Associations, Codes Covenants and Restrictions (CC&Rs), bylaws, articles of incorporation, and a reserve fund for maintenance of such common areas.

The proposed text/Code section would be:

§17.36.160 Common Area Development Requirements

A. All developments with common areas or common facilities shall be owned and managed by a “homeowner association” as defined in U.C.A §57-8a-102.
B. The homeowner association shall adopt City approved covenants, conditions, and restrictions (CC&Rs), bylaws and rules for the association. The bylaws and rules for the association shall provide for enforcement of the CC&Rs, including the assessing of fines for violations.
C. Prior to the issuance of any permits, the developer shall establish a reserve fund in the name of the homeowner association for the maintenance, repair and replacement of the common area improvements and the common facility improvements equal to the amount of ten percent of the cost of installation of the improvements.

AGENCY AND DEPARTMENTAL COMMENTS
No departmental comments were received for this project.
PUBLIC COMMENTS
A newspaper advertisement was published as public notice for the proposed amendment to the Land Development Code. No comments were received by the Department of Community Development as of the date this staff report was prepared.

STAFF RECOMMENDATION
Staff recommends that the Planning Commission approve a motion to recommend that the Municipal Council create Land Development Code §17.36.160: Common Area Development Requirements as presented above.

RECOMMENDED FINDINGS
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1. Utah state law authorizes local planning commissions to recommend ordinance changes to the legislative body (Municipal Council) that are consistent with the role of the Planning Commission.

2. Proposed §17.36.160 provides adequate requirements for maintenance of private roads and other common areas within developments.

3. The proposed change to the Land Development Code is consistent with the intent of the Land Development Code.

4. The proposed changes to the Land Development Code will enable the Planning Department to fulfill its obligations and make land use decisions that are consistent with the General Plan and the Land Development Code.

Respectfully submitted,

Tavis J. Austin, AICP
Senior Planner
07-029 **Modification to LDC Chapter 17.36.** Code Amendment. City of Logan, applicant/owner, requests the addition of Section 160 to govern common area development requirements for homeowner’s associations, bylaws, and covenants, conditions, & restriction requirements for private roads and homeowner’s associations.

STAFF: Mr. Austin reviewed the staff report as written.

Mr. Ward questioned whether it would apply to industrial areas and private roadways.

Mr. Housley stated it would not; it was not that broad. They are not concerned with commercial developments because historically there have not been any problems with them because revenue is enough incentive for them to keep things in good repair.

Mr. Ward questioned if it should apply to a doctors office.

Mr. Housley stated that if a line breaks, the City expects them to get it fixed and historically the City has not had to get involved. But with residential, some times they are not aware they own utilities until it breaks and they have to come up with the money to get it fixed. Businesses can be included if the Commission wants, but we are just trying to deal with the problems where they exist.

Ms. Morgan asked who would hold the 10% installation costs in escrow.

Mr. Housley stated they would be held by the homeowner association. The developer typically has controlling votes until the units are 50% sold, then control switches over to the homeowners. This would give them seed money, but they will still have to manage it.

Ms. Morgan questioned whether there are many developers with private utilities.

Mr. Housley stated there are currently several. There are some good developments out there with private utilities. In the future, the City may mandate that they are all public utilities.

Mr. Kartchner asked whether there was a provision for continuous reserves for potential improvement needs.

Mr. Housley stated there are provisions in the bylaws and CC&Rs, but they have to be enforced by the HOA. This will give them the initial seed money, then they will have to rely on their annual HOA dues. The bylaws are requiring the ability to assess fines so there is an ability to enforce. They will just have to do it. So if they neglect it or do not manage it, we will still have problems. Mr. Housley has drafted sample documents for setting up a HOA. If they use their own, the City will check to make sure there are enforcement provisions. The City will not set the due amount, but we will make sure it is reasonable for their infrastructure.

Mr. Kerr questioned whether there would be merit in requesting a bond from developers since there have been past problems with them not completing common area amenities.

Mr. Housley pointed out that the City already requires that and should not issue a Certificate of Occupancy until it is done or make them bond at that point. If that has not happened that way in the past, it was a mistake.

Mr. Kerr stated that there were a few in the southwest part of town on Park Avenue.
Mr. Housley was familiar with the incident Mr. Kerr was eluding to and said that in that particular case it was never part of the written recommendation, so there was no way for the City to enforce it. He feels that the City is doing a better job of catching those things and adding it as a Condition of Approval for it can be enforced. The City has learned from that mistake in the 1990’s.

Mr. Kerr suggested requiring a performance bond at the same time.

Mr. Housley stated it would be required for infrastructure. If they want to occupy it before then, it is treated like a landscaping bond.

Mr. Blaser agreed that bonding should be required upfront.

Mr. Housley stated that it is a viable alternative, but it would place an additional burden on the City to account for the money. Perhaps escrow would be a better intermediate step than a bond.

PUBLIC: Mr. Tony Johnson stated that cash is tight on the front side of a project and asked when it would be required and whether there was some other way.

Mr. Housley explained that it would be required by the time they sell the first lot. Before that the developer is the only one at risk.

Mr. Ward stated that would essentially increase the selling price of a lot by 10%.

Mr. Housley clarified that it was 10% of the cost of the infrastructure - not the total cost of the lot. He stated that they might be willing to take a letter of credit or bond, but when the lot is sold it would have to be transferred to a cash fund. It might be a chunk of money upfront, but it will not affect all developments, just those that have common areas or want private utilities, and it will only be for 10% of the total cost of the common area and facility improvements. Some developers take the private route because it is cheaper. The City does not know when they sell the first lot, but maybe we could say prior to the first occupancy.

Mr. Alan Jones from Deer Crest Communities agreed with Mr. Johnson about requiring additional cash upfront. He guessed that this change would result in developers doing less landscaping. He stated that his development was planning on setting up a fund similar to this using funds from the selling price of each lot; not cash upfront. He stated that he supports the concept, but requiring cash upfront would just add another hurdle to the process. He cautioned about finding a way to ensure the funds can not be used for other purposes.

Mr. Housley asked for an idea of the dollar amount requirement for Deer Crest.

Mr. Jones stated there will be 94 lots with private streets built to City specification so they should last 20 years. They intend to set aside $1,000 per lot so with interest they should be able to replace the streets in their entirety when needed. It will probably require 3-7% upfront, not 10% of the lot.

Mr. Housley asked if he felt 10% of a $1 million dollar infrastructure would be unreasonable and what kind of impact it would have on a developer.

Mr. Jones stated that if it was required upfront they would have to make some changes. If it could be funded through sales, it would be easier to fund it.

Mr. Housley stated that everyone runs into trouble when developers are working on a shoe string budget. This would require that they have better cash flow, but they would recoup it.

Mr. Jones asked if the infrastructure has to be to City standards.

Mr. Housley stated only if there are private utilities or private streets.
Mr. Jones stated that if this were a requirement many developers may build elsewhere. He plans to turn it over to the HOA when the project is 2/3 sold, but the homeowners will gain more seats along the way.

COMMISSION: Ms. Morgan asked how many HOA’s there currently are in Logan.

Mr. Housley stated there are dozens. Staff is not concerned about this being a disincentive. If the developer can afford it, the City is comfortable having them do it.

Ms. Morgan asked what type of impact it would have on affordable housing projects like Mr. Johnson’s.

Mr. Housley stated it would have a small impact. The big impact is when the sewer line breaks and the home owners can not afford to fix it. They would be in an equally bad situation.

Mr. Kerr stated it seemed to be self adjusting. Infrastructure runs at 1/3-1/2 the cost. Ten percent of that is going to be 3-7% of the sales price of the lot. He asked if there was a mechanism the City could put in place for the County Recorder to trigger at the time the lot is sold.

Mr. Housley stated he was not sure they would want to manage it, but perhaps if the HOA is created when the plat is recorded they could put a lien on each lot to be paid to the HOA at the time the lot is sold.

Mr. Jones stated that made a lot of sense from a developers standpoint.

Mr. Housley stated the only possible issue would be if a developer went bankrupt short of 50%, but eventually the other lots would sell.

Mr. Kerr suggested that in that instance the City could take over the 110% performance bond.

Mr. Housley suggested an immediate lien recorded at the time of the plat that would favor the HOA in the event of a bankruptcy.

Mr. Ward stated that would also eliminate the upfront cash problem.

Mr. Housley stated he would need time to think through the possible scenarios.

Mr. Kerr asked Mr. Ward if a lender would provide a developer a loan if there is a lien.

Mr. Ward stated that as long as it was specific to that purpose and had a stated dollar amount, they would understand that sufficient funds would have to be withheld so they are in the first position in the event of a bankruptcy.

Mr. Housley stated the HOA would probably be subordinate to the primary lender.

Mr. Jones questioned why the additional 10% above the 100% performance bond could not be used for the funding.

Mr. Ward stated because it was not cash.

Mr. Austin added that the City keeps the 10% for two years to protect the public’s interest incase anything goes array.

Mr. Housley added that the 110% is specifically for public utilities.

Mr. Ward stated he was not sure he was ready to recommend the amendment to the Municipal Council until item C is worked out.
Mr. Housley stated that the City would require the builder to bring proof of the infrastructure costs and would then base the 10% requirement off of that.

Mr. Ward requested that the amendment be rewritten to state that prior to recording of the plat a lien will be filed against each lot equal to 10% of the infrastructure costs.

MOTION: Mr. Kerr motioned that the project be continued until the next meeting so Mr. Housley had time to reword the proposed text amendment. Mr. Ward seconded the motion.

Staff and the Planning Commission reviewed the agenda for the meeting of April 12, 2007, in a workshop setting.

- 06-062 Protective Insurance Agency Inc.
- 07-026 D.I. Remodel
- 07-030 Short Dugway and Trail
- Deer Crest House Style. Outside builders want to build homes that in staff's opinion do not meet approved designs. They want to add Country American style homes. Approval was given.
- Willow Wood East Phase II requested approval to reduce the number of structures by half and to adjoin two duplexes with a shared floor. Mr. Housley stated that it would require a text amendment.
- Adams/Woodruff Elementary Rooftop Towers. Informational item. The school district wants to put a 30 foot tall antenna on both schools so they can bounce internet signals and the schools can talk to each other. The Director of Community Development approved it because it does not require a Design Review. The district notified all property owners within 300 feet and did not receive any comments.

The meeting adjourned at 8:45 p.m.

Minutes approved as written and recorded on 2 tapes at the Planning Commission meeting of March 22, 2007.

Jay Nielson
Director of Community Development

Becky Morgan
Chairman

Tammy Firth
Administrative Secretary

Tavis Austin
Senior Planner
STATE OF UTAH
COUNTY OF CACHE, e.

On this 19th day of June, 2007, A.D., personally appeared before me, Rachelle S. Thomas, who being first duly sworn, deposes and says that she is the chief clerk of the Cache Valley Publishing Co., publishers of The Herald Journal, a daily newspaper published in Logan, City, Cache County Utah, and that the advertisement

LEGAL NOTICE

a copy of which is hereto attached, was published in said newspaper for One (1) issue, commencing June 12, 2007, and ending June 22, 2007.

Signed Rachelle S. Thomas

Subscribed and sworn to before me, the day and year above written.

Signed Cynthia K. Fullen

My Commission expires September 7, 2007

Notary Public

Lois Price, Recorder

Publication Date: June 12, 2007

Ordinance 07-33. An ordinance was adopted and approved May 15, 2007, adding Section 17.36.160 "Common Area Development Requirements," to the Logan Municipal Code as follows:

A. All developments with common areas or common facilities shall be owned and managed by a "Homeowner association" as defined in U.C.A §57-8A-102.

B. The homeowner association shall adopt City approved covenants, conditions and restrictions (CC&Rs), bylaws and rules for the association. The bylaws and rules for the association shall provide for enforcement of the CC&Rs, including the assessment of fines for violations.

C. Prior to the issuance of any permits, the developer shall file a lien in favor of the homeowner association against each residential lot equal to the prorata share of ten percent of the total cost of the common area and facility improvements. Upon payment of the liens, the homeowner association shall place the proceeds in a restricted fund to be used solely for the maintenance, repair and replacement of the common area and facility improvements.

This ordinance is effective upon publication. Full text may be reviewed at the Office of the Logan City Recorder, City Hall, 255 North Main, during regular business hours.