



Date: March 23, 2016

To: Thomas J. Bonfield, City Manager

Through: W. Bowman Ferguson, Deputy City Manager

From: Marvin G. Williams, Director of Public Works

Subject: Revision to City Code Section 62-126 and 62-127 – Warranty and Repair Security

Executive Summary

Currently, Section 62-126 and Section 62-127 of the City of Durham Code of Ordinances do not mention the requirement of a warranty and repair security when a Developer submits a request for acceptance of a project’s infrastructure (all proposed streets, water, sanitary sewer, and stormwater drainage). Public Work’s policy requires a warranty and repair security when a project is completed. The proposed code revision intends to clarify Public Works’ requirements at the time of infrastructure acceptance.

Recommendation

The Public Works Department recommends that City Council adopt an ordinance amending Section 62-126 and 62-127 of the Durham City Code of Ordinances as noted in the attached proposed code revision.

Background

In October of 2015 the state legislature adopted House Bill 721 (see attached exhibit). This legislation requires that Developers build the entire infrastructure of a project or post a construction security in lieu of completing the infrastructure of a project before the approval of the final plat. House Bill 721 triggered changes to the Public Works construction security policy and extensive revision to the language of the City’s construction security templates.

Issues and Analysis

Even though House Bill 721 did not address the collection of warranty and repair (maintenance) securities after the infrastructure of a project is completed, the change in the language of the construction securities is substantial enough that the City Attorney’s Office recommends revising the ordinance. The intent is to avoid problems when calling a warranty and repair security by clearly stating that the security is required as part of the process for infrastructure acceptance.

Under the current Section 62-126 - *Application for acceptance of infrastructure* and Section 62-127 - *Final acceptance* provisions of the City Code, there is no mention of the Public Works policy of requiring a warranty and repair security for one year after the street, water, sanitary sewer, and stormwater drainage of a project is completed and approved by the Department. The proposed code revision requires that a warranty and repair security be submitted with the application for infrastructure acceptance. Before the end of the 1-year warranty period, Public Works will re-inspect the project and request repairs to the infrastructure if necessary.

Alternatives

The alternative would be to leave the ordinance as is and not require a warranty and repair security when the infrastructure of a project is completed or keep requiring them per Public Work's policy but have the possibility of bonding companies challenging the legality of the requirement.

Financial Impacts

This section of the report is not applicable.

SDBE Summary

This section of the report is not applicable.