



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Growth Management Department

300 Sixth Street

Vicki Fisher, Planning Manager
Growth Management Department
city web: www.rcgov.org

Phone: 605-394-4120
Fax: 605-394-6636
e-mail: vicki.fisher@rcgov.org

MEMORANDUM

TO: Planning Commission

FROM: Vicki L. Fisher, Planning Manager

DATE: August 19, 2010

RE: Warranty Surety for Subdivision Improvements

The Rapid City Municipal Code requires that warranty surety be posted for all subdivision improvements. The City of Rapid City Standard Specifications for Public Works Construction (2007 Edition) states that prior to the City's acceptance of the subdivision improvements, a warranty bond, or other equivalent surety, in an amount equivalent to ten percent (10%) of the total cost of the project/improvement must be provided to the City to secure the warranty for a period of two years. The current regulations do not insure that Warranty Surety is posted and that the subdivision improvements be accepted. As such, the City Council has requested that the Planning Commission review options addressing the issue.

It should be noted that this issue was discussed by both the Council Development Committee and their Technical Sub-committee when the warranty surety requirements were first proposed. At that time, staff noted that the changes proposed lacked a mechanism to require that a developer put the project into warranty and post the warranty surety. However, the Council Development Committee's Technical Sub-committee felt that additional requirements would not be necessary. Significant changes in the financial industry have made it more difficult for some developers to obtain the warranty surety.

Some developers, but not all, post subdivision improvement surety for public improvements that are not completed at the time of Final plat approval. However, that surety may not be adequate to meet the dollar amount required to be posted for the warranty surety. As an example, there may only be \$10,000 worth of improvements that have not been complete when the Final Plat is submitted; however, a \$25,000.000 warranty surety may be required.



EQUAL OPPORTUNITY EMPLOYER

If adequate subdivision surety is posted to obtain Final Plat approval, once a portion of the improvements are completed, a partial release is made. This may result in the dollar amount of the subdivision surety being retained by the City being less than that required for the warranty surety leaving the developer with limited incentive to post the warranty surety. To avoid the situation, staff has over the past two years stopped releasing the subdivision improvement surety below the dollar amount of the required warranty surety.

Because of the terms of the subdivision improvement surety typically included in the bond or letter of credit, staff cannot draw on the subdivision improvement surety when the subdivision improvements have been completed but not accepted because the warranty surety has not been posted.

In an effort to amend the Ordinance to provide a mechanism to secure Warranty Surety as required, staff has reviewed the practices of other communities and offers the following options:

1. Billings, Montana requires that surety at a ratio of 125% be posted upon submittal of a Final Plat application. The 125% surety includes the estimated total cost of the improvements or actual construction contract amount of installing all required improvements including engineering and administration fees, as estimated by a professional engineer and approved by the public works department. Upon completion of the required improvements by the subdivider and acceptance of them by the city, the city may authorize the release of any remaining portion of the improvement guarantee of 90% of the original amount. The remaining 10% is retained as warranty surety for a period of one year.

Obtaining 125% surety for the estimated total cost of the improvements would insure that adequate funds exist to complete the improvements if several years elapse before the improvements are completed. However, this may be a financial burden on developers. Issuing a letter of credit for a 4 to 5 year period has also been an issue with the financial institutions in the past. The City Attorney's Office is reviewing this matter with the financial institutions to see if there is a solution to allow a portion of a subdivision surety to be retained as warranty surety.

2. Fort Collins requires that surety at a ratio of 100% of the incomplete subdivision improvements be posted upon submittal of a Final Plat application. The surety may be released in part upon completion of the improvements and acceptance by the City, except for a percentage that must be retained as a maintenance/repair surety. The amount of the maintenance/repair surety is based on a percentage of the cost of the public improvements which is determined by the City Engineer based on the potential costs of repairs within the development and may not exceed 25% of the total cost of the improvements. At the conclusion of the 2 year maintenance/repair period, the improvements are inspected and if it is determined that repairs or maintenance are needed, the surety may be retained for an additional 3 years.

Retaining surety up to seven years may significantly increase the cost to the developer to post surety and again may be an issue with the financial institutions. In addition, retaining 25% of the total cost of the subdivision improvements as warranty surety is a significant increase from the 10% that Rapid City currently requires.

3. Gillette, Wyoming requires surety be posted similar to the process currently required by Rapid City. Surety at a ratio of 100% of the incomplete subdivision improvements must be submitted for review and approval. Upon completion of the subdivision improvements,

the subdivision surety is released. Prior to acceptance of the subdivision improvements by the City, warranty surety at a ratio of 10% of the estimated total cost of the subdivision improvements, must be posted. The warranty surety is retained for a period of two years from the date of acceptance of the subdivision improvements.

The issue with this process is that the City cannot require warranty surety until the developer requests that the subdivision improvements be accepted by the City. In some cases, the subdivision surety is released as the improvements are completed and a significant time passes without warranty surety being posted. Granted, the City has not accepted the improvements but the funds are no longer there if the streets fail and improvements are needed. In addition, because of the terms of the subdivision improvement surety typically included in the bond or letter of credit, staff cannot draw on the subdivision improvement surety when the subdivision improvements have been completed but not accepted because the warranty surety has not been posted.

4. Sioux Falls, South Dakota currently does not require subdivision surety or warranty surety. However, in the past year they have experienced problems with developers not completing the subdivision improvements and are reviewing options for requiring surety as a part of the Final Plat approval process.
5. Mason City, Iowa requires that no building permits be issued until a Final Plat is approved, the subdivision improvements are completed and accepted and warranty surety at a rate of 25% of the total cost of the subdivision improvements is posted.

This process would insure that all subdivision improvements are in place before the lots are developed. However, in many instances in our community, building permits are issued shortly after a Final Plat is approved and before the subdivision improvements are completed. This process would require the developer to up front all of the subdivision costs before recovering any of the cost through the sale of lot(s).

6. An option discussed by staff included requiring a maintenance and repair surety at a ratio of 100% of the total cost of the incomplete subdivision improvements or at a ratio of 10% of the estimated total cost of the subdivision improvements, whichever is greater, to be submitted upon submittal of a Final Plat application. Upon completion of the subdivision improvements, no more than two years from the date of Final Plat approval, and acceptance of the subdivision improvements, the surety may be released except for 10% of the estimated total cost of the subdivision improvements, which would be retained as warranty surety for a period of two years from the date of acceptance of the improvements.

This process insures that sufficient surety is being obtained as a part of the Final Plat application to cover the 10% warranty surety amount that is currently required. As previously indicated, there are instances under the current practice where the subdivision surety posted with the Final Plat is less than the required warranty surety amount if most or all of the subdivision improvements are in place before submitting the Final Plat. With this process the surety would be released as improvements are completed, with the exception of 10% of the estimated total cost of the subdivision improvements, which would be retained as warranty surety eliminating the requirement that the developer obtain a second form of surety from their financial institute.

7. The City also has the option of leaving the procedure as it currently stands today.

Upon review of the seven options, staff recommends that the Ordinance be amended to reflect Option No. 6. Several of the other options place an added financial burden on the developer and require that two forms of surety be posted in lieu of one. This option also insures that warranty surety is being posted prior to approval of a Final Plat application eliminating the current concern with securing the surety in a timely manner once the subdivision surety is released.

Staff Recommendation: Authorize staff to advertise public hearings to consider amendments to Chapter 16.20.060 of the Rapid City Municipal Code to revise surety requirements for Final Plats requiring that maintenance and repair surety at a ratio of 100% of the total cost of the incomplete subdivision improvements or at a ratio of 10% of the estimated total cost of the subdivision improvements, whichever is greater, to be submitted upon submittal of a Final Plat application. Upon completion of the subdivision improvements, no more than two years from the date of Final Plat approval, and acceptance of the subdivision improvements, the surety shall be released except for 10% of the estimated total cost of the subdivision improvements, which would be retained as repair and maintenance surety for a period of two years from the date of acceptance of the improvements.