

AN ORDINANCE OF THE COMMISSIONER OF BARTOW COUNTY FOR THE PURPOSE OF **AMENDING THE CODE OF BARTOW COUNTY, THE DEVELOPMENT REGULATIONS, PROVISIONS RELATING TO SUBDIVISIONS, DEVELOPMENT AND AMENDING PROVISIONS RELATING TO SPECIAL DISTRICTS; AND AMENDING THE CODE OF BARTOW COUNTY RELATING TO ACCESSORY BUILDINGS AND SUBDIVISIONS** AND FOR OTHER PURPOSES AT THE REGULAR MEETING OF THE COMMISSIONER OF BARTOW COUNTY HELD ON THE 5<sup>TH</sup> DAY OF AUGUST, 2020.

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**WHEREAS**, the County has adopted the Code of Bartow County to govern, among other things, development of property, and has specifically adopted Appendix B, the Development Regulations to govern development of residential and non-residential property, and to create standards for streets, subdivisions, and other matters; and

**WHEREAS**, the Community Development Department recommends adoption of the amendments set forth below to update the Code as set forth in Appendix B, the Development Regulations; and to further update certain provisions relating to accessory uses in Chapter 18 of the Code and relating to large lot subdivisions in Chapter 34 of the Code; and

**WHEREAS**, the Commissioner has determined it is in the best interests of the public health, safety and welfare to adopt the amendments set forth below; and

**NOW THEREFORE BE IT ORDAINED, AND IT IS HEREBY ORDAINED**, by virtue of the authority vested in the Commissioner by law, that the Code of Bartow County is amended as follows:

**I. Section 1.9 of Appendix B (Development Regulations) of the Code is amended by adding the following provision:**

(5) Recognizing that not all subdivision requirements are logical or affordable for large lot subdivisions, subdivision of land in the A-1 agriculture district into large lots (meaning where all lots are ten (10) acres or greater in size) may be granted, upon approval of the county engineer, without requiring a preliminary plat before approval of a final plat. The county engineer is authorized to determine that the following development regulations either shall not apply or may be reduced from the stated requirement for large lot residential subdivisions: road right-of-way dedication (Sec. 5.31(10)), connection to public water (Sec. 3.1(6)), and/or stormwater management requirements (Code Chapter 34, Sec. 34-555). In order to eliminate or reduce such regulations, the county engineer must make a determination in writing that the proposed reduction or elimination is

consistent with the spirit and intent of the Code, will not harm the public interest or adjacent property, and is in the best interests of the County. Any such approved modification shall be noted on the final plat to provide public record of the fact that existing regulations have been varied or reduced for the particular large lot residential development.

**II. New Section 3.11 is added to Appendix B (Development Regulations) of the Code as follows:**

**3.11 Surety to County**

(a) Prior to issuance of a land disturbance permit the developer shall cause to be executed in favor of Bartow County surety in the form of a performance and maintenance bond or an irrevocable standby letter of credit. The surety must be accepted and approved by the county engineer before the LDP can issue.

(b) Purpose. The purpose of the surety shall be any or all of the following, depending on the particular development: 1) to secure performance of the erosion and sedimentation control work in compliance with county regulations; 2) to ensure proper construction of roads in new developments; 3) to ensure proper construction of any work performed in existing Bartow County rights-of-way; 4) to provide a guaranty for the warranty and maintenance period applicable to any new road or work in any existing county right-of-way; 5) to provide funds for repair of damage to any existing county roads, including roads contained in earlier phases of the same development, caused by construction traffic in the new development.

(c) Approval. The surety shall only be issued in a form approved by Bartow County. The language of the surety and the term of the surety must be approved by Bartow County prior to issuance. Bartow County has forms it prefers that surety companies use, and those can be provided upon request; otherwise, the form of the surety shall be approved by the county engineer prior to acceptance of the surety. Any irrevocable standby letter of credit or surety bond shall be issued by a company or financial institution authorized to do business in the State of Georgia. Irrevocable standby letters of credit shall be issued in accordance with International Chamber of Commerce (ICC) Publication 590, International Standby Practices "ISP98", and must be issued by a bank having a physical branch within Bartow County or with a headquarters or branch in Georgia within 100 miles of Bartow County, which shall be the place of tender of the draft on said letter of credit. Bartow County reserves the right to demand a specific form of surety from a developer that has tendered unsatisfactory surety in the past. Bartow County reserves the right to reject a surety from a financial institution or insurance company that has provided an unsatisfactory surety in the past. Cash is not an acceptable form of surety.

(d) Scope. In each case, the surety guarantees that all applicable provisions of any Bartow County ordinances are complied with, including but not limited to, the erosion and sedimentation control ordinance, these development regulations, the utility

accommodation ordinance, Bartow County standard road details, and the regulations promulgated under each of the foregoing.

(e) Amount and term. The amount of the surety depends on the project, and shall be set by the county engineer relying on experience with similar projects and the developer, knowledge of material and labor costs, and investigation of additional costs. The amount shall be sufficient to secure performance of the work and compliance with the county ordinances and regulations. Depending on the elements of the project, the amount can include one or more of the following: 1) For security of erosion and sedimentation control work, the amount shall be sufficient to permanently stabilize the entire project, at a minimum of \$3,000.00 per acre of the property to be disturbed. 2) For road work on new roads, the amount shall be sufficient to grade, base and pave all new roads called for on the plans, at a rate to be determined by Bartow County and such rate may be revised from time to time as deemed necessary by the county engineer to reflect current construction costs; the amount shall also be sufficient to pay for associated utility relocations/installations and stormwater controls. 3) For work in existing county rights-of-way, the amount shall be sufficient to ensure repair of the roads after any planned work, including associated utility relocations/installations and stormwater controls, that are part of the project being approved; the minimum amount shall be \$25,000.00. 4) For multi-phased developments where construction traffic is traveling through subdivision roads already accepted by the county, the minimum amount shall be \$10,000.00 per 0.1 miles (i.e, 1/10 th of a mile) of county-owned subdivision road being crossed by the construction traffic. The foregoing amounts are minimums and can be increased based on a more complex or expensive project, difficult terrain or other factors that would make the remedial work more expensive. No additional separate amount of surety shall be required for maintenance purposes. The term of any surety shall extend for the period from the issuance of the LDP until the project or development is completed, and additionally beyond that for the duration of any applicable warranty and maintenance period.

(f) Partial release. Once erosion and sedimentation control BMPs are complete, and the site is finally stabilized, the county may, at the discretion of the county engineer, authorize a release of the portion of the surety relating to E & S work. Once a new roadway or roadways have had final "as-built certificates" issued and they have been dedicated and accepted, the county may, at the discretion of the county engineer, release a portion of the surety amount relating to the new roads; the remainder shall be kept as surety for the maintenance period. Once a project within an existing county right-of-way has been completed and inspected, the county may, at the discretion of the county engineer, release a portion of the surety amount relating to the work in the existing right-of-way; the remainder shall be kept as surety for the maintenance period. Once the applicable maintenance period has passed, the remaining surety amount shall be released. In the event there are no new roads nor any work in the county right-of-way that require a warranty period, the surety shall be released upon the issuance of a certificate of occupancy.

(g) Prerequisite; calling surety. No land disturbance permit shall be issued by the county until the surety has been furnished to the county, in a form acceptable to the county. If the

developer does not comply with these regulations, other applicable Bartow County ordinances and regulations, or with the conditions of the permit after issuance, the county may call the surety, or any part thereof, to be forfeited and may use the proceeds to perform the work or hire a contractor to remedy the defects, whether that means installing soil erosion and sedimentation prevention measures, completing paving and road work, or completing other work.

(h) Waiver. The county engineer shall be authorized, but not required, to reduce or waive the surety requirement for projects undertaken by a municipal government in the county.

**III. New Section 3.12 is added to Appendix B (Development Regulations) of the Code as follows:**

**3.12 Erosion and Sedimentation Control**

The developer shall comply with the Bartow County Soil Erosion and Sedimentation Control Ordinance (Code [section 34-251](#) et seq.) and guidelines set forth in the Manual for Erosion and Sediment Control in Georgia, latest edition. The location of the erosion control devices may have to be altered from that shown on the approved plans due to changes in drainage patterns created during construction. It is the developer's responsibility to accomplish erosion control for all drainage patterns created at various stages during construction. Any difficulty in controlling erosion during any phase of construction shall be reported to the county immediately. Failure to properly install, operate or maintain all erosion control measures may result in all site activity being stopped, by issuance of a stop-work order, until such measures are corrected to the satisfaction of the county.

**IV. New Section 3.13 is added to Appendix B (Development Regulations) of the Code as follows:**

**Sec. 3.13 Plan Details and Other Requirements for Development**

(a) Development plan detail. The developer must submit a set of development plans of the proposed development showing the improvements required by this section which must be approved by the county prior to commencing construction. Said plan shall include, but not be limited to, showing existing two-foot contours, adjacent areas such as streams, lakes, residential areas, etc. which might be affected by proposed development, proposed grades, 100-year flood elevations if applicable, and all improvements. Hydrological studies, engineering computations, flood records and field surveys compiled and certified by an engineer currently registered in the State of Georgia may be required for exact delineation of flood limits and elevations. In addition to the requirements contained in these regulations the developer shall comply with the Bartow County Development Checklist.

(b) Land disturbance permit. Upon approval of development plans, the property owner must obtain a land disturbance permit. Owner must obtain said permit within 120 days of

approval of development plans. If not, the permit may be canceled. Land disturbing activity under the permit must begin within 120 days after issuance of permit. Failure to begin land disturbing activity may be cause for the permit to be canceled. Once a permit has been canceled or voided, it cannot be reactivated or reinstated for any reason. A new set of development plans must be submitted, reviewed and accepted when the applicant is ready to obtain a land disturbance permit.

(c) Construction exits. The developer shall comply with [section 34-267](#)(e) regarding construction exits.

(d) Utilities. All utilities shall be installed as set out in Bartow County Site and Utility Details for Development.

(e) Altered conditions. If actual site conditions, grading or construction, vary from approved plans, it is the owner/developer's responsibility to inform the engineer of record and the county engineer for assessment of the varied condition. Project construction may be delayed during the assessment period. Revised plans may be required and reviewed.

(f) Flood zone property. Sites affected by FEMA flood zones shall be referenced to mean sea level vertical datum. A permanent onsite benchmark must be provided. Development shall comply with the Bartow County Flood Damage Prevention Ordinance, and a certification consistent with that ordinance shall be provided at the rough inspection stage.

(g) Flood hazard areas. Sites affected by flood hazard areas not determined by FEMA shall be referenced to the best vertical datum available and acceptable to the county. A permanent onsite benchmark must be provided. Flood hazard areas shall be defined to include detention ponds, retention ponds, drainage easements, headwater pools or backwater from pipes, culverts, dams, channelizations, etc., and any other manmade areas or structures relating to flood, erosion or surface water control, whether located within the floodplain or not.

(h) Street access required. Access to each lot in said development may only be from a street designed and constructed as part of said development except A-1 district lots may be accessed from county right-of-way provided each lot has a minimum of 200 feet of road frontage.

(i) Clear-cutting and mass clearing prohibited. The property or lot to be developed shall not be cleared except that amount of land minimally necessary for the foot print of the structure, rights-of-way, required drainage or required parking.

**V. New Section 3.31 is added to Appendix B (Development Regulations) of the Code as follows:**

Sec. 3.31. - Special district assessments.

- (a) *Purpose and Authority.* This section is adopted pursuant to the authority of Article IX, Section II, Paragraph IV of the Georgia Constitution of 1983, authorizing the County to create special districts by ordinance to provide local government services and to provide for assessments to pay for such services. This section is intended to address the problems created by failed subdivisions where the original developer has dissolved, gone bankrupt, or otherwise lost ownership before completing the roads and streets, paving and sidewalks, stormwater, detention, ponds, water and sewer or other infrastructure within the development to the required standards of these Development Regulations; or when the original developer has failed to complete the final wearing surface of the roads within five years of final plat recording; or when the original developer has performed substandard work and there is no maintenance bond; or otherwise created other problems with roads, sidewalks, utility infrastructure, stormwater structures, drainage, ponds, dams or other structures and is no longer available to repair such problems. In compliance with the Development Impact Fee Act (O.C.G.A. § 36-71-1 et seq.), only Project Improvements (as defined below) shall be constructed under this section. However, in any conflict between authority exercised under the above-cited paragraph of the Constitution and the Development Impact Fee Act, the Constitution shall control.
- (b) *Creation.* There is hereby created a special district pursuant to Article IX, Section II, Paragraph IV of the Georgia Constitution of 1983 for purposes of correcting, finishing or repairing a particular development's internal streets and roads and related water, sewer, and storm water infrastructure, for each subdivision or development that requires Project Improvements, provided all of the following occur:
  - (1) The Community Development Director certifies in writing to the Bartow County Commissioner that a residential subdivision has been lawfully final platted in the unincorporated county; that more than five lots have been sold by the original developer and homes are erected and certificates of occupancy have been issued on such lots; that the original developer no longer owns the development and there is no successor developer who can provide appropriate surety for completion of the roads or other infrastructure (or that the successor developer has failed or refused to do so). The Community Development Director shall further certify that work is necessary to provide correction of problems with roads, stormwater structures, etc.; or that the original developer has not placed the final wearing surface on the roads within five years of final plat recording, or that all or a portion of the roads and streets (and other related stormwater or other community infrastructure) shown on the final plat do not comply with these Development Regulations; and that adequate funds or surety for proper completion of the roadways and infrastructure within the residential development was not obtained or has not been honored or otherwise received.
  - (2) The Community Development Director shall also provide the cost of constructing all Project Improvements to bring the development into compliance with the Development Regulations and/or repair any problems or deficiencies, and provides a cost per vacant lot of constructing such necessary improvements.

Any partial amounts received from surety or maintenance bonds available and received related to the subdivision shall be credited against the assessment figure before the per-lot fee is calculated.

- (3) The County Commissioner adopts a resolution designating the subdivision as a special district under this section and approves the construction of the necessary street and related improvements and the implementation of the assessment to recover the costs, such assessment to be imposed only on lots meeting the definition of vacant lots as of the date of the adoption of the Commissioner's resolution. Such district can be created either before the work is performed or after the work is performed.
- (c) *Construction and Assessment.* Upon creation of the special district, the County shall be authorized to impose the assessment on each vacant lot in the subdivision. The building inspections division shall collect the assessment at the time of issuance of a building permit. This fee shall be in addition to and separate from regular building permit fees, water and sewer tap fees, and any other fees required by the Code of Bartow County and regulations adopted thereunder.
- (d) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
  - (1) *Project Improvement:* means site improvements required to provide all the street, road, stormwater, sewer, water or other utility or infrastructure improvements within the right-of-way or serving a specifically identified residential development that are necessary for the use and convenience of the occupants of the development and necessary to bring the development into compliance with the standards set forth in the Bartow County Development Regulations or other applicable laws and agreements. Such street, road and utility improvements include, but are not limited to, streets, roads, sidewalks, curb and gutter, and associated utility improvements in the right-of-way such as storm water structures, sewer manholes, water and sewer lateral connections and similar items. Such term can also mean improvements made necessary to repair substandard work or to repair other problems to the roads, sidewalks, curb and gutter, stormwater structures, drainage infrastructure, ponds, dams and other related appurtenances.
  - (2) *Vacant lot:* means a lot within a residential subdivision for which no certificate of occupancy (C.O.) has been issued by the county, or for which a C.O. has been revoked. This shall include lots with foundations or partially built homes.
- (e) *Restrictions.*
  - (1) Assessments collected under this section shall be spent only on the specific Project Improvements necessary for the specific development designated as a special district.
  - (2) It is not intended that this section be used to provide upgrades to a subdivision that were not called for in the original plat (for example, providing sidewalks where none were called for by the plat) but minor improvements necessitated by

changing conditions or new information but not shown on the final plat (for example, an additional storm drain) can be included as a Project Improvement.

- (3) Once sufficient assessments have been collected to equal to the cost of construction of the project improvements, the assessments shall be lifted.

**VI. Sections 5.28 and 5.30 of Appendix B (Development Regulations) of the Code are deleted and replaced with “Reserved”.**

**VII. Section 18-203 of the Code of Bartow County is deleted and replaced with the following:**

Sec. 18-203. - Accessory buildings.

Accessory buildings in residential and agricultural zoning districts shall not require site plans. However, such applications must be provided with certification that such buildings will meet all applicable setbacks and comply with any relevant special agricultural zoning setbacks contained in the Bartow County Zoning Ordinance. Placement of and requirements for accessory buildings is governed by the Zoning Ordinance.

**VIII. Section 34-555 subsection (b) of the Code of Bartow County is deleted and replaced with the following:**

(b) The following activities are exempt from this article:

- 1) Individual single-family or duplex residential lots that are not part of a subdivision or phased development project;
- 2) Additions or modifications to existing single-family or duplex residential structures;
- 3) Agricultural or silvicultural land management activities within areas zoned for these activities;
- 4) Repairs to any stormwater management facility or practice deemed necessary by the county engineer; and
- 5) A-1 district lots five (5) acres or greater in size upon approval of the county engineer.

All other Ordinances and Resolutions, or parts of said Ordinances or resolutions, in conflict herewith are hereby repealed, except to the extent said Ordinances are more restrictive than this Ordinance.



**SO ADOPTED** this 5th day of August, 2020, to be effective immediately, the public health, safety, and general welfare demanding.

ATTEST:

BARTOW COUNTY, GEORGIA

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Kathy Gill, Clerk

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Steve Taylor, Commissioner