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**CITY OF KANNPOLIS, NC  
PLANNING AND ZONING COMMISSION**

**Minutes of Meeting  
October 15, 2024**

The Kannapolis Planning and Zoning Commission met on Tuesday, October 15, 2024, at 6:00 PM in the Laureate Center of City Hall. This meeting was held in accordance with required public notice, as well as announced on the City's website.

**Commission Members Present:** Chris Puckett, Chair  
James Litaker, Vice-Chair  
Daisy Malit  
Jamie Richardson  
Larry Ensley  
Scott Trott  
Shelly Stein  
Mike McClain, ETJ Representative

**Commission Members Absent:** Ryan French

**Visitors:** Todd Meckley  
Kassie Watts

**Staff Present:** Richard Smith, Planning Director  
Elizabeth McCarty, Assistant Planning Director  
Kathryn Stapleton, Planner  
Wilmer Melton, Assistant City Manager  
Pam Scaggs, Recording Secretary

**CALL TO ORDER**

Chair Puckett called the meeting to order at 6:00 P.M.

**ROLL CALL AND RECOGNITION OF QUORUM**

Recording Secretary Pam Scaggs called the roll. The presence of a quorum was recognized.

**APPROVAL OF AGENDA**

Chair Puckett asked for any changes to the agenda and hearing none, approved the agenda.

**APPROVAL OF MINUTES**

Chair Puckett asked for a motion regarding the August 20, 2024 minutes. Mr. Ensley made the motion to approve, second by Ms. Malit, and the motion was unanimously approved.

**PUBLIC HEARING**

**CZ-2024-06 – Conditional zoning map amendment request submitted by Todd Meckley, for property located at 1011 Kansas Street and an Unaddressed Parcel on Coliseum Avenue, from General Commercial (GC) to Residential 8 (R8) zoning district.**

Assistant Planning Director, Elizabeth McCarty, provided the application details for case #CZ-2024-06, attached to and made part of these minutes as Exhibit 1. Ms. McCarty identified the applicant, property owner,

1 and the location and size of the parcel. Ms. McCarty stated that the request is to conditionally rezone the  
2 property to Residential 8-Conditional Zoning (R8-CZ) zoning district.  
3

4 Ms. McCarty directed the Commission's attention to the Staff Report maps and discussed the existing and  
5 surrounding zoning districts; stating that the subject property is located within the Suburban Activity 2  
6 Character Area, and that the request is consistent with the recommended uses of that Character Area. She  
7 further directed the Commission's attention to site photographs and aerial drone video of the subject property  
8 to further illustrate the surrounding residential uses. Ms. McCarty directed the Commission's attention to the  
9 submitted site plan and discussed location of the single-family detached residential unit as well as location of  
10 the four (4) attached residential units.  
11

12 Ms. McCarty stated that staff found the rezoning request consistent with the Move Kannapolis Forward 2030  
13 Comprehensive Plan ("2030 Plan") and recommends approval of the requested rezoning. She stated that staff  
14 is recommending conditions and read those conditions into the record:  
15

- 16 1. The permitted use allowed by this rezoning shall be limited to five (5) dwelling units as shown on  
17 the Rezoning Plan.
- 18 2. Dedication of a fifty-foot (50') right-of-way for the future extension of Coliseum Avenue.
- 19 3. Placement and dedication of right-of-way on Kansas Street measured twenty-five feet (25') from  
20 centerline along the subject properties.
- 21 4. A final site plan, in compliance with the applicable Kannapolis Development Ordinance standards,  
22 shall be submitted to and approved by City Staff prior to issuance of a Zoning Clearance permit.
- 23 5. The final site plan shall comply with the current Kannapolis Land Development Standards Manual.  
24

25 Ms. McCarty reminded the Commission of the actions requested of them, concluded the presentation, and  
26 made herself available for questions.  
27

28 There being no additional questions or comments for staff, Chair Puckett opened the Public Hearing.  
29

30 Kassie Watts, 1021 Kansas Street, stated that she is not opposed to the property being rezoned residential but  
31 is confused as to whether the lots will be separate or if the attached units will be located on one lot. Ms. Watts  
32 stated that she would rather see three (3) single-family lots. Ms. McCarty responded that the property would  
33 be divided into five (5) lots, but that only one of the lots would contain a single-family detached home and  
34 that the applicant is proposing four (4) attached residential units.  
35

36 There being no further questions, Chair Puckett closed the Public Hearing and apologized to the applicant for  
37 not providing him an opportunity to speak first.  
38

39 The applicant, Todd Meckley, stated that the homes will be for sale because he wants to avoid rental properties  
40 and implied that "for sale" homes are more stable. He added that he intends to preserve as many trees as  
41 possible and that the homes will be pushed back off the street. Mr. Meckley stated that the original request  
42 was for six (6) lots, but that he is working with City staff to provide Right-of-Way (ROW).  
43

44 Chair Puckett asked how Mr. Meckley will be able to ensure that the homes will not become "for rent" homes.  
45 Mr. Meckley responded that he intends to sell the homes but cannot control what a homeowner chooses to do  
46 with them. He added that there will be fire walls on the attached homes so that they will truly be individual  
47 homes.  
48

49 Ms. Stein stated that she agrees with Ms. Watts in that the homes appear to be duplex units and that she would  
50 rather see single-family homes instead. She asked staff if the Commission is able to restrict approval to only  
51 allow single-family homes. Planning Director, Richard Smith, responded that if the Commission approves

1 the rezoning request, they will not be able to restrict to single-family detached homes because single-family  
2 attached, including duplexes, are a permitted use by right in the R8 zoning district. Ms. Stein stated that she  
3 is not opposed to the rezoning.  
4

5 Chair Puckett asked for a motion regarding the Statement of Consistency. Mr. Trott made the motion to  
6 approve, second by Ms. Malit and the motion was unanimously approved.  
7

8 Chair Puckett asked for a motion regarding the Resolution to Zone. Vice-Chair Litaker made the motion to  
9 approve, second by Ms. Richardson and the motion was unanimously approved.  
10

#### 11 **RECOMMENDATION TO CITY COUNCIL**

#### 12 **TA-2024-03 – Text Amendments to Article 5, Section 5.10F.(2)a.3(b) and Section 5.10.F.(2)b.2.: 13 Stormwater Management Standards, Operation and Maintenance, of the Kannapolis Development 14 Ordinance (KDO)**

15 Planning Director, Richard Smith, provided the text amendment details for case TA-2024-03, attached to  
16 and made part of these minutes as Exhibit 2. Mr. Smith stated that the City currently has stormwater  
17 management provisions (stormwater control measures “SCMs”) in the Kannapolis Development Ordinance  
18 (KDO), but due to recent state statute changes, language in the KDO needs to better reflect how escrow  
19 funds are held and maintained with regards to homeowner associations. He reminded the Commission that  
20 they are being asked to make a recommendation to City Council based on staff recommendations and made  
21 himself available for questions.  
22

23 Mr. Ensley asked for confirmation that the text amendment is mandatory due to changes in the state statute.  
24 Mr. Smith confirmed and added that the language needed to be updated because it was antiquated. He stated  
25 that it is much better to let Homeowners Associations (HOA) manage escrow accounts rather than the City.  
26 Mr. Smith stated that the City will still have the ability to call on the escrow funds when or if they needed,  
27 but that it is better for the HOAs to manage.  
28

29 Vice-Chair Litaker asked if the City will monitor the SCMs. Mr. Smith responded that facilities are  
30 inspected every other year unless there are issues that cause it to be inspected more frequently. Vice-Chair  
31 Litaker asked the possible impact if an HOA is dissolved. Mr. Smith responded that the City would either  
32 take over the escrow account or require creation of another HOA. Vice-Chair Litaker indicated that there  
33 have been developers that have gone bankrupt and that the City has helped to set up an HOA. Mr. Smith  
34 agreed.  
35

36 Chair Puckett asked if it would be better to perform an audit every year versus every other year and  
37 expressed concern regarding developers that may “skip out” on a project. Mr. Smith responded that the  
38 funds are held in escrow so that they would still have access to funds; and stated that he would relay the  
39 concern to the Engineering Department, who is responsible for the audits.  
40

41 Mr. Trott stated that SCMs are a safety concern and should be fenced as a requirement. Mr. Smith responded  
42 that the City used to require the fence, but that ultimately the HOA is responsible for any accidents on the  
43 property and therefore responsible for installing a fence. He added that there was also an instance of an  
44 HOA that did not like the type of fence that was being used, so the City put the responsibility back on the  
45 HOAs.  
46

47 Mr. Ensley asked if SCMs are state mandated. Mr. Smith confirmed adding that they protect both the City  
48 and the residents during storm events.  
49

1 Vice-Chair Litaker asked if there are other funds in the escrow or does it just cover SCMs. Mr. Smith  
2 responded that it only covers SCMs based on City attorney recommendations, but that there are other means  
3 to ensure overall development compliance.  
4

5 Chair Puckett asked for a motion regarding the Statement of Consistency for TA-2024-03. Vice-Chair Litaker  
6 made the motion to approve the Statement of Consistency, second by Mr. Ensley and the motion was  
7 unanimously approved.  
8

9 Chair Puckett asked for a motion to recommend approval of TA-2024-03 as presented by staff which was  
10 made by Mr. Trott, second by Ms. Malit and the motion was unanimously approved.  
11

12 **TREE CANOPY DISCUSSION**

13 Planner Kathryn Stapleton provided a presentation regarding existing tree canopies in the City of  
14 Kannapolis. Ms. Stapleton directed the Commissions attention to a map that compared the progression of  
15 tree canopies over a number of years and provided several examples of existing tree canopies as well as  
16 new plantings due to development. She stated that each developer is required to provide landscaping plans  
17 and provided a list showing the list of acceptable and unacceptable plant species. Ms. Stapleton stated that  
18 the Parks and Recreation Department is currently working with *Barlett Tree Experts* to inventory the City's  
19 trees. Ms. Stapleton concluded her presentation and made herself available for questions.  
20

21 Mr. Ensley asked if there were incentives if a developer provides one species over another. Ms. Stapleton  
22 responded that the City could not require them to plant specific trees but that developers do have to work  
23 with the list she provided of acceptable/unacceptable plant species.  
24

25 There was discussion regarding whether the Commission should recommend hiring a full-time arborist. Mr.  
26 Smith recommended to wait another year because he thinks the current procedures are adequate.  
27

28 **PLANNING DIRECTOR UPDATE**

29 Mr. Smith provided an update regarding permit activity, the number of Board cases, Code Enforcement  
30 activity, addressing; annexations; and plan review. Chair Puckett asked for a copy of the report and Mr. Smith  
31 responded that he would provide copies to the Commission via email.  
32

33 **OTHER BUSINESS**

34 Mr. Smith responded to Commission members questions regarding various citywide development projects  
35 and sewer allocation.  
36

37 **ADJOURN**

38 There being no further business, questions, or comments, Mr. Ensley made the motion to adjourn, second by  
39 Chair Puckett and the meeting adjourned at 6:55 PM on Tuesday, October 15, 2024.  
40

41  
42   
43 \_\_\_\_\_  
44 Chris Puckett, Chair  
45 Planning and Zoning Commission

46   
47 \_\_\_\_\_  
48 Pam Scaggs, Recording Secretary

# EXHIBIT 2



## Planning and Zoning Commission October 15, 2024 Meeting

### Staff Report

**TO:** Planning and Zoning Commission Members

**FROM:** Richard Smith, Planning Director

**SUBJECT:** Case: TA-2024-03: Text Amendment

Consideration of text amendments to Article 5, Section 5.10.F.(2)a.3(b) and Section 5.10.F.(2)b.2.: Stormwater Management Standards, Operation and Maintenance.

#### A. Actions Requested by Planning and Zoning Commission Members

1. Consider Resolution to Adopt a Statement of Consistency for TA-2024-03
2. Consider motion to recommend approval of proposed text amendments by City Council

#### B. Decision and Required Votes to Pass Requested Action

Article 2, Section 2.5.A of the KDO addresses the procedures for processing amendments to the text of the ordinance. These proposed text amendments were initiated by staff and the necessity to ensure a more efficient process.

#### C. Background

Staff is proposing the following text amendments to Section 5.10.F(2)a.3(b) and to section 5.10.F(2)b.2.: Stormwater Management Standards, Operation and Maintenance. We have standards in place to help ensure that proper stormwater control measures (SCMs) are constructed in order to properly mitigate the impacts from new development. The purpose of these amendments is to establish a more efficient system for the maintenance and management of storm control measures (SCM) facilities. The proposed amendments are in line with practices permitted by state statutes.

The proposed text amendments to the KDO are attached as Exhibit A **bold, red-text** for deletions and **bold, green text** for additions.

#### D. Fiscal Considerations

None

#### E. Policy Issues

The proposed text amendments to the KDO are **attached**.

**F. Legal Issues**

None

**G. Alternative Courses of Action and Staff Recommendation**

The Planning and Zoning Commission may choose to recommend approval or denial of the text amendments as presented. The Commission may also add, delete, or change any of the language as proposed.

Based on the foregoing analysis, staff recommends **approval** of the proposed text amendment to the Kannapolis Development Ordinance, as shown per staff edits on Appendix A.

**The following actions are required to recommend approval of TA-2024-03:**

1. Consider Resolution to Adopt a Statement of Consistency for TA 2024-03
2. Consider motion to recommend approval of proposed text amendments by City Council.

**The following actions are required to recommend denial of TA-2024-03**

1. Consider Resolution to not Adopt a Statement of Consistency for TA 2024-03
2. Consider motion to recommend denial of proposed text amendments by City Council.

**H. Attachments**

1. Proposed KDO changes: Exhibit A
2. Resolution to Adopt a Statement of Consistency

**I. Issue Reviewed By:**

- City Manager
- Assistant City Manager
- City Attorney

# EXHIBIT A

## ARTICLE 5. DEVELOPMENT STANDARDS; SECTION 5.10.F(2)a.3(b)

### F. OPERATION AND MAINTENANCE

#### (2) OPERATION AND MAINTENANCE AGREEMENT

##### a. GENERAL REQUIREMENTS

3. An operation and maintenance plan or manual, together with a budget, shall be provided by the initial developer. The plan or manual shall indicate what operation and maintenance actions are needed, and what specific quantitative criteria will be used to determine when those actions are to be undertaken. The plan or manual must indicate the steps that will be taken to restore a stormwater system to design specifications if a failure occurs. The budget shall include the following:
  - (a) Annual costs such as routine maintenance, periodic sediment removal and replenishment of rip-rap, insurance premiums, taxes, mowing and reseeded, and required inspections (common costs include (i) maintenance of the SCM, (ii) premiums for liability insurance in an amount of not less than \$1,000,000.00 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of common areas, including the SCM, and (iii) premiums of hazard insurance on the common area(s) insuring against all risk of loss commonly insured against, including fire and extended coverage of peril); and
  - (b) ~~A sinking fund for structural, biological, or vegetative replacement of the SCM; major repair and replacement repair of the SCM; and other cost of the stormwater control facilities. These required documents shall be attached to the property association declaration as an exhibit~~  
The operation and maintenance agreement shall include the establishment of an escrow account created by the Owner or Developer.
  - (c) If structural SCMs are not performing adequately or as intended, or are not properly maintained, the City, in its sole discretion, may remedy the situation and in such instances the City shall be fully reimbursed from the escrow account.
  - (d) The Owner or Developer shall fund the escrow account as follows:
    1. Prior to plat recordation or issuance of construction permits, whichever first occurs, the Owner or Developer shall establish and maintain a separate escrow account to establish, collect or retain funds for maintenance, repair, replacement and reconstruction costs for the stormwater control project's original cost of construction and shall be managed by the Owner or Developer.
    2. The amount of the escrow account shall not exceed ten percent (10%) of the original cost to construct the SCM as estimated by the sealed engineers.
    3. The Owner or Developer shall deposit into the escrow account no less than two percent (2%) of the engineer's estimated costs.
    4. The Owner or Developer shall have a period of five (5) years from the acceptance of the SCM to fully deposit the required escrow amount.
    5. The Owner or Developer shall annually by January 30 of each year verify to the City Engineer the amount held in the escrow account.
4. Each SCM shall be maintained by the landowner, homeowners' association, property owners' association, or commercial lot owner(s) designated in the approved stormwater operations and maintenance manual and budget. An association may be delegated responsibilities in subsection 2 above only if:

**ARTICLE 5. DEVELOPMENT STANDARDS; SECTION 5.10.F(2)b.2**

F. OPERATION AND MAINTENANCE

(2) OPERATION AND MAINTENANCE AGREEMENT

b. SPECIAL REQUIREMENTS FOR HOMEOWNERS' AND OTHER ASSOCIATIONS

For all structural SCMs required by this section that are or are to be owned and maintained by a homeowners' association, property owners' association, or similar entity, ("Association") the operation and maintenance agreement ("Agreement") required by subsection a above, shall comply with the following requirements, in addition to those in subsection a above.

1. Continuous Operation and Maintenance

The Agreement shall include acknowledgment that the Association shall continuously operate and maintain the stormwater control and management facilities.

2. Escrow Account

(a) The Agreement shall include the establishment of an escrow account created and maintained by the ~~City~~ Developer and Association and then maintained by the Association.

(b) If structural SCMs are not performing adequately or as intended, or are not properly maintained, the City, in its sole discretion, may remedy the situation, and in such instances the City shall be fully reimbursed from the escrow account.

(c) ~~Both Both developer contribution and annual sinking funds~~ Developer and Association shall fund the escrow account, as follows:

1. Prior to plat recordation or issuance of construction permits, whichever first occurs ~~first~~, the ~~developer~~ Developer or the Association shall establish and maintain a separate escrow account to establish, collect or retain funds for maintenance, repair, replacement and reconstruction costs for the stormwater control project's original cost of construction and shall be managed by the Association. pay into the escrow account an amount equal to 15 percent of the initial construction cost of the structural SCMs.

2. The amount of the escrow account shall not exceed ten percent (10%) of the original cost to construct the SCM as estimated by the sealed engineers. The remaining 85 percent of the sinking fund shall be deposited into the escrow account annually for 24 years in an equal amount.

3. The Developer shall deposit into the escrow account no less than two percent (2%) of the engineer's estimated costs.

4. The Association shall have a period of five (5) years from the acceptance of the SCM to fully deposit the required escrow amount.

5. The Association shall annually by January 30 of each year verify to the City Engineer the amount held in the escrow account.

3. City's Right of Entry

The Agreement shall grant the City a right of entry to inspect, monitor, maintain, repair, and reconstruct structural SCMs.





**RESOLUTION TO ADOPT A STATEMENT OF CONSISTENCY WITH REGARD TO  
TEXT AMENDMENT TA-2024-03**

**WHEREAS**, Section 160A-383 (2013), of the North Carolina General Statutes, modified in Section 160D-605, specifies that the governing board shall also approve a statement describing whether its action is consistent with an adopted comprehensive and any other officially adopted plan that is applicable; and

**WHEREAS**, the text amendments to **Article 5, Section 5.10.F.(2)a.3(b) and Section 5.10.F.(2)b.2: Stormwater Management Standards, Operation and Maintenance**, is consistent with the *Move Kannapolis Forward 2030 Comprehensive Plan*; and

**WHEREAS**, the Planning and Zoning Commission conducted a Public Hearing on October 15, 2024 for consideration of text amendment Case# TA-2024-03 as submitted by the Planning Department staff and shown on Exhibit A (attached);

**NOW, THEREFORE BE IT RESOLVED** that the Planning and Zoning Commission finds the text amendment as represented in Case TA-2024-03 is consistent with the *Move Kannapolis Forward 2030 Comprehensive Plan*, as well as state statutes, reasonable, and in the public interest, and is recommended for approval by the City Council based on consideration of the application materials, information presented at the Public Hearing, and the recommendation provided by Staff.

**Adopted this the 15th Day of October 2024:**

Chris Puckett, Chairman  
Planning and Zoning Commission

Attest.

Pam Scaggs, Recording Secretary  
Planning and Zoning Commission

**AN ORDINANCE TO AMEND TEXT OF THE  
KANNAPOLIS DEVELOPMENT ORDINANCE**

**WHEREAS**, Article 5, Development Standards, Section 5.10.F.(2)a.3(b): Stormwater Management Standards, Operation and Maintenance, General Requirements is deleted and amended with additions of (b) - (d) and shall read hereafter as follows:

- (b) The operation and maintenance agreement shall include the establishment of an escrow account created by the Owner or Developer.
- (c) If structural SCMs are not performing adequately or as intended, or are not properly maintained, the City, in its sole discretion, may remedy the situation and in such instances the City shall be fully reimbursed from the escrow account.
- (d) The Owner or Developer shall fund the escrow account as follows:
  - 1. Prior to plat recordation or issuance of construction permits, whichever first occurs, the Owner or Developer shall establish and maintain a separate escrow account to establish, collect or retain funds for maintenance, repair, replacement and reconstruction costs for the stormwater control projects original cost of construction and shall be managed by the Owner or Developer.
  - 2. The amount of the escrow account shall not exceed ten percent (10%) of the original cost to construct the SCM as estimated by the sealed engineers.
  - 3. The Owner or Developer shall deposit into the escrow account no less than two percent (2%) of the engineer's estimated costs.
  - 4. The Owner or Developer shall have a period of five (5) years from the acceptance of the SCM to fully deposit the required escrow amount.
  - 5. The Owner or Developer shall annually by January 30 of each year verify to the City Engineer the amount held in the escrow account.”; and

**WHEREAS**, Article 5, Development Standards, Section 5.10.F.(2)b.2.: Stormwater Management Standards, Operation and Maintenance, Special Requirements for Homeowners' and other Association, Escrow Account, is hereby deleted and shall read hereafter as follows:

**2. Escrow Account**

- (a) The Agreement shall include the establishment of an escrow account created by the Developer and Association and then maintained by the Association.
- (b) If structural SCMs are not performing adequately or as intended, or are not properly maintained, the City, in its sole discretion, may remedy the situation and in such instances the City shall be fully reimbursed from the escrow account.
- (c) Both Developer and Association shall fund the escrow account as follows:
  - 1. Prior to plat recordation or issuance of construction permits, whichever first occurs, the Developer or the Association shall establish and maintain a separate escrow account to establish, collect or retain funds for maintenance, repair, replacement and reconstruction costs for the stormwater control project's original cost of construction and shall be managed by the Association.
  - 2. The amount of the escrow account shall not exceed ten percent (10%) of the original cost to construct the SCM as estimated by the sealed engineers.

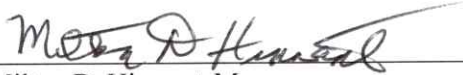
3. The Developer shall deposit into the escrow account no less than two percent (2%) of the engineer's estimated costs.
4. The Association shall have a period of five (5) years from the acceptance of the SCM to fully deposit the required escrow amount.
5. The Association shall annually by January 30 of each year verify to the City Engineer the amount held in the escrow account.”; and

**WHEREAS**, City Council conducted a public hearing on November 25, 2024 to consider the amendment to the above-referenced Articles of the Kannapolis Development Ordinance (the “KDO”); and

**WHEREAS**, the proposed text amendment is required by law (NCGS 160D-925).

**NOW, THEREFORE BE IT ORDAINED**, by the Kannapolis City Council that the above-referenced Article of the KDO is amended as stated.

**ADOPTED this the 25th day of November, 2024.**

  
\_\_\_\_\_  
Milton D. Hinnant, Mayor  
City of Kannapolis

**ATTEST:**

  
\_\_\_\_\_  
Bridgette Bell, MMC, NCCMC  
City Clerk

# EXHIBIT A

## ARTICLE 5. DEVELOPMENT STANDARDS; SECTION 5.10.F(2)a.3(b)

### F. OPERATION AND MAINTENANCE

#### (2) OPERATION AND MAINTENANCE AGREEMENT

##### a. GENERAL REQUIREMENTS

3. An operation and maintenance plan or manual, together with a budget, shall be provided by the initial developer. The plan or manual shall indicate what operation and maintenance actions are needed, and what specific quantitative criteria will be used to determine when those actions are to be undertaken. The plan or manual must indicate the steps that will be taken to restore a stormwater system to design specifications if a failure occurs. The budget shall include the following:
  - (a) Annual costs such as routine maintenance, periodic sediment removal and replenishment of rip-rap, insurance premiums, taxes, mowing and reseeding, and required inspections (common costs include (i) maintenance of the SCM, (ii) premiums for liability insurance in an amount of not less than \$1,000,000.00 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of common areas, including the SCM, and (iii) premiums of hazard insurance on the common area(s) insuring against all risk of loss commonly insured against, including fire and extended coverage of peril); and
  - (b) ~~A sinking fund for structural, biological, or vegetative replacement of the SCM; major repair and replacement repair of the SCM; and other cost of the stormwater control facilities. These required documents shall be attached to the property association declaration as an exhibit~~  
The operation and maintenance agreement shall include the establishment of an escrow account created by the Owner or Developer.
  - (c) If structural SCMs are not performing adequately or as intended, or are not properly maintained, the City, in its sole discretion, may remedy the situation and in such instances the City shall be fully reimbursed from the escrow account.
  - (d) The Owner or Developer shall fund the escrow account as follows:
    1. Prior to plat recordation or issuance of construction permits, whichever first occurs, the Owner or Developer shall establish and maintain a separate escrow account to establish, collect or retain funds for maintenance, repair, replacement and reconstruction costs for the stormwater control project's original cost of construction and shall be managed by the Owner or Developer.
    2. The amount of the escrow account shall not exceed ten percent (10%) of the original cost to construct the SCM as estimated by the sealed engineers.
    3. The Owner or Developer shall deposit into the escrow account no less than two percent (2%) of the engineer's estimated costs.
    4. The Owner or Developer shall have a period of five (5) years from the acceptance of the SCM to fully deposit the required escrow amount.
    5. The Owner or Developer shall annually by January 30 of each year verify to the City Engineer the amount held in the escrow account.
4. Each SCM shall be maintained by the landowner, homeowners' association, property owners' association, or commercial lot owner(s) designated in the approved stormwater operations and maintenance manual and budget. An association may be delegated responsibilities in subsection 2 above only if:

## ARTICLE 5. DEVELOPMENT STANDARDS; SECTION 5.10.F(2)b.2

### F. OPERATION AND MAINTENANCE

#### (2) OPERATION AND MAINTENANCE AGREEMENT

##### b. SPECIAL REQUIREMENTS FOR HOMEOWNERS' AND OTHER ASSOCIATIONS

For all structural SCMs required by this section that are or are to be owned and maintained by a homeowners' association, property owners' association, or similar entity, ("Association") the operation and maintenance agreement ("Agreement") required by subsection a above, shall comply with the following requirements, in addition to those in subsection a above.

##### 1. Continuous Operation and Maintenance

The Agreement shall include acknowledgment that the Association shall continuously operate and maintain the stormwater control and management facilities.

##### 2. Escrow Account

(a) The Agreement shall include the establishment of an escrow account created and maintained by the ~~City~~ Developer and Association and then maintained by the Association.

(b) If structural SCMs are not performing adequately or as intended, or are not properly maintained, the City, in its sole discretion, may remedy the situation, and in such instances the City shall be fully reimbursed from the escrow account.

(c) ~~Both-Both developer contribution and annual sinking funds~~ Developer and Association shall fund the escrow account, as follows:

1. Prior to plat recordation or issuance of construction permits, whichever ~~first~~ first occurs, the ~~developer~~ Developer or the Association shall establish and maintain a separate escrow account to establish, collect or retain funds for maintenance, repair, replacement and reconstruction costs for the stormwater control project's original cost of construction and shall be managed by the Association. pay into the escrow account an amount equal to 15 percent of the initial construction cost of the structural SCMs.

2. The amount of the escrow account shall not exceed ten percent (10%) of the original cost to construct the SCM as estimated by the sealed engineers. The remaining 85 percent of the sinking fund shall be deposited into the escrow account annually for 24 years in an equal amount.

3. The Developer shall deposit into the escrow account no less than two percent (2%) of the engineer's estimated costs.

4. The Association shall have a period of five (5) years from the acceptance of the SCM to fully deposit the required escrow amount.

5. The Association shall annually by January 30 of each year verify to the City Engineer the amount held in the escrow account.

##### 3. City's Right of Entry

The Agreement shall grant the City a right of entry to inspect, monitor, maintain, repair, and reconstruct structural SCMs.