ARTICLE 8. SUBDIVISION DESIGN/IMPROVEMENTS

8.1. Applicability of article.
8.2. Streets.
8.3. Sewage disposal facilities, water supply and utilities.
8.4. Open space and recreational facilities.
8.5. Subdivision dedication requirements.
8.6. Improvement guarantees.

8.1. Applicability of article.

This article shall apply to all development within the Town's planning jurisdiction.

8.2. Streets.

A. **Street classification.**

1. In all new subdivisions, streets that are dedicated to public use shall be classified as provided in paragraph 2. below.
   a. The classification shall be based upon the projected volume of traffic to be carried by the street, stated in terms of the number of trips per day or during the peak hour of the day;
   b. The number of dwelling units to be served by the street may be used as a useful indicator of the number of trips but is not conclusive; and
   c. Whenever a subdivision street continues on an existing street or it is expected that a subdivision street will be continued beyond the subdivision at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the subdivision.
2. Street types:
   a. **Major thoroughfare.** A street serving the principal network for high volumes of traffic or high speed traffic as shown on the Town of Garner Transportation Plan. This street type consists of at least two travel lanes in each direction. A major thoroughfare shall be designated where the anticipated average daily volume exceeds 10,000 vehicles. Residences should not front on a major thoroughfare.
   b. **Minor thoroughfare.** A street designed primarily to collect and distribute traffic between local streets or areas and the major thoroughfare network as shown on the Town of Garner Transportation Plan. This street type generally consists of more than one travel lane in each direction. A minor thoroughfare shall be designated where the anticipated average daily volume ranges exceeds 6,000 vehicles. Residences should not front on a minor thoroughfare.
   c. **Collector street.** A street whose principle function is to carry traffic between local streets and major and minor thoroughfare streets but that may also provide direct access to abutting properties. This street type generally consists of one travel lane in each direction and may include on-street parking. A collector street shall be designated where the anticipated average daily volume exceeds 2,000 vehicles. Residences may front on a collector street. The Town may require a collector street to meet continuation, connectivity or spacing requirements.

d. **Local streets.** A street whose primary function is serving adjacent land users. This street type generally consists of one travel lane in each direction and may include on-street parking. A local street generally carries an anticipated average daily volume that exceeds 500 vehicles. Residences should front on a local street.

e. **Cul-de-sac.** A short local street having one end open to traffic and the other permanently terminated by a vehicular turn-around.

f. **Service drive (alley).** A public vehicular way used for providing service access along rear or side property lines of lots which are also served by one of the previously listed street types. Alleys are not intended to accommodate through traffic.

g. **Access easement.** An access easement is intended to provide connections to landlocked properties created prior to the adoption of land use ordinance requirements in the Town in 1984. It may also, in rare cases, be used to provide access for a new subdivision not to exceed three lots.

h. **Frontage road.** A street that is parallel to and adjacent to a major or minor thoroughfare street and that is designed to provide access to abutting properties.

B. **Access to public streets in general.**

1. Every lot shall have either direct or indirect access to a public street. A lot has direct access to a public street if a sufficient portion of a boundary of the lot abuts the public street right-of-way so that an access way meeting the criteria set forth in paragraph 2. below can be established. A lot has indirect access if it connects to a public street by means of one or more private roads that are of sufficient size to meet the criteria for a public access easement. A sufficient portion of a boundary is 20 feet; however, this is a presumptive standard and greater or lesser frontage may be necessary to meet the criteria of paragraph 2., below.

2. Access must provide a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property in its intended use.

C. **Access to major thoroughfares.**

1. Whenever a subdivision that involves the creation of one or more new streets borders on or contains an existing or proposed thoroughfare street, no direct driveway access may be provided from lots within the subdivision onto this street.

2. When a lot or development borders on or contains an existing or proposed thoroughfare as delineated by the transportation plan access to the thoroughfare may be limited by one of the following means:

a. Driveway access between the lot and the thoroughfare shall be located not closer than 400 feet to the nearest centerline of any other proposed or existing driveway access along the same side of the thoroughfare.

b. Lots shall be subdivided so as to provide access onto a frontage road or reverse frontage road. The centerline of the frontage or reverse frontage road where it intersects the thoroughfare shall be no closer than 800 feet to the centerline of the nearest proposed or existing driveway access or road.

c. Approval of driveway access between a lot and the thoroughfare at an interval less than those specified herein may be granted only by review and recommendation of the Town Engineer and the Division of Highways of the North Carolina Department of Transportation.

d. Driveway access closure may be required for any change in use of a lot based upon review and recommendation of the Town Engineer and the Division of Highways of the North Carolina Department of Transportation.

e. Road widening and right-of-way dedication shall be required to be consistent with the recommendations of the adopted CAMPO Transportation Plan or Garner Transportation Plan.

f. Notwithstanding any other provisions of this section, the driveway access provisions shall not be applicable to any subdivision lot where:

(1) The effect of such application would be to deprive the lot of reasonable access; or

(2) The size of the tract being subdivided, or lack of frontage on the thoroughfare makes the alternatives above not feasible.

g. No building permit shall be issued until submitted site development plans have been approved as complying with the major thoroughfare access requirements of this UDO.

h. No certificate of compliance may be issued until the major thoroughfare access requirements of this UDO have been complied with in full.

D. **Access to minor thoroughfares.** All access to minor thoroughfares shall occur in accordance with the following illustrations.

1. **Provision of a frontage road.** Lots may take direct access onto a frontage road.

2. **Provision of culs-de-sac.** Lots may take indirect access by fronting on culs-de-sac.

3. **Change of lot orientation.** Lots may front on a parallel residential street.

E. **Driveways and other entrances to streets.**

1. All driveway entrances and other openings onto streets within the Town's planning jurisdiction shall be constructed so that:

   a. Vehicles can enter and exit from the lot in question without posing any substantial danger to themselves, pedestrians, or vehicles traveling in abutting streets; and

   b. Interference with the free and convenient flow of traffic in abutting or surrounding streets is minimized.

2. As provided in G.S. 136-93, no person may construct any driveway entrance or other opening onto a state maintained street except in accordance with a permit issued by the North Carolina Department of Transportation.

3. All commercial or industrial development shall require a paved driveway.

4. The design of entrance drives in industrial subdivisions shall be based upon the development standards detailed in Chapter 2 of Policy on Geometric Design of Highways and Streets by AASHTO (American Association of State Highway and Transportation Officials), dated 1984.

5. For lots within industrial subdivisions with access onto existing, anticipated or proposed collector streets, the entrance drives shall be developed so turning movements will not encroach onto opposing travel lanes on the collector roadway or the drive through the property.

F. **Coordination with surrounding streets.**

1. The street system of a subdivision shall be coordinated with existing, proposed and anticipated streets outside the subdivision (hereinafter, surrounding streets) as provided in this section.

2. Collector streets shall intersect with surrounding collector or thoroughfare streets at safe and convenient locations.
3. In order to accommodate emergency and service vehicles, the following standards shall apply.
   a. Any subdivision of greater than 75 lots shall include at least two access points to the collector and thoroughfare street network via public streets or private streets built to public standards.
   b. No more than 75 certificates of occupancy may be issued within the subdivision until the required secondary access has been constructed or bonded for construction.
   c. Subdivisions of 250 or more lots shall provide three separate access points. Where three or more access points are required, the Town Engineer may waive the requirement for immediate construction of more than two access points, provided that subdivision phasing and design illustrates the additional required connections.
   d. For those subdivisions large enough to require a third access, a stub-out street may be credited as a required access if the two functioning access roads are both connected to a collector road.
   e. Where acceptable to the Town of Garner Fire Official, secondary private access points may be gated.
   f. A waiver of these standards may be allowed by the permit issuing authority during approval of the preliminary subdivision plat or site plan only in extreme cases where limited frontage, natural features (slope, topography), or similar circumstances preclude the required connections and there is no substantial impact noted regarding emergency service delivery.
4. Local residential streets shall connect with surrounding streets where necessary to permit the convenient movement of traffic, or to facilitate access to neighborhoods by emergency service vehicles, or for other sufficient reasons, but connections shall be designed to avoid the use of such streets by substantial through traffic.
5. Whenever connections to anticipated or proposed surrounding streets are required by this section, the right-of-way shall be extended and the street developed to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of a single tract) at the point where the connection to the anticipated or proposed street is expected. A sign at the end of the street stub describing the street extension and Type III barriers may be required by the Town Engineer. The permit-issuing authority may also require temporary turn-arounds to be constructed at the end of such streets pending their extension when such turn-arounds appear necessary to facilitate the flow of traffic or accommodate emergency or service vehicles. Notwithstanding the other provisions of this subsection, no temporary dead-end street in excess of 1,000 feet may be created unless no other practicable alternative is available.

6. The street system of the industrial subdivision shall be designed to connect into existing, proposed or anticipated streets outside the subdivision. In cases where the connections to an anticipated or proposed surrounding street are called for but the streets are not designated for immediate construction, then the right-of-way shall be extended to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of the tract) at the point where the connection to the anticipated or proposed street is expected. In lieu of the actual construction of the connection street, the Planning Director may require temporary turn-arounds to be constructed at a location which facilitates the flow of traffic inside the subdivision and accommodates emergency and service vehicles. No temporary dead-end streets in excess of 1,000 feet may be created unless no other practical alternative is available.

G. **Relationship of streets to topography.**

1. Streets shall be designed to relate appropriately to the topography of a site. In particular, streets shall be designed to facilitate the drainage and stormwater runoff objectives in Subsection O., and, subject to the design requirements relating to maximum grades set forth in paragraph 2. below, street grades shall conform as closely as practicable to the original topography.
2. The maximum grade for street construction shall meet design requirements of the North Carolina Department of Transportation. However, in no case may streets be constructed with grades that, in the professional opinion of the Town Engineer, create a substantial danger to the public safety or cause any substantial degradation to the street or drainage system.

H. **Construction standards and specifications.** Construction standards and specifications shall be determined by the Town Engineer. The geometric layout of all streets shall meet or exceed N.C. DOT requirements.

I. **Right-of-way and street width standards.**

1. **General intent.** Streets and rights-of-way within the Town of Garner are intended for multi-purpose use, as follows:
   a. To carry motor vehicle traffic, and, in some cases, allow on-street parking;
   b. To provide a safe and convenient passageway for pedestrian traffic; and
   c. To serve as an important link in the Town's drainage system.

2. **Right-of-way standards by type of development.** Street widths shall be measured from back of curb to back of curb.

Street Type	Right-of-Way	Width (Back of Curb)	Gutter	Sidewalk
Access Easement Landlocked Parcel (1 lot)	20 feet	10 feet	—-	—-
New Subdivision (max. 3 lots)	20 feet	16 feet	2-foot shoulder, each side	—-
Alley	20 feet	12 feet		—-
Local (and cul-de-sac)	55 feet	29 feet	2 feet	5 feet, one side
Collector	60 feet	32 feet	2 feet	5 feet, both sides
Lake Benson Conservation District:				
Collector	60 feet	26 feet	Roll Type	5 feet, both sides
Local	50 feet	26 feet		5 feet, one side
Rural Streets*	60 feet	20 feet (no curb)	6-foot shoulder, each side	—-
Minor/Major Thoroughfare	Build to N.C. DOT standards No driveway access for lots in a residential subdivision.			

*** Note: Rural street type shall not be used where public water or wastewater utility service is available.**

3. **Other right-of-way standards.**

   a. **Access easements.**

      (1) A recorded access easement option is available for existing landlocked lots only; nothing in this section is intended to allow approval of new lots with easement frontage and access only.

      (2) In RMH districts, every lot or rental space shall have at least 20 feet of frontage on either a public street or a private drive, measured at the street right-of-way line or private drive "reserved area" limit.

      (3) The minimum acceptable access easement width shall be 20 feet.

      (4) The access easement shall be paved with, at minimum, gravel three to six inches in depth and 16 feet in width running down the center of the easement.

(5) A full shoulder and ditch section shall be required on the subject property.

b. **Arterials and thoroughfares.** Arterial and thoroughfare right-of-way widths shall be as determined by the Town in consultation with N.C. DOT. The geometric layout shall meet or exceed N.C. DOT standards.

c. **Curb and gutter.**

(1) All public streets within the Town or its extra-territorial zoning jurisdiction shall be constructed with curb and gutter section as provided for in this ordinance and the Town of Garner Standard Construction Details.

(2) The Board of Aldermen may allow non curb and gutter street construction in residential projects developed at rural densities of one dwelling unit per 30,000 square feet or greater without the provision of sidewalks or in non-residential projects under the following conditions:

(a) Such project is located outside of the Town limits but within the Towns extraterritorial

jurisdiction;

(b) There is no connection to municipal water or sewer proposed;

(c) This type of alternative street construction will not create significant storm water drainage impacts to surrounding areas;

(d) It may be applied only to local streets or culs-de-sac where the grade does not exceed eight percent;

(e) Streets with non curb and gutter sections shall have a minimum right-of-way width of 60 feet and;

(f) Streets with non curb and gutter sections shall have a minimum pavement width of 20 feet with eight-foot wide shoulders with drainage swales on each side. All non curb and gutter streets shall be constructed in accordance with the specifications in Appendix C. The non curb and gutter street construction provisions of this subsection shall not apply to streets in cluster developments, instead all streets in cluster development shall have curb and gutter construction as provided for in Section 6.6.

J. **Major or minor thoroughfare dedication.**

1. Whenever a subdivision is developed in an area through which a proposed major or minor thoroughfare passes, according to the officially adopted CAMPO Transportation Plan or Garner Transportation Plan, then the developer shall dedicate to the Town a right-of-way as set forth in such plan and shall construct within such right-of-way a street meeting the specifications set forth in this section for a collector street.

2. Whenever a subdivision or new development fronts along an existing major or minor thoroughfare, the development shall dedicate one-half of the right-of-way required for the appropriate street type and build at least one-half of the recommended cross-section as shown in the CAMPO Transportation Plan or the Garner Transportation Plan unless the subdivision or development does not propose street or driveway access to said thoroughfare. When the total peak hour trip generation according to the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual does not exceed a total of 50 trips for a project, the permit issuing authority may require only that a deceleration lane without curb and gutter construction be installed in lieu of full widening.

K. **General layout of streets.**

1. Local residential streets shall be laid out so as to avoid conformity of lot appearance.
2. Cul-de-sac streets shall be laid out only in limited instances where they are required to provide access to land which cannot be served by a loop or other street design solution.
3. Traffic calming measures, including improved street network design and other technical solutions such as traffic circles and other natural calming measures may be used to limit cut-through traffic if approved by the Town Engineer.
4. To the extent practical, driveway access to collector streets shall be minimized to facilitate the free flow of traffic and avoid traffic hazards.
5. Half streets (i.e., streets of less than the full required right-of-way and pavement width) shall not be permitted.
6. Streets shall intersect as nearly as possible at right angles, and no two streets may intersect at an angle of less than 80 degrees. Not more than two streets shall intersect at any one point, unless the permit-issuing authority concludes, based on engineering review, that such an intersection can be constructed with no extraordinary danger to public safety.
7. Whenever possible, proposed intersections along one side of a street shall coincide with existing or proposed intersections on the opposite side of such street. In any event, where a centerline offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall be not less than 150 feet unless the Town Engineer concludes that a shorter distance will not adversely affect public safety.
8. No two streets may intersect with any other street on the same side at a distance of less than 400 feet measured from centerline to centerline of the intersecting street. When the intersected street is a major thoroughfare, the distance between intersecting streets shall be at least 1,000 feet wherever practicable.
9. Local circulation systems and land development patterns should not detract from the efficiency of adjacent major streets.

10. To discourage excessive speeds, residential streets should be designed with curves, changes in alignment and short lengths. Residential streets should not be designed to be wider than is necessary.

L. **Detailed design of streets.**

1. **Local streets.** Local streets shall be designed to provide parking unless an alley is provided. Streets shall be laid out so that residential blocks do not exceed 1,000 feet, unless no other practicable alternative is available.

2. **Cul-de-sac streets.**

a. All permanent dead-end streets, as opposed to temporary dead-end streets, shall be developed as culs-de-sac in accordance with the standards set forth in the table below.

b. The permit-issuing authority may require a pedestrian or bikeway connection through a cul-de-sac when the cul-de-sac helps provide a connection to a pedestrian traffic generator such as a school, public park or open space, library or recreation facility, a shopping, office or governmental facility.

c. The minimum right-of-way for cul-de-sac turnarounds shall be 100 feet in conventional subdivisions and 80 feet in cluster developments. Two types of culs-de-sac are permitted:

(1) A standard fully paved turn-around shall have a minimum pavement diameter of 80 feet in conventional subdivisions and 60 feet in cluster developments both measured back of curb to back of curb.

(2) Turn-arounds with one way travel lanes and unpaved centers shall have a minimum travel lane pavement width of 24 feet in conventional subdivisions and 20 feet in cluster developments. Unpaved centers of turn-arounds in all types of developments shall be landscaped.

d. Streets shall be laid out so that residential blocks do not exceed 1,000 feet, unless no other practicable alternative is available. Cul-de-sac requirements are set forth in the table below. The permit-issuing authority may allow cul-de-sac lengths in residential developments to exceed the maximum length allowable when there is no other practical alternative available due to steep slopes or other environmental restrictions (floodplains, buffer areas, etc.) In no case shall the length exceed 500 feet.

Type Subdivision	**Type Street**	**Max. Length Cul-de-Sac**	**R/W Width Turn-Around**	**Pave-ment Width**	**Curb Type**
Industrial	Curb & Gutter	580 ft.	100 ft.	80 ft. back to back	90 degrees
	Ditch Section		120 ft.		8 ft. shoulders & swales
Conventional	Curb & Gutter	200 ft.	100 ft.	80 ft. back to back	90 degrees
	Ditch Section		120 ft.		8 ft. shoulders & swales
Cluster	Curb & Gutter	200 ft.	80 ft.	60 ft. back to back	90 degrees
	—		80 ft.		8 ft. shoulders & swales
Lake Benson Conservation District	Curb & Gutter	200 ft.	100 ft.	80 ft. back to back	Roll Type
	Ditch Section		120 ft.		8 ft. shoulders & swales

3. **Exceptions to street standards.**

a. Only standard 90-degree curb shall be used in conventional subdivisions located outside the Lake Benson Conservation District.

b. Roll type curb and gutter construction may be allowed in lieu of a ditch section as an option in the Lake Benson Conservation District in developments where all street surface runoff is diverted to permanent retention ponds constructed in accordance with the provisions of Section 7.2.F.1d.

c. In cluster developments, the type of curb and gutter section shall be standard 90-degree curb unless an alternative curb and gutter section which adequately provides for proper drainage, access and maintenance needs is approved by the Town Engineer.

d. Within the Lake Benson Conservation District all roads shall be constructed and paved to the Town of Garner standards. No unimproved or gravel roads are permitted, with the exception of farm roads.

e. The entrance of unpaved residential driveways shall be graveled for an area of 30 feet in length and ten feet in width, with a six-inch depth of stone. Roads, streets and driveways shall be designed to avoid direct runoff into streams through dispersion onto grassed and vegetated areas wherever possible.

M. **Private roads.**

1. Except as provided in paragraph 3. below, all streets in subdivisions shall be constructed according to Town of Garner public street standards and shall be offered as a public street dedication to the Town. Unless the recorded plat of a subdivision clearly indicates a street to be private, the recording of such plat shall constitute an offer of dedication of such streets.

2. A new subdivision shall be served by a private road where it contains three lots or less. A private road serving greater than three lots shall be built in accordance with public street standards. The Town shall have the discretion to require a public street connection for safety or access purposes.

3. No final plat that shows lots served by private roads may be recorded unless the final plat contains the following notations:

   a. Further subdivision of any lot shown on this plat as served by a private road may be prohibited by the Town of Garner UDO.

   b. The policy of the Town of Garner is that, if the Town improves streets:

      (1) That were never constructed to the standards required in the Town of Garner Land Use Ordinance for dedicated streets or its precedent; and

      (2) On which 75 percent of the dwelling units were constructed after July 1,1981; 100 percent of the costs of such improvements shall be assessed to abutting landowners.

4. The recorded plat of any subdivision that includes a private road shall clearly state that such road is a private road. Further, the initial purchasers of a newly-created lot served by a private road shall be furnished by the seller with a disclosure statement outlining the maintenance responsibilities for the road, in accordance with the requirements set forth in G.S. 136-102.6. The intention of this subsection is to afford the same protection to purchasers of lots on private roads within the Town as is provided to purchasers of lots outside the Town by G.S. 136-102.6.

5. All private roads shall be maintained in accordance with Town of Garner standards.

6. Where private roads are later made public through dedication to the Town, such roads shall be brought up to public standards, including maintenance, prior to their acceptance by the Town.

N. **Sidewalks.**

1. **Sidewalks required.**

   a. The developer of any subdivision with frontage on any street identified as meeting the criteria set out in paragraph 2. below shall provide for the construction of public sidewalks in accordance with the Town standards across the entirety of such frontages. Subdivision exemptions are excluded from this requirement.

   b. Sidewalks shall be constructed to allow easy continuation by adjacent properties and to form a safe and convenient network for users.

2. **Criteria for sidewalks.** The developer shall be responsible for constructing a sidewalk in the public right-of-way, or, where required by topography or other circumstances in duly obtained public easements approved by the Board of Aldermen, and along every street upon which the property fronts and along every new street within the development according to the following criteria:

   a. Public sidewalks shall be constructed on both sides of a road or street with four or more lanes; and

   b. Public sidewalks shall be constructed on one side of a road or street designated as a local street, cul-de-sac, and both sides of a street designated as a collector.

3. **Fee-in-lieu of sidewalk construction.** For streets meeting any combination of the categories in paragraph 2. above, the developer may propose to pay a fee in lieu of sidewalk construction, based on the then current estimated per-foot cost of construction, if a particular street frontage qualifies under one or more of the following:

   a. Extenuating circumstances, documented by the developer and mutually acceptable to the Town which makes sidewalk construction along a particular frontage impractical or unreasonable at the time of the development's construction;

   b. A capital improvements program schedule that calls for the installation of sidewalk improvements by the Town along a particular frontage; or

   c. The Board of Aldermen has made a decision that sidewalks are only to be provided along the opposite side of the street. Such fees shall be held by the Town in a restricted sidewalk construction account.

4. **Previously constructed sidewalks.** Where the sidewalk which a developer would otherwise be required to construct, or pay a fee-in-lieu of constructing pursuant to other sections in this UDO, has previously been constructed by the Town, the permitting authority shall determine during site plan review whether the developer's compliance with this subsection

shall be accomplished by a re-design and reconstruction of said sidewalk, or by the payment of a fee-in-lieu in accordance with the then current Town schedule of fees.

5. **Sidewalk width.** Public sidewalks in all developments shall be at least five feet in width.

6. **Construction standards.** Sidewalks and walkways required by this section shall be constructed according to the specifications of the Town of Garner Standard Construction Details except that the permit-issuing authority may permit sidewalks and walkways to be constructed with other materials when it concludes that:

   a. Such sidewalks would serve the residents of the development as adequately as concrete sidewalks;

   b. Such sidewalks would be more environmentally desirable or more in keeping with the overall design of the development; or

   c. Such sidewalks could be maintained as adequately as concrete sidewalks.

   d. Whenever the permit-issuing authority finds that a means of pedestrian access is necessary from the subdivision to schools, parks, playgrounds or other facilities or roads and that such access is not conveniently provided by sidewalks adjacent to the streets, the developer shall be required to provide an unobstructed easement of at least ten feet in width to provide such access.

O. **Unpaved roads to be paved prior to annexation.** Where a property that is annexed after the effective date of this UDO uses nonconforming gravel roads to provide access, such roads shall be paved at the landowner's expense in accordance with Town specifications within 30 days of annexation. This requirement shall not apply to any roads permitted to be gravel by this section.

P. **Road and sidewalk requirements in unsubdivided developments.**

1. Within unsubdivided developments, all private roads and access ways shall be designed and constructed to facilitate the safe and convenient movement of vehicular and pedestrian traffic. Width of roads and use of curb and gutter shall be determined based on the density, size and type of development. The Town Engineer shall determine appropriate road widths and paving specifications based on the street classification system in Section 8.2.A. To the extent not otherwise covered in the articles, and to the extent that the requirements set forth in this article may be relevant to the roads in unsubdivided developments, the requirements of this article may be applied to satisfy the standard set forth in the first sentence of this subsection.

2. Whenever a road in an unsubdivided development connects two or more collector, or major thoroughfare streets in such a manner that any substantial volume of through-traffic is likely to make use of this road, such road shall be constructed in accordance with the standards applica-

ble to subdivision streets and shall be dedicated. In other cases when roads in unsubdivided developments within the Town are constructed in accordance with the specifications for subdivision streets, the Town may accept an offer of dedication of such streets.

3. Whenever a development fronts along an existing major or minor thoroughfare, the development shall dedicate one-half of the right-of-way required for the appropriate street type and build at least one-half of the recommended cross-section as shown in the CAMPO Transportation Plan or the Garner Transportation Plan unless the development does not process street or driveway access to said thoroughfare.

4. The developer(s) of any land in a location which meets the criteria established in paragraph N. of this section shall provide for the construction of sidewalks or, as per paragraph N., pay a fee in lieu of construction, in accordance with Town standards across the entirety of such frontages and along any new streets within the development. The residential development of one duplex or single-family dwelling on an existing lot is excluded from this requirement, unless sidewalks abut the property line, in which case, sidewalks shall be required.

5. In all unsubdivided multifamily residential developments, private walkways shall be provided linking dwelling units with other dwelling units with the public street frontage and with on-site activity centers such as parking areas, laundry facilities and recreational areas and facilities. Such walkways shall not be required for developments of 25 or fewer units in which all units have direct access to an interior private drive or public street.

6. Whenever the permit-issuing authority finds that a means of pedestrian access is necessary from an unsubdivided development to schools, parks, play-grounds or other facilities or roads and that such access is not conveniently provided by sidewalks adjacent to the roads, the developer shall be required to provide an unobstructed easement of at least ten feet to provide such access.

7. The public sidewalks required in paragraph N. of this section shall be at least five feet wide and those private walkways required in paragraph N. shall be at least four feet wide, except for walkways constructed along the back of parking bays which shall be at least six feet in width in order to accommodate vehicle overhang, unless wheel stops are placed at the ends of these parking spaces, in which case sidewalks shall be at least four feet in width.

   Sidewalks and walkways required by this section shall be constructed according to the specifications set forth in Appendix B, except that the permit-issuing authority may permit sidewalks and walkways to be constructed with other materials when it concludes that:

   a. Such sidewalks would serve the residents of the development as adequately as concrete sidewalks;

b. Such sidewalks would be more environmentally desirable or more in keeping with the overall design of the development; or

c. Such sidewalks could be maintained as adequately as concrete sidewalks.

Q. **Attention to handicapped in street and sidewalk construction.**

1. As provided in G.S. 136-44.14, whenever curb and gutter construction is used on public streets, wheelchair ramps for the handicapped shall be provided at intersections and other major points of pedestrian flow. Wheelchair ramps and depressed curbs shall be constructed in accordance with published standards of the North Carolina Department of Transportation, Division of Highways.

2. In unsubdivided developments, sidewalk construction for the handicapped shall conform to the published standards of the North Carolina Department of Transportation, Division of Highways.

R. **Public utility easements.**

1. All public utility easements shall meet the requirements of the City of Raleigh as set forth in the City of Raleigh Public Utility Department Handbook.

2. The City of Raleigh may allow deviations from the standards outlined above that may be less or more restrictive whenever it finds that such deviations are more likely to satisfy the public utility needs of the Town of Garner.

S. **Street names, street markers and house numbers.**

1. Street names shall be assigned by the developer subject to the approval of the permit-issuing authority. Proposed streets that are obviously in alignment with existing streets shall be given the same name. Newly created streets shall be given names that neither duplicate nor are phonetically similar to other streets within Wake County;

2. The developer shall bear the costs of the fabrication and installation of street markers on all streets within or intersecting the development in accordance with the standards of the Town; and

3. Building numbers shall be assigned by the Town.

4. All street makers shall be in accordance with the Town of Garner standard street number installation. If a development wishes to use an alternative street maker, such maker shall be maintained by the development and approved by the Town Engineer.

T. **Bridges.** All bridges shall be constructed in accordance with the standards and specifications of the North Carolina Department of Transportation, except that bridges on roads not intended for public dedication in unsubdivided developments may be approved if designed by a licensed architect or engineer.

8.3. Sewage disposal facilities, water supply and utilities.

A. **General.**

1. **Utility ownership and easement rights.** In any case in which a developer installs or causes the installation of water, sewer, electric power, telephone or cable television facilities and intends that such facilities shall be owned, operated or maintained by a public utility or any entity other than the developer, the developer shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities.

2. **Lots served by publicly-owned water and sewer lines.**

   a. Whenever it is legally possible and practicable in terms of topography to connect a lot with a publicly-owned water or sewer line by running a connecting line not more than 300 feet from the lot to the Town line, then no use requiring water or sewage disposal service may be made of such lot unless that connection is made.

   b. Connection is not legally possible if it is necessary to run the connecting line over property not owned by the owner of the property to be served by the connection, and after diligent effort, the easement necessary to run the connecting line cannot reasonably be obtained.

   c. A lot is served by public water or sewer system if connection is required by this section.

   d. No requirements or provisions of this section are intended to supersede the requirements for utility extensions for a new development as provided for in the Town Garner Utility Extension Policy.

3. **Certification require prior to certificate of occupancy.** The project engineer shall certify that the water and/or sewer system has been constructed according to plans and specifications approved by the Town prior to receipt of any certificate of occupancy.

B. **Sewage disposal facilities.**

1. **Sewage disposal facilities required.** Every principal use and every lot within a subdivision shall be served by a sewage disposal system that:

   a. Is adequate to accommodate the reasonable needs of such use or lot; and

   b. Complies with applicable health regulations.

2. **Determining compliance.**

   a. Primary responsibility for determining compliance with the standards in paragraph B. above, often lies with an agency other than the Town, and the developer must comply with the standards and specifications of such other agency. These agencies are listed in subsection (b). Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed sewage disposal system, the Town may rely upon a prelim-

inary review by such agency of the basic design elements of the proposed sewage disposal system to determine compliance with paragraph B. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued or approvals given by such agency.

b. In the following table, the column on the left describes the type of development and the column on the right indicates the agency that must certify to the permit-issuing authority whether the proposed sewage disposal system complies with the standard set forth in paragraph B., above.

Type of Development	**Permit-Issuing Authority Action**
(1) The use is located on a lot that is served by the Town sewer system or a previously approved, privately owned package treatment plant, and the use can be served by a simple connection to the system (as in the case of a single-family residence) rather than the construction of an internal collection system (as in the case of a shopping center or apartment complex).	No further certification is necessary.
(2) The use (other than a subdivision) is located on a lot that is served by the Town sewer system but service to the use necessitates construction of an internal collection system (as in the case of a shopping center or apartment complex); and, (a) The internal collection system is to be transferred to and maintained by the Town. (b) The internal collection system is to be privately maintained	The Town Engineer must determine that the proposed collection system is adequate and conforms to the Town of Garner Utility Extension Policy.
(3) The use (other than a subdivision) is not served by the Town system, but is to be served by a privately operated sewage treatment system (that has not previously been approved) with 3,000 gallons or less design capacity, effluent from which does not discharge into surface waters.	The Wake County Health Department (WCHD) must certify to the Town that the proposed system complies with all applicable state regulations. If the proposed use is a single-family dwelling other than a mobile home, the developer must present to the Town a certificate of completion from the WCHD.

Type of Development	Permit-Issuing Authority Action
(4) The use (other than a subdivision) is to be served by a privately operated sewage treatment system (not previously approved) that has a design capacity of more than 3,000 gallons or that discharges effluent into surface waters.	The City of Raleigh must certify to the Town that the proposed system complies with all applicable state regulations. A "Permit to Construct" and a "Permit to Discharge" must be obtained from the City of Raleigh. The Town Engineer must also approve the system for future addition to the Town system.
(5) The proposed use is a subdivision, and (a) Lots within the subdivision are to be served by simple connection to existing Town lines or lines of a previously approved private system.	No further certification is necessary.
(b) Lots within the subdivision are to be served by the Town system, but the developer will be responsible for installing the necessary additions to the Town system.	The Town Engineer must determine that the proposed collection system is adequate and conforms to the Town of Garner Utility Extension Policy.
(c) Lots within the subdivision are to be served by a sewage treatment system that has not been approved that has a capacity of 3,000 gallons or less, and that does not discharge into surface waters.	The Wake County Health Department must certify that the proposed system complies with applicable state and local health regulations. If each lot within the subdivision is to be served by a separate on-site disposal system, the WCHD must certify that each lot shown on a major subdivision preliminary plat can probably be served, and each lot on a major or minor subdivision final plat can be served by an on-site disposal system.
(d) Lots within the subdivision are to be served by a privately operated sewage treatment system (not previously approved) that has a design capacity in excess of 3,000 gallons or that discharges effluent into surface waters.	The City of Raleigh must certify that proposed system complies with all applicable state regulations. A Permit to Discharge must be obtained from the City of Raleigh. The Town Engineer must also approve the system for future addition to the Town system.

C. **Water supply.**

1. **Water supply system required.** Every principal use and every lot within a subdivision shall be served by a water supply system that:

   a. Is adequate to accommodate the reasonable needs of such use or lot; and

   b. Complies with all applicable health regulations.

2. **Determining compliance.**

   a. Primary responsibility for determining compliance with the standards in paragraph 1. above, often lies with an agency other than the Town, and the developer must comply with the standards and specifications of such other agency. These agencies are listed in the table below. Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed water supply system, the Town way rely upon a preliminary review by such agency of the basic design elements of the proposed water supply system to determine compliance with paragraph 1., above. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued by such agency.

   b. In the following table, the column on the left describes the type of development and the column on the right indicates the agency that must certify to the Town whether the proposed water supply system complies with the standard set forth in paragraph 1., above.

Type of Development	**Permit-Issuing Authority Action**
(1) The use is located on a lot that is served by the Town water system or a previously approved, privately owned public water system and the use can be served by a simple connection to the system (as in the case of a single-family residence) rather than the construction of an internal distribution system (as in the case of a shopping center or apartment complex).	No further certification is necessary.

Type of Development	Permit-Issuing Authority Action
(2) The use (other than a subdivision) is located on a lot that is served by the Town water system but service to the use necessitates construction of an internal distribution system (as in the case of a shopping center or apartment complex); and (a) The internal distribution system is to be transferred to and maintained by the Town.	The Town Engineer must determine that the proposed collection system is adequate and conforms to the Town of Garner Utility Extension Policy.
(b) The internal distribution system is to be privately maintained.	The Town Engineer must certify that the proposed distribution system is adequate. A Permit to Construct must also be obtained from DHS.
(3) The use (other than a subdivision) is located on a lot not served by the Town system or a previously approved, privately owned public water supply system; and (a) The use is to be served by a privately owned public water supply system that has not previously been approved.	The Division of Health Services of North Carolina Department of Human Resources must certify that the proposed system complies with all applicable state and federal regulations. A Permit to Construct must be obtained from DHS. The City of Raleigh must also approve the plans if the water source is a well and the system has a design capacity of 100,000 gallons per day or greater or is located in certain areas designated by the city. The Town Engineer must also approve the system for possible future addition to the Town system.
(b) The use is to be served by some other source (such as an individual well).	The Wake County Health Department must certify that the proposed system meets all applicable state and local regulations.
(4) The proposed use is a subdivision; and (a) Lots within the subdivision are to be served by simple connection to existing Town lines or lines of a previously approved public water supply system;	No further certification is necessary.

Type of Development	Permit-Issuing Authority Action
(b) Lots within the subdivision are to be served by the Town system but the developer will be responsible for installing the necessary additions to the Town systems.	The Town Engineer must certify that the proposed system meets the necessary additions to the Town's standards and will be accepted by the Town. A Permit to Construct must also be obtained from the Division of Health Services of the North Carolina Department of Human Resources.
(c) Lots within the subdivision are to be served by a privately owned public water supply system that has not been previously approved.	The Division of Health Services of North Carolina Department of Human Resources must certify that the proposed system complies with all applicable state and federal regulations. A Permit to Construct must be obtained from DHS. The City of Raleigh must also approve the plans if the water source is a well and the design capacity of 100,000 gallons per day or greater or is located within certain areas designated by the City. The Town Engineer must also approve the system for possible future addition to the Town system.
(d) Lots within the subdivision are to be served by individual wells.	The Wake County Health Department must certify to the Town that each lot intended to be served by a well can be served in accordance with applicable health regulations.

3. **Fire hydrants.**
   a. Every development, subdivided or unsubdivided, shall include a system of fire hydrants sufficient to provide adequate fire protection for a building or buildings located or intended to be located within a development.
   b. All fire hydrants shall be installed on a minimum six inch water line. Only one fire hydrant may be installed on a dead-end six inch water line.
   c. The spacing and general location of hydrants shall be as follows:
      (1) In all zoning districts, there shall be at least one fire hydrant at each public or private street intersection;
      (2) In residential districts, the maximum distance between fire hydrants, measured along street centerlines, shall be 500 feet.

(3) In nonresidential zoning districts, the maximum distance between fire hydrants, measured along street centerlines, shall be 300 feet.

(4) In applying paragraphs (2) and (3) above, fire hydrants located on the opposite side of any major thoroughfare with four or more travel lanes, any U.S. or N.C. designated routes, divided highway, or railroad track shall not be counted when determining the fire hydrant coverage or locational requirements of this section; and

(5) All premises subject to the state building code where buildings or portions of buildings are located more than 500 feet from a fire hydrant system shall be provided with approved on-site fire hydrants and water mains capable of supplying the fire flow required by the Fire Official. The location and number of on-site hydrants shall be as designated by the Fire Official consistent with the criteria in paragraph d below where practicable, with the minimum arrangement being so as to have a hydrant available for distribution of hose to any portion (including public hydrants) of any building on the premises at distances not exceeding 500 feet but in no case shall hose lengths be greater than 500 feet; provided, however that this subsection does not apply to one and two family dwellings with or without attached or detached accessory structures used exclusively by the owner and not subject to use by the public.

d. The Town Fire Official shall approve the specific location of all fire hydrants, in accordance, where practicable, with the following design criteria:

(1) Relative location to streets: Streets with curb and gutter two to four feet behind back of curb; streets with ditch section—one foot inside right-of-way;

(2) Clear space: Four feet on all sides free of any structures, utility poles, landscaping planting, or other permanent objects;

(3) Minimum distance from nonresidential buildings: 40 feet;

(4) Construction standards and specifications: City of Raleigh Utilities Department, except that the nozzles still have national standard threads;

(5) Adequate fire flow and coverage for nonresidential buildings: Coverage from two hydrants generally required; and

(6) Maximum distance from a hydrant to any portion of a building: 500 feet (as measured along the hose laying route).

Provided, however, that the permit-issuing authority may apply either more restrictive or less restrictive fire hydrant location criteria when it finds that such deviations are more likely to accomplish the provision of sufficient fire protection for all buildings within a development.

Whenever the permit-issuing authority allows or requires a deviation from the presumptive requirements, the reasons for doing so and the requirements imposed shall be listed on the permit.

D. **Other utilities.**

1. **Electric power.** Every principal use, and every lot within a subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

   a. If the use is not a subdivision and is located on a lot served by an existing power line, and the use can be served by a simple connection (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is needed; and

   b. If the use is a subdivision or is not located on a lot served by an existing power line or a substantial internal distribution system, then the electric utility company must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

2. **Telephone service.** Every principal use and every lot within a subdivision must have available to it a telephone service cable adequate to accommodate the reasonable needs of such use or lot. Compliance with this requirement shall be determined as follows:

   a. If the use is not a subdivision and is located on a lot that is served by an existing telephone line and the use can be served by a simple connection to such line, then no further certification is necessary; and

   b. If the use is a subdivision, or is not located on a lot served by an existing telephone line, or will require a substantial internal distribution system, then the telephone company must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

3. **Underground utilities.**

   a. All electric power lines, (not to include transformers or enclosures containing electrical equipment such as switches, meters, and capacitors, which may be pad mounted), telephone, gas distribution, and cable television lines in subdivisions developed after the effective date of this UDO shall be placed underground in accordance with the specifications and policies of the respective utility companies and located in accordance with Town of Garner Standard Construction Details.

   b. Whenever an unsubdivided development is hereafter constructed on a lot that is undeveloped on the effective date of this UDO, then all

electric power, telephone, gas distribution, and cable television lines shall run underground from the point of connection with the main lines to any structures on the lot served by those lines. Such lines shall be placed underground in accordance with the specifications and policies of the respective utility companies.

4. **Utilities to be consistent with internal and external development.**

   a. Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, such utility facilities (e.g., water or sewer lines) shall be located and constructed so that extensions can be made conveniently and without undue expense or service duplication.

   b. All utility facilities shall be constructed in such a manner as to minimize interference with pedestrian or vehicle traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

5. **As-built drawings required.**

   a. Whenever a developer installs or causes to be installed a utility line in any public right-of-way or easement, the developer shall, as soon as practical alter complete installation furnish the Town with a permanent copy of a drawing that shows the exact location of such utility lines. Such drawings must be verified as accurate by an appropriately licensed designer and shall bear a certificate on the drawing to that effect. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing such development.

   b. If any utility line in any right-of-way is installed by a utility company, the company shall maintain accurate as-built drawings and shall make these available to the Town upon request. The Town will maintain as-built drawings furnished by the developer of all other utilities.

8.4. Open space and recreational facilities.

A. **Open space.**

1. The Board of Aldermen finds that, when land is developed for residential purposes, the public health, safety, and welfare are best served if a portion of the land so developed remains as common open space. The preservation of such open space areas serves the following important objectives, to the benefit of the residents of such developments as well as the general public:

   a. Preservation of open vistas, providing relief from an urban landscape;

   b. Preservation of environmentally sensitive lands;

   c. Preservation of habitat for wildlife;

d. Preservation of historically or archaeologically significant areas; and

e. Provision of areas for passive recreation, such as walking or jogging.

2. For purposes of this section:

a. Open space refers to an area that:

(1) Is not encumbered with any substantial structure;

(2) Is not exclusively devoted to use as a roadway, parking area, or sidewalk;

(3) Is not part of any privately owned lot that is used or intended for use for residential purposes;

(4) Is private, is legally and practicably accessible to the residents of the subdivision or development it is designed to serve; and

(5) If publicly dedicated, is legally and practicably accessible to the general public.

b. Narrow strips of common area that separate lots within a development from each other, from streets, or from adjoining tracts shall generally not be regarded as open space within the meaning of this section unless such areas:

(1) Are at least 50 feet in width and capable of functioning as a substantial visual buffer; or

(2) Are configured and improved in a manner acceptable to the permit issuing authority (e.g. through the installation of trails) in such a way as to be conducive to actual use for passive recreational purposes (i.e. walking or jogging) by residents of the development where located.

c. The following areas shall be regarded as open space where such areas satisfy the criteria set forth a.(1), a.(2) and a.(3) of this section:

(1) Utility easements located outside of street rights-of-way;

(2) Cemeteries located on a tract prior to its development;

(3) Areas used for the growing of crops, such as hay, corn, or vegetables, if and to the extent that such uses occur within an area that is subject to the control of a homeowners association and the homeowners association approves such uses; and

(4) Golf courses as private open space.

d. The term "primary conservation areas" shall mean:

(1) Areas shown as greenways on the adopted Garner Open Space and Greenways Plan or other applicable policies or plans;

(2) Wetlands as defined pursuant to Section 404 of the Clean Water Act;

(3) Floodplains;

(4) Lakes and ponds; or

(5) Areas containing slopes greater than 25 percent.

e. The term "secondary conservation areas" shall mean:

(1) Areas containing slopes greater than 15 percent but not more than 25 percent;

(2) Other areas containing unique vistas or unusual natural features (such as major rock formations); or

(3) Other environmentally, historically or archaeologically significant or unique areas.

3. Except as otherwise provided herein, every residential development shall be developed so that at least ten percent of the total area of the development remains permanently as open space.

a. The Board of Aldermen recognizes that, the smaller the development, the less practical value open space areas set aside under this section may have. Therefore, developments of less than one acre in overall size shall be exempt from the open space provisions of this section.

b. For purposes of this section, the term "development" refers to the entire project developed on a single tract or contiguous multiple tracts under common ownership or control, regardless of whether the development is constructed in phases or stages.

4. If a tract where a residential development is proposed contains any areas defined above as primary or secondary conservation areas, then such areas shall be designated as open space, subject to the following:

a. In no case shall the developer be required to set aside as open space more than the minimum required percentage of open space specified in subsection 3., above.

b. If the development tract contains primary or secondary conservation areas, then the specific areas to be set aside as open space shall be determined by the permit issuing authority, with priority given to primary conservation areas over secondary conservation areas.

c. If the total of primary and secondary conservation areas on a development tract is less than the minimum required percentage of open space specified in subsection 3., then the choice of additional open space areas to be set aside to satisfy this minimum percentage shall remain with the developer, provided the location is acceptable to the permit-issuing authority.

5. Notwithstanding the other provisions of this section, where a developer agrees to dedicate land to the Town that is intended to be used by the Town for open space purposes such dedication shall be credited to the developer in satisfaction of the open space requirements.

B. **Park land dedication and fee in-lieu requirement.**

1. **Purpose.**

a. The Board of Aldermen finds that all new residential development places a demand on existing Town park and recreational facilities

and creates the need for the expansion of existing park and recreation facilities and the development of new park and recreation facilities.

b. The Board further concludes that the need for such new or expanded parks and recreation facilities is directly related to the number of persons expected to reside in such new development and is also affected by the housing type (single-family detached or multifamily and all other residential units) as well as the extent to which such developments provide their own recreational facilities.

c. The Board concludes that it is appropriate for such new developments to contribute to the cost of such new or expanded parks and recreational facilities in a manner that is roughly proportional to the need generated by such developments either through public dedication of land or by the payment of fees in-lieu-of dedication.

2. **Use of fees.**

a. The Board of Aldermen hereby establishes a park and recreational facilities capital improvement fund that is distinct from the general fund of the Town, the purpose of which shall be to accumulate the fees generated by this section.

b. The park and recreational facilities capital improvement fund shall contain only those funds collected pursuant to this section plus any interest which may accrue from time to time on such amounts.

c. The monies in such fund shall be used only for the acquisition of additional park land or for the construction of new recreational facilities in areas that will benefit the residents of the development that contributed to the fund.

d. The Board of Aldermen may establish more than one fund, and divide the Town into districts, each served by a separate fund, if the Board concludes that the establishment of such multiple districts and multiple funds will best serve the objectives of this section.

3. **Dedication or fee in-lieu.** The procedure for determining if a subdivider is to dedicate land or pay a fee in-lieu of dedication shall be as follows:

a. **Subdivider.** At the time of filing any subdivision plan, the subdivider shall, as part of such submission, indicate whether dedication of the property for park and recreational purposes is proposed, or whether the subdivider proposes to pay a fee in-lieu thereof. If the subdivider proposes to dedicate land for this purpose the subdivider shall designate the area thereof on the master subdivision plan as submitted.

b. **Action of Town.** At the time of the subdivision plat review, the parks and recreation advisory Committee shall recommend and the Planning Commission shall determine as a part of its subdivision plat approval, whether to require a dedication of land within the subdivision, payment of a fee in-lieu thereof or a combination of both. In

cases where there is any disagreement on the question of dedication or fee in-lieu, the Planning Commission shall refer the matter to the Board of Aldermen for a final decision.

4. **Park land dedication.** Where it is determined that park land dedication is appropriate to satisfy the recreational requirements of the UDO, the amount of the park land to be dedicated shall be as follows:

Housing Type	Acres/Unit
Single-family detached	0.0354
All other residential	0.0287

a. **Acceptance of dedicated park land.** The parks and recreation advisory Committee and the Planning Commission shall have the opportunity to review the proposed land dedication and recommend on its acceptability within the guidelines of this UDO and Town plans, and on the preferability of land dedication or payment of a fee-in-lieu of dedication.

b. **Standards for dedicated park land.** All park land proposed for dedication shall meet the following criteria:

(1) **Unity.** The dedicated park land shall form a single parcel of land except where the parks and recreation advisory Committee recommends, and the Board of Aldermen finds, that two parcels or more would be in the public interest. Where two or more parcels exist, any connecting path or strip of land shall not be less than 30 feet in width.

(2) **Shape.** The shape of the dedicated parcel of land shall be a shape to be sufficiently usable for recreational activities generally associated with a public recreation park.

(3) **Location.** The dedicated land shall be located so as to reasonably serve the recreation area needs of the development and surrounding area for which the dedication was made.

(4) **Access.** Public access to the dedicated land shall be provided either by adjoining street frontage or public easement at least 30 feet in width.

(5) **Topography.** Slope on areas dedicated for parks shall not exceed five percent.

(6) **Utility.** The dedicated land shall be usable for active recreation, or could be improved so as to be so usable without exceeding the amount of the fee in-lieu.

(7) **Consistency with adopted plans.** The acceptance of dedication shall be consistent with the officially adopted open space and greenway plan, parks and recreation master plan or other applicable policies or plans.

5. **Fee-in-lieu of dedication.**
   a. Where determined appropriate, all residential development shall pay a fee-in-lieu of dedication to the Town in an amount equal to the fee set annually by the Board of Aldermen in the miscellaneous fees and charges schedule based on the number of dwelling units in the proposed development.
   b. The amount of the fee in-lieu is based on the cost per acre to acquire new park land multiplied by the acreage demand per housing unit.
   c. Where determined appropriate, the following procedures shall be followed as applicable:
      (1) If the development is a subdivision, the fee in-lieu shall be paid before the approval of the final plat.
      (2) If the development is not a subdivision, the fee in-lieu shall be paid before the first building permit is issued.
      (3) If a development is constructed in phases, the fee in-lieu shall be paid on a phase by phase basis according to the foregoing schedule.
6. **Prerequisites for approval of final plat.**
   a. Where park land dedication is required, such dedication shall be shown on the final plat for the subdivision submitted for approval.
   b. Where a fee in-lieu is required, the fee in-lieu shall be deposited with the Town prior to the recording of the final plat for subdivision.
   c. Covenants for private open space areas shall be submitted to the Town prior to approval of the final plat and shall be recorded with the final plat.
7. **Refunds.** Any monies in the park and recreational facilities capital improvement fund that have not been spent within ten years after the date on which such fee was paid shall be returned to the current owners with any accumulated interest since the date of payment.
   a. Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property within 30 days of the date the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.
   b. The refund shall be made on a pro rata basis, and shall be paid in full within 90 days of the date certain upon which the refund becomes due.

C. **Private ownership and maintenance.**
1. Recreational facilities or open space not dedicated to the Town shall remain under the ownership and control of the developer (or his successor) or a homeowners' association or similar organization. Such recreational

facilities and open space shall be made available to all residents of the development where they are located under reasonable rules and regulations established to encourage and govern the use of such facilities and open space by the residents without payment of separate optional fees or charges other than membership fees in a homeowners' association. Such facilities and open space may be made available to a limited extent on a fee basis to persons who are not residents of the development where such facilities or open space are located, so long as such use does not become so extensive as to remove the facilities and open space from the category of an accessory use to a residential development and transform the use to a separate principal use classification.

2. The person or entity identified in subsection 1. as having the right of ownership and control over such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

3. Homeowners' associations or similar legal entities that are responsible for the maintenance and control of common areas, including recreational facilities and open space, shall be established in such a manner that:

   a. Provisions for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;

   b. The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities;

   c. The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities; and

   d. The association will establish a capital fund for the maintenance and upkeep of common areas and facilities and a method of contributing to that fund which will spread the costs of said maintenance and upkeep to the residents over a number of years.

8.5. Subdivision dedication requirements.

A. **Plat approval does not constitute acceptance of dedication offers.** Plat approval does not constitute acceptance by the Town of the offer of dedication of any public facilities shown on a plat. However, the Town may accept any such offer of dedication by resolution of the Board of Aldermen or by actually exercising control over and maintaining such facilities.

B. **Protection against defects.**

1. Whenever occupancy, use or sale is allowed prior to completion of all publicly dedicated facilities and improvements, the performance bond or surety posted pursuant to Section 8.6.A shall guarantee correction by the developer of any defects in such improvements or facilities that appear within one year.

2. Whenever all publicly dedicated facilities and improvements are installed before occupancy, use, or sale is authorized, then the developer shall post a performance bond or other sufficient surety to guarantee that he will correct all defects in such facilities or improvements that occur within one year after use, occupancy or sale is authorized.
3. An architect or Engineer retained by the developer shall certify to the Town that all facilities and improvements to be dedicated to the Town have been constructed in accordance with the requirements of the ordinance. This certification shall be a condition precedent to acceptance by the Town of the offer of dedication of such facilities or improvements.
4. For purposes of this section, the term defects refers to any condition that requires the Town to make repairs in such facilities over and above the normal amount of maintenance that they would require. If such defects appear, the guaranty may be enforced regardless of whether the facilities or improvements were constructed in accordance with the requirements of this UDO.

C. **Maintenance of dedicated areas until acceptance.** All facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer is accepted by the appropriate public authority.

8.6. Improvement guarantees.

A. **Performance guarantee to ensure compliance with subdivision or other approval.**

1. There may be cases when it would be unreasonable to require the permit recipient to comply with all UDO requirements before commencing the intended use of the property or occupying any buildings or selling lots in a subdivision, such as weather conditions or other factors beyond the control of the permit recipient (exclusive of financial hardship). In these cases, the Town of Garner may authorize such commencement or occupancy or sale if the permit recipient provides a performance guarantee or other security of up to 125 percent of the costs of the remaining improvements satisfactory to the Town to ensure that all of these requirements will be fulfilled within not more than one year.
2. When the Town of Garner imposes additional requirements upon the developer or when the permittee proposes to install amenities beyond those required by this UDO, the Town may authorize the permittee to commence the intended use, occupy any building, or sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a date or a schedule by which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:
   a. A commercial letter of credit, or a certified check satisfactory to the Town of Garner is furnished;

b. A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made; and

c. The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Article 10, Enforcement.

3. With respect to subdivisions in which the permittee is selling only undeveloped lots, the Planning Director may authorize final plat approval before all of the requirements of this UDO are fulfilled if the permittee provides a commercial letter of credit or certified check satisfactory to the Town of Garner to ensure that all of these requirements will be fulfilled within not more than 12 months after final plat approval.

4. In no case shall an improvement guarantee that reduces public safety be approved in place of the actual improvement.

5. The final plat for a single phase subdivision (i.e. a plat that is recorded as a single unit and is not one that will be recorded in multiple phases) shall have a minimum of 10 lots withheld from plat recordation until such time as all remaining improvements have been satisfactorily installed in a manner acceptable to the Town of Garner. The last final plat of a multiple phase subdivision shall be withheld from plat recordation until such time as all remaining improvements have been satisfactorily installed in a manner acceptable to the Town of Garner.

B. **Performance guarantee.** There may be cases when it would be unreasonable to require the applicant to comply with all of the requirements of this UDO prior to commencing the intended use of the property or occupying any buildings, such as weather conditions or other factors beyond the control of the permit recipient (exclusive of financial hardship). In these cases, the Planning Director may authorize commencement of the intended use or occupancy of buildings if the permit recipient provides a commercial letter of credit or certified check of up to 125 percent of the cost of the remaining improvement satisfactory to the Planning Director to ensure that all UDO requirements will be fulfilled within not more than 12 months.

C. **Roads intended to be accepted by N.C. DOT.** Any road intended to be accepted by the North Carolina Department of Transportation (N.C. DOT) shall meet the following requirements:

1. An encroachment agreement with NC DOT for all utilities is required prior to the Town issuing a building permit for any more than 25 percent of the lots in the phase of the subdivision currently under construction.

2. The road must be accepted by NC DOT prior to the Town issuing a building permit for any more than 70 percent of the lots in the phase of the subdivision currently under construction.

(Ord. No. 3376, § 13, 1-17-06)