

Review by P&Z: 06/20/07
Public Hearing by M&C: _____
Adopted by M&C: _____
Ord. No. : 008-07
Sponsor: Councilman Pressley

**AN ORDINANCE TO AMEND APPENDIX B, SUBDIVISION
AND LAND DEVELOPMENT ORDINANCE OF THE
TOWN CODE OF SMYRNA**

BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that Appendix B Subdivision and Land Development Ordinance, of the Town of Smyrna be and hereby is amended as follows:

Section 1. Article 2, Section 2.01 Specific words or terms, of Appendix B Subdivision and Land Development Ordinance, of the Town of Smyrna is hereby amended to include the following definitions:

Homeowners' Association. A non-stock corporation (the members of which hold record legal title to lots or parcels of land within a subdivision) which is legally responsible for the maintenance of private open spaces and/or common facilities; also known as "maintenance corporation".

Maintenance Corporation. see "homeowners' association".

Section 2. Article 3, Section 3.04 subdivision plans, of Appendix B Subdivision and Land Development Ordinance, of the Town of Smyrna is hereby amended by adding the following provision as a new subsection (c)(1)(k):

"Copies of deed restrictions, homeowners association articles of incorporation and bylaws, and maintenance declarations applicable within the subdivision (including agreements for operation and maintenance by the homeowners association or property owners in the subdivision of any open space, common areas, storm water management facilities, recreation facilities, or any other facility which is of common use or benefit

and not accepted by the Town) must accompany the record plat and be made a part thereof. All deed restrictions and maintenance agreements shall be recorded in conjunction with the final record plan. A homeowners' association shall be created for the maintenance of all common facilities or lands not to be held in public ownership."

Section 3. Article 3, Section 3.10 Homeowners' association, of Appendix B Subdivision and Land Development Ordinance, of the Town of Smyrna is hereby amended by adding the following after the last sentence in subpart (a):

"The homeowners' association shall be organized and established as a legal entity prior to or as a part of the final plat approval and recording process and all documents related to the homeowners' association shall be submitted in draft form at the time of application for the subdivision plan review (whether minor or major). Such documents shall be acceptable to the Town as a condition of subdivision plan approval".

Section 4. Article 3, Section 3.10 Homeowners' association, of Appendix B Subdivision and Land Development Ordinance, of the Town of Smyrna is hereby amended by adding the following section as part D:

"D. Homeowners' association requirements. If the applicant is required to establish a homeowners' association for purposes of ownership and maintenance of common areas, common facilities and/or open spaces, such association documents shall require, at minimum:

1. Membership mandatory. Membership in the organization shall be mandatory for all purchasers of properties within the development and their heirs and assigns and it shall be inseparable from property ownership. Membership shall become effective upon the first conveyance of a lot by the developer. The members of the homeowners association shall share equitably in the costs of maintaining all open space, common areas and facilities, recreation areas and facilities, and stormwater management areas and facilities which are not accepted by the Town in writing in accordance

with the provisions of all deed restrictions and maintenance agreements, all applicable property maintenance codes, all record plan notes, and in accordance with procedures established by the homeowners' association. The Deed Restrictions shall require, at minimum, that the costs of such maintenance shall be collectable from the owner of the lot(s) to which such costs are assessed and to their successor-in-interest; and that such costs shall be and constitute a lien upon such lot(s), subordinate only to the lien of any mortgage on the property regardless of the priority of such mortgage.

2. Responsibilities. The homeowners association shall be responsible for all maintenance, insurance, taxes, fees, and other burdens customary to the ownership of real property and all improvements and construction thereon, but not limited to all recreation amenities, walkways, storm water facilities, ponds, landscaping, and other facilities not owned or accepted by the Town of Smyrna.
3. Deed restrictions. Restrictive covenants shall provide that in the event the association fails to maintain the common areas, common facilities, and open areas according to the standards of the Town of Smyrna, in accordance with the recorded plan, and in accordance with the requirements of recorded restrictions, the Town, following reasonable notice may:
 - a. Demand that the deficiency of maintenance be corrected; or
 - b. Enter the common area to maintain same. The cost of such maintenance shall be charged to the association; or
 - c. Enforce collection of all assessments owing to the homeowners association from the members thereof in accordance with the provisions of the Homeowners Association Agreement, to the same extent as the Homeowners Association.

