

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 6, 2006

SUBJECT: Improvement Guarantee for Freeman Place

ATTACHMENTS: 1. Application for Improvement Guarantee
2. Draft Performance Guarantee Agreement
3. Cost Estimates

SUMMARY OF REQUEST:

Wayne Nix and Sons Investments, LLC, owner, submitted an application for an improvement guarantee for a major subdivision named Freeman Place. Freeman Place is located on 22 acres of land off of Pilot Mountain Road. The applicant has proposed a total of 35 lots with 21 lots in Phase I. The Master Plan and Development Plan for Freeman Place was conditionally approved by the Planning Board on November 15, 2005. The improvement guarantee is proposed to cover the paving of all roads in Phase I of the subdivision.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements, in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developer intends to deposit with the County a certified check in the amount of at least \$42,500.00 to cover the cost of the improvements (\$34,000.00) as well as the required twenty-five percent (25%) contingency (\$8,500.00). The proposed completion date for the improvements is February 1, 2007.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developer must deposit with the County the certified check in accordance with the terms of the Agreement. Once the funds are submitted for deposit, the County Attorney must certify the Agreement as to form prior to its execution by the Chairman and the developer.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

I recommend that the Board approve the improvement guarantee application for Freeman Place, subject to the developer depositing with Henderson County a certified check in accordance with the terms of the draft Performance Guarantee Agreement.

**Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES**

Name of Subdivision Freeman Place
 Name of Owner Wayne Nix + Sons LLC
 Address 1310 N. Ridge Rd Hendersonville, NC
28792 Phone: 828-685-3659
 Agent _____ Phone: _____
 Date of Preliminary Plan Approval by Planning Board Nov. 15, 2005
 Significant Conditions Imposed: FINAL PLAT

Type of improvement requested:

☒ Cash on Deposit (Certified Check)

☐ Bank Escrow Account

☐ Irrevocable Letter of Credit

☐ Surety Performance Bond

☐ Trust Agreement

Name of bank or bonding company First Citizens

Amount of guarantee (including 25% overhead) \$ 42,500⁰⁰

Projected completion date 2/01/07

Are cost estimates attached (with quantities and unit costs)? ☒ yes ☐ no

Have engineering and design work been completed?

☒ complete ☐ partially complete ☐ incomplete

I have read and understand all requirements stated in Article V of the Henderson County Subdivision Ordinance regarding subdivision improvement guarantees.

Wayne Nix
Owner's Signature

1-18-06
Date

Submitted By Ann Nix

Date 1/18/06

Received By me

Date 1/18/06

\$250.00
paid
1/18/06



STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200__, by and between Wayne Nix and Sons Investments, LLC, hereinafter referred to as "Developer," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

WITNESSETH:

WHEREAS, the Developer is attempting to secure approval of one or more Final Plat(s) for a major subdivision known as Freeman Place, hereinafter referred to as the "Project," located in Henderson County, North Carolina, and;

WHEREAS, the Henderson County Planning Board conditionally approved the Master Plan and Phase I Development Plan for Freeman Place, under Chapter 170 of the Henderson County Code, which is entitled Subdivision of Land, and;

WHEREAS, Chapter 170 requires the completion of certain improvements prior to Final Plat approval, however Sections 170-38 and 170-39 allow the Board of Commissioners to permit the Developer to deposit cash or certified funds with Henderson County to guarantee the completion of said required improvements; and

WHEREAS, the Developer has requested that the Board of Commissioners approve the deposit of cash or certified funds to guarantee and secure the completion of said improvements in lieu of completion of all improvements prior to said approval;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before February 1, 2007, complete as required the following improvements in the Phase I of Freeman Place: fine grading and paving of roads as required by the Henderson County Subdivision Ordinance, as shown on the Phase I Development Plan prepared by Stacy Rhodes, P.L.S., as shown on the attached cost estimates prepared by Hipp Asphalt Paving (dated 1/17/06).
2. The Developer will provide to Henderson County for deposit at least \$42,500.00 in cash or certified funds (the "Improvement Guarantee"), with such monies securing and guaranteeing completion of said improvements by the required date stated in Paragraph 1, above.
3. Henderson County will hold the monies in an interest-bearing account with all interest accruing to the Developer upon the condition that all required improvements be completed by the required date. In the event that the required improvements are completed as required, the monies and all accrued interest will be returned to the Developer. In the event that the improvements are not

completed as required, then the Developer shall be in breach of this Agreement and the Improvement Guarantee and the monies and all accrued interest shall be forfeited by the Developer and shall be used by Henderson County to complete the required improvements.

4. At such time as the County Attorney has reviewed and approved this Agreement and this Agreement is fully executed, and the cash or certified funds are deposited with Henderson County, then the Board will allow the Final Plat(s) for Phase I of Freeman Place subdivision to be approved by the Subdivision Administrator, provided that any other requirements of Chapter 170 of the Henderson County Code and/or conditions imposed by the Subdivision Administrator have been satisfied.
5. The County Manager shall have the authority to approve the release of portions of the Improvement Guarantee as work progresses, provided the amount remaining under the Improvement Guarantee meets or exceeds 125% of the cost of the remaining improvements. The County Manager has the discretion to require the Developer to provide, at the Developer's expense, an independent verification of the remaining work.

IN WITNESS WHEREOF, the Board has, by appropriate action, caused this Agreement to be reviewed for approval by the County Attorney and executed by its Chairman or other authorized member and attested by the Clerk, and the Developer has caused this Agreement to be properly executed, this the ____ day of _____, 200__.

APPROVED AS TO FORM:

County Attorney

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

[OFFICIAL SEAL]

Elizabeth W. Corn, Clerk to the Board

DEVELOPER:
Wayne Nix and Sons Investments, LLC

BY: _____
Manager

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Henderson County, a municipal corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by the Chairman of the Board of Commissioners, sealed with its corporate seal, and attested by her as its Clerk.

THIS the ____ day of _____, 200__.

Notary Public

My Commission Expires: _____ **[NOTARIAL SEAL]**

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, Notary Public for said County and State, certify that the Manager of Wayne Nix and Sons Investments, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

THIS the ____ day of _____, 200__.

Notary Public

My Commission Expires: _____ **[NOTARIAL SEAL]**

Hipp Asphalt Paving

1289 Ozone Drive
Saluda N.C. 28773
(828)749-9278

**PROPOSAL AND
ACCEPTANCE**

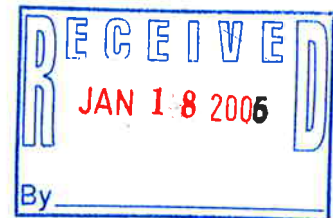
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PROPOSAL SUBMITTED TO <u>Wayne Nix</u>		PHONE	DATE <u>6/17/06</u>
STREET		JOB NAME <u>Freeman Place</u>	
CITY, STATE AND ZIP CODE		JOB LOCATION <u>Pilot Mtn Rd.</u>	
ARCHITECT <u>FAX # 685-3659</u>	DATE OF PLANS	JOB PHONE	

We hereby submit specifications and estimates for:

Grade and conditions Pave with 2" T2 Asphalt
Main Road, 4 side Roads At Freeman Place
using existing Gravel

See attached



We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

Completion of Jobdollars (\$ 34,000.00)

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a workman-like manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature Lloyd HippNote: This proposal may be withdrawn by us if not accepted within 90 days.

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date of Acceptance _____ Signature _____

Wayne Nix & Sons, LLC
1310 North Ridge Road
Hendersonville, NC 28792
828-685-3659

Freeman Place Subdivision
Road Estimated Paving Cost

Unit Price \$8.00 per square yard
Total sq. yds. 4240

Main road 1000' X 20'

Julia Way 122' X 16'
80' X 25'

Nobie's Way 144' X 16'
80' X 25'

Private drive (right) 167' X 10'

Hal's Way 165' X 16'
80" X 25'

