ORDINANCE 2006-02

AN ORDINANCE AMENDING AN ORDINANCE REQUIRING, THE STAGING OR PROVISION OF ADEQUATE PUBLIC FACILITIES OF BOONSBORO, MARYLAND

WHEREAS, the Mayor and Town Council of Boonsboro, Maryland, is empowered under the provisions of Article 568, Section 10.01 of the Annotated Code of Maryland to enact an Ordinance requiring the planning, staging, or provision of adequate public facilities in order to facilitate orderly development and growth of the Town; and

WHEREAS, the Mayor and Town Council adopted an Ordinance to facilitate orderly growth that became effective December 22, 1991 which was duly advertised and a Public Hearing conducted, Town determined that it is appropriate and in the best interest of the inhabitants of the Town to adopt said Ordinance;

WHEREAS, the Mayor and Town Council and the Boonsboro Planning Commission held a Public Hearing and adopted on June 23, 1997 the Comprehensive Development Plan for the Town of Boonsboro;

WHEREAS, the Boonsboro Municipal Utilities Commission conducted a comprehensive review and needs study in 2005 for future adequacy of the Town's public facilities;

WHEREAS, the Mayor and Town Council have determined that certain amendments are appropriate to update the original Ordinance a copy which is attached to this Ordinance in its entirety ([[deleted text]] with new text highlighted in gray);

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Mayor and Council of Boonsboro adopts Ordinance 2006-02;

SECTION TWO: EFFECTIVE DATE

In accordance with Section 210 of the Charter of the Town, this Ordinance shall become effective twenty (20) days from the time of its adoption.

ATTEST:

Barbara Rodenhiser, Town Clerk

THE MAYOR AND COUNCIL OF BOONSBORO

Charles F. Kauffman, Jr., Mayor

Howard W. Long, Assistant Mayor

Richard E. Hawkins, Sr., Councilman

Raymond D. Grove, Councilman

Kevin M. Chambers, Councilman

William L. Tritapoe, Councilman

Ray Hoffman, Councilman

Date of Introduction: January 3, 2006

Date of Adoption: March 6, 2006

Effective Date: March 26, 2006

ORDINANCE FOR GROWTH MANAGEMENT

FOR THE TOWN OF BOONSDORO, MARYLAND

ARTICLE I - PURPOSE

1.1 SHORT TITLE

This Ordinance shall be known and cited as the Ordinance for Growth Management for the Town of Boonsboro, Maryland.

1.2 PURPOSE -

It is the purpose of the Mayor and Council of Boonsboro, Maryland, that public facilities and services needed to support new development shall be available concurrently with the impact of such new developments. In meeting this purpose, public facility and service availability shall be deemed sufficient if the public facilities and services for new development are phased, or the new development is phased, so that the public facilities and those related services which are deemed necessary by the local government to operate the facilities necessitated by that new development, are available concurrently with the impact of the new development. In addition, it may also establish the number of units for which building permits may be allocated annually. For the purpose of this Ordinance, public facilities include, but are not limited to, roads, storm drains, storm water management, water, and sewage.

ARTICLE II - DEFINITIONS

2.1 GENERAL

For the purpose of these regulations, the following, terms, phrases, words and their derivations shall have the meaning given herein. Words in the present tense include the future, the singular number includes the plural, and the plural includes the singular. The word "shall'

is mandatory and the word "may" is permissive. The words "used for" shall include "arranged for", "designed for", "intended for", "maintained for", "constructed for", or "occupied for". The word 'individual" shall mean natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust or the manager, lessee, agent, servant, officer or employee of any of them. The word "land" shall include water surface and land under water

2.2 ADEQUATE PUBLIC FACILTIES

For the purpose of this Ordinance, the term "Adequate Public Facilities" shall be defined as those facilities relating to public roads, sewage disposal systems, schools, water supply and distribution systems meeting established minimum standards. The term "Ordinance" shall refer to this Ordinance and all subsequent additions or amendments thereto. Proposed improvements shall be in compliance with all applicable Town, County and State policies, regulations, and plans as defined herein.

2.3 TERMS DEFINED

2.3.1 Agriculture or Agricultural Purposes

The raising of farm products for use or sale, including animal or poultry husbandry, and the growing of crops such as grain, vegetables, fruit, grass for pasture or sod, trees, shrubs, flowers and similar products of the soil.

2.3.2 Board of Appeals

The Board of Appeals for the Town of Boonsboro, Maryland.

2.3.3 Board of County Commissioners

The local Legislative Body of Washington County, Maryland.

2.3.4 Board of Education

The Washington County Board of Education.

2.3.5 Commission

The Boonsboro Planning Commission

2.3.6 Comprehensive Development Plan

The policies, statements, goals, objectives, and interrelated plans relating to the use of land in the town, or to transportation and community facilities, housing, parks, historic sites, or other elements that are documented in text and maps that constitute a guide for the future development of the town.

2.3.7 Council

The Council of Boonsboro, Maryland.

2.3.8 County

Washington County, Maryland.

2.3.9 County Health Department

The Washington County Health Department.

2.3.10 Development

Any activity, other than normal agricultural activity, which materially affects the existing condition or use of any land or structure.

2.3.11 Developer

Any individual, firm, association, syndicate, co—partnership, corporation, trust or any other legal entity or agent thereof commencing proceedings under this Ordinance to effect a subdivision or development of land hereunder for himself or for another, and while used here in the

masculine gender and singular number it shall be deemed to mean end include the feminine or neuter gender and the plural number whenever required. The term "developer is intended to include the term subdivider.

2.3.12 Extraordinary Hardship

a. Where strict compliance with the Ordinance would prevent the owner or developer from making reasonable return from or to make reasonable use of the property; and

b. The difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and

c. The hardship is not the result of the owner or developers own actions.

2.3.13 Improvements

Improvements shall include storm sewers, sanitary sewers, water supply lines, streets, roads, curbs, gutters, gas lines, electricity lines, water lines, septic tanks, wells, walks, and other accessory works and appurtenances, dwellings, farm buildings, and other principal or accessory structures.

2.3.14 Jurisdiction

The territory of a county or municipal corporation within which its powers may be exercised.

2.3.15 Lot

A parcel of real property marked by the developer as a numbered, lettered or otherwise identified tract to be utilized as a unit of land intended for building development whether immediate or future.

2.3.16 Lot of Record

Any lot or parcel legally designated as a separate and distinct parcel of land on a legally recorded deed filed among the Land Records of Washington County.

2.3.17 Mayor

The mayor of The Town of Boonsboro, Maryland.

2.3.18 Minor Subdivision Plot

The term "minor subdivision plat" as used in this Ordinance is **division of a lot, tract or parcel into five (5) or fewer lots for the immediate or future transfer of property ownership.** **[[**a map, plan, chart or drawing indicating the proposed subdivision or resubdivision of land filed or intended to be filed with the Planning Commission and where the intent of the subdivider is not to develop the land or for proposed subdivision which can be approved by the minor subdivision plat procedure described in Section 233 of the Subdivision Ordinance.**]]**

2.3.19 Person

A corporation, firm, partnership, association, organization, or any other group acting as an estate unit, as well as a natural person.

2.3.20 Plot

A map, plan, chart or drawing indicating the subdivision or resubdivision of land filed or intended to be filed for the record.

2.3.21 Residential

The terms "residential" or residence" are applied herein to any lot, building or portion thereof used exclusively for dwelling unit and/or rental sleeping unit occupancy, including multiple uses.

2.3.22 Resubdivision

A change in a plat of an approved or recorded subdivision if such change affects any street layout, any lot line, or any area reserved or dedicated to public use.

2.3.23 Right-Of-Way

A land area designated, dedicated, or reserved for use as a highway, street, alley, or interior walk, or for a drainage channel, or other public purpose.

2.3.24 Road

A public right of way, intended for vehicular traffic, including freeways, expressways, arterials, parkways, thoroughfares, collector streets, local streets, cul-de-sacs, marginal access streets, avenues, boulevards, roads, lanes and other public ways, with the exception of alleys and as now or hereafter or otherwise designated.

2.3.25 Site Plan

A drawing which shows all of the existing conditions of a specified area (the site) and all of the improvements and changes proposed to be made on the site. A site plan(s) is the drawing(s) required by the Zoning Ordinance for all new development and certain additions and must contain all applicable information as specified in the Zoning Ordinance.

2.3.26 Subdivision Ordinance

The Subdivision Ordinance for the Town of Boonsboro, Maryland, and all subsequent additions or amendments thereto.

2.3.27 Town

The Town of Boonsboro, Maryland

2.3.28 Unit

One or more rooms in a residential building or in a mixed building, which are arranged, designed, used or intended for use by one or more persons living together and maintaining a common household, and which include lawful cooking space and lawful sanitary facilities reserved for the occupants therefore

2.3.29 Utilities Commission

The Boonsboro Municipal Utilities Commission for the Town of Boonsboro.

2.3.30 Year

A period of 12 calendar months.

2.3.31 Zoning Ordinance

The Zoning Ordinance for the Town of Boonsboro, Maryland, and all subsequent additions or amendments thereto.

ARTICLE III - ADMINISTRATION

3.1 ADMINISTRATION OF ORDINANCE

This Ordinance shall be administered by the Boonsboro Planning Commission. All applications, maps, and documents relative to subdivision approval or site plan approval coming under the provisions of this Ordinance shall be submitted to the Boonsboro Planning Commission hereinafter referred to as the "Commission".

3.2 JURISDICTION

The provisions of these regulations shall apply to all lands within the Town of Boonsboro, Maryland.

3.3 NEW DEVELOPMENT

All new subdivisions and site plans for new construction, hereinafter referred to as new development, received for approval by the Planning Commission after the effective date of this Ordinance shall meet the requirements set forth herein prior to final approval.

3.4 DISAPPROVAL

New development that does not meet the requirements for adequate public facilities contained within this Ordinance shall not be approved by the Planning Commission except under the conditions stated in ARTICLE IX; EXCEPTION, AGENCY PARTICIPATION.

3.5 MINOR SUBDIVISION PLATS EXEMPT

Subdivisions which can be approved by the minor subdivision plat procedure described in Section 233 of the Subdivision Ordinance ere not subject to the requirements of this Ordinance.

3.6 APPEALS

Appeals from any decision of the Boonsboro Planning Commission under this Ordinance shall be de novo to the Board of Appeals. The Board of Appeals may grant a variance from the requirements of the Adequate Public Facilities Ordinance only if the variance meets the following requirements:

a. The requirements imposed by the Ordinance would result in extraordinary hardship; and

b. The physical features and characteristics of the proposed plat or site plan are such that a waiver would not impair the intent and purpose of the requirements; and

c. The variance will not endanger or present a threat to the public health, safety or welfare; and

d. Granting the variance would observe the spirit Of the Ordinance and secure public safety and welfare.

Any appeal shall be made by filing the same with the Board of Appeals, through the offices of the Town Clerk, within thirty (30) days after the date of the Planning Commission's decision.

All appeals and applications made to the Board of Appeals shall be in writing, specifying the grounds thereof.

3.6.1 HEARINGS

The Board of Appeals shall fix a reasonable time, not less than thirty (30) days nor more than forty-five (45) days from the appeal date for a public hearing. Applicants and other parties may petition the Board of Appeals for continuance or change of said dates for good cause

At least fifteen (15) days prior to the date fixed for the public hearing, the Board of Appeals shall:

a. Publish a notice containing the name of the applicant or appellant; the date, time and place fixed for the hearing; and a brief statement of the appeal sought by the applicant, in at least one newspaper of general circulation within the Town.

b. Post, in a conspicuous place on the property involved, a notice of pending action containing the same information as in the above; such posting to take place at least fifteen (15) days prior to the date fixed for the appeal hearing.

c. Give written notice of the time and place of such hearing sent by certified mail to the applicant or appellant and to the Owners of Record of property contiguous to or opposite the property affected.

The Board of Appeals, following such action above, shall hold such hearing. At the hearing, any party may appear and be heard in person or by agent or attorney.

3.6.2 HEARINGS - POSTPONEMENT

a. Requests for postponement of a scheduled hearing shall be filed in writing with the Board of Appeals, not less than ten (10) days prior to the date of hearing, and shall be accompanied by a sum of money sufficient to pay the cost of advertising the postponement and the rescheduled hearing. The granting of such requests shall be at the discretion of the Board of Appeals.

b. Requests for postponement filed later than ten (10) days prior to the date of a scheduled hearing, shall, in addition the other requirements set forth in subsection (a) above, be supported by an affidavit of the party making the request) or of some other creditable person. The granting of such requests shall be at the discretion of the Board of Appeals in cases of extreme hardship or upon good cause shown.

c. In any case, no more than three (3) postponements over a period of ninety (90) days are allowed.

3.6.3 HEARINGS - CONTINUANCE

The Board of Appeals may continue a hearing at another time and/or date once such hearing has been started; however, the Board of Appeals shall announce the date and hour of continuance of such hearing while in session.

3.6.4 HEARINGS - DECISION BY THE BOARD OF APPEALS; APPEAL FROM DECISION DY THE BOARD OF APPEALS

The Board of Appeals shall render a decision within thirty (30) days after completion of the hearings. Any person or persons, or any taxpayer, or any officer, department, board, bureau of the jurisdiction, may appeal the same to the Circuit Court of Washington County in a manner set forth in Article 656 of the Annotated Code of Maryland.

3.7 VALIDITY

If validity of any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is, for any reason, held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

3.8 VIOLATIONS AND PENALTIES

Any violation of this Ordinance or the regulations herein shall constitute a misdemeanor and shall be punishable upon conviction by a fine of not less than Two Hundred ($200.00) Dollars nor more than One Thousand ($1,000.00) Dollars. Each day that a violation continues shall be deemed a separate offense. In addition to any other remedies, the Mayor and Council may institute any appropriate actions or proceedings to compel compliance with this Ordinance, as provided for in Article 656 of the Annotated Code of Maryland, as amended from time to time.

ARTICLE IV- ROADS

All new development shall be served by an adequate network of existing and proposed new roads.

4.1 PUBLIC ROADS

Public roads to be built and/or improved as part of the new development shall be constructed to the standards adopted by the Mayor and Council contained in the Street Design Standards.

4.1.1 The type of roadway to be built and/or improved shall be based on the projected volume of traffic that will be generated by the new development in accordance with the aforementioned standards, as amended.

4.1.2 The Planning Commission may require a traffic impact study for proposed commercial or residential development to be provided by the developer.

4.2 EXISTING ROADS

Existing public roads that serve the development shall at a minimum meet the same standards contained in the Town of Boonsboro's Street Design Standards, as amended, or the Washington County Engineering Departments SPECIFICATIONS FOR HIGHWAY AND STREET IMPROVEMENT, as amended, or the applicable standards of the Maryland State Highway Administration (MSHA) if the existing road is a State Highway.

4.2.1 The portion of the existing road required to be adequate for the proposed new development shall be from its intersection with any new road in the development, in each direction to the nearest intersection with a road determined to be adequate to support the projected traffic volume generated by the proposed new development.

4.2.2 The portion of the existing road to be adequate for proposed new developments that do not include the construction of new public streets shall be the road frontage of all new or existing lot(s) containing the proposed new development and the remainder of the road in each direction to the nearest intersection with a road determined to be adequate to support the projected traffic volume generated by the proposed new development.

4.2.3 In determining the adequacy of the existing roads or the improvements necessary to make the existing roads adequate, the Planning Commission or the Maryland State Highway Administration may consider the following:

a. Existing traffic,

b. Traffic projected to be generated by the development,

c. Traffic projected to be generated by other approved but not constructed development,

d. Improvements scheduled to take place within one (1) year from the date of final plot approval,

e. Improvements scheduled in the Maryland Department of Transportation (MDOT) Consolidated Transportation Program,

f. Traffic studies which may be required by the Planning Commission or the Maryland State Highway Administration,

g. Any other information that may reasonably be required by the Manning Commission or the Maryland State Highway Administration, to effectively evaluate the road network or information supplied by the developer.

4.3 ROADS DETERMINED INADEQUATE

If an existing road is determined to be inadequate to accommodate the traffic flow projected to be generated from the new development or scheduled as in Section 4.2.3 (d), above, the new development shall not be approved.

ARTICLE V - SCHOOLS

5.0 ADEQUACY

All residential new development shall be served by public schools that:

a. Are currently adequate;

b. Have funded construction capacity, exclusive of any capacity created pursuant to a Developer-funded mitigation grogram, scheduled for completion within the same school attendance area in the current or the next year of the approved Washington County Capital Improvement Program (CIP) following final plat or site plan approval to be adequate based upon 90% of elementary school State Rated Capacity and to be adequate based on 100 % of State Rated Capacity for middle schools and high schools, or

c. Have been identified by the Board of Education (BOE) as part of an approved redistricting plan scheduled to occur in the current or the next year of final plat or site plan approval that will render the public schools adequate.

5.01 CAPACITY CREATED BY MITIGATION PROGRAM

Funded construction capacity to be created by a mitigation program may not be used in a determination of adequacy for any Developer other that the Developers who are parties to the mitigation program.

[[All residential new development shall be served by public schools which are currently adequate or programmed in the Washington County Capital Budget or Six-Year Capital Improvement Program to be adequate within six (6) years of final plat or site plan approval.**]]**

5.1 EXEMPTIONS

Article V of this Ordinance does not apply to:

a. New development to be developed exclusively for nonresidential uses; or

b. New development to be developed according to federal regulations restricting occupancy in the dwelling units to elderly persons;

[[c. New development consisting of one or two family dwelling units in the Town of Boonsboro.**]]**

c. Public or private elementary and secondary schools, and public safety facilities; or public safety facilities; or

d. Minor Subdivision as defined in Section 2.3.18

[[5.1.1 The Planning Commission may exempt a new development to be developed as a retirement community.**]]**

5.2 ADEQUACY DETERMINED

5.2.1 The Boonsboro Planning Commission shall determine whether public school facilities are "adequate" for the proposed new development. The Commission shall review the recommendation of the Planning Department of Washington County and evaluation enrollment information provided by the Washington County Board of Education. The Boonsboro Planning Commission shall determine that a school is adequate if the school has the capacity to accommodate student enrollment without exceeding **[***105%***]** **90 %** of the State Interagency Committees capacity rating for each **elementary** school. **Middle and high schools shall be determined adequate if the school has available capacity to accommodate student enrollment, including new development without exceeding the State Rated Capacity established for each school.**

5.3 RESIDENTIAL BUILDING PERMIT APPROVAL

5.3.1 The Boonsboro Planning Commission shall review the Washington County Planning Departments Adequacy of Schools Report and **forward a recommendation to the Mayor and Town Council.**

5.3.2 The **[[**Planning Commission**]]** **Mayor and Town Council** of the Town of Boonsboro shall have the authority to limit the number of new residential building permits within the corporate limits of the Town of Boonsboro relating to the Boonsboro school district. The decision to limit building permits shall be based on the Comprehensive Development Plan of the Town of Boonsboro, the recommendation of the **Boonsboro Planning Commission and the** Washington County Planning Commission **report on** adequacy of the school district.

ARTICLE VI - SEWAGE DISPOSAL SYSTEMS

All new subdivisions and development shall be served by adequate sewage disposal systems.

6.1 ADEQUACY DETERMINED

6.1.1 The adequacy of a site to accommodate a private, individual, on-site septic disposal system shall be evaluated by the Washington County Health Department according to the standards$_1$ guidelines and procedures contained in the Washington County On-Site Sewage Disposal Ordinance and C.O.M.A.R 26.04.02 and 26.04.03.

6.1.2 The adequacy of existing community or multi-use sewage disposal system to accommodate the flow projected to be generated by the new development shall be evaluated by a Maryland Registered Professional Engineer and a complete report submitted to the Boonsboro Municipal Utilities Commission for review. The engineer shall be provided by the developer. Adequacy shall then be determined by the Planning Commission upon consideration of the recommendation made by the Utilities Commission. Adequacy shall be determined according to the Utilities Commissions adopted guidelines, standards, policies or procedures and any other applicable, County, State, or Federal regulation.

6.1.3 The adequacy of a new community or multi-use sewage disposal system shall be determined by the Planning Commission upon recommendations made by the Boonsboro Municipal Utilities Commission. Adequacy shall be determined according to the Utilities Commissions adopted guidelines, standards, policies or procedures and any other applicable County, State, or Federal regulation. Establishment of new community or multi-use sewage disposal systems shall be consistent with the WASHINGTON COUNTY WATER AND SEWERAGE PLAN and the COMPREHENSIVE DEVELOPMENT PLAN for the Town of Boonsboro.

6.1.4 In determining the adequacy of any sewage disposal system (other than a private, individual, on-site system), all parts of the system affected by the projected flow generated from the new development shall be considered including, but not limited to, laterals, interceptors, pumping stations, force mains, treatment plants, points of discharge, flow meters and rights-of-way.

6.1.5 In evaluating the adequacy of sewage disposal systems, the Boonsboro Municipal Utilities Commission may consider the following items:

a. Design Capacity;

b. Available Capacity;

c. Adopted standards, guidelines, policies, and procedures;

d. The projected flow to be generated by the new developments;

e. Other proposed or expected connections to the system;

f. Other variables found to have an effect on the systems ability to accept the projected flow.

6.2 DETERMINATION OF EXPECTED FLOW

The projected flow expected to be generated by the proposed new development shall be determined by the Boonsboro Municipal Utilities Commission.

6.3 SEWAGE DISPOSAL SYSTEMS DETERMINED INADEQUATE

If the Planning Commission, upon recommendation of the Boonsboro Municipal Utilities Commission, determines that the sewage disposal site or system is inadequate to accommodate the sewage disposal needs of the new development, the new development shall not be approved.

ARTICLE VII - WATER SUPPLY AND DISTRIBUTION SYSTEMS

All new development shall be served by an adequate water supply and distribution system which provides sufficient water and service pressure for domestic consumption and fire protection.

7.1 ADEQUACY DETERMINED

7.1.1 The adequacy of an existing public or multi-use water supply and distribution system to provide the projected water needs of the new development shall be evaluated by a Maryland Registered Professional Engineer and a complete report submitted to the Boonsboro Municipal Utilities Commission for review. The engineer shall be provided by the developer. Adequacy of the system shall then be determined by the Planning Commission upon consideration of the recommendations made by the Utilities Commission. Adequacy shall be determined according to the Utilities Commissions adopted guidelines, standards, policies or procedures and any other applicable County, State, or Federal regulation.

7.1.2 The adequacy of a new community or multi-use water supply and distribution shall be determined by the Planning Commission upon recommendations made by the Boonsboro Municipal Utilities Commission Adequacy shall be determined according to the Utilities Commissions adopted guidelines, standards, procedures and policies. Establishment of new public or multi-use water supply and distribution systems shall be consistent with the WASHINGTON COUNTY WATER AND SEWERAGE PLAN and the COMPREHENSIVE DEVELOPMENT PLAN for the Town of Boonsboro.

7.1.3 When determining the adequacy of any water supply and distribution system for domestic consumption and fire protection, all ports of the system affected by the projected water needs of the new development shall be considered, including but not necessarily limited to the water source, quality, distribution or collection system, treatment system, pumping facilities, metering devices, and rights-of-way.

7.1.4 When evaluating the adequacy of a water supply and distribution system the Boonsboro Municipal Utilities Commission may consider the following items:

a. The system's design capacity;

b. The system's water supply source;

c. The system's available capacity;

d. The Commission's adopted guidelines, standards, procedures and policies regarding water service;

e. The projected water needs of the proposed development including domestic consumption and fire protection;

f. Other proposed or expected connections to the system;

g. The evaluations end recommendations of the local Fire Deportment(s) that provides fire protection service in the new development;

h. Other variables found to have an affect on the ability of the water system to deliver the projected water needs of the development;

i. Existing facilities affected by the proposed development

7.2 DETERMINATION OF PROJECTED WATER NEEDS

The projected water needs of the new development for domestic consumption and fire protection shall be determined by the Planning Commission, after reviewing the recommendation of the Utilities Commission.

7.3 WATER SUPPLY AND DISTRIBUTION SYSTEM DETERMINED INADEQUATE

If the Planning Commission, upon recommendations from the Boonsboro Municipal Utilities Commission determines that the community or multi-use water supply and distribution system is inadequate to accommodate the projected needs of the new development, the development shall not be approved.

ARTICLE VIII - BUILDING UNITS

8.1 The [Planning Commission] **Mayor and Town Council** may determine the number of units for which building permits may be issued annually for any new development. In no case shall the total number of permits issued exceed the number of units for which the development was approved. The year shall commence from the date of the issuance of the first building permit and for each succeeding 12 month period thereafter.

8.2 If a developer does not complete the number of residential units allocated, he may carry those units over to succeeding years. The units will be charged against the number of units for which the Commission has given approval for the successive year.

8.3 With the exception of individual lot sales, the number of building permits allocated for a given development may not be transferred to a subsequent owner unless the remainder of the development is conveyed in its entirety and constructed in accordance with the final plat.

8.4 Minor subdivisions of four (4) lots or less may be exempted from the requirements of this Ordinance provided that the Owner does not own contiguous lots which total in excess of four (4) lots.

ARTICLE IX – EXCEPTIONS, AGENCY PARTICIPATION

9.1 Nothing under the terms of this Ordinance shall prohibit or prevent an individual from agreeing to constructing necessary improvements for the purpose of complying with this Ordinance. **Nothing under the terms of this Ordinance shall prohibit or prevent the Mayor and Town of Boonsboro, Board of County Commissioners and an individual from reaching an agreement as to a mitigation program for the purpose of ensuring the adequacy of public facilities as required by this Ordinance.**

9.2 Nowithstanding any other provision or term of this Ordinance, neither the Mayor or Council nor any governmental body shall be compelled to enter into an agreement as to a mitigation program with a Developer for the purpose of advancing the adequacy of public facilities as required by this Ordinance.

9.3 Any mitigation program submitted to the Mayor and Council shall be in full compliance with the Washington County Adequate Public Facilities Ordinance as amended.

[[9.2]] With regard to any public facility governed under this Ordinance, the Mayor and Council of Boonsboro, the Washington County Commissioners, the State of Maryland, or any other responsible agency hereinafter referred to collectively as the Agency, may elect to participate in the cost of any necessary improvements to make the facility adequate.**]]**

[[9.3 The Agency may elect to participate in the cost of the improvements, if the facility involved is located within the Town Growth Area as identified in the COMPREHENSIVE DEVELOPMENT PLAN and determined by the Washington County Planning Commission. The Agency participation shall be determined after consideration of the benefits of the improvement with regard to the existing and/or future needs of the public.**]]**