



# TOWN OF HILLSBOROUGH

**To:** Mayor and Board of Commissioners

**From:** Matt Efird, Assistant Town Manager

**CC:** Eric Peterson, Town Manager

Corbinton Commons HOA

**Date:** March 11, 2024

**Subject:** Status of Corbinton Commons Alleys

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As Board Members may be aware, town staff and residents of the Corbinton Commons neighborhood have been working for years, mostly unsuccessfully, to get the public infrastructure associated with the Corbinton Commons neighborhood to be acceptably completed by the developer in order for the town to assume maintenance responsibility. **The residents have devoted a significant amount of time and energy over the years advocating for the developer to deliver a finished product, and have been immensely helpful to town staff in identifying and tracking construction deficiencies. This is not a case of the town and residents being at odds; the interests of both parties are aligned in trying to address subpar performance by the developer.** The Board was recently briefed on a series of conditions from the developer and staff recommendations on a response, with the goal of bringing the negotiations to a close.

Of the many uncompleted punch list items that staff and residents have been pushing for, a number relate to the alleys located around the exterior of the property to the rear of a number of residences (see image below – alleys highlighted in purple). This memo is intended to provide additional background information to inform the Board and residents of the issues being considered by staff in determining next steps on potential acceptance of the alleys for public maintenance.



## I. Timeline

One of the significant factors in the ongoing disputes and confusion over the public infrastructure in the Corbinton Commons neighborhood is the length of time between initial approval of the development, construction of public infrastructure and construction of the homes that have now been occupied for several years. The following brief timeline is a reminder of pertinent dates.

1. October 2003 – Board of Commissioners (BOC) denies rezoning and Special Use Permit (SUP) for Corbinton Commons after more than a year of consideration
2. 2004 – Town ordered by Court to issue SUP
3. 2004-2006 – Litigation continues over various aspects of Corbinton SUP. SUP ultimately issued June 12, 2006.
4. 2006-2007 – Construction drawings approved for Corbinton Commons, including public infrastructure. 2006 Construction Drawings list alleys as “20’ Private R/W”, but 2007 Drawings list alleys as “20’ Public R/W”, but also states that “By referencing roadway improvements on the plan, the Applicant agrees to construct said improvements prior to the issuance of Certificate of Occupancy in a manner that will allow them to function as noted on the plan and in accordance with NCDOT and Town of Hillsborough Standards and Policies...”
5. 2015 – Updated Construction Drawings received indicating Alleys as “20’ Public R/W, 14’ PVMT”. Includes same agreement to construct to standards as 2006/2007 documents.
6. 2016 – Plats recorded indicating Alleys as “45’ Public R/W” – also includes dedication from developer “to public use all areas shown on this plat as streets, **alleys**, walks, parks, open space and easements, except those specifically indicated as private, **and that I will maintain all such areas until the offer of dedication is accepted by the appropriate public authority.**”
7. 2015-2017 – Construction of Residential Units by Blue Heel.
8. June 2020 – Punch List prepared by Summit Engineering covering acceptance criteria for streets, sidewalks and stormwater conveyances.
9. August 2020 – final Certificate of Occupancy issued for residential construction.
10. January 2022 – Alleys deeded from developer to Corbinton Commons Association. This is contrary to the plat language listed above with respect to maintenance of the alleys until dedication is accepted by the “appropriate public authority”. This occurred without the knowledge of the association, though that was apparently not a legal requirement of the transfer.
11. February 2022 – Email from town staff to HOA states “**The recorded plat for the community clearly indicates the alleys are dedicated to public use. The town has been operating under the assumption they would be dedicated once our standards are met.**”
12. November 2022 – Town Attorney sends final consolidated punch list to developer. **The transmittal references multiple previous instances of notice of construction defects to developer in May 2020, October 2021, December 2021, and March 2022.** Of note, the punch

list includes several necessary repairs in alleys, indicating that they would be accepted as public.

13. December 2022 – Town Board approves a Hold Harmless Agreement to allow the Town to provide snow plowing services prior to acceptance of streets and sidewalks. The agreement specifically says that the Town was not committing to accept the dedication of rights-of-way. The agreement is renewed in October 2023 with the same stipulations.
14. February 2023 - Board is updated on lack of progress on Corbinton punch list, including alleys.
15. December 2023 – Town staff meets with developer to discuss lack of progress on punch list. Developer primarily focused on their plans for east section of development, which has no active planning entitlements. Staff repeatedly refuses to discuss entitlement of future phases. Outstanding punch list provided again to developer.
16. February 2024 – Letter from developer to Town Attorney following up from December 2023 meeting states that the developer “no longer has the right or obligation to make additional repairs” to the alleys, which have been conveyed to the HOA. Additionally, the developer claims that the act of issuing Certificates of Occupancy for the residences indicates town approval of standards being met for streets and sidewalks per UDO Section 6.1. It should be noted that that section specifically says “The standards set forth in this section are to be used in conjunction with the other sections of this Ordinance in the development of projects and submittal of site plans”, and that Section 6.21 holds that new public streets must meet both the town standards for street construction and town acceptance procedures.
17. February 2024- Staff briefs Town Board on demand letter from developer, indicates intended direction on continued negotiations. As developer no longer owns alleys, and alleys are not constructed to town standards, staff advises that they should remain under HOA ownership. Following board discussion, town staff advises HOA of direction regarding alley ownership.

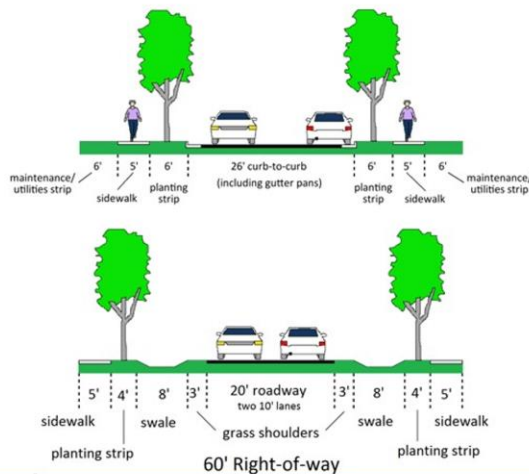
## **II. Alley Construction vs. Standards**

The chart below illustrates the differences between the alleys as constructed and the Town’s current minimum street standards. It is unclear what, if any standard the alleys were originally reviewed against during the construction drawing approval process as there is no similar town or NCDOT standard. If originally intended as private, they would not have been reviewed against a town or NCDOT standard. The depth and condition of the asphalt and subgrade is currently unknown and would require core sampling to determine what, if any, upgrades would be needed to meet town standards.

<u>Requirement</u>	<u>Standard</u>	<u>Corbinton Alleys</u>
Right-of-Way width	60'	20'
Roadway width	26'	14'
Planting Strip	6' each side	None
Sidewalk	5' on each side	None
Sight Distance	70'	Unknown – but well below 70'
Drainage	Curb & gutter or 8' swale	Central drain

## Comparison of Alleys to Street Standards

RESIDENTIAL LOCAL STREET



### III. Precedents

There are several other situations in new developments around town that have similar issues that needed to be worked through. In considering the path forward on this issue, the board should be aware of past decisions and potential implications on future developments.

1. Forest Ridge – Homes in the Forest Ridge development along Quincy Cottage Rd. and Ellsworth Manor Dr. are served by rear alleys similar to Corbinton Commons. The alleys are similarly narrow and do not meet town standards for street construction. In Forest Ridge, the alleys are not platted as separate right-of-way, they are either included in the development's common property or as part of individual residential parcels (likely with an access easement). The town does not provide maintenance for these alleys, nor are they serviced for trash

collection or snow plowing. Trash and recycling are collected at the front of the property on public roads. In Corbinton, there are not necessarily direct paths for residents to take their trash and recycling containers to the public street in front of their homes.

2. Waterstone Terraces – The HOA was required to bring Aronia Dr., Monarda Way, Rubrum Dr and Allium Ln. up to Town standards before acceptance for town maintenance. These streets were intended by the developers to be private. Private streets in residential developments no longer allowed since March 2022.
3. Harmony @ Waterstone, Elfin’s Pond – Both development’s HOAs are currently in the process of bringing their streets up to town standards, including re-platting the properties into separate right-of-way parcels. In both cases, the streets were originally intended by the developers to be private. Private streets in residential developments no longer allowed since March 2022.

#### **IV. Options for Moving Forward**

In this particular situation, there is likely no good win-win scenario. Either the residents or the town will incur the responsibility and cost of addressing something that should have been handled by the developer. At this point, staff offers to the board for consideration the following options:

1. Town accepts the alleys as-is, brings them up to standards at town expense
  2. Town agrees to accept alleys once HOA has brought them into compliance with standards
  3. HOA maintains ownership and maintenance responsibility for alleys, town continues to provide services via hold-harmless agreement.
  4. Town and/or HOA continues to pursue developer to bring roads to standards
- Scenario 1 puts all of the cost burden on the town (and other residents) and is contrary to precedent.
  - Scenario 2 puts the burden on the Corbinton residents but is consistent with recent precedent.
  - Scenario 3 is what town staff recently proposed to both the board and HOA. This avoids either party having to bear the cost of improving the alleys to town standards at this time. This is similar to the Forest Ridge example above but it does not address the identified information in the timeline above that indicates that the town would accept the alleys, which may not be fair to the residents that relied upon that information.
  - Scenario 4 could place the cost burden on the developer – but only if negotiations and/or legal actions are successful in compelling the developer to do so. There will potentially be a cost to ongoing legal action, and the residents will continue to go without closure. The town may continue to offer snow plowing and trash collection services via a hold-harmless agreement, so this scenario ultimately continues the status quo for some undetermined time into the future.

- If the board were to decide that Option 1 or 2 is most appropriate (i.e. that the town will ultimately accept the alleys as public), staff has started working on an alternative compliance path that is more feasible than bringing the alleys up to town standards. This would entail bringing the alleys up to standards consistent with NCDOT Traditional Neighborhood Development design guidelines and would include one-way travel, reduced speed limits, restricted truck traffic, additional encroachment agreements and changes to the neighborhood covenants and town policies. The significant issues of apron width, sight triangles and driveway tie-ins would still need to be addressed under this scenario. The condition of the asphalt and subgrade would still need to be examined and addressed as needed. This process will not necessarily be easy, quick or inexpensive, but offers a better option than trying to reach current town standards.

## Option – NCDOT Traditional Neighborhood Design Guidelines



**Purpose:** Although part of the interconnected street system, alleys provide access to property but are not intended to accommodate through traffic. Alleys are often used by garbage trucks. In some areas alleys must accommodate dumpsters.  
 [Note: Not to be accepted onto the state system]

### Features

- Requires 20' right of way (minimum)
- Utilities, either above or underground, may be located in alleyways to provide service connections to rear elevations
- Width 12' (minimum)
- Additional pavement at alleyway intersections is necessary to facilitate turns.

### Building and Land Use

- Residential - primarily single family
- Provides rear access to garages