

**MADISON COUNTY, KENTUCKY FISCAL COURT
ORDINANCE NO. 18-17
AMENDMENT TO ORDINANCE #00-02**

AN ORDINANCE OF THE MADISON COUNTY FISCAL COURT, KENTUCKY, AMENDING ORDINANCE #00-02, THE MADISON COUNTY PLANNING AND ZONING REGULATIONS REGARDING CONSTRUCTION GUARANTEES AND PERFORMANCE BONDS.

BE IT ORDAINED BY THE FISCAL COURT OF MADISON COUNTY, KENTUCKY:

WHEREAS, the Madison County Office of Planning and Development identified a need to update and improve the Regulations regarding Construction Guarantees and Performance Bonds;

AND WHEREAS, the Madison County Planning Commission held a public hearing on Tuesday, August 21, 2018 to consider said changes to the Regulations; after discussion of same, voted to recommend to the Madison County Fiscal Court that the text of **Section 316 1. and 316.2** as follows:

316.1 Completion of Improvements – Prior to the submission of the Final Plat to the Planning Commission for approval, the developer shall complete all required improvements in compliance with the development ordinance and the *conditions and requirements* of the approved preliminary plat, including but not limited to all contemplated roads (including final cap of asphalt), curbs and gutters (if applicable), drainage systems (including catch basins, detention/retention basins, as applicable), headwalls, and culverts, but excluding sidewalks. The Codes Enforcement Officer shall then accept the filing of the Final Plat for consideration by the Planning Commission.

316.2 Performance Bonds – Any final plat submitted for approval shall be accompanied by a bond in an amount not less than fifty percent (50%) of the amount that the County Road Department Supervisor shall estimate to be the cost of the final 1 inch surface coat of asphalt, plus the estimated costs of all additional road improvement requirements and including but not limited to, curbs and gutters (if applicable), sidewalks, drainage systems (including catch basins, detention/retention basins, as applicable), headwalls, and culverts; said estimate shall be as set out by the County Road Department Supervisor in his sole discretion for the completion of said improvement and the adoption of the right of ways into the County road system.

- (a) The bond may be in the form of a surety bond or negotiable United States Treasury Certificates of the kind approved by law for securing deposits, or Irrevocable Commercial Letters of Credit in a form and from sureties

approved by the Madison County Fiscal Court and the Madison County Attorney.

- (b) The bond shall be executed by the Developer as principal, and if a surety bond, shall be executed by a corporation authorized to act as a surety under the laws of the Commonwealth of Kentucky, as surety. The bond shall be a joint and several obligation of the principal and the surety for the faithful performance of all repairs to or replacement of any of the improvements required as a condition of approval of the Final Plat, and any related inspections and engineering costs or fees, including attorneys' fees or other costs and expenses incurred in collecting under the bond.
- (c) After five (5) years from the issuance of the original performance bond, the amount of the bond shall be reassessed upon Notice by the County Planning Administrator at which time the County Road Department Supervisor shall reassess the estimate of the previous bond under current market costs and a new performance bond shall be secured by the Developer consistent with said estimate.
- (d) The Madison Fiscal Court may demand that the Developer perform within a specified period of time any repairs identified by the County Road Supervisor, or, in its sole discretion may, without notice or demand, perform any repairs or replacement deemed necessary and pay all costs and fees and demand payment of the covered expenses under *the* surety bond or withdraw the requisite amount to reimburse the covered expenses from any deposits in lieu of a security bond.
- (e) In the event a surety bond is not renewed or is about to expire by its terms and is not replaced by the Developer prior to termination, the Fiscal Court may demand payment in full of the bond and shall hold the proceeds thereof for the remaining term of the developer's obligation for repair, replacement, or completion of the improvements then release any unused balance to the developer.
- (f) The bond shall remain in effect until such time as 75% of all lots have been developed and the completion of the improvements required for approval of the Final Plat, including but not limited to all contemplated roads (including final cap of asphalt), curbs and gutters (if applicable), sidewalks, drainage systems (including catch basins, detention/retention basins, as applicable), headwalls, and culverts; at which time, the Developer may petition the County to release the bond and adopt the right of ways into the County Road System. Approval of said petition shall be subject to the inspection and approval by the County Road Supervisor in his sole discretion of the improvements required for approval of the Final Plat.

Alternatively, after five (5) years from the date of approval of the Final Plat and at such time as 50% of all lots have been developed and the completion of the improvements required for approval of the Final Plat, including but not limited to all contemplated roads (including final cap of asphalt), curbs and gutters (if applicable), sidewalks, drainage systems (including catch basins, detention/retention basins, as applicable), headwalls, and culverts; at which time, the Developer may petition the County to release the bond and adopt the right of ways into the County Road System. Approval of said petition shall be subject to the inspection and approval by the County Road Supervisor in his sole discretion of the improvements required for approval of the Final Plat.

Developers having Final Plats approved prior to the passage 316 (f) may have bonds released under the requirements existing at the time of their Final Plat approval or may elect to petition the County to release the bond under the requirements set out herein.

- (g) Notwithstanding any other provision contained herein, Developers having Final Plats approved prior to the passage 316 (f) may petition the County to release the bond and adopt the right of ways into the County Road System under the requirements contained in 316(f) except that they shall be responsible for the completion of sidewalks only upon the lots owned by the Developer at the time of said Petition.

NOW, THEREFORE BE IT ORDAINED AND ENACTED BY THE FISCAL COURT OF THE COUNTY OF MADISON, COMMONWEALTH OF KENTUCKY, that the text of Section 316.1 and Section 316.2 shall be changed to read as follows:

316.1 Completion of Improvements – Prior to the submission of the Final Plat to the Planning Commission for approval, the developer shall complete all required improvements in compliance with the development ordinance and the *conditions and requirements* of the approved preliminary plat, including but not limited to all contemplated roads (including final cap of asphalt), curbs and gutters (if applicable), drainage systems (including catch basins, detention/retention basins, as applicable), headwalls, and culverts, but excluding sidewalks. The Codes Enforcement Officer shall then accept the filing of the Final Plat for consideration by the Planning Commission.

316.2 Performance Bonds – Any final plat submitted for approval shall be accompanied by a bond in an amount not less than fifty percent (50%) of the amount that the County Road Department Supervisor shall estimate to be the cost of the final 1 inch surface coat of asphalt, plus the estimated costs of all additional road improvement requirements and including but not limited to, curbs and gutters (if applicable), sidewalks, drainage systems (including catch basins, detention/retention basins, as applicable), headwalls, and culverts; said estimate shall be as set out by the County Road Department Supervisor in

his sole discretion for the completion of said improvement and the adoption of the right of ways into the County road system.

- (a) The bond may be in the form of a surety bond or negotiable United States Treasury Certificates of the kind approved by law for securing deposits, or Irrevocable Commercial Letters of Credit in a form and from sureties approved by the Madison County Fiscal Court and the Madison County Attorney.
- (b) The bond shall be executed by the Developer as principal, and if a surety bond, shall be executed by a corporation authorized to act as a surety under the laws of the Commonwealth of Kentucky, as surety. The bond shall be a joint and several obligation of the principal and the surety for the faithful performance of all repairs to or replacement of any of the improvements required as a condition of approval of the Final Plat, and any related inspections and engineering costs or fees, including attorneys' fees or other costs and expenses incurred in collecting under the bond.
- (c) After five (5) years from the issuance of the original performance bond, the amount of the bond shall be reassessed upon Notice by the County Planning Administrator at which time the County Road Department Supervisor shall reassess the estimate of the previous bond under current market costs and a new performance bond shall be secured by the Developer consistent with said estimate.
- (d) The Madison Fiscal Court may demand that the Developer perform within a specified period of time any repairs identified by the County Road Supervisor, or, in its sole discretion may, without notice or demand, perform any repairs or replacement deemed necessary and pay all costs and fees and demand payment of the covered expenses under *the* surety bond or withdraw the requisite amount to reimburse the covered expenses from any deposits in lieu of a security bond.
- (e) In the event a surety bond is not renewed or is about to expire by its terms and is not replaced by the Developer prior to termination, the Fiscal Court may demand payment in full of the bond and shall hold the proceeds thereof for the remaining term of the developer's obligation for repair, replacement, or completion of the improvements then release any unused balance to the developer.
- (f) The bond shall remain in effect until such time as 75% of all lots have been developed and the completion of the improvements required for approval of the Final Plat, including but not limited to all contemplated roads (including final cap of asphalt), curbs and gutters (if applicable), sidewalks, drainage

systems (including catch basins, detention/retention basins, as applicable), headwalls, and culverts; at which time, the Developer may petition the County to release the bond and adopt the right of ways into the County Road System. Approval of said petition shall be subject to the inspection and approval by the County Road Supervisor in his sole discretion of the improvements required for approval of the Final Plat.

Alternatively, after five (5) years from the date of approval of the Final Plat and at such time as 50% of all lots have been developed and the completion of the improvements required for approval of the Final Plat, including but not limited to all contemplated roads (including final cap of asphalt), curbs and gutters (if applicable), sidewalks, drainage systems (including catch basins, detention/retention basins, as applicable), headwalls, and culverts; at which time, the Developer may petition the County to release the bond and adopt the right of ways into the County Road System. Approval of said petition shall be subject to the inspection and approval by the County Road Supervisor in his sole discretion of the improvements required for approval of the Final Plat.

Developers having Final Plats approved prior to the passage 316 (f) may have bonds released under the requirements existing at the time of their Final Plat approval or may elect to petition the County to release the bond under the requirements set out herein.

- (g) Notwithstanding any other provision contained herein, Developers having Final Plats approved prior to the passage 316 (f) may petition the County to release the bond and adopt the right of ways into the County Road System under the requirements contained in 316(f) except that they shall be responsible for the completion of sidewalks only upon the lots owned by the Developer at the time of said Petition.

The Madison County Office of Planning and Development shall make the appropriate textual changes to the Madison County Planning and Zoning Regulations to effect this change.

THIS ORDINANCE NO. 18-__17__ SHALL BECOME EFFECTIVE ON THE DATE OF THE SECOND READING AND ADOPTION.

That the County Clerk cause this Ordinance to be published in accordance with the Kentucky Revised Statutes.

DATE OF FIRST READING:

August 28, 2018

MOTION BY:

John Tudor

SECONDED BY:

Roger Barger

VOTE:

YES

NO

Magistrate Larry Combs

✓

Magistrate Roger Barger

✓

Magistrate John Tudor

✓

Magistrate Tom Botkin

✓

Judge Reagan Taylor

✓

DATE OF SECOND READING:

Sept 25, 2018

MOTION BY:

John Tudor

SECONDED BY:

Roger Barger

VOTE:

YES

NO

Magistrate Larry Combs

✓

Magistrate Roger Barger

✓

Magistrate John Tudor

✓

Magistrate Tom Botkin

✓

Judge Reagan Taylor

✓

B-72-
MADISON COUNTY JUDGE/ EXECUTIVE

Attest:

Kenny Barger
Madison County Clerk, Kenny Barger