

Mapleton City Council Staff Report

Meeting Date: March 19, 2014

Applicant: Mapleton City

Prepared by: Sean Conroy, Community Development Director

Public Hearing Item: Yes

Zone: All

Description: Consideration of an Ordinance amending Mapleton City Code (MCC) Chapters 17.03, 17.04, 17.16, 17.20, 17.24, 18.82.170 and 18.84.390 modifying the city's bonding requirements for subdivision improvements.

BACKGROUND AND PROJECT DESCRIPTION

When most subdivision developments in the City are approved, there are requirements to install improvements such as roads, curb, gutter and sidewalks, culinary water, pressurized irrigation and sewer lines. Prior to recording the final plat with the county recorder, the City currently requires the developer to post two bonds. The first bond is a performance bond that guarantees the installation of the improvements and is in an amount equal to the City Engineer's cost estimate for the work to be completed. The second bond is a cash durability bond in an amount of 20% of the performance bond. The purpose of this bond is to cover any defects that may have been identified with the improvements during the one year durability period.

The City does not currently allow any work to begin on the improvements until the bonds have been posted and the plat has been recorded. However, recent changes to state code require municipalities to allow an applicant to either bond for the required improvements prior to recording the plat or to install the improvements without bonding prior to the subdivision plat being recorded. State code also limits the durability bond to no more than 10%. The proposed ordinance is designed to comply with these new state regulations.

EVALUATION

Bonding vs. Not Bonding: The majority of the code sections that are being amended as part of this ordinance are simply to reflect the new option for installing improvements. MCC Chapter 17.16.010 contains the major substantive changes of the ordinance and should be the primary focus of the Council's review. This amended section requires the following:

- Upon approval of a subdivision plat the applicant shall either bond for the improvements as currently required, or shall install the improvements prior to plat recording as allowed by state code.
- If an applicant elects to install the improvements prior to plat recording, the following will be required prior to the commencement of construction:
 - City Engineer shall approve the final construction drawings;
 - A pre-construction meeting shall be held;
 - A durability bond shall be required;
 - A site restoration bond shall be required. The purpose of this bond is to provide some ability for the City to address safety hazards that might exist if a developer walks away from a project prior to completing the work. For example, if a trench had been dug for a sewer line, but the project was never completed, the City could use the restoration bond to fill in the trench.
 - All engineering inspection fees shall be paid;
 - The applicant shall submit a lien waiver from all contractors, suppliers, etc.;
 - The applicant shall comply with all storm water requirements and permits; and
 - All utility companies have been notified of the proposed work.

- If an applicant elects to install the improvements rather than bonding, then the City will not authorize the plat to be recorded until it has accepted the required improvements.

Durability Bond: MCC Chapter 17.20.050.A has been amended to indicate that the durability bond (previously called the improvements assurance warranty) shall be 10% of the cost estimate for the improvements, per state code.

Plat Recording Timeline: MCC Chapter 17.04.080 currently states that if a plat is not recorded within three years of final approval that the approvals shall become null and void. Staff is recommending that the three year timeframe be reduced to two years. This will ensure that applicants that elect to install the required improvements prior to plat recording will be motivated to complete the improvements in a timely manner.

RECOMMENDATION:

Adopt the attached ordinance.

ATTACHMENTS:

1. Proposed ordinance.
2. State Code citation.

ORDINANCE NO. 2014-

CONSIDERATION OF AN ORDINANCE AMENDING MAPLETON CITY CODE (MCC) CHAPTERS 17.03, 17.04, 17.16, 17.20, 17.24, 18.82.170 AND 18.84.390 MODIFYING THE CITY'S BONDING REQUIREMENTS FOR SUBDIVISION IMPROVEMENTS.

WHEREAS, Utah Code Section 10-9a-604.5 indicates that a developer shall install any required improvements prior to recording a subdivision plat unless the developer requests to post a bond for the required improvements; and

WHEREAS, Mapleton City Code (MCC) currently requires that a performance bond be posted prior to the recording of any subdivision plat; and

WHEREAS, the proposed ordinance would allow a developer to elect to either install the required public improvements prior to the recording of a subdivision plat, or to bond for the improvements consistent with state code; and

WHEREAS, the Planning Commission has recommended approval of the proposed ordinance.

NOW THEREFORE, BE IT RESOLVED by the City Council of Mapleton, Utah, to amend Mapleton City Code chapters 17.03, 17.04, 17.16, 17.20, 17.24, 18.82.170 and 18.84.390 modifying the city's bonding requirements for subdivision improvements as described in Exhibit "A".

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF MAPLETON, UTAH,

This 19th Day of March, 2014.

Brian Wall
Mayor

ATTEST:

Camille Brown
City Recorder

Publication Date:
Effective Date:

Exhibit “A”
(Changes Shown in Strikeout and Underline and Highlighted)

17.03.090: REQUIRED IMPROVEMENTS BONDING REQUIREMENTS:

Improvements shown on the approved plat shall be completed in a manner consistent with chapter 17.16.010 of this title ~~bonded for as per chapter 17.20, “Performance Guarantees”, of this title.~~

17.04.080: CITY COUNCIL TAKES ACTION ON FINAL PLAT:

Upon receipt of the final plat, bearing all required signatures, seals and stamps, and also submission of evidence of ability to satisfy the performance guarantee requirements, the city council shall consider the plat, final engineering drawings, construction agreement and performance guarantee and shall act to approve or disapprove the plat or approve it with modification. If disapproved, the city council shall state its reasons therefor to the subdivider. If modifications are required such modifications must first be referred to and reviewed by the planning commission. If approved, the plat shall be signed by the city council and retained for recording. The signature of the city council on the final plat shall constitute final approval of the subdivision. Unless otherwise authorized by the city council, ~~A~~any final plat which has not been recorded within two (2) ~~three (3)~~ years of final plat approval by the land use authority city council shall become null and void.

17.04.110: APPLICANT COMPLETES IMPROVEMENTS OR SUBMITS PERFORMANCE GUARANTEE:

After final plat approval by the appropriate land use authority ~~by the city council,~~ the applicant shall either complete the required improvements or post a performance guarantee in accordance with chapter 17.16.010 of this title and prior to commencement of the construction of the required improvements, the applicant shall: a) ~~proceed to execute the improvements construction agreement and~~ b) ~~post a performance guarantee for the construction of the required improvements, in conformance with the provisions of chapter 17.20 of this title.~~

17.04.120: FINAL PLAT RECORDED IN OFFICE OF COUNTY RECORDER:

The final plat shall be recorded in the office of the county recorder when either:

- a. The required improvements have been completed in accordance with chapter 17.16.010 of this title; or
- b. A performance guarantee and a durability bond have been submitted in accordance with chapter 17.20 of this title.

Upon approval of the final plat and performance guarantees and receipt of the executed documents and all other outstanding submissions and fees, including a copy on electronic media (such as a 3.5 inch floppy disk, a zip disk, or a CD ROM), in a format approved by Mapleton City, the city shall submit the plat for recording in the office of the county recorder.

After recording, the building official may thereafter issue a building permit for the construction of the subdivision improvements. Upon the recording of the plat the owner may thereafter proceed to convey title to the lots as described by the plat.

Chapter 17.16 SUBDIVISION IMPROVEMENTS

17.16.010: IMPROVEMENTS REQUIRED; TIME OF CONSTRUCTION; PERFORMANCE GUARANTEES REQUIRED:

A. The improvements hereinafter set forth shall be required to be constructed for all areas shown on the final plat and at all off site locations designated at the time of final approval. All subdivision improvements shall meet minimum city standards and specifications as directed by the city engineer. In the instance of third lot divisions, the subdivider shall be responsible only for those improvements required for the third and subsequent lots.

B. The following two options are available to an applicant regarding the installation of the improvements required by this chapter:

1. The improvements shall be completed prior to the plat being recorded in the office of the county recorder. The following requirements apply to this option:

a. No construction activity shall begin until:

(1) Final construction drawings have been approved by the city engineer that address any and all outstanding issues as identified by the Development Review Committee and any and all conditions of approval as adopted by the land use authority;

(2) A pre-construction meeting to include the city engineer and the applicant has been held. During the pre-construction meeting the city engineer shall outline the city standards that will be used during the inspection of the improvements;

(3) The applicant has submitted the following bonds:

i. A Durability Bond in accordance with the provisions of chapter 17.20.050 of this title;

ii. A Site Restoration Bond shall be in cash equal to the amount of the durability bond. This bond shall be released upon plat recording.

iii. A Right-of-Way (ROW) Excavation bond for any work that may be required in an existing city ROW. The amount shall be based on the City Engineer's estimate for the work to be done in the ROW. This bond shall be released upon acceptance of the work by the city.

(4) All engineering inspection fees have been paid; and

(5) The applicant has submitted a lien waiver release for each contractor, subcontractor and supplier.

(6) The applicant has obtained approval of a Storm Water Pollution Prevention Plan and a Land Disturbance Permit.

(7) The applicant has submitted a Utility Notification Form signed by all applicable utility companies.

b. If the improvements do not comply with city standards, the plat shall not be recorded in the office of the county recorder until such time as all deficiencies are corrected.

2. A performance guarantee and a durability bond securing the installation of any required improvements shall be submitted to the city in accordance with the provisions of chapter 17.20 of this title prior to recording of the final plat at the office of the county recorder.

B. The construction of required improvements shall not commence prior to final plat approval, bonding in accordance with the provisions of chapter 17.20 of this title, and recording of the final plat.

C. A performance guarantee securing the installation of any required improvements shall be required as a condition of final plat approval. Said performance guarantee shall be in accordance with the provisions of chapter 17.20 of this title.

D. Notwithstanding the other provisions of this section, for subdivisions containing one lot, the city council, subject to the prior recommendation of the planning commission, may authorize an indefinite delay of the construction of improvements. However, a cash bond equal to the estimate of cost for the required improvements must be posted with the city prior to final plat recording. (Ord. 2002-04, 3-20-2002)

17.18.020: LOCATION, BONDING, PHASING, AND LIABILITY FOR TRAILS:

- A. Location: Where feasible, trails should be separated from vehicle traffic.
- B. Bonding for Trail Improvements: Where trails are required as part of a development project, a security or bond will be posted for the full cost of the trail improvements **prior to plat recording, or the trail shall be installed prior to the recording of the plat in accordance with section 17.16.010 of this title. This is required prior to the recording of final plats.**
- C. Phasing Of Trail Improvements: When trails are part of a phased project, the phasing of various trail segments will follow a logical sequence for trail users. Some trail construction may be required through an entire project to provide completed trail connections at an early phase in the project.
- D. Trail Rights Of Way And Easements: All trails that are open to the public should be located on publicly dedicated property, or dedicated easements for such purposes. There are a variety of mechanisms for this to occur. Public street rights of way and dedicated easements are the most common and acceptable forms of access rights. The trails map provides recommended right of way widths for the various trail types.
- E. Trail Easement Liability: In cases where public easements are dedicated, or lease agreements are negotiated for public use with private landowners, the jurisdiction should assume general liability responsibility in the same manner as assumed for streets and other public areas.

Chapter 17.20 PERFORMANCE GUARANTEES

17.20.010: PERFORMANCE GUARANTEE REQUIRED:

17.20.020: TYPE AND AMOUNT OF GUARANTEE:

17.20.030: FINAL DISPOSITION AND RELEASE:

17.20.040: DEFAULT:

17.20.050: DURABILITY BOND IMPROVEMENTS ASSURANCE WARRANTY:

17.20.010: PERFORMANCE GUARANTEE REQUIRED:

Wherever a performance guarantee is required under the terms of this title, the performance guarantee shall be submitted:

- A. In conformance with this chapter; and
- B. Prior to the commencement of any improvements.

17.20.020: TYPE AND AMOUNT OF GUARANTEE:

~~A. Performance bonds under this section shall apply to all land development subject to regulation by Mapleton City.~~

~~B. A performance bond for any street improvements, utility improvements, grading improvements, landscaping improvements, driveway installation, early occupancy, and similar matters is required to be installed:~~

~~1. At the time of development approval; or~~

~~2. With the issuance of a building permit.~~

~~CA. 1. The amount of the performance bond for street, grading, or utility improvements shall be established by the city engineer's original estimated cost of completion or his designee, and shall be based on the average cost paid by the city for the same type of performance.~~

~~2.B. The amount of the performance bond for landscaping improvements, driveway installation, and early occupancy shall be established by the community development director the director of the department of community development or his designee as follows:~~

~~A1. Where landscaping is required, the developer must submit at least two (2) bids from landscaping companies to be considered;~~

~~B1. For all new single-family residential units, an improvement performance bond paid at the issuance of the building permit is required in the amount of a minimum of two thousand three hundred dollars (\$2,300.00).~~

~~D. Under subsection C1 of this section, the principal amount of a performance bond posted with Mapleton City shall be one hundred twenty percent (120%) of the total estimated cost of any performance which is promised to the city.~~

~~EC. The performance bond shall be in the form of cash and/or an irrevocable letter of credit, with:~~

~~1. Twenty percent Ten (210%) of the performance bond being posted in the form of cash and shall be the last monies released; and~~

~~2. The remaining amount posted in the form of cash or an irrevocable letter of credit.~~

~~FD. A performance bond agreement shall be entered into by and between Mapleton City and the applicant:~~

~~1. The performance bond agreement shall include a provision that the performance bond shall expire within thirteen (13) months from the date issued.~~

2. If the project has not been completed by that date, then the performance bond shall be considered foreclosed upon.
3. All remaining funds shall be thereafter remitted to the city as set forth in the performance bond agreement.
4. A performance bond may be extended only if special circumstances warrant an extension, as determined by the city engineer.

GE. 1. A performance bond may be partially released if the performance to which it relates has been satisfactorily completed, except that not less than twenty percent (20%) of the performance bond shall be retained to ensure completion of the entire performance. Beginning with the third partial release of a performance bond, a service charge of one hundred dollars (\$100.00) shall be charged in addition to the actual cost of processing the partial release.

HE. The director of the department of community development or a designee may establish objective procedures consistent with this section relating to the administration of performance bonds, including fund management, default and collection. (Ord. 2009-02, 3-18-2009, eff. 4-22-2009)

17.20.030: FINAL DISPOSITION AND RELEASE:

- A. Upon completion of the work for which a performance bond has been posted, the developer shall submit to the city one copy of a written request for release.
- B. After receipt of the notice and request under subsection A of this section, the city engineer shall make a preliminary inspection of the improvements and shall submit a report to the director of the department of community development setting forth the condition of the facilities.
- C. The director of the department of community development shall accept the report and authorize release of the remainder of the performance bond except for that portion to be held as a **durability bond improvements assurance warranty** under section 17.20.050 of this chapter if the city finds, based on objective inspection standards, that the condition of the improvements are satisfactory.
- D. The performance bond may not be released if the city finds:
 1. That the condition of material or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability; or
 2. That any other terms of the performance bond have not been satisfied.

E. In the case of a dispute over the release of a performance bond under this section, the city administrator may refer the matter to the city council for subsequent action to secure performance. (Ord. 2009-02, 3-18-2009, eff. 4-22-2009)

17.20.040: DEFAULT:

A. Upon substantiating a finding under subsection B of this section, the director of the department of community development with approval of the city administrator may, with due notice to the developer:

1. Declare the performance bond forfeited; and
2. Install or cause the required improvement to be installed using the proceeds from the performance bond to defray the costs.

B. A performance bond may be forfeited under subsection A of this section if the city finds that a developer has failed or neglected to:

1. Satisfactorily install the required improvements;
2. Make required corrections;
3. Make payment to the city for administration and inspections; or
4. Otherwise failed to carry out the activity for which the performance bond was required.

C. The developer is responsible for work beyond the limits of the bond amount.

D. Any funds remaining after completion of the required improvements will be returned to the developer. (Ord. 2009-02, 3-18-2009, eff. 4-22-2009)

17.20.050: DURABILITY BOND IMPROVEMENTS ASSURANCE WARRANTY:

A. The city shall retain a durability bond improvements assurance warranty in the amount of not less than ten percent (10%) ~~twenty percent (20%)~~ of the initial amount of the performance bond in the form of cash. The durability bond improvement assurance warranty shall be for the purpose of warranting the improvements and shall be for a period of:

1. One year after final acceptance of the improvement or warranty work; or
2. Two (2) years after final acceptance of the improvement or warranty work, if the city:
 - a. Determines for good cause that a lesser period would be inadequate to protect the public health, safety, and welfare; and

b. Has substantial evidence of:

- (1) Prior poor performance of the applicant;
- (2) Unstable soil conditions within the subdivision or development area; or
- (3) Extreme fluctuations in climatic conditions that would render impracticable the discovery of substandard or defective performance within a one year period.

B. A determination under subsection A2 of this section shall be made by the city engineer in consultation with the city administrator.

C. If, after the warranty period, the durability of said improvements are found to be satisfactory, the retainage may be released following the procedure outlined under section 17.20.030 of this chapter.

D. The city engineer may authorize a release of fifty percent (50%) of the improvement durability bond assurance warranty prior to the warranty period, if determined appropriate based on a finding of:

1. The project has been completed and found acceptable and all monies have been released except for the durability bond improvements assurance warranty;
2. An error in the initial amount of the performance bond or the original calculation of the durability bond improvements assurance warranty; or
3. Fact that was previously unknown to the city that is material in a determination that the city's public health, safety, and welfare would still be adequately protected.

E. ~~1.~~ The person giving the durability bond improvements assurance warranty shall correct the improvements if at any time during the warranty period:

- a. Any required improvement fails or shows unusual depreciation;
- b. Certain work has not been completed or it becomes evident that certain work was not completed; or
- c. The materials or workmanship used in constructing the improvements do not otherwise comply with accepted standards of durability.

~~2.~~ If the corrections are not made within a reasonable time, the director of the department of community development, with review from the city administrator, in accordance with section 17.20.040 of this chapter, may declare the person in default and use the retainage to defray the cost of any required work.

17.24.060: AS BUILT DRAWINGS OF RECORD REQUIRED:

Plans showing the location and size of all sewer and water lines, valves and other subsurface utility and service lines and facilities shall be required prior to plat recording or the release of performance guarantees.

18.82.170: BONDING AND PERFORMANCE GUARANTEES:

~~A performance guarantee bond pursuant to the requirements in chapter 17.20 of this code shall be required with each phase or plat. Bonding shall include all required development improvements, street trees, and all landscaping for any required parks and open spaces as shown or required in each phase or plat.~~

18.84.390: MINIMUM LEVEL OF IMPROVEMENTS TO BE INSTALLED BEFORE BUILDING PERMITS MAY BE ISSUED:

No building permit for the construction of a dwelling or other structure intended for human occupancy shall be issued unless and until the lot is served by the following minimum level of improvements:

- A. A culinary water main and pressurized irrigation, which conform to city standards and extends to and across the lot. (See title 13, chapter 13.20 of this code for requirements regarding the extension of water lines to unserviced lots.)
- B. A water service line and a pressurized irrigation line including the service tap, pipe and meter housing and assembly, constructed in accordance with city standards.
- C. A hard surfaced access road (city street) having a right of way width which conforms to the minimum city standard and extends to and across the lot (see title 13, chapter 13.20 of this code for requirements regarding the extension of city streets to unserved lots). In the case of a road which is part of an approved subdivision plat or road extension, a building permit may be issued with only the subbase and gravel base installed, provided that the city holds a performance guarantee for the completion of the road improvements. Paving will be required from the existing edge of pavement to any required or existing curb and gutter.
- D. A sewer main, which conforms to city standards and extends to and across the lot. (See title 13, chapter 13.20 of this code for requirements regarding the extension of sewer lines to unserviced lots.)
- E. A permanent sewer service line constructed according to city standards.
- F. Curb, gutter and sidewalk as determined necessary by the city engineer.

1. An applicant may petition the planning commission to waive the requirement for curb, gutter, and/or sidewalks. However, the planning commission may only waive or modify the requirements if it is determined to more effectively achieve the policies, goals, and objectives of

Mapleton City. The modifications shall be consistent with appropriate engineering measures to protect public safety.

G. A plat map has been recorded with the Utah County recorder in accordance with title 17 chapter 04.120 of this code.

Attachment “2”

State Code citation for bonding vs. no bonding (emphasis added)

10-9a-604.5. Subdivision plat recording or development activity before required infrastructure is completed -- Infrastructure completion assurance -- Infrastructure warranty.

(1) A land use authority shall establish objective inspection standards for acceptance of a landscaping or infrastructure improvement required by the land use authority as a condition of:

- (a) subdivision; or
- (b) development activity.

(2) (a) A land use authority shall require an applicant to complete a required landscaping or infrastructure improvement prior to any plat recordation or development activity.

(b) Subsection (2)(a) does not apply if:

(i) **upon the applicant's request**, the land use authority has authorized the applicant to post an improvement completion assurance in a manner that is consistent with local ordinance; and

(ii) the land use authority has established a system for the partial release of the improvement completion assurance as portions of required improvements are completed and accepted.

(3) At any time up to the land use authority's acceptance of a landscaping or infrastructure improvement, and for the duration of each improvement warranty period, the land use authority may require the developer to:

(a) execute an improvement warranty for the improvement warranty period; and

(b) post a cash deposit, surety bond, letter of credit, or other similar security, as required by the municipality, in the amount of up to 10% of the lesser of the:

- (i) engineer's original estimated cost of completion; or
- (ii) applicant's reasonable proven cost of completion.