

# Mapleton City Planning Commission Staff Report

Meeting Date: January 9, 2014

**Item:** 3

**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, and 18.82.170 modifying the city's bonding requirements for subdivision improvements, and Chapter 18.64.040 regarding the allowed number of stories for mixed-use buildings in the General Commercial (GC-1) zone.

## **BACKGROUND AND PROJECT DESCRIPTION**

**Amendment #1 (bonding):** 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. 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. The second is a cash durability bond in an amount of 20% of the performance bond that is held for one year after the improvements have been installed. The City does not currently allow any work to begin on the improvements until the bond has been posted and the plat has been recorded.

Recent changes to state code require the following:

- An applicant has the choice to either bond for the improvements or install the improvements without bonding prior to the subdivision plat being recorded.
- The durability bond cannot exceed 10%.

The proposed ordinance amends the City's requirements to comply with the new changes in state code. The ordinance outlines the process and requirements if an applicant chooses to bond for the subdivision improvements or install the improvements prior to plat recording. The ordinance also indicates that the durability bond shall not exceed 10%.

**Amendment #2 (number of stories):** MCC Chapter 18.82.170 indicates that mixed-use buildings in the General Commercial (GC-1) zone are limited to a maximum height of 45 feet and no more than three stories. Staff is recommending that the limitation on the number of stories be removed. A building that is 45 feet tall but only contains three finished stories will likely have unused attic space, depending on the ceiling height on each story. Staff sees no reason not to allow for a fourth story if a building is still in compliance with the overall height limitation of 45 feet.

## **RECOMMENDATION:**

Recommend adoption of the proposed ordinance to the City Council.

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

**Amendment #1 (bonding):**

**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.~~

**17.04.110: APPLICANT COMPLETES IMPROVEMENTS OR SUBMITS PERFORMANCE GUARANTEE:**

After final plat approval by the planning commission or 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 has 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;

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

(3) The applicant has submitted an assurance warranty bond in accordance with the provisions of chapter 17.20.050 of this title;

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

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

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 the deficiencies are corrected.

2. A performance guarantee 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)~~

## **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: 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. Prior to plat recording At the time of development approval; or~~
- ~~2. With the issuance of a building permit.~~

~~EB. 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 the applicant's reasonable proven 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. The amount of the performance bond for landscaping improvements, driveway installation, and early occupancy shall be established by the director of the department of community development or his designee as follows:

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

b. 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 (20%) 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.

HF. 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 an 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: IMPROVEMENTS ASSURANCE WARRANTY:**

A. The city shall retain an improvements assurance warranty (formerly known as durability retainer) 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 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 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 improvements assurance warranty;
2. An error in the initial amount of the performance bond or the original calculation of the 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 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.~~

**AMENDMENT #2 (# OF STORIES):**

**18.64.040: MIXED COMMERCIAL AND RESIDENTIAL USES:**

**B. Design Standards For Mixed Use Structures:**

1. The structure shall not have the appearance of an apartment building, meaning that entrances and entryways shall not be visible from the facade of the building, and the entrance or entrances to any residential dwelling unit shall not be visible from any public street.
2. The combined commercial and residential structure shall not exceed ~~three (3) stories and~~ shall not exceed the height requirement established in this chapter.