

## ARTICLE III

### ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

#### **3-101 Improvements and Performance Bond**

##### **3-101.1 Completion of Improvements**

Before the final subdivision plat is signed by the Secretary of the Planning Commission specified in Subsection 2-104.1, of these regulations, all applicants shall complete, in accordance with the Planning Commission's decision and to the satisfaction of the appropriate governmental representative, all public way, sanitary, and other improvements, including lot improvements on the individual lots of the subdivision, as required in these regulations and approved by the Planning Commission, and shall dedicate such improvements to the governing body free and clear of all liens and encumbrances on the property and public improvements thus dedicated.

##### **3-101.2 Surety Instrument** (Amended 1/27/03 & 1/23/12)

The Planning Commission at its discretion may waive the requirement that the applicant complete and dedicate all public improvements prior to the signing of the final subdivision plat by providing that, as an alternative, the applicant may post a bond at the time of submission for final subdivision approval in an amount estimated by the Planning Commission provided by the appropriate governmental representative as sufficient to guarantee to the governing body the satisfactory construction, installation, and dedication of the incomplete portion of required improvements. (See Subsection 2-102.4).

Such performance bond shall comply with all statutory requirements and shall be satisfactory to legal counsel as to form, sufficiency, and manner of execution, as set forth in these regulations. The period within which required improvements must be completed shall be specified by the Planning Commission in the resolution approving the final subdivision plat and shall be incorporated in the bond. This time period shall be one (1) year initially, and shall not exceed a total of two (2) years from date of final approval.

The Planning Commission as to amount and conditions shall approve such bond. The Planning Commission may, upon proof of difficulty, extend the completion date set forth in such bond. The Planning Commission may accept at any time during the period of such bond a substitution of principal.

A maintenance bond for a period of one (1) year shall be required on any new road to be accepted by the Tipton County Road Commission. Once the new road has been completed and then approved by the Tipton County Public Works Director, the developer shall be required to hold a maintenance bond for a period of one (1) year. The maintenance bond shall be in an amount that is no less than fifty (50%) percent of the original full amount of the performance bond. The maintenance bond shall be treated in the same manner as an extension to the performance bond requiring Planning Commission approval.

### **3-101.3 Temporary Improvements**

The applicant shall build and pay for all costs of temporary improvements required by the Planning Commission, and shall maintain them to a reasonable satisfaction for the period specified by the Planning Commission. Prior to construction of any temporary facility or improvement, the applicant shall file with the Planning Commission a separate suitable bond for temporary facilities, which shall ensure that the temporary facilities will be properly constructed, maintained and removed.

### **3-101.4 Costs of Improvements**

All required improvements shall be made by the applicant at his expense. Any provisions for reimbursement by the governing body or any utility agency shall be stipulated clearly in the provisions of any bonds.

### **3-101.5 Governmental Units**

Governmental units to which these bonds and contract provisions apply may file, in lieu of said contract or bond, a certified resolution or ordinance from officers or agencies authorized to act in their behalf agreeing to comply with the provisions of this article.

### **3-101.6 Failure to Complete Improvements**

In subdivisions for which no performance bond has been posted, if the improvements are not completed within the period specified by the Planning Commission in the resolution approving the plat, the approval shall be deemed to have expired. In those cases in which a performance bond has been posted and required improvements have not been installed within the terms of such performance bond, the Planning Commission thereupon may declare the developer's bond to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the developer's bond is declared to be in default. The Planning Commission then may call the bond and authorize the completion of the required improvements through the appropriate governmental representative.

### **3-101.7 Acceptance of Dedication Offers**

Acceptance of formal offers of dedication of public ways, easements, and parks shall be by formal action of the county. The approval by the Planning Commission of a subdivision plat shall not be deemed to constitute or imply an acceptance by the local government of any public way, easement, or other ground shown on the plat. The Planning Commission may require the plat to be endorsed with appropriate notes to this effect.

### **3-102 Inspection of Improvements**

#### **3-102.1 General Procedure**

The Planning Commission may provide for inspection of required improvements during construction and ensure their satisfactory completion. If the appropriate governmental representative finds upon inspection that any of the required improvements has not been constructed in accordance with the governing body's construction standards and specifications, the applicant shall be responsible for completing the improvements to the required standards. Whenever a performance bond covers the cost of improvements, the applicant and the bonding company shall be liable severally and jointly for completing said improvements according to specifications.

#### **3-102.2 Release or Reduction of Performance Bond**

##### **3-102.201 Certificate of Satisfactory Completion**

The Planning Commission shall not recommend dedication of required public improvements nor shall the Planning Commission release a developer from their performance bond until the appropriate governmental representative submits a certificate stating that all required improvements have been satisfactorily completed, a site inspection by the Planning Commission's Enforcing Officer has been completed, and until the applicant's engineer or surveyor has certified to the Planning Commission and the appropriate governmental representative (through submission of a detailed "as built" survey of the subdivision indicating location, dimensions, construction materials, and any other information required by the Planning Commission) that the layout and the line and grade of all public improvements are in accordance with the approved construction plans and substantially comparable with the certified preliminary plat for the subdivision. Upon such approval and recommendation, the governing body, thereafter, may accept the dedicated improvements in accordance with the procedures set forth in these regulations.

##### **3-102.202 Reduction of Performance Bond** (Amended 1/23/12)

A performance bond may be reduced (if the appropriate governmental representative permits) upon actual dedication and acceptance of public improvements and then only to the ratio that the public improvement dedicated bears to the total public improvements for the plat. In no event shall a performance bond be reduced below fifty (50) percent of the principal amount prior to final acceptance of all items covered under the bond.

### **3-103 Maintenance of Improvements**

The applicant shall be required to maintain all improvements including all lot improvements, until all of the public improvements have been accepted by the appropriate governmental representative.

The applicant may be required to file a maintenance bond with the Planning Commission prior to dedication, in an amount considered adequate by the appropriate governmental representative and in a form satisfactory to legal counsel in order to assure the satisfactory condition of the required improvements, including all lot improvements, for a period of one year after the date of acceptance of the public improvements by the Planning Commission.

### **3-104 Deferral or Waiver of Required Improvements**

The Planning Commission may defer or waive at the time of final approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interest of the public health, safety, and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.

### **3-105 Issuance of Building Permits and Certificates of Occupancy**

- A. Where a performance bond has been required for a subdivision, or any section of a subdivision, no certificate of occupancy for any building in the subdivision or section thereof shall be issued prior to the completion and dedication of the improvements to the appropriate governmental unit, as required in the Planning Commission's resolution of final approval of the subdivision plat.
- B. The extent of public way improvements shall be adequate for vehicular access by the prospective occupant and by police and fire equipment prior to the issuance of an occupancy certificate.
- C. No building permit shall be issued for the final ten (10) percent of lots in a subdivision, or if ten (10) percent is less than two (2) lots, for the final two (2) lots of a subdivision, until all public improvements required by the Planning Commission's resolution of final plat approval have been fully completed, dedicated, and accepted by the governmental body.