



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2018-2293

Substitute

10/23/2018

Public Hearing: YES NO

Department: Planning and Sustainability

SUBJECT:

Commission District(s): All Commission Districts

Bond and Escrow Requirements (NO COST TO THE COUNTY)

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PURPOSE:

An ordinance to amend Chapter 14, to modify the Bond and Escrow requirements for subdivision improvements.

NEED/IMPACT:

Public infrastructure improvements in new subdivisions must be timely completed for the benefit of residents and homebuyers and DeKalb County as a whole. To ensure that public improvements in a new subdivision are satisfactorily completed by the developers without expense to DeKalb County's taxpayers the County must establish appropriate Bond and Escrow requirements. To that effect, all improvements covered in the performance guarantee must be secured by funds to be held in escrow or security bonds. In addition, funds shall be held in escrow guaranteeing maintenance of the subdivision's streets, drainage facilities, best management practices for water quality, water and sanitary sewer systems, and right-of-way during the twelvemonth maintenance period.

FISCAL IMPACT:

No impact to the County.

RECOMMENDATION:

Adopt the ordinance and authorize the chief executive officer to execute all necessary documents...

AN ORDINANCE

**AN ORDINANCE TO AMEND
THE CODE OF DEKALB COUNTY, GEORGIA,
AS REVISED 1988, CHAPTER 14, TO MODIFY THE BOND AND ESCROW
REQUIREMENTS FOR SUBDIVISION IMPROVEMENTS,
AND FOR OTHER PURPOSES.**

WHEREAS, the Governing Authority of DeKalb County is tasked with the protection of the County's health, safety, and general welfare;

WHEREAS, the Governing Authority finds that these amendments are needed to insure that public improvements in new subdivisions will be completed for the benefit of the subdivisions' homebuyers and DeKalb County residents; and

WHEREAS, the Governing Authority finds that these amendments are needed to insure that public improvements in new subdivisions will be satisfactorily completed by the subdivisions' developers without expense to DeKalb County's taxpayers;

NOW, THEREFORE, be it ordained by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 14 of the Code of DeKalb County, as Revised 1988, be and the same is hereby amended as follows:

PART I. ENACTMENT

By deleting Section 14-381 in its entirety.

* * *

By deleting Section 14-123(e) in its entirety and substituting in lieu thereof the following new Section 14-123(e).

Sec. 14-123. Review, certification by county departments.

* * *

- (e) The final plat shall not be forwarded to the chief executive officer until such time as the planning director or designee certifies that the final plat conforms to the approved preliminary plat and that it complies with all county zoning, environmental and subdivision ordinances and regulations, including the requirements contained in Section 14-298, and all applicable state and federal laws.

* * *

By adding Section 14-298 to read as follows:

Sec. 14-298. Performance guarantee, maintenance guarantee, performance security, and maintenance security requirements.

(a) *General.*

- (1) Unless otherwise indicated in this section, all subdivision improvements required in this article shall be fully completed to the specifications contained in this article by the developer, applicant or owner before the final plat shall be forwarded to the chief executive officer.
- (2) The subdivision improvements required in this article shall not be accepted by the county until they are fully completed to the specifications contained in this article (by the developer, applicant or owner).

(b) *Performance guarantee requirements.*

- (1) The developer, applicant or owner shall execute a performance guarantee and provide the original signed copy thereof to the planning director or designee before the final plat shall be forwarded to the chief executive officer. The performance guarantee shall be executed upon forms provided by the planning director or designee, and shall include a unilateral assurance that the developer, applicant or owner will satisfactorily complete to county standards the remaining items identified in the performance guarantee.
- (2) The performance guarantee shall be executed only after the planning director or designee conducts an inspection of the subdivision improvements and certifies that all necessary subdivision improvements indicated in the approved plans, except the remaining items identified in the performance guarantee, have been satisfactorily completed to county standards. The

performance guarantee shall be executed at least seven (7) calendar days before recordation of the final plat.

- (3) The performance guarantee shall state the date(s) by which the identified improvements will be completed. All identified improvements shall be completed within one year of executing the performance guarantee unless an extension is approved per section 14-298(b)(4). If the developer, applicant or owner fails to timely complete the identified improvements, the county may take action to correct the deficient items, including performing the work itself or retaining a third party to do so, and the county may seek reimbursement from the developer, applicant or owner by making a demand under any applicable surety bond, deducting the county's expenses from any applicable escrow funds held by the county, or by exercising any other means available under law.
- (4) A developer, applicant, or owner may apply for an extension of the performance guarantee to the planning director or designee, who shall have discretion to extend the performance guarantee for up to one year. Such an extension of a performance guarantee must be accompanied by new or extended performance security to cover the duration of the extended performance guarantee period.
- (5) The planning director or designee shall not issue any new land disturbance permits, and shall place a stop work order on any existing land disturbance permits, pertaining to any subdivision wherein: (1) the developer, applicant or owner has missed a deadline for satisfactory installation of improvements as required in the Code or applicable performance guarantee, or (2) the county has directed or made repairs of identified improvements but has not yet been fully reimbursed by the developer, applicant or owner.

(c) ***Performance security requirements.***

- (1) At the time the final plat is submitted by the developer, applicant or owner to the planning director or designee for approval, and before the final plat shall be forwarded to the chief executive officer, the developer, applicant or owner must provide the planning director or designee with security in the form of funds to be held in escrow or security bonds, guaranteeing satisfactory completion of all improvements covered in the performance guarantee. All improvements covered in the performance guarantee must be secured by funds to be held in escrow or security bonds. Letters of credit shall not be accepted by the planning director or designee to satisfy any portion of this security requirement.

- (2) The performance security amount shall be calculated by the planning director or designee, and shall amount to one hundred twenty-five percent (125%) of the estimated construction costs (labor and materials) of the improvement(s) to be secured by the performance guarantee, based on the most recent edition of Gordian's "Site Work & Landscape Costs with RSMeans Data" annual publication's (or equivalent publication's) industry standard unit prices at the time the final plat is tendered by the developer, applicant or owner for review.
- (3) Escrow funds shall be held by the director of finance. Surety bonds shall be executed by a surety company actively licensed to transact business in Georgia by the Georgia Secretary of State, on forms provided by the planning director or designee. In addition, the bonding company must hold an A.M. Best's rating of not less than "A" (Excellent) with Financial Size Category of VII or better. The surety company should also hold a sufficient treasury listing as reflected on the department of the treasury's listing (Department circular 570) such that the bond limit for any prescribed bond does not exceed the surety's underwriting limitation. The planning director or designee shall only accept the signed original of the surety bond, and shall not accept any photocopied, altered or modified bond documentation.
- (4) In lieu of extending performance security where a subdivision's improvements are incomplete or deficient, and based on the discretion of the planning director or designee, a developer, applicant, or owner may elect to provide new performance security in an amount equal to one hundred twenty-five percent (125%) of the value of the incomplete infrastructure improvements (labor and materials) for a duration of one year. No extension or new performance security shall be allowed under this section for street topping.

(d) *Maintenance guarantee requirements.*

- (1) Before the performance security is released, the developer, applicant, or owner must execute a maintenance guarantee and provide the original signed copy thereof to the planning director or designee. The maintenance guarantee shall be executed upon forms provided by the planning director or designee and shall include unilateral assurance that the developer, applicant or owner will maintain all of the subdivision's streets, drainage facilities,

best management practices for water quality, water and sanitary sewer systems, and rights-of-way to the specifications required by the Code of DeKalb County for a period of twelve (12) months, commencing on the date that the final plat is recorded or the performance security is released by the planning director or designee, whichever occurs last.

- (2) The planning director or designee may conduct periodic inspections during the twelve (12) month maintenance period described above, and shall advise the developer, applicant or owner in writing of any subdivision improvements that are deficient, have been damaged, or otherwise require repair or maintenance. Any such warning notice shall be sent by U.S. mail to the developer's, applicant's or owner's address as indicated on the final plat. The developer, applicant or owner must provide the planning director or designee with an acceptable corrective plan within thirty (30) days of the date of the warning notice, and must satisfactorily complete the repairs or maintenance within sixty (60) days after the date of the warning notice, unless otherwise agreed in writing. If the developer, applicant or owner fails to timely make the repairs or complete the maintenance, the county may take action to correct the deficient items, including performing the work itself or retaining a third party to do so, and the county shall seek reimbursement from the developer, applicant or owner by making a demand under any applicable surety bond, deducting the county's expenses from any applicable escrow funds held by the county, or by exercising any other means available under law. In the case of emergency situations posing imminent risk to the health or safety of person or property, the county may direct or make any necessary repairs without providing any notice to the developer, applicant or owner, and may seek reimbursement for the county's expenses in the manner described in this subsection.
- (3) The planning director or designee shall not issue any new land disturbance permits, and shall place a stop work order on any existing land disturbance permits, pertaining to any subdivision wherein: (1) the developer, applicant or owner has missed a deadline for satisfactory correction or repair of improvements as required in the Code or applicable maintenance guarantee, or (2) the county has directed or made repairs of maintenance items but has not yet been fully reimbursed by the developer, applicant or owner.
- (4) If repairs or maintenance are required under subsection (2) above and notice is sent or repairs are made within three (3) months of the maintenance period's scheduled date of expiration as indicated

in the maintenance guarantee, the maintenance period shall extend another twelve (12) months, and the developer, applicant or owner shall also extend any surety bond for an additional twelve (12) month period, both extensions to commence on the date the repairs are completed and approved by the planning director or designee. The developer, applicant or owner shall provide original documentation to the planning director or designee evidencing the surety bond's extension for the required period of time, as determined by the planning director or designee.

(e) ***Maintenance security requirements.***

- (1) At the time the executed maintenance guarantee is provided to the planning director or designee, the developer, applicant or owner must provide the planning director or designee with security in the form of a surety bond or funds to be held in escrow guaranteeing maintenance of the subdivision's streets, drainage facilities, best management practices for water quality, water and sanitary sewer systems, and rights-of-way during the twelve (12) month maintenance period. Letters of credit shall not be accepted by the planning director or designee to satisfy this security requirement.
- (2) The maintenance security amount shall be calculated by the planning director or designee, and shall amount to twenty-five percent (25%) of the actual construction costs (labor and materials) of the public improvement(s) covered by the maintenance guarantee,, based on the most recent edition of Gordian's "Site Work & Landscape Costs with RSMMeans Data" annual publication's (or equivalent publication's) industry standard unit prices at the time the final plat is tendered by the developer, applicant or owner for review. However, in no case shall any maintenance security be less than \$5,000.
- (3) Where subsequent phase(s) of an interdependent project are anticipated to damage or otherwise decrease the useful life of an improvement or infrastructure system covered under existing maintenance security, the planning director or designee may require an extension of the existing maintenance security for the potentially impacted improvement(s) or infrastructure system. The developer, applicant, or owner may elect to obtain new maintenance security in lieu of extending the existing maintenance security in an amount equal to twenty-five percent (25%) of the actual construction costs (labor and materials) of the affected interdependent infrastructure improvement(s) or system(s), as determined by the planning director or designee.

- (4) Escrow funds shall be held by the director of finance. Surety bonds shall be executed by a surety company actively licensed to transact business in Georgia by the Georgia Secretary of State, on forms provided by the planning director or designee. In addition, the bonding company must hold an A.M. Best's rating of not less than "A" (Excellent) with Financial Size Category of VII or better. The surety company should also hold a sufficient treasury listing as reflected on the department of the treasury's listing (Department circular 570) such that the bond limit for any prescribed bond does not exceed the surety's underwriting limitation. The planning director or designee shall only accept the signed original of the surety bond, and shall not accept any photocopied, altered or modified bond documentation.
- (5) In lieu of extending maintenance security where a subdivision's improvements are damaged or deficient, and based on the discretion of the planning director or designee, a developer, applicant, or owner may elect to provide new maintenance security in an amount equal to twenty-five percent (25%) of the value (labor and materials) of the damaged or otherwise substandard infrastructure improvements for a duration of one year.

(f) *Return of security.*

- (1) Performance security may only be released upon satisfactory completion of all subdivision improvements by the developer, applicant or owner and execution of a maintenance guarantee. Escrow funds shall be returned only to the same person who or entity that submitted the funds on behalf of the developer, applicant or owner. Release of surety bonds shall not be effective until the original bond is returned to the developer, applicant or owner, accompanied by a letter signed by the planning director or designee indicating that the improvements have been satisfactorily completed and that the bond has therefore been released.
- (2) Maintenance security may only be released upon satisfactory maintenance of all subdivision improvements by the developer, applicant or owner as evidenced by expiration of the maintenance period without issuance of any deficiency notice(s) by the planning director or designee. Escrow funds shall be returned only to same person who or entity that submitted the funds on behalf of the developer, applicant or owner. Release of surety bonds shall not be effective until the original bond is returned to the developer, applicant or owner, accompanied by a letter signed by the planning director or designee indicating that the improvements have been

satisfactorily completed and that the bond has therefore been released.

PART II. EFFECTIVE DATE

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole, nor any part thereof, other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2018.

JEFF RADER
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2018.

MICHAEL THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA SANDERS-NORWOOD, CCC

Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

LUZ BORRERO

Deputy Chief Operating Officer
DeKalb County, Georgia

VIVIANE H. ERNSTES

County Attorney
DeKalb County, Georgia

ANDREW BAKER

Planning & Sustainability Director
DeKalb County, Georgia