

CHAPTER 15: BONDS AND GUARANTEES

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CITY OF ELM SPRINGS ZONING ORDINANCE

CHAPTER 15: BONDS AND GUARANTEES

15.01 Guarantees In Lieu Of Installed Improvements

- (A) *Subdivisions.* The Planning Commission may approve a subdivision final plat prior to the installation of the final pavement if all other required improvements have been substantially completed as determined by the City after the final inspection, provided the developer deposits with the city, or provides the following in an amount equal to 150% of the estimated cost of the uncompleted improvements as determined by the City Engineer:
- (1) *Currency.* U.S. currency;
 - (2) *Bond.* A performance/surety bond; or
 - (3) *Letter of credit.* An irrevocable letter of credit from a bank, or banking institution doing business in this state which is a member of the Federal Deposit Insurance Corporation.
- (B) *Large Scale Developments.* The Planning Commission may approve an office, residential, commercial, or industrial Large Scale Development plan prior to the installation of the required improvements; however, no building permits may be issued until one of the following has occurred:
- (1) *Complete.* All of the required improvements have been completed; or
 - (2) *Deposit.* The developer deposits with the city or provides the following in an amount equal to 150% of the estimated cost of the uncompleted improvements as determined by the City .
 - (a) *Currency.* U.S. currency;
 - (b) *Bond.* A performance/surety bond; or
 - (c) *Letter of credit.* An irrevocable letter of credit from a bank, or banking institution doing business in this state which is a member of the Federal Deposit Insurance Corporation.
- (C) *Remedies.* The city has the following options if the improvements have not been constructed after 270 days:
- (1) *Deposit of U.S. currency.*
 - (a) *Construct improvements.* Construct the remaining improvements using the U.S. currency. Any balance remaining after the improvements have been

constructed shall be returned to the developer; or

- (b) *Hold currency.* Continue to hold the U.S. currency until the developer completes the required improvements. After the City certifies that the improvements have been complete, the entire deposit shall be returned to the developer.
- (2) *Irrevocable letter of credit.*
- (a) *Call letter of credit.* Call the irrevocable letter of credit and use the proceeds to construct the remaining improvements. Any balance remaining after the improvements have been constructed, shall be returned to the developer; or
 - (b) *Amend letter of credit.* Amend the irrevocable letter of credit or require the developer to provide another irrevocable letter of credit for any uncompleted improvements in an amount equal to 150% of the estimated cost of remaining improvements as determined by the City. After the City certified as to which improvements have been completed, the guaranteed amount for any completed improvements may be returned to the developer.
- (3) *Performance/surety bond.*
- (a) *Terms of bond.* The surety shall be notified and the parties shall proceed under the terms of the bond, or
 - (b) *Amend bond.* Amend the performance/surety bond, or require the developer to provide another performance/surety bond for any uncompleted improvements in an amount equal to 150% of the estimated cost of remaining improvements as determined by the City.

15.02 Excavation In Public Rights-Of-Way

Cash bond. No person shall make any excavation of a street or public right-of-way unless a cash bond is first deposited with the city for the purpose of guaranteeing repair and replacement of said street or public right-of-way. Said cash bond shall be in an amount equivalent to the estimated cost of properly repairing and replacing said street or public right-of-

way, as determined by the Mayor, or his duly authorized representative.

15.03 Maintenance

- (A) Installed improvements. An acceptable guarantee shall be provided in the amount of 25% of the total contract price of the public improvements including sewer, streets, sidewalks and the stormwater management drainage system against defects in workmanship and materials for a period of two years from the date of acceptance of such improvements. The guarantee shall be filed with the City prior to the acceptance of the improvements by the City. A walk-through shall be performed at the end of the two-year period and all deficiencies corrected prior to the release of the bond.
- (B) Erosion and sediment control. For developments in excess of five (5) acres, an acceptable guarantee shall be provided at the time of the issuance of the drainage permit in the amount of 100% of the total cost to install the approved erosion & sediment control plan to insure the continuation of the proper maintenance of the plan. The guarantee shall remain in place until permanent stabilization has been achieved for the development site.

15.04 Grading; Bonds/Sureties

The building official may require bonds or other sureties in such form and amounts as may be deemed necessary to assure the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

15.05 Off-Site Improvements/Delays

- (A) *Proportionate share.* If the Planning Commission determines that a needed off-site improvement cannot be built until future development occurs, the developer shall pay to the city an amount determined by the Planning Commission, in accordance with the standards prescribed in §6.04, to be the developer's proportionate share of the cost of said off-site improvements as of the date of final plat or large scale development approval.
 - (1) The city shall deposit said money into an interest bearing escrow account until such time as the off-site improvement is constructed and shall provide for payment of interest on said amount at the rate of 10% per annum, or the maximum rate allowable under Arkansas law, whichever is lower.
 - (2) If the off-site improvement is not constructed within five (5) years from the date of the first payment into the escrow account by a

developer, the Planning Commission shall hold a public hearing, after notification to all affected property owners, to determine the disposition of all money in the escrow account. Following the public hearing, the Planning Commission may:

- (a) Determine that the off-site improvement is still necessary and feasible, and can be built within a reasonable time, in which case the escrow account shall be continued for a period specified by the Planning Commission; or
- (b) Determine that the off-site improvement is not necessary, or will not be feasible, or that insufficient development has occurred to render the improvement likely in the foreseeable future, in which case the Planning Commission shall refund the monies to the then current owner of the land for which such fee was paid with interest since the date of payment. Interest shall be based on a five percent (5%) annual rate.
- (c) With the written consent of a majority of the property owners who have purchased lots in the subdivision(s) and the developer(s), direct that money in the escrow account be utilized for a different purpose which will specifically benefit the neighborhood.

- (B) *Bill of Assurance/performance bond.* The developer may, with approval of the City Council, guarantee payment of said amount so determined by executing a bill of assurance, or performance bond in a form approved by the City Attorney.

Bills of Assurance and/or performance bonds shall meet the following requirements:

- (1) Bills of assurance shall be filed of record and shall be a covenant running with the land.
- (2) Bills of assurance, or performance bonds, shall obligate the landowner to pay the city the amount so determined by the Planning Commission within 10 days from receipt of written notice from the city.

15.06 Sidewalks

In lieu of issuing a notice as set forth in §7.10, the City may accept a bill of assurance executed by the property owner to guarantee installation of the sidewalk within three months from receipt of notice from the mayor. The property owner's obligation under the bill of assurance shall be a covenant running with the land, and the form of the bill of assurance shall be approved by the city attorney.