

## **Soil and Erosion Committee: regulatory revisions for Oldham County**

*The following text shall be added to The Oldham County Subdivision Regulations: Section 3.3:*

### **Section 3.3:**

Any consideration of the requirements set out in the previous subsection: “Steps for Consideration...” shall be based on the following regulations. Moreover, and notwithstanding the location of these subsections in this portion of the Subdivision Regulations, consideration of any plan under this section shall be conditioned on determinations regarding the construction of plan improvements and erosion control plans by the county engineer, and all approvals shall be accompanied by a performance guarantee as set out below.

#### **Section 3.3.1: Administrative Regulations of the County Engineer Concerning Performance Guarantees:**

The County Engineer shall promulgate administrative regulations for approval of construction and soil and erosion plans, and administrative regulations for the terms, amount, and enforcement of performance guarantees for all plans approved under this section. Compliance with conditions of approval under these or any other regulations shall be backed by performance guarantees sufficient to ensure completion of plan features, structures, improvements and erosion control measures and all other requirements of approval. Said conditions shall be fulfilled within a reasonable time, as set out below, and shall be subject to a systematic and consistent means of enforcement. Failure to abide by these regulatory conditions of approval shall mean that the recipient of said approval is deemed to have failed to perform, triggering default of the performance guarantee therein.

The Planning Commission shall review and approve said administrative regulations at least once per year. During consideration, the Commission may amend or add additional regulations.

#### **Section 3.3.2:**

Performance guarantees and the conditions under which they are granted shall be approved by the Planning Commission before a development is put to record.

#### **Section 3.3.3:**

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Notwithstanding any administrative regulation created pursuant this section; or lack thereof, all performance guarantees and their conditions of approval, shall, at a minimum, include the following:

A. Performance guarantees must be one of the following types:

- 1) A cash or property escrow deposit to Oldham Fiscal Court; or,
- 2) Letter of credit from a secure financial institution; or,
- 3) A surety bond guaranteed by a secure financial institution.

B. All performance guarantees shall explicitly state:

- 1) A time-period for completion, or specific date for performance.
- 2) A liquidated penalty for failure to perform within that time-period.
- 3) A clause obligating the principal, guarantor or surety for the entire cost of enforcement and/or collection of the guaranteed sum
- 4) An agreement that the guarantee vests whenever there is a finding by the Planning Commission and the Fiscal Court that the principal is in default.
- 5) An agreement that ~~in addition to~~ if any performance guarantee is not fulfilled under this section the Planning Commission and Oldham Fiscal Court retain a lien for the performance guarantee equal to 10% of the real estate or two lots of the development, whichever is of greater value, and that the ~~is~~ lien property shall not be sold until the County Engineer has certified that all public improvements on the development are complete. Statutory priority of previous lien holders if any shall not be extinguished by this provision.
- 6) All performance guarantees are to be irrevocable and/or of an indefinite term.
- 7) The sum pledged in the guarantee shall be referenced in all documents as a "penal and performance (bond, escrowed amount, or letter of credit)."

C. Penal and performance guarantees must be an amount sufficient to cover the cost of completing performance; including, any reasonably anticipated conditions that might lead to increased cost of performance in the future.

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- 1) The County Engineer shall promulgate a list of potential conditions for increased costs of future performance.
- 2) The plan certificate shall carry a statement from the developer's engineer regarding potential future costs.

D. The continued maintenance of structures guaranteed by performance bonds must be an explicit condition of any approval of any plan that contains such feature and said maintenance provisions shall be accounted for when determining the amount and specific conditions of a performance guarantee.

- 1) The development application and/or the plans shall contain a statement describing arrangements for future maintenance.

E. The performance guarantee document shall not cause the Planning Commission to waive any right to recovery under the performance guarantee that would otherwise be available to it under the laws of Kentucky. (e.g., There may not be a requirement that any lawsuits commence within a certain period after disclosure of a default.)

**Section: 3.3.4:**

Content of Administrative Regulations:

A. The Administrative Regulations of the County Engineer shall contain a schedule of costs of generic features common to construction and erosion control plans that shall determine the amount of the financial guarantee for that item: e.g., lighting fixtures, feet of sidewalk, retention ponds, etc.

B. The Administrative Regulations of the County Engineer may incorporate by reference any acceptable criteria, or "Best Management Practices" stated in any learned treatise or authoritative publication of special interest to the subject of performance guarantees for planning officials so long as those criteria, or "Best Management Practices," are those generally accepted by the public engineering or planning professions.

**Section 3.3.5:**

Penalties for Non-Performance:

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In addition to forfeiture as described in the preceding subsections, additional penalties shall result from any failure to perform or when a substantial deviation from the approved construction and erosion control plans has occurred:

A. For any development where a performance guarantee was originally required, ~~all permits, approvals, or applications~~ the latest permit or approval from the Planning Commission may be revoked, regardless of whether the performance guarantee is forfeit, upon a ~~vote~~ motion of the Planning Commission finding that the developer has failed to perform pursuant to this section.

B. Whenever an approval is revoked under this subsection, developers of those projects who wish to continue construction of the development must re-apply and pay the application fee for any ~~permits, approvals, or applications~~ for any stage of performance or approval before commencing work on any portion of the development that remains incomplete at the time of default ~~for failure to complete~~.

C. For the purposes of section 3.3.1 and 3.3.2, a default of the performance guarantee because of a substantial deviation from the approved plan is no different from and has the same effect as default for non-performance.

D. The provisions of this section are supplemental and may not hinder or preempt the enforcement provision of any other section of this regulation, the county zoning ordinances, or any applicable law or regulation.

E. Failure of any provision of this section to comply with the applicable laws of the jurisdiction shall act to invalidate the offending section only, and any remaining provisions shall remain valid and enforceable.