

COMMONWEALTH OF KENTUCKY
CALLOWAY COUNTY
ORDINANCE NO. ~~020~~ 0416-B

**AN ORDINANCE AMENDING ARTICLE I, SECTION 6.2
OF THE SUBDIVISION REGULATIONS OF CALLOWAY COUNTY, KENTUCKY**

WHEREAS, the Fiscal Court of Calloway County has heretofore adopted ordinances and regulations relating to the development of subdivisions;

WHEREAS, it was the original intent of the Fiscal Court of Calloway County in adopting ordinances and regulations relating to the development of subdivisions to give the Fiscal Court discretion in requiring the subdivider to perform all work and improvements, taking action to secure installation of all work and improvements, and releasing guarantees.

WHEREAS, contrary to the intent of the Fiscal Court, on January 21, 2020, the Calloway Circuit Court entered an order interpreting the Calloway County Subdivision Regulations to *require* the Fiscal Court to cause completion of street, road, or right of way construction when a subdivider fails to complete said work, even if that means taxpayer dollars must be expended to do so.

WHEREAS, in order to ensure that the Calloway County Subdivision Regulations are interpreted in accordance with the Fiscal Court's original intent, the Fiscal Court hereby amends Article I, Section 6.2 of the Subdivision Regulations of Calloway County, Kentucky to more accurately reflect the original intent of the Fiscal Court.

WHEREAS, the amendments will be applicable retroactively to the date the subdivision regulations were first enacted since they merely elaborate on the original intent of the Fiscal Court.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF CALLOWAY, COMMONWEALTH OF KENTUCKY AS FOLLOWS:

SECTION 1. That the Fiscal Court of the County of Calloway, Commonwealth of Kentucky, hereby amends Article 1, Section 6.2 of the Subdivision Regulations of Calloway County, Kentucky as follows:

SECTION 6.2 GUARANTEES

The subdivider may execute and file guarantees with the Fiscal Court, (and if applicable, additional guarantees to the appropriate city legislative body), in lieu of actual installation or completion of the required improvements, except sidewalks, when requesting approval of the final plat.

A. Guarantees, except for sidewalks, shall be based on a cost estimate for the required improvements, for each phase of uncompleted construction as estimated by the subdivider's engineer. Such guarantees shall run to Calloway County Fiscal Court (and such additional guarantees as may be required by the appropriate city legislative body). Copies of such guarantees shall be submitted to the Fiscal Court and approved by the Fiscal Court. The cost estimate shall be based on the amount determined to be reasonably necessary to complete all of the improvements required to be constructed by the subdivider, as specified in the approved improvement drawings and specifications, including a sum in addition to fifteen (15%) percent above the cost estimate as a contingency for cost overruns plus engineering fees, attorney fees and the fees for plan review and construction review.

B. Except as herein provided, the guarantee shall be in the form of a good and sufficient surety bond, executed by the subdivider as principal, and a corporation authorized to act as a surety under the laws of the state of Kentucky, as surety. The guarantee shall be an assurance of faithful performance of any and all work and the construction and installation of all improvements required to be done by the subdivider, as specified in the approved improvement drawings and specifications, together with all other overrun and contingency sums as herein provided.

C. With regard to street, road or right of way construction, the guarantee shall contain the further condition that, should the subdivider fail to complete all work and improvements required to be done by him within twenty-four (24) calendar months of the date of approval of the final plat, or within a mutually agreed upon extension, but never to exceed twelve (12) consecutive calendar months, that the Fiscal Court shall cause all required work to be done and improvements constructed. The parties executing the guarantee shall be firmly and without contest bound for the payment of all necessary costs therefore. Whenever the subdivider elects to execute alternative forms of guarantee (i.e., cash, bonds, letter of credit, escrow agreement, etc.), written authorization from the County Judge/Executive concerning its adequacy, amount, etc. shall be filed with the Fiscal Court prior to approval of such guarantee and a final plat. All guarantees shall include a provision that in the event of any default on the part of the subdivider or the performance of any work or construction of any improvements for which such guarantees have been deposited, the Fiscal Court may cause the required work to be done and the Fiscal Court shall be permitted to withdraw that amount required for payment of all costs therefore. Although the guarantee shall include language to put the guarantor on notice that should the subdivider fail to complete all work and improvements, the Fiscal Court shall have the authority to require all work to be done and improvements constructed, the determination as to whether to require the all work to be performed, including street, road or right of way construction and improvements, will be made at the sole discretion of the Fiscal Court or its designee. It is within the sole discretion of the Fiscal Court to waive any requirements for construction of street, road, right of way, or any other improvements.

D. In addition to any other security or guarantees provided herein, the Fiscal Court shall be granted a first priority lien upon the real property to secure the improvements required by the Fiscal Court.

E. All written guarantees shall be approved in writing by the Calloway County Attorney or another attorney selected by the Fiscal Court prior to acceptance by the Fiscal Court.

F. In the case where sidewalk improvements have not been completed (i.e., construction of sidewalks as regulated herein are the responsibility of the builder and owner of the lot in question and are not required to be completed or guaranteed prior to final plat approval), a conditional certificate of occupancy may be given by contract with the applicable legislative body or Fiscal Court not to exceed six (6) months signed by both the builder and owner of the premises for which the improvements will serve.

G. No release by the guarantor shall be made of guarantees until the Fiscal Court has received written certification from the developer's engineer and from the appropriate County official that all improvements have been constructed in accordance with the previously approved plans.

H. Following final inspections of improvements, the County Road Supervisor and the County Judge/Executive shall so certify in writing to the Fiscal Court to permit the release or return of the guarantee to the subdivider or surety within ten (10) days of such final inspection certification.

SECTION 2. That the Fiscal Court of the County of Calloway, Commonwealth of Kentucky, hereby amends Article 1, Section 6.2 of the Subdivision Regulations of Calloway County, Kentucky as follows:

SECTION 6.23 FAILURE TO INSTALL IMPROVEMENTS

If it is determined by the Fiscal Court that improvements have not been installed as planned or that the improvements are not properly guaranteed, then the Fiscal Court may take action to secure installation of the improvements, including, but not limited to, civil actions for injunctive relief, damages, and/or foreclosure against the developer and such providers of the guarantees. The parties executing the guarantee shall be firmly bound for the payment of all necessary costs therefrom, including the attorney fees and costs of the Fiscal Court.

The determination to take action to secure completion of all work or installation of all improvements, including street, road, or right of way improvements, will be made at the sole discretion of the Fiscal Court or its designee. It is within the sole discretion of the Fiscal Court to

waive any requirements for completion of work or installation of improvements, including street, road, right of way, or any other work or improvements.

If such action is taken, no new building permit or certificate of occupancy or public approval by any public agency shall be issued or granted until all improvements are installed properly as determined by the Fiscal Court.

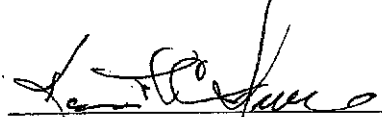
SECTION 3. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall continue in full force and effect, and, to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 4. This Ordinance shall be read on two separate days and become effective upon summary publication pursuant to KRS Chapter 424. First reading the 19th day of August, 2020. Published not more than seven (7) days nor more than twenty-one (21) days prior to passage on the 9th day of September 2020. Second reading and passage occurring on the 16th day of September, 2020.

SECTION 5. The Clerk of the Court is directed to publish this ordinance in a local newspaper one time within thirty (30) days of passage, to obtain proof of publication thereof and to file said proof in the minutes of this Court.

SECTION 6. Because this Ordinance merely elaborates on the intent of the Subdivision Regulations, as originally enacted, the changes herein shall be retroactively applied and shall take effect and be in full force and effect as of March 1, 2003.

ADOPTED BY THE CALLOWAY COUNTY FISCAL COURT ON FIRST READING:



KENNETH C. IMES
CALLOWAY COUNTY JUDGE EXECUTIVE