

1 ORDINANCE NO. 2010-229

2
3 SPONSOR: Mr. Pry

4
5 DATE: May 24, 2010 COMMITTEE Rules

6
7 **An Ordinance amending numerous sections of Part Eleven of the Codified Ordinances of**
8 **the County of Summit, Ohio, entitled “Subdivision Regulations”, for the Planning**
9 **Commission and the Executive’s Department of Community and Economic Development,**
10 **and declaring an emergency.**

11
12 WHEREAS, County Council previously adopted Ordinance No. 2008-020, which
13 amended certain subdivision regulations that are set forth in Part Eleven of the Codified
14 Ordinances of the County of Summit, Ohio, as amended; and

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16 WHEREAS, pursuant to § 711.10 of the Ohio Revised Code, on March 25, 2010,
17 following a duly noticed public hearing, the County of Summit Planning Commission
18 recommended certain amendments to the current County subdivision regulations to clarify and
19 strengthen the same particularly as they apply to contractor performance bonds; and

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21 WHEREAS, pursuant to § 711.05 and § 711.132 of the Ohio Revised Code, this
22 Council has reviewed the proposed amendments to the subdivision regulations and has
23 conducted a duly noticed public hearing regarding the same; and

24
25 WHEREAS, pursuant to § 711.101 of the Ohio Revised Code, this Council has also
26 reviewed the proposed amendments to the rules setting standards and requiring and securing the
27 construction of improvements, including performance bond requirements that are set forth in the
28 subdivision regulations, and has conducted a duly noticed public hearing regarding the same; and

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30 WHEREAS, this Council has determined by reviewing all pertinent information that it is
31 necessary and in the best interest of the County of Summit, Ohio, to adopt the proposed
32 amendments to the subdivision regulations, pursuant to § 711.05, § 711.101 and § 711.132 of the
33 Ohio Revised Code;

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35 NOW, THEREFORE, BE IT ORDAINED by the Council of the County of Summit, State
36 of Ohio, that:

37
38 SECTION 1

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40 Part 11 of the Codified Ordinances of the County of Summit, Ohio, entitled “Subdivision
41 Regulations” is hereby amended as set forth on Exhibit A, attached hereto and incorporated
42 herein by reference as if fully restated.

1 ORDINANCE NO. 2010-229
2 PAGE TWO

3
4 SECTION 2

5
6 This Resolution is hereby declared to be an emergency in the interest of the health, safety
7 and welfare of the citizens of the County of Summit, Ohio, and for the further reason that it is
8 immediately necessary to clarify and strengthen the County's subdivision regulations.
9

10 SECTION 3


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12 Provided this Resolution receives the affirmative vote of eight members, it shall take
13 effect immediately upon its adoption and approval by the Executive, otherwise it shall take effect
14 and be in force at the earliest time provided by law.
15

16 SECTION 4

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18 It is found and determined that all formal actions of this Council concerning and relating
19 to the adoption of this Resolution were adopted in an open meeting of this Council, and that all
20 deliberations of this Council and any of its committees that resulted in such formal action were in
21 meetings open to the public, in compliance with all legal requirements, including Section 121.22
22 of the Ohio Revised Code.
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25 INTRODUCED May 10, 2010

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27 ADOPTED May 24, 2010

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31 CLERK OF COUNCIL


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33 PRESIDENT OF COUNCIL

34 APPROVED May 24, 2010

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36 
37 EXECUTIVE

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39 ENACTED EFFECTIVE May 24, 2010

Voice Vote: 10-0 YES: Comunale, Crawford, Crossland, Feeman, Kostandaras
Poda, Prentice, Rodgers, Schmidt, Shapiro, ABSENT: Smith

2010 COUNTY OF SUMMIT SUBDIVISION REGULATIONS UPDATE**1110.04 BONDS.**

Before the Final Plat may be considered for approval by County Council, the Summit County Planning Commission must have recommended the Final Plat for approval and must confirm that the Developer has furnished to the County Executive the Bonds as required hereby. If the construction of the Subdivision Improvements is complete, Maintenance Bonds are required, otherwise Performance Bonds are required.

- (a) Bond for Haul Roads & Previously Constructed Roads.
- (1) In order to protect roads in a multiple phase Subdivision, Performance Bonds for future phases shall include assurances of the maintenance and repair of any of the Subdivision's completed roads used by construction vehicles for access to the phase (s) under construction. Prior to the start of construction of such a future phase, the Developer shall provide the Summit County Executive with such a Bond, along with an estimate prepared in accordance with section 1110.03 hereof verifying the sufficiency of the Bond amount covering said completed road (s). The Bond will be released, subject to the recommendation of the Summit County Engineer, when the road(s) in question are no longer used by the Developer's construction vehicles and any maintenance work required therefore has been completed.
 - (2) When a separate "Haul Road" is established and construction vehicle traffic is eliminated from Subdivision roads constructed in a previous phase, the phase bond requirement as stated above, shall not apply. The Summit County Engineer must review and approve such proposed temporary Haul Road(s) prior to the start of construction. Upon the completion of construction, the Developer shall eliminate the temporary Haul Road (s) and restore the road pathway to its original condition.
- (b) Performance Bond or Bonds. Prior to any consideration of County Council approval, the Developer shall furnish Performance Bonds to the County Executive in the amount equal to one hundred (100) percent of the approved total cost of the Improvements not yet completed plus ten (10) percent of the cost of the completed items. Performance Bonds may shall be provided in the form of surety bonds issued by sureties insurance companies authorized to transact business in the State of Ohio by the Ohio Department of Insurance~~acceptable to the County Executive, or irrevocable letters of credit issued by banks acceptable to the County Executive, or escrowed funds as described below.~~

Performance Bonds will remain in effect until released by the County Executive. Separate Performance Bonds shall be issued according to the office or department responsible for inspection of the Improvements, and shall guarantee completion of the required Improvements in compliance with the approved Improvement Plans as follows:

- (1) Summit County Engineer
 - A. Earthwork and Grading Operations
 - A.B. Paving
 - B.C. Stormwater Management System
 - C.D. Miscellaneous, i.e., monuments, street signs, restoration of land, site clean-up, etc.
 - D.E. Erosion Control
 - E.F. Fire Ponds
 - F.G. Contingencies (10%)
 - G.H. Inspection and Testing Costs (7%)
 - I. As-Built Construction/Survey Drawings
- (2) Department of Environmental Services
 - A. Sanitary Sewer
- (3) Department of Building Standards
 - A. Landscaping and Street Trees

If an insurance company ceases to be authorized by the Ohio Department of Insurance to transact business in the State of Ohio, the County Executive may require an adequate authorized substitute security to assure completion of the Improvements.

- ~~(e) Escrowed Funds Performance Bond Option. In lieu of a Performance Bond, the Developer may deposit a funds equal to one hundred (100) percent of the estimated costs of the Improvements (calculated in accordance with section 1110.03 hereof) in an escrow account with a bank approved by the County Executive. The Developer and the bank shall inform the County Executive in writing that said money is secured and deposited in with the bank for the Improvements, the Developer shall verify all invoices and statements of expenditures for said Improvements and submit them to the Summit County Engineer, Department of Environmental Services, and/or Department of Building Standards as applicable, for review and approval. Upon written approval of a Developer's requested partial release of escrow funds, the bank may release such escrow funds.~~
- ~~(d) Financial Status of Surety or Bank. On intervals of two years or less after the date of enactment of legislation accepting each Final Plat and until acceptance of the respective Improvements, the County Executive shall confirm the financial status of each Surety or Bank that issues Performance Bonds. If, in the opinion of the County Executive, the financial status of such a Surety or Bank is questionable, If an insurance company ceases to be authorized by the Ohio Department of Insurance to transact business in the State of Ohio, the County Executive may require an adequate authorized substitute security to assure completion of the Improvements.~~
- (c) Reduction of Escrow Account or Performance Bond. The Summit County Engineer may recommend the County Executive to reduce the Performance Bond or escrow account and accept the Maintenance Bond prior to the completion of the Improvements should weather, or the time of year, or need to schedule surface asphalt paving operations after cessation of major Subdivision construction

traffic, or seasonal factors affecting seeding and mulching, minor restoration work and clean-up, or other factors deemed significant by the Summit County Engineer or the Executive prevent immediate completion. In this case, the reduced Performance Bond shall remain in effect or remaining fund shall be retained in the escrow account to cover the uncompleted items.

- (d) Failure to Construct or Complete Improvements. If the Developer fails to commence active and continuous construction of the required Improvements with one (1) calendar year of the date of enactment of legislation accepting the Final Plat, or fails to achieve substantial completion of the Improvements within two (2) calendar years of said date, such that the Improvements are not then available for public use, and the Summit County Engineer, and/or Department of Environmental Services and/or Department of Building Standards, as applicable, deems it necessary to notify the County Executive that the Developer has failed in his duty to complete the project, the County Executive may notify the Developer and the Bond surety or bank in which the escrow account is deposited, in writing of such failure and of Summit County's intention to vacate the Subdivision or to complete the project via the Performance Bond.
- (e) Maintenance Bond or Bonds. Before the Summit County Engineer, Department of Environmental Services, and/or Department of Building Standards, where as applicable, will recommend the acceptance of the Subdivision roads or authorization of the release any Performance Bond by the County Executive, a review will be coordinated with the local Township affected to ensure that all phases of the project are satisfactory and complete. Only upon satisfactory completion shall the Developer provide a Maintenance Bond or Bonds (in the form of a surety Bond, irrevocable letter of credit, or escrowed cash on deposit with a bank approved by the County Executive), which shall be divided and administered as follows:
- (1) A separate Bond in the amount of three percent (3%) of the certified construction costs of any sanitary sewer and a separate Bond in the amount of ten percent (10%) of the certified construction costs of any pump station administered by the Department of Environmental Services.
 - (2) A separate Bond in the amount of ten percent (10%) of the estimated cost of all other improvements administered by the Summit County Engineer and including the following:
 - A. Earthwork and Grading Operations
 - ~~A.B.~~ Paving
 - ~~B.C.~~ Storm water management system
 - ~~C.D.~~ Fire ponds
 - ~~D.E.~~ Miscellaneous, e.g., monuments, street signs, street lights, restoration of land and site clean-up
 - ~~E.F.~~ Contingencies (10%)
 - ~~F.G.~~ Inspection and Testing Costs (7%)
 - ~~H.~~ As-Built Construction/Survey Drawings

- (3) A separate Bond in the amount of ten percent (10%) of the estimated construction costs of any Improvements administered by the Department of Building Standards and including the following:
- A. Landscaping and street trees (see section 1106.03 hereof).
- (f) Optional Increase of Amount of Maintenance Bonds. The Summit County Engineer, Department of Environmental Services and/or Department of Building Standards, as applicable, may increase the required Maintenance Bond above the specified amounts if in his/her opinion, unusual topographic, subsoil, or other construction limitations warrant. In such situations, the Summit County Engineer, Department of Environmental Services and/or Department of Building Standards, as applicable, shall furnish written explanations to the Summit County Planning Commission for their action.
- (g) Assurances & Duration of Maintenance Bonds. The Maintenance Bonds shall assure that the Developer will maintain and restore the roads and other Improvements until such roads and Improvements pass the final inspections of the Summit County Engineer, Department of Environmental Services and/or Department of Building Standards, as applicable.—~~Said final inspections to take place no earlier than two (two) years after the date of release of the Performance Bonds (as further set forth below).~~
- (h) Failure to Maintain Improvements. If the Developer fails to perform maintenance and restoration work, the County Executive or the Summit County Engineer may self-perform the work or authorize to have the work performed by others. The cost of such work will be deducted or drawn from the Maintenance Bond. The Developer will remain liable for any expenditure over and above recovery derived from the Maintenance Bonds.
- (i) Release of the Maintenance Bonds. It is the responsibility of the Developer to request inspections for Bond release. After all maintenance and restoration work has been completed to the satisfaction of the Summit County Engineer, and/or Department of Building Standards, as applicable, the County Executive will release the Maintenance Bonds or those portions remaining to the Developer. The Bonds will remain in full force and effect until formally released by the County Executive.
- (j) Bond Status Report. The Subdivision Administrator shall distribute a Bond Status Report quarterly to the Planning Commission at regularly schedule meetings and also provide this report to the President and Clerk of Council. The report will be presented in the following months; January, April, July, and October. The Bond Status Report shall contain a list of all outstanding Performance and Maintenance Bonds and indicate the original bond amount and the remaining balance, an estimate of the cost of work remaining to be completed, and the continued status of the surety to transact business in the State of Ohio. The Report information is to be submitted to the Subdivision Administrator by the Summit County Engineer, the Department of Environmental Services, and the Department of Building Standards for distribution at the specified Planning Commission meetings.

1110.05 PLAT APPROVAL WITHHELD.

Final Plat approval may be withheld if there is a problem with Improvement Plan compliance (including Stormwater Pollution Prevention Plan compliance) in any of the preceding plat phases.

1110.06 RECORDING OF FINAL PLAT.

Once the Final Plat has been approved by the Summit County Planning Commission, the following two approval options are available for the Developer to be granted Final Plat approval by County Council:

- Option 1. The Developer must have furnished a Performance Bond or Bonds for the amount of the estimated construction cost of the ultimate installation of the Improvements. (Refer to Section 1110.04(b)).
- Option 2. The Developer must have completed the Improvements, and have them inspected and approved per Section 1110.07(c). In addition, the Developer must have furnished a Maintenance Bond or Bonds per Section 1110.04(g).

After all required approvals are secured, including obtaining the required Bonds, and the proposed final Special Conditions Agreement, if applicable, the original Mylar Final Plat and the Agreement shall be taken by the Developer and/or Developer's agent to the Summit County Engineer for processing and signature on the Final Plat. If signatures have not yet been obtained from the Summit County Planning Commission on the Final Plat, staff will obtain Summit County Planning Commission signatures and return the Final Plat to the Summit County Engineer's Office. The Summit County Engineer, after reviewing and approving the Bonds, shall submit the Final Plat and the proposed Agreement to the County Executive's General Counsel for legislation preparation and for final checking of the proposed Agreement. The Final Plat, the Agreement and legislation are given signature approval by Summit County Council and the Summit County Executive, then the Final Plat is submitted to the County Tax Map Department for checking. The Developer and/or Developer's agent, then takes the Final Plat and the binding Special Conditions Agreement to the County Fiscal Officer for recording. No Final Plat of any Subdivision nor any Special Conditions Agreement shall be recorded in the Office of the County or have any validity until it has been approved and processed in the manner prescribed herein. In the event any such unapproved Final Plat and/or Special Conditions Agreement is recorded, it shall be considered invalid. All costs for recording of the Final Plat and the Special Conditions Agreement shall be borne by the Owner and/or Developer.

Following approval by County Council, approval of a Final Plat and approval of a Special Conditions Agreement shall automatically expire one (1) year from the date of approval, unless the Final Plat and the Agreement are ~~is~~officially recorded in Summit County.

1110.07 CONSTRUCTION.

- (a) Requirements for Start of Construction.
 - (1) Approvals Required. The following items must have been approved:

- A. The initial Special Conditions Agreement.
 - B. The Improvement Plans and the Stormwater Pollution Prevention Plan (SWPPP) for the Subdivision.
 - C. The construction schedule showing the starting and completion dates for each phase of the construction work, and a date for the completion of the entire Subdivision.
 - D. Any Bonds required for the project.
- (2) Permits Required. The contractor must have all necessary permits required for the project prior to the start of construction.
- A. Permit verification. Jurisdictional Wetlands – In areas where jurisdictional wetlands as defined by an on-site delineation verified by the United States Army Corps of Engineers will be affected, a copy of the wetland delineation report shall be submitted with the SWPPP. If an individual Permit is required, a copy of that Permit, showing project approval and any restrictions that apply to the site activities shall also be submitted. If an individual permit is not required for the proposed project, the Developer shall submit proof of compliance with the Nationwide Permit Program and Ohio EPA Regulations. Proof shall include, but is not limited to the following: A letter from the site owner verifying that a qualified professional has surveyed the site and found no Waters of the United States, or a site plan showing any proposed fill of Waters of the United States conforms with the conditions specified in the applicable Nationwide Permit, and Ohio EPA Regulations.
 - B. In addition, the Developer must provide proof of compliance with the Ohio EPA General Stormwater National Pollution Discharge Elimination System (NPDES) Permit. Proof of compliance shall be, but is not limited to, a copy of the NPDES General Stormwater Permit Notice of Intent and/or a copy of the NPDES Permit number and/or a copy of the Ohio EPA Director's Acceptance Letter for the NPDES Permit.
- (3) Pre-Construction Meeting. A pre-construction meeting will be held at which the Owner, Developer and/or his/her representative, design engineer, contractor, the Summit County Engineer, the Summit Soil and Water Conservation District, Township and other agencies as required will attend prior to the commencement of any project. At this time the project will be discussed in regard to procedure, construction methods, plans, materials, inspections, stormwater management, erosion control, etc.
- (b) Cooperation of Developer and/or Contractor. The Developer and/or contractor shall have available on the project site at all times one (1) copy of all approved plans and specifications. He/she shall cooperate with the Summit County Engineer's Inspector, the Summit Soil and Water Conservation District Inspector, (SWCD) and/or Department of Environmental Services Inspector, and the Department of Building Standards Inspector, where applicable, and with other contractors in every way possible. The Developer and/or contractor shall at all times have a competent representative acting as his/her agent on the project. The

representative shall be capable of reading and thoroughly understanding the plans and specifications and promptly supplying such materials, tools, plat equipment and labor as may be required. A representative shall be furnished regardless of the amount of work sublet.

(c) Inspection.

- (1) The Summit County Engineer shall be responsible for the inspection of all street, structure, fire pond and drainage Improvements in consultation with Township officials. The Developer, his/her engineer, or his/her contractor, shall give notice to the Summit County Engineer at least three (3) working days in advance of any construction of physical public Improvements. Failure to notify the Summit County Engineer may result in requiring the complete removal of such uninspected work at the Developer's sole cost.
- (2) The Summit County Engineer shall determine the amount of inspection, including laboratory and other test(s), required to assure that the Developer or his contractor(s) and/or subcontractor(s) will comply with the approved drawings and schedule.
- (3) The project engineer shall perform the first inspection of erosion and sediment control devices to certify that the 'as built' conditions complies with the approved Stormwater Pollution Prevention Plan (SWPPP) no less than two working days prior to the start of construction. An inspection report shall be sent to the Summit Soil and Water Conservation District within seven days from the date of the inspection. Following this initial inspection, regular inspection will be performed by the Summit Soil and Water Conservation District for compliance with the SWPPP. If the site is not in compliance with the approved plan, the Developer will be notified in writing by mail and will have 14 days to make the necessary corrections/improvements per the requirements of the Development Agreement (also refer to Section 1105.07(b), Stormwater Pollution Prevention Plan).
- (4) The Department of Environmental Services shall be responsible for inspection of all sanitary sewage and water supply system improvements.
- (5) The following operations will be inspected by the Summit County Engineer's Office:
 - A. Preliminary grading.
 - B. Backfilling of all trenches and excavations in the right-of-way.
 - C. Preparation of sub-grade.
 - D. Setting forms.
 - E. Paving (rigid and flexible).
 - F. Inlet construction.
 - G. Curing of rigid pavement.
 - H. Removal of forms and berm compaction.
 - I. Sidewalk/walkway construction.
 - J. Sealing joints.
 - K. Storm water management system construction.
 - L. Any construction of utilities within the street right-of-way.

- M. Any construction of structures within the right-of-way.
- N. Landscaping within right-of-way.
- O. Street Lighting.

Any of the above-listed construction operations that may be performed without advance notice to the Summit County Engineer's Office may result in coring of the pavement, subgrade boring, and non-acceptance of the improvement if it does not meet the specifications of the Summit County Engineer.

- (d) Inspection Fees. The fees shall cover the actual wage, salary, or contract cost of the inspection service, plus overhead as determined by the Summit County Engineer to cover such items as employee benefits, engineering service, and transportation. Any costs incurred by the Summit County Engineer to perform pavement corings, sub-grade borings and/or non-destructive testing to field verify the Developers work, shall be borne by the Developer. The Developer is held responsible for all inspection fees which will be payable monthly. The Performance Bonds posted by the Developer guarantees the payment of all inspection fees. The County Executive shall not authorize the release of any Bonds until the Summit County Engineer certifies that all inspection fees have been paid in full.
- (e) Roadway Construction. All work shall be done in conformance with the approved Improvement Plans and the latest editions; of the Ohio Department of Transportation Construction and Materials Specifications and the Summit County Engineer Specs and Details.
- (f) Testing. All material supplied shall be plant inspected as directed by the Summit County Engineer. Compaction tests shall be made in fill areas in the right-of-way and on the subgrade prior to paving as directed by the Summit County Engineer. Pavement tests shall be conducted on site as directed by the Summit County Engineer. The Summit County Engineer reserves the right to order pavement cores made if conditions warrant. The testing mentioned above shall be done by a private testing laboratory acceptable to the Summit County Engineer and shall be done at no cost to the County.
- (g) Field Changes. Approval of Final Improvement Plans shall not prevent the Summit County Engineer, or his/her agent, from ordering needed changes he/she deems necessary in the field as work progresses. This extra work shall be at the Developer's sole expense. If it becomes necessary to modify the previously approved improvements due to unforeseen circumstances, the Developer shall inform the Summit County Engineer in writing of the conditions requiring modification. Written authorization from the Summit County Engineer to make the required modification must be received by the Developer and/or Developer's engineer before proceeding with the construction of the Improvement.