

1 AN ACT relating to planning and zoning.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO
4 READ AS FOLLOWS:

- 5 *(1) Any party that appeals the Circuit Court's final decision made in accordance with*
6 *any legal challenge under this chapter shall, upon motion of an appellee as set*
7 *forth in subsection (2) of this section, be required to file an appeal bond in the*
8 *manner directed by the Kentucky Rules of Civil Procedure prior to the case being*
9 *transferred to the Kentucky Court of Appeals.*
- 10 *(2) Within thirty (30) days of the filing of the notice of appeal in Circuit Court, any*
11 *appellee may file a motion for the Circuit Court to order the appellant to post an*
12 *appeal bond, which the Circuit Court shall impose, subject to the other*
13 *requirements of this section. If an appellee does not move the Circuit Court to*
14 *require the appellant to post an appeal bond, the right to request an appeal bond*
15 *is waived.*
- 16 *(3) (a) Within thirty (30) days of an appellee filing a motion in Circuit Court for*
17 *the appellant to post an appeal bond, the Circuit Court shall conduct a*
18 *hearing to determine the amount of the appeal bond, issue findings of fact,*
19 *and set the bond amount.*
- 20 *(b) In determining the amount of the appeal bond, the Circuit Court shall*
21 *determine if the appeal is presumptively frivolous, including but not limited*
22 *to:*
- 23 *1. Whether the appeal is of a ministerial or discretionary decision; and*
24 *2. Whether or not there exists a reasoned interpretation supporting the*
25 *appellant's position.*
- 26 *(c) If the Circuit Court determines that an appeal is presumptively frivolous,*
27 *the Circuit Court shall consider all costs and damages that the appellee may*

1 suffer or incur during the pendency of, or that will be caused by, the appeal,
2 including but not limited to any lost or delayed profits, lost or delayed cash
3 flow, interest payable on land acquisition or development loans, and
4 attorney fees and court costs, up to a maximum bond amount of two
5 hundred fifty thousand dollars (\$250,000).

6 (d) If the Circuit Court determines that an appeal is not presumptively
7 frivolous, the Circuit Court shall consider the costs that the appellee may
8 incur during the pendency of the appeal, including but not limited to
9 attorney fees and court costs, plus interest payable on land acquisition or
10 development loans, up to a maximum bond amount of one hundred
11 thousand dollars (\$100,000).

12 (e) Whether the Circuit Court makes a determination under paragraph (c) or
13 (d) of this subsection:

14 1. Costs and damages shall not include expenses incurred prior to the
15 date the notice of appeal is filed with the Kentucky Court of Appeals;
16 and

17 2. The appellee has the burden to present sufficient evidence establishing
18 the appellee's costs and damages.

19 (4) (a) Once an appeal pursuant to this section becomes final and unappealable,
20 either the appellant or the appellee may make a motion in the originating
21 Circuit Court requesting that the Circuit Court conduct a hearing to
22 determine the actual costs and damages to be paid to the appellee under the
23 appeal bond.

24 (b) The Circuit Court shall hold the hearing within thirty (30) days of the
25 request and issue findings of fact as to the costs and damages within an
26 additional thirty (30) days.

27 (c) Costs and damages awarded under this subsection shall be limited to the

- 1 amount of the appeal bond.
- 2 (d) If neither party moves the Circuit Court pursuant to this subsection, the
- 3 Circuit Court may on its own motion release the appeal bond.
- 4 (5) Subsections (1) and (2) of this section shall not apply to the United States, the
- 5 Commonwealth of Kentucky or any of its municipal corporations or political
- 6 subdivisions, or any of their agencies or officers acting for or on their behalf.

7 ➔Section 2. Whereas it is desirable to curb unnecessary appeals of land use cases,

8 which appeals burden the courts, cause loss of jobs and loss of tax revenue, and many

9 times render time-sensitive projects such as multifamily affordable housing projects

10 undevelopable, an emergency is declared to exist, and this Act takes effect upon its

11 passage and approval by the Governor or upon its otherwise becoming a law.