

Article 7:
SUBDIVISION BONDS AND SURETY

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A. Completion of Improvements and Bonding

In order to obtain guarantee of performance to assure timely completion and competent construction of subdivision and related public improvements, the applicant is required to post surety(ies) in the form of bond, escrow, letter of credit or other acceptable surety under the provisions contained in this article. Such surety(ies) shall be posted by the applicant and approved by the Town Council prior to recordation of the Final Subdivision Plat to which the bond applies.

B. Surety and Bond Agreements

The surety (or bond) agreement(s) shall apply to erosion and sediment control, landscaping and required physical improvements located within the existing or proposed public right-of-way or public or private easements or as are connected to any public utility or facility in form and substance as approved by the Town.

C. Bond Amount Estimate

The applicant's engineer shall submit an itemized, component cost estimate of improvements planned for the subdivision, including: (1) subdivision improvements, (2) erosion and sediment control measures, (3) landscaping improvements, (4) other public or private infrastructure to be dedicated to and maintained by a public agency, (5) proffered improvements and financial commitments related to conditional zoning approvals for the subdivision, and (6) other items as may be required for subdivision bonding by the Zoning Administrator.

The bond amount estimate shall be submitted to and reviewed by the Town Attorney, and the Zoning Administrator prior to the review of the Subdivision Agreement by the Town Council. The component cost estimate for bonding shall be based upon industry norms within the Tidewater region and/or Town standard unit prices and shall be signed and sealed by either a licensed professional engineer or qualified land surveyor. The bond amount estimate shall include a reasonable allowance for administrative costs, inspection fees, inflation, potential damage to existing streets or utilities, but shall not exceed ten (10) percent of the construction costs.

The erosion and sediment control bond may be separate from the subdivision improvements bond.

D. Period of Bond Agreement

1. When an applicant enters into a bond agreement with the Town, it is understood that all necessary physical improvements must be completed in the specified period of time. If all of the improvements are not completed to the sole satisfaction of the Town within the period of the bond, and no extension has been obtained, or a replacement bond has not been approved, the bond agreement shall be deemed in default.
2. The maximum period of the performance bond agreement shall be twelve (12) months, unless the initial bond period is extended by the Town Council at the time of Final Subdivision Plat approval.
3. The applicant and surety will be notified by the Zoning Administrator within sixty (60) calendar days prior to the end of the period of bond agreement. For sureties which contain an expiration date, the applicant and surety will be notified within sixty (60) calendar days prior to expiration that an approved extension or new bond will be required.

DI. Extension of Bond Agreement

The applicant may request and be granted by the Town Council, an extension of the expiration date of the bond for a period not to exceed one (1) year, provided that:

1. All surety agreements have been acquired and accepted by the Town.
2. The applicant has submitted an acceptable program of completion to the Planning and Zoning Administrator.
3. Inspection of existing physical improvements is found satisfactory.
4. There have been no undue and unattended complaints lodged against the applicant or the subdivision.
5. The applicant's request for extension of the bond sufficiently addresses the reasons which have precluded the completion of the project within the original bond period.

6. The bond cost estimate has been updated to the satisfaction of the Zoning Administrator.
7. The applicant's extension request is received by the Zoning Administrator thirty days (30) prior to the end of the period of the bond agreement.

F. Forms of Surety Guarantees Shall be Limited to the Following:

1. Cash escrows.
2. Letters of credit from an insured lending institution.
3. Cashier's or certified check.
4. Other surety as approved by the Town Attorney.

G. Maintenance (Warranty) Bonds

1. Prior to the release of the performance bond and the Town or state acceptance of streets and other public facilities subject to initial surety requirements, a maintenance (or warranty) bond shall be required for such subdivision improvements to be held for a period of two (2) years.
2. The subdivider shall furnish surety in the same manner as a performance bond, in an amount sufficient for and conditioned upon the maintenance of the improvements. The form and type of surety shall be approved by the Town Attorney.
3. The maintenance bond shall apply to streets, roads, curbs, guttering, street lighting, storm drainage improvements, utilities, other related improvements, including the reconstruction and repaving of any public street or road.
4. The maintenance bond shall be equal to or greater in value than an amount equaling twenty (20) per cent of the total construction cost of the subdivision improvements.

H. Release of Bond

1. The performance bond shall be released only upon (a) the findings of the Town and state that support satisfactory completion of improvements, and (b) upon the placement of a maintenance bond per the requirements of this ordinance, the Town's Design and Construction Standards Manual, and other standards and criteria upon which the approval of the Final Subdivision Plat and Public Improvements Plan, erosion and sediment control plan, and landscape plan were based.
2. Upon written request by the subdivider or developer, the Town shall make periodic partial performance bond releases for satisfactory subdivision performance and otherwise in accord with the Code of Virginia. Upon the Town's review of request and upon satisfactory inspection and approval of improvements subject to the release request, such periodic and/or partial releases shall be made within thirty (30) days of request. The releases shall be based upon the percentage of the facilities completed and approved by the Town, provided that such releases may not occur before the completion of at least thirty (30) percent of the facilities covered by any bond, escrow, letter of credit, or other performance guarantee. The Town shall not execute more than three (3) periodic and/or partial releases in any twelve-month period. Upon final completion and acceptance of said facilities by the Town and state, the Town shall release any remaining bond, escrow letter of credit, or other performance guarantee (surety) to the subdivider or developer provided a maintenance (or warranty) bond is in place.
3. For the purpose of final release, the term "acceptance" is deemed to mean: when the said public facility is accepted by and taken over for operation and maintenance by the Town. For the purpose of erosion and sediment control, acceptance shall be warranted upon final stabilization of the site as determined by the Zoning Administrator, and for the purpose of landscaping, acceptance shall be warranted upon final installation of all required landscaping measures as determined by the Zoning Administrator.

I. Bond Default

1. If the applicant or owner of property subject to the bond fails to complete the required improvements within the specified time frame of the bond agreement, the applicant and owner shall be deemed in default.
2. The applicant, owner and surety will be mailed a copy of the Zoning Administrator's report on the default and will be advised of their right to be heard on the matter at a scheduled public hearing of the Town Council.

3. The applicant, owner and surety shall have thirty (30) days to correct the default and to otherwise complete an agreement with the Town to complete improvements subject to the default.

4. If satisfactory action is not made within the prescribed period, the Town Attorney shall proceed with the completion of the default action by the Town against the applicant and owner, and the Town shall take any and all necessary legal actions to call the bond and secure monetary proceeds related thereto. The Town shall take appropriate steps to initiate action to complete the improvements with monies secured from the default action pursuant to prior approved plans or revisions thereto which may be in the best interest of the residents of the subdivision.