

SECTION EIGHT – BONDING REQUIREMENTS

8-00 BONDING REQUIREMENTS

8-01 No building permit for any construction in the subdivision shall be issued nor any lot within the subdivision conveyed until a bond has been posted in accordance with all of the requirements of Section 8.01. No bond or letter of credit described herein shall be required as long as no building permit for construction is applied for and no lots are conveyed prior to acceptance of the public improvements by the Town.¹

8-01.01 A bond estimate shall be prepared by the Town Engineer and approved by the Commission as sufficient to guarantee the completion of all public improvements specified by the Commission and in conformity with the provisions of these Regulations. In computing the estimated cost of all public improvements, the Town Engineer shall add a percentage not exceeding 20%, to cover inflationary costs, contingencies, and administrative or other costs to the Town in case of default. The Commission may accept assurance, in writing, from each of the utility companies whose facilities are proposed to be installed in the subdivision, in lieu of bond.²

The bond estimate shall be based on the actual cost of construction and installation of all streets, sidewalks, curbs, storm drainage facilities, public utilities, fire hydrants, parks, walkways and fencing, street lights, street name signs, traffic signs, pavement markings, telephone and electric service, planting of street trees and other required landscaping, retaining walls or other structures, easements, as built drawings and monumentation, which are proposed in the plan of subdivision or any phase of a plan of subdivision. Unit prices shall be as specified by the Town Engineer.³

No bond shall be accepted for a period of less than 5 years and 3 months from the date of the approval. In the event the subdivider shall fail to install all improvements within five (5) years from the date of approval, the term of the performance bond may be extended by the Commission upon request of the developer and subject to the receipt of an agreement of such extension by the bank that issued the⁴ irrevocable letter of credit. However, such extension shall not exceed a period of one (1) year.

8-01.01.a The estimated costs of measures, as determined by the Town Engineer, required to control soil erosion and sedimentation, as well as a lump sum figure for possible clean-up efforts for failure to comply, as specified in the plan, shall be covered in the form of a certified check payable to the Town of

¹ revised, SA #19, effective 9/8/07

² revised, SA #19, effective 9/8/07

³ new, SA #19, effective 9/8/07

⁴ revised, SA #23, effective 3/20/10

Southington¹. Said bond² shall be separate from and in addition to the bonding requirements for all other public improvements pursuant to Section 8 herein.

8-01.02 The performance bond filed by the applicant shall be in the form of a certified check made payable to the Town of Southington³ an irrevocable letter of credit in favor of the Town of Southington in a form satisfactory to the Town Attorney and in an amount recommended by the Town Engineer.⁴ If the bonding requirements for work, excluding erosion and sedimentation control, exceeds \$25,000, and the developer wishes to submit an insurance bond, the insurance bond must meet or exceed the following minimum standards:

1. The surety company shall maintain permanent offices within the State of Connecticut.
2. The surety bond agreement shall contain the following provisions, at a minimum:
 - a. that payment shall be made in full within 65 days of written demand by the Commission or its agent; and
 - b. that failure to make full payment within such time shall automatically and without further demand result in a penalty of one (1%) of the total outstanding bond for each calendar month or part thereof that such payment is delayed past the date of demand; and
 - c. that if litigation is required to collect the said surety bond, the surety company shall pay to the Commission the costs thereof, including witness fees, court entry fees, legal fees, and any other costs and expenses of such litigation; and
 - d. the surety company shall agree to indemnify and hold harmless the Commission and the Town of Southington against any and all claims of damage or injury sustained upon, or as a result of, the incomplete public improvements during the period following the demand for payment on said surety bond, and for restoration of any damage or deterioration (including, but not limited to, erosion and sedimentation damages) resulting from such delay in payment; and
 - e. such other provisions as the Commission's legal counsel shall require.⁵

8-01.03 There shall be filed with the bond, in a form acceptable to the Town Attorney and Town Engineer, and a temporary right of access and construction to the premises constituting the subdivision, in a form acceptable to the Town Attorney, including the area of all required off-site improvements, granting to the agencies of the Town

¹ revised, SA #23, effective 3/20/10

² revised, SA #23, effective 3/20/10

³ revised, SA #23, effective 3/20/10

⁴ new, SA #19, effective 9/8/07

⁵ revised, SA #24, effective 11/19/11

of Southington in their sole discretion the right to enter the premises for purposes of inspections and effectuating emergency repairs and maintenance of facilities, including but not limited to, proposed public streets, water, sewer and storm drainage utilities and other facilities under construction but not yet dedicated to the Town.¹

8-02 The Commission may reduce the bond amount as the work progresses if the Town Engineer or his designee approves the completed improvements, provided that it shall not be reduced to less than 10% of the total estimated cost of construction and completion.²

8-03 The developer shall have the option of constructing public improvements without posting a complete performance bond subject to the following conditions:

8-03.a The developer shall notify the Commission in writing of this option and all work shall be subject to the required inspection procedures.

8-03.b The developer shall file a security agreement with the Planning and Zoning Commission in a form approved by the Town Attorney and duly recorded in the land records. Said agreement shall include, inter alia, that the developer cannot sell, assign nor dispose of any lots nor apply or receive any building or zoning permits until the public improvements are fully completed to the satisfaction of the Town Engineer or until a proper bond has been filed and accepted by the Commission in lieu thereof.

8-03.c All deeds for open space and any easements for drainage and sanitary sewer, both within the subdivision and across other property must have been executed and delivered to the Town Clerk, with a copy for the Commission's files. The Town shall not accept the road deed until all improvements and easements connected therewith have been completed to the satisfaction of the Town Engineer or a performance bond is posted to complete any unfinished work.³

8-03.d The Commission shall grant any bond release request within 65 days of application unless it provides to the subdivider a written explanation as to the additional work that must be done before the bond is released.⁴

- Partial release of bond - The applicant may apply for a partial release of the bond. Such partial release shall be executed by the Commission if, after inspection, it is found that the remaining security is adequate to cover the then estimated cost of completion of public improvements plus 10% of the original total established security.

¹ new, SA #19, effective 9/8/07

² new, SA #19, effective 9/8/07

³ revised, SA #19, effective 9/8/07

⁴ new, SA #24, revised 11.19.11

- 8-03.e Upon completion of all public improvements as required, the Commission may accept said public improvements no earlier than 12 months after the Director of Public Works indicates in writing of satisfactory completion of public improvements. The developer can request that the Commission consider accepting a bond valued at not less than 10% of the public improvements for a term of 12 months in conjunction with formal acceptance of public roadway prior to the end of the 12 month period¹.
- 8-03.f The developer or owner of record of any vacant lot within an approved subdivision or any lot on an accepted town road shall be required to post a performance or cash bond, in an amount satisfactory to the Town Engineer, prior to the issuance of a building permit. The amount of said bond shall provide coverage to ensure against damage to pavement, curbing, sidewalk, storm drainage, utilities, and other public improvements and the installation and maintenance of required soil erosion and sedimentation controls. The Town Engineer shall inspect said lot and damage to any public improvements shall be repaired prior to issuance of a Certificate of Occupancy by the Building Inspector. Said bond shall not be released until all repairs have been completed.
- 8-03.g When a subdivision is built, and thus bonded, in sections, approval shall not be granted for subsequent sections if the time period on a bond for a previous section has elapsed without having had all required work completed to the satisfaction of the Town; unless otherwise waived by the Commission.
- 8-03.h If, after due notice, the improvements for which the bond has been posted have not been fully completed within the time limit established in the bond or there are any deficiencies in the quality of any portion of the work or the work fails in any way to be completely acceptable to the Commission as meeting the standards required by the Town specifications, the notices shall be sent to the developer and bonding company, after proper action has been taken by the Planning and Zoning Commission to formally vote the calling of the bond, advising the developer and bonding company of the default and forfeiture and that the Town will proceed by contract or such other means as is more suitable for the situation, with the completion of the bonded improvements.

8-04 The developer shall furnish to the Planning and Zoning Commission a certificate of insurance naming the Town as an additional insured and agreeing to hold the Town free and harmless from any and all suits or claims which may arise as a result of said subdivision work and construction. Such policy shall remain in effect until such time as the roads are accepted by the Town, or the performance bond is totally released, whichever is latest.²

¹ revised, SA #24, effective 11.19.11

² revised, SA #19, effective 9/8/07

8-05 Procedure for filing subdivision mylar

Deeds for all land to be transferred, easements, rights to flow, and bonding must be in place prior to filing mylar. The erosion and sedimentation bond must be posted as certified check or irrevocable letter of credit. The subdivision and public improvement bonding can be posted, or, the developer can choose to file a security agreement as detailed in Section 8-03.b.¹

¹ new, SA #24, effective 11/19/11