

# ***Town of Bethany -- Subdivision Regulations***

## **Section 12 Guarantee of Performance**

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### **12.1 Methods**

The Commission shall require any one of the following methods or any reasonable combination of them for securing the completion of all work and installation of all road(s), public utilities and services required by these regulations:

1. Conditional Approval
2. Provision of a Bond with surety in the form set forth in Section 12.3

Pursuant to Section 13, a bond for the completion of the Soil Erosion and Sediment Control Plan may also be required.

### **12.2 Computations of Costs**

Following the approval of any subdivision or resubdivision plan and before proceeding with any work or the filing of the approved subdivision or resubdivision plan, the subdivider shall review the scope of the road(s), public utilities and services to be completed to fulfill the conditions of the subdivision or resubdivision plan (herein after referred to collectively as improvements) with the Commission who will review the subdivider's estimates of the cost of construction and will determine the type and amount of the surety to be furnished by the subdivider to guarantee the completion of the improvements. In computing the estimated cost of the improvements the Commission will give due consideration to possible escalation of costs during the surety period.

If upon inspection the Commission determines that the construction costs for the improvements exceeds the estimate or the posted surety has experienced a reduction in value the Commission shall have the power to require additional surety. The subdivider shall be responsible for overseeing the actual costs of improvements and advising the Commission if costs for such construction shall be in excess of the estimates.

### **12.3 Form of Surety.**

For the purposes of these regulations, the form of surety for a bond which may be provided and accepted by the Commission is as follows:

A Bond together with:

- a. The pledge of a passbook savings account, or
- b. An irrevocable letter of credit, or
- c. A cash deposit with the Town of Bethany, or
- d. Such other surety as the Commission may find acceptable.

### **12.4 Pledge of Savings Account**

Bonds secured by a passbook savings account shall be accompanied by:

- a. A savings account passbook,
- b. A withdrawal slip in the amount of the bond properly endorsed and made payable to the Town of Bethany.
- c. A letter from the bank acknowledging that the account has been assigned to the Town for a period established for the construction or installation of the improvements plus six months.

#### 12.5 Irrevocable Letter of Credit

Bonds secured by an irrevocable letter of credit shall be provided by a Connecticut bank subject to the approval of the Commission. The letter of credit shall be in such form and accompanied by such documents as may be prescribed by the Commission. The letter of credit shall contain an expiration date of at least six months greater than the period established for the construction or installation of the improvements.

#### 12.6 Cash Deposit.

Bonds secured by a cash deposit with the Town shall be treated as follows:

A certified check, cashiers check or cash shall be delivered to the Treasurer for the Town of Bethany for the amount of the bond. The Town shall deposit said sum in a specific and separate bank account earmarked by the name of the surety to the bond, in the name of the Town of Bethany. The deposit shall be in a savings account drawing standard shortterm interest. The surety shall use his, her or its taxpayer I.D. number or Social Security number as the interest creditor for IRS and bank purposes. Within 30 days of the release of the bond by the Commission the Town shall cause the account to be closed and the proceeds, plus interest less IRS deductions, to be paid to the surety.

#### 12.7 Failure to Complete Improvements

Where surety has been posted and required improvements have not been completed within the time required, the Commission may thereupon declare the subdivider to be in default and withdraw the total amount of surety from the pledged bank account or letter of credit and proceed to complete the improvements. All costs the Town may accrue in completing the work, including the value of the time of its public officials, employees and attorney fees, shall be debited against the funds so withdrawn. If for some reason the security is insufficient to pay for all costs to the Town, the subdivider/owner shall remain liable for such costs in excess of the security.

#### 12.8 Partial Releases.

When and if the Commission determines that a substantial portion of the improvements called for in the final plan approved by the Commission has been completed, it may recommend one or more partial releases of a portion of the security. The balance of the security at all times shall be sufficient to guarantee completion of all the remaining improvements. Such partial release shall be authorized by the Commission. Releases granted shall be in amounts in excess of \$10,000.00 (ten thousand dollars).

#### 12.9 Release of Surety.

The surety shall not be released until the following conditions have been met:

- a. All improvements of the subdivision or resubdivision have been approved and/or accepted by the designated Town Official.
- b. All required monuments must have been set and a sworn affidavit filed by the land surveyor employed by the subdivider stating required monuments have been accurately set as required by these regulations.
- c. The applicants' engineer or surveyor has certified to the Town through the Commission and through submission of detailed "asbuilt" plans, that the improvements are in accordance with the construction plans of the subdivision or resubdivision. "Asbuilt" plans shall include the site development plan, a grading plan and a construction plan as described elsewhere in these regulations. Such plans shall show any modifications or changes made including those made during construction.
- d. Warranty Deed for new streets and street stubs, also road frontage along existing Town roads where no street line had been established, must have been executed and delivered to the Selectmen with a copy to the Commission. Title to said roads shall be unencumbered.
- e. A maintenance Bond as described in these regulations shall be on file with the Town.
- f. All other documents, transfers or conditions required by the approval of the subdivision or resubdivision shall have been provided (conditions performed) to the appropriate Town Official with copies of said documents to the Commission.

#### 12.10 Maintenance Bond

The applicant shall be required to file a Maintenance Bond with the Town prior to dedication to the Town of public improvements in order to assure the satisfactory condition of the completed improvements until April 30 of the following year, or such late date as shall be necessary to correct any defects that may have developed after the winter season. Said bond may provide for snow removal on roads until acceptance of said public improvements by the Town. The Maintenance Bond shall be in an amount not less than 10% of the costs of public improvements.

#### 12.11 Right of Way of Entry for Correction of Violations

The applicant shall file a written agreement executed by the owner of the premises and the applicant in a form approved by the Town Attorney, which permits the Town of Bethany or its officials and employees or independent contractors, to enter upon the premises and to perform all work necessary to correct and abate any violations of these Regulations, and of stipulations which the applicant has made and failed to execute within the required time - such right of entry to arise upon the certification of such violation(s) by the Commission and shall continue for such time thereafter as is required for the Town to remedy such default.

#### 12.12 Attorney Approval

Any and all bonds with surety, agreements, deeds or such other documents required by these Regulations shall be in such form as may be approved by the Town Attorney.