

Adopted December 9, 2015

On December 9, 2015, the Chester Planning Board (Regulator) voted to adopt these amendments to the Town of Chester's Subdivision Regulations, after a duly noticed Public Hearing also held on December 9, 2015.

Amendment to Chester's Subdivision Regulations:
(Replaces original Section 3.9 in its entirety.)

3.9 Performance and Maintenance Guarantee

A. Posting of Performance Guarantee

The Planning Board shall review the Town Engineer's Construction and Road Bond Estimate, and then set the amount and approve the type of the construction performance guarantee prior to the final approval of the subdivision plan. The developer shall post such guarantee with the Planning Board prior to the issuance of any building permits for the site. The guarantee shall cover the estimated cost of constructing and installing all site improvements, including, but not limited to: streets (both public and private roads), drainage facilities, parking, landscaping, and other utilities and infrastructure within the development.

The basis for determining the performance guarantee shall be one hundred percent (100%) of the costs of all required site improvements, plus any other funds necessary for the completion of ancillary work as conditioned by the Board's approval, including engineering and engineering contingencies. The amount shall be reviewed and approved by the Planning Board.

In the case where a new multi-unit subdivision is accessed by existing Town roads, the Planning Board may require an increase to the performance guarantee to cover the repair cost of resulting damage to existing roads. The intent of this provision is to ensure funds to pay for repairing any damages by heavy trucking and construction equipment resulting from the construction of the new subdivision. Upon written approval by the Board, this increase to the performance guarantee may be waived if the developer requests in writing to use, and documents the procurement of, alternate construction access to the new subdivision. Failure to abide by the terms of this approval may affect the amount of future performance guarantee reduction requests (Section 3.9.B.)

Time limitations shall be imposed upon completion of the improvements of the site in accordance with the Conditions of Approval. Posting a performance guarantee shall not be considered a vesting of rights, nor shall posting of a performance guarantee be considered "active and substantial development or building." Failure to commence work on site improvements within the specified time limits will result in one of the following situations.

1. A forfeiture of the performance guarantee in favor of the Town in order to complete the required improvements, or;
2. The need to post a new guarantee prior to construction, or;
3. Revocation of the approved plan pursuant to RSA 676:4-a.

Performance guarantees must be represented in a written agreement with, and acceptable to, the Planning Board, and the Board's Counsel. This provision insures proper and legally binding agreements and appropriate economic assurance for the protection of the Town of Chester and its citizens.

The Planning Board may accept the following methods of posting a performance guarantee through the Planning Board's Office:

1. Cash or a savings passbook held in the name of the Town of Chester and deposited with the Town's Treasurer.
2. An Irrevocable Letter of Credit (LOC) in an amount and manner acceptable to the Planning Board. Sample forms of acceptable LOCs are available through the Planning Board's office.

In addition to the standard clauses, Irrevocable LOCs shall contain the following references and provisions:

1. The Town Engineer's Construction / Road Bond Estimate for the subdivision shall be referenced. Said estimate shall include a 25% engineering contingency.
2. An automatic call clause shall be included whereby, if all improvements, as referenced by the Town Engineer's Construction / Road Bond Estimate, are not completed to the satisfaction of the Chester Planning Board by the LOC's expiration date, and if a letter indicating completion of all improvements is not issued and accepted by the Board, then the LOC shall be automatically considered to have been called and without further action of the Board, the Issuer shall forthwith forward a check in the full amount with the Town of Chester as Payee.
3. A ten percent (10%) annual escalation factor shall be included, in order to ensure any increases in the costs of improvements due to increases in labor and materials costs, inflation etc. will be covered. In the event the Issuer is unwilling to include said clause, then the Planning Board will hold back funds sufficient to account for escalation when recalculating LOC reduction requests for work satisfactorily completed.
4. A clause shall be included stating the Issuer of the performance guarantee agrees that the LOC or other form of performance guarantee is governed by New Hampshire law and that any disputes over the performance guarantee will be subject to the jurisdiction of the New Hampshire state courts.

B. Release of Performance Guarantee

Upon inspection by the Town's Engineer of a partial completion of required improvements, and upon the receipt of his review letter and revised Construction and Road Bond Estimate, the Planning Board may authorize, by vote and in writing, a reduction in the performance guarantee up to an amount equal to the estimated cost of the completed work.

The Town shall retain sufficient funds for the current cost to complete the remaining improvements as indicated by the Town Engineer's Construction and Road Bond Estimate approved by the Board, plus a retainage of twenty-five percent (25%) of the original

performance guarantee amount to cover the repair costs of any latent defects which shall be kept until all required improvements have been inspected by the Town Engineer and accepted by the Planning Board. If the costs for completing the required improvements exceed the amount of performance guarantee held by the Town, additional funds shall be required by the Board, in order to ensure completion before the development proceeds any further. The retainage shall be held until the completion of all required improvements have been inspected and approved by the Board and the Town Engineer.

Should progress toward the completion of all required improvements fall substantially behind the mutually agreed upon timetable, the Planning Board may obtain a completion cost estimate, at the applicant's expense, from:

1. The developer's contractor; or
2. A qualified contractor of the Planning Board's choice.

If the estimated completion costs exceed the amount of the performance guarantee posted with the Town, the developer shall post an additional performance guarantee as is necessary to complete the required improvements. The developer shall post such guarantee within thirty (30) days of notice thereof.

The performance guarantee (or balance thereof) shall not be released until the Town's Engineer has certified in writing completion of the required site improvements in accordance with the approved final plan, and the Planning Board's Counsel has reviewed and approved all deeds governing land to be used for public purposes, as well as all easement agreements for the site. Installation of all required improvements shall be completed within two (2) years of the date of the final plan's approval, unless the time frame is extended by mutual consent of the applicant and the Board. If the required improvements are not satisfactorily installed within the mutually agreed upon timetable, the posted performance guarantee shall be forfeited by the applicant.

Prior to the return of the balance of the performance guarantee, the Town's Engineer shall certify in writing that all site improvements have been installed satisfactorily as per the approved subdivision plan. Furthermore, the developer shall certify in writing that the "As Built" location of all newly installed utilities are in conformance with the approved subdivision plan. Any change in location of the utilities shall require the submission of "As Built" plans indicating the actual location of the newly installed utilities.

C. Maintenance Bond

For roads proposed to be accepted by the Town, the Planning Board will not release the performance guarantee until a maintenance bond is in place. The Town will require a cash maintenance guarantee covering the maintenance of the public roads and other public improvements for a period of at least two (2) years from the date of completion, in an amount no less than fifteen percent (15%) and no more than twenty-five percent (25%) of the total improvement costs and following acceptance by the Board of Selectmen at a public hearing for new road acceptance.

The percentage amount of the maintenance bond shall be determined by the Planning Board. The Board shall review the "build-out status" of the subdivision, and determine the percentage amount of the maintenance bond based on the percentage of the remaining unbuilt housing

units, and the potential impact the construction of these remaining units may have on the new roads and infrastructure within the subdivision.

The Planning Board may, upon receipt of a written review by the Town Engineer, periodically vote to reduce the percentage amount of the maintenance bond. The maintenance bond shall remain in place until two (2) years after the construction of the last housing unit has been completed whereupon the unused portion shall be released to the developer.

If repair or unusual maintenance is needed or additional improvements are required, then such costs as are necessary shall be drawn against said performance guarantee or paid for separately by the developer.