

PROPOSED AMENDMENTS TO WESTBROOK SUBDIVISION REGULATIONS  
IN RESPONSE TO PUBLIC ACT 11-79  
CONCERNING BONDING AND PHASING

*(Sections 1.5, 2.1.1, 2.11.2, 2.11.4, 2.11.6, 2.11.7, 4.3.7, 4.5.6, 4.5.7, 4.5.4.1 & 4.6)*

Rev. September 26, 2011

1.5 Definitions

Delete the definition "PHASED SUBDIVISION."

New paragraph after the first one in Section 2.1.1:

Where contiguous parcels of land are to be subdivided in phases, submission of a Master Plan for the entire development showing lot layouts, future road extensions and road patterns, pedestrian circulation, open space, and utility connections is strongly encouraged in order to identify issues that may arise in future subdivision applications and to ensure that any subdivision phase, in conjunction with previously developed phases, can stand on its own as a subdivision with all improvements and open space necessary to serve its residents. A Master Plan shall be required in support of any request for a waiver of the max. length of a temporary dead end street as prescribed in Sect. 4.5.6.

While discussion of the master plan is no guarantee that future subdivision applications will be approved as depicted on the master plan, this procedure minimizes that risk for the benefit of both the subdivider and the Commission. Each phase shall be considered a separate subdivision application and a separate subdivision decision.

2.11.2 Performance Bonds

- a) Performance Bonds for Public Improvements. A Performance Bond shall be posted by the subdivider prior to the ~~commencement of construction of any improvement or work on sale of~~ any lot to insure the completion of required improvements and utilities in the event the subdivider shall fail to install the same within the term of such Bond or any extension thereof. Such restriction on the sale of lots shall be guaranteed by a declaration satisfactory to the Commission and filed on the land records prior to endorsement of the Final Subdivision Plan. The term of the Performance Bond may be extended by the Commission upon approval of a petition from the developer to the Commission requesting an extension subject to agreement of such extension by the party issuing such bond. If the subdivider shall fail to complete all improvements in accordance with these Regulations and the approved plans, and within the time limits set forth in these Regulations, the Commission may recommend that the Town utilize the Bond, and any accrued interest, to complete construction and for any attendant costs, such as costs of advertising for contracts, supervision and inspection of work, legal fees, and the like.
- b) Calculation of Performance Bond for Public Improvements. In computing the amount of the Bond, the Commission shall include the construction cost of the following items:
  - 1) The construction cost of all required improvements, including **but not limited to** storm drainage system, erosion and sedimentation control measures, roads and pavements,

sidewalks and curbs, trees, lights, fire storage tanks, grading, setting of monuments, water mains, electric lines or other utilities to be installed by a public utility, and any other requirements made as a condition for subdivision approval or depicted on the endorsed Final Subdivision Plan, Plan and Profile, Erosion and Sedimentation Control Plan, or any other plan as approved by the Commission. The cost of erosion and sedimentation control measures shall be stated separately, and may be reduced by the amount of any cash bond required by the Westbrook Inland Wetlands and Watercourses Commission at such time as such bond is posted. In the case of water mains, electric lines or other utilities to be installed by a public utility, a written statement from such utility or signed contract from such utility indicating that the work will be done within the period required for other Improvements in such subdivision, and at no expense to the Town of Westbrook or in excess of any prepayment by the subdivider, will be accepted in lieu of the requirements of this Section.

- 2) Estimated costs shall be those that would allow for the Town advertising and awarding a contract for construction of the improvements, and for engineering review and supervision.
  - 3) Costs shall be projected to a point at the end of the Performance Bond term. Any extension of the term of the Performance Bond may result in an adjustment as to the Bond total.
  - 4) The total estimated cost of the Performance Bond shall also include a 15% addition to cover contingencies ~~and engineering~~.
  - 5) ~~Where a subdivision is to be developed in phases, the subdivider may petition the Commission in writing for permission to post a Performance Bond covering the costs itemized in paragraphs (b) 1 through 4 above, related to those improvements and utilities located within or required to serve one or more phases rather than for the entire development. Similar permission shall be obtained by the subdivider prior to commencing development of any or all additional phases. Where the subdivider bonds in phases as authorized in this paragraph, no improvement, as that term is defined in these Regulations, shall be commenced in any phase for which no bond has been posted.~~
- c) Performance Bonds for Erosion and Sedimentation Control. A Bond for erosion and sedimentation control measures shall be posted by the subdivider prior to the commencement of construction of any improvement or work on any lot. In computing the amount of the Bond, the Commission shall include the construction cost of the following items:
- 1) The construction, maintenance, and repair cost of all Erosion and Sedimentation Control Plan measures. The cost of erosion and sedimentation control measures may be reduced by the amount of any cash bond required by the Westbrook Inland Wetlands and Watercourses Commission at such time as such bond is posted.
  - 2) Estimated costs shall be those that would allow for the Town advertising and awarding a contract for construction, repair, or maintenance, and for engineering review and supervision.
  - 3) Costs shall be projected to a point at the end of the Performance Bond term. Any extension of the term of the Performance Bond may result in an adjustment as to the Bond total.
  - 4) The total estimated cost of the Performance Bond shall also include a 10% addition to cover contingencies

d) As used in these Regulations, the term "Performance Bond" shall refer to one of the following methods of assuring completion of Subdivision Improvements:

- 1) Cash in the form of a certified check, or a passbook, assigned to the Town by assignment forms prescribed by the Commission's legal counsel. The issuing bank ("Surety") shall be one maintaining offices in New Haven, New London, or Middlesex Counties. This shall be the only method of bonding permitted for erosion and sedimentation control measures;
- 2) A Letter of Credit in favor of the Town in the form prescribed by the Commission's legal counsel. Such Letter of Credit shall be issued only by a bank or comparable lending institution maintaining offices in the State of Connecticut. The issuing bank ("Surety") shall be one maintaining offices in New Haven, New London, or Middlesex Counties;
- 3) Except for Performance Bonds for Erosion and Sedimentation Control, a restrictive covenant, in a form prescribed by the Commission's legal counsel, to be filed on the land records of the Town of Westbrook, prohibiting the sale of any subdivision lot(s) until such time as all improvements are completed in accordance with these Regulations, or until the incomplete portions of such improvements are bonded by one of the methods in the preceding two (2) paragraphs. See Section 2.8.

4) A surety bond that meets the following requirements:

- (i) The surety issuing the bond shall be one approved by the Commission based on a list of approved surety companies that the Commission may, by resolution, approve from time to time. The Commission may by resolution, in its sole discretion, add or remove surety companies based on the performance of such companies in Westbrook or any other municipality. The Commission may by resolution use a list of approved surety companies published by the Connecticut Conference of Municipalities or any other State-wide organization selected by the Commission.
- (ii) The surety company shall maintain permanent offices within the State of Connecticut.
- (iii) The surety bond agreement shall contain the following provisions, at a minimum: (a) that payment shall be made in full within sixty-five (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 Westbrook 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.

The above-referenced forms shall be as provided by the ~~Town~~ Commission and shall be the only ones acceptable to the Commission. The amount of the Bond shall be the sum which the Commission shall require. The completion date of all required improvements shall be the end of the term of the Bond or any extension thereof, but, in no event, longer than the period set forth in Chapter 126 of the C.G.S.

~~de)~~ For all Performance Bond documents: If the subdivision applicant is a corporation, then the corporate seal must be shown in addition to the seal of the lending institution issuing the passbook assignment or Letter of Credit, and a corporate resolution must be provided indicating that the corporate officer executing the bond documents has authority to do so. If the subdivision applicant is a partnership, then a partnership resolution must be provided indicating that the then a partnership resolution must be provided indicating that the partner executing the bond documents has authority to do so. Any corporation shall provide a Certificate of Good Standing from the Connecticut Secretary of the State; any limited partnership shall provide a Certificate of Legal Existence from the Connecticut Secretary of the State; out-of-state applicants shall present evidence from the Secretary of the State that they are authorized to do business in Connecticut.

f) All bonds shall include an executed Bond Agreement in the form approved by the Commission.

ge) If at any time, the bond required by this Section shall not be in effect for incomplete or unaccepted improvements, the Commission may file a caveat on the Land Records warning potential purchasers of such fact; or may void the subdivision in accordance with the provisions of Section 1.7 of these Regulations.

#### 2.11.4 Bond Release

~~a) Prior to the release of the Performance Bond the subdivider shall present a Maintenance Bond equal to twenty (20%) percent of his Performance Bond. Such Bond shall be for the period of one (1) year and shall guarantee the improvements installed against defects in materials or workmanship, or damage caused to the improvements by any construction activity in the subdivision. The said one year period shall commence upon the effective date of the acceptance of any road or other public improvements by that agency having authority for such acceptance.~~

a) A written application for the release of any Bond upon completion of all required improvements shall include the submission of scale as-built drawings which shall include all changes in the plans as authorized by the Commission or the Engineer during the course of construction. The as-built drawings shall be signed and sealed by both a Connecticut Registered Professional Engineer and a Land Surveyor licensed in the State of Connecticut. The Commission shall grant any bond release requested within sixty-five (65) days of application therefor, unless it provides to the subdivider a written explanation as to the additional Work that must be done before such bond shall be released.

e)b) Upon submission of a written report from the Engineer that all or a certain specified stage in the construction of improvements has been satisfactorily completed, the applicant may request that the Commission reduce any outstanding bond to reflect the cost of construction of the remaining improvements. The Commission ~~shall grant no more than three (3) such reductions prior to the final release of bonds, and the Commission~~ may refuse such reductions if it finds that the construction of any improvements are in violation of any provision of these Regulations, including any required road specifications, or the plans or conditions for any subdivision approved hereunder.

2.11.6 Guarantee of Maintenance of Improved Town Roads – Improved streets which are accepted by the Town shall be maintained in good repair by the applicant for a period of one year from the date of such acceptance. ~~Prior to acceptance by the Town, the applicant will furnish to the Selectmen an acceptable surety bond (or cash or certified check) in the amount to be established by the Selectmen, upon recommendation of the Planning Commission, sufficient to secure to the Town of maintenance above specified.~~

2.11.7 Warranty of Improved Town Roads – The applicant shall, when notified by the Selectmen promptly and at his own expense, repair all defects, settlements and irregularities in the construction and operation of any improvements ~~[an improved town road and its appurtenant structures, including drainage system pipes, mains or conduits, curbs, gutters, sidewalks, road surfaces, land turbing and bridges]~~ which may arise during a period of one year after acceptance by the Town.

4.3.7 ~~Enforcement Bonding~~ Timing of Completion for Open Space Improvements ~~– To ensure proper construction of any required improvements, the Commission shall require the subdivider to post a performance bond in an amount and with terms acceptable to the Commission.~~ Unless modified by the Commission in accordance with Section 1.1.1 of these Regulations, all required improvements of open space and/or recreation land shall be completed prior to the issuance of building permits for occupancy of fifty (50%) of the dwellings within the subdivision.

4.5.6 Dead End Streets; Temporary Dead End Streets; *Add to the first paragraph:*  
~~. . . . the risks to life and property which are inherent in single access subdivisions. In addition, no Temporary Dead End Street shall be extended beyond the length and number of lots set forth in this paragraph unless a Master Plan is submitted and approved by the Commission in accordance with Section 2.1.1 of these Regulations.~~

4.5.7 Future Extension. *Delete the last sentence, “Plans of phased subdivisions shall indicate the proposed locations of streets in all sections to be developed subsequently to the section under consideration.”*