

**7.10 Bonding Policy**

A performance agreement between the applicant and the town council, supported by an acceptable form of guarantee, shall be required ensuring the timely and proper installation of required development and subdivision improvements; provided, however, that any improvements to be dedicated to Loudoun County within the one mile subdivision jurisdiction area shall be bonded in accordance with County bonding policy. Such agreements with the Town Council shall be posted to guarantee the installation of all improvements described below:

- A. All improvements described in §15.2–2241.5, Code of Virginia, 1950 (as amended), that will be accepted for public use and public maintenance by the Town of Middleburg or the Va. Department of Transportation;
- B. All other improvements required by the Zoning Ordinance and Subdivision and Site Plan Regulations and as specified in §15.2–2241.5, Code of Virginia, 1950 as amended) and as determined by the administrator;
- C. Improvements proffered as part of any zoning map amendment, as required by the administrator in accordance with §15.2–2299, Code of Virginia, 1950 (as amended);
- D. Improvements offered as part of any variance or special exception application or required by the Board of Zoning Appeals in accordance with § 15.2–2309.2 and 15.2-22309.6, Code of Virginia, 1950 (as amended).

(Amended 5/14/98; 1/21/99)

**7.10.1 Performance Bond Agreements**

The performance bond agreement form required by the administrator, accompanied by an acceptable guarantee, shall be executed and filed by the applicant with the administrator at least 10 days prior to the town council meeting at which first consideration of the agreement is desired. The agreement shall specify the manner and date by which the required improvements shall be completed. The agreement shall be accompanied by a cost estimate for the bonded improvements, subject to town approval, in accordance with specifications and construction schedules prepared for the applicant by a professional engineer. Where two or more guarantees are provided in conjunction with one performance agreement, the agreement shall identify and incorporate each guarantee separately.

**7.10.2 Acceptable Bond Guarantees**

The following bond guarantees are acceptable, provided they are consistent with the regulations below:

- A. Cash escrow. The face amount of the bond shall be submitted to the Town Treasurer and shall be deposited in an interest-bearing escrow account in an institution selected by the town and approved by the state for investment by state or local government entities. Such interest shall be available to the Town in the case of default or breach of the performance agreement. If the improvements are successfully completed, the principal and interest shall be refunded to the developer; provided, however, that the town is entitled to retain up

to five percent of the accrued interest to cover the cost of administering the account.

- B. Letter of credit. An irrevocable letter of credit from financial institutions are acceptable, provided they are in a form acceptable to the Town and they extend at least six months beyond the expiration date of the performance agreement. The letter of credit must contain conditions for automatic renewal for additional six-month periods, unless the financial institution notifies the administrator in writing by certified mail at least 60 days in advance of any cancellation, including normal expiration of term. The financial institution issuing the letter of credit shall be chartered in the Commonwealth of Virginia or be authorized to conduct business in Virginia and insured by the Federal Depository Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- C. Corporate bond. Corporate surety bonds are acceptable, provided the bonds are in a form acceptable to the Town, are furnished by an insurance company licensed to transact fidelity and surety insurance in Virginia, and the surety holds a certificate of authority from the Federal Government to act as surety on Federal projects or has a rating of XV or better by Best's Key Rating.

### 7.10.3 Bond Extensions

For projects bonded with the Town, if the applicant fails to complete all of the bonded improvements within the time period specified by the performance agreement and no extension has been obtained, or a replacement agreement and bond have not been approved with a new expiration date, the agreement is deemed in default. Projects bonded with the County must follow County bond extension requirements. (Amended 1/21/99)

Performance agreements with the Town may be extended by the town council for periods of one year or less. Any request for extension shall be in writing and shall be accompanied by an estimate of the remaining work and a timetable for completion of the improvements, as well as the conditions which have prevented the applicant from completing the required improvements. (Amended 1/21/99)

### 7.10.4 Bond Reductions

Periodic partial releases of bonds held by the Town may be approved by the town council in accordance with § 15.2-2241.11, Code of Virginia, 1950 (as amended). Bonds held by Loudoun County must be reduced in accordance with County bonding policy. Upon recommendation of the administrator, the town council shall act within thirty (30) days of the receipt of any written request for a bond reduction, unless the administrator notifies the applicant in writing of non-receipt of approval by applicable state agencies or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the 30-day period. (Amended 5/14/98;1/21/99)

The following standards shall apply to any request for a bond reduction:

- A. No more than three reductions shall be permitted within any 12-month period.

- B. No bond shall be reduced beyond 90 percent of the original bond amount. Periodic partial releases shall not occur before completion of at least 30 percent of the improvements covered by the bond.
- C. The applicant shall pay the town a fee for processing such reductions according to a fee schedule established by the town council. The applicant shall also be responsible for all engineering costs incurred by the town in the process of inspecting the required improvements.

#### **7.10.5 Bond Release Procedures**

Upon completion of all required improvements, the subdivider or developer shall notify the administrator in writing of such completion and shall submit as-built plans, certified as to construction by a licensed engineer, accompanied by the required fee. The administrator shall have all such improvements inspected and shall file a written report with the town council indicating approval, partial approval or rejection of such improvements, setting forth the cost of improvements as approved or rejected and reasons for any rejections.

Upon final completion and acceptance of said improvements, the town council shall release any remaining bond within 30 days after receipt of written notice by the applicant of completion of said improvements, unless the administrator notifies the applicant in writing of non-receipt of applicable state agency approval or of any specified defects or deficiencies in construction and suggested corrective measures prior to expiration of the 30-day period. For the purpose of final release, the term "acceptance" is deemed to mean when said improvements are accepted by and taken over for operation and maintenance by the town, state agency, or other governmental body which is responsible for maintaining and operating such improvements.

Bonds held by Loudoun County shall be released by the County in accordance with County bonding policy. (Amended 1/21/99)

#### **7.10.6 Conditions for Acceptance of Public Improvements**

The Town council shall accept public improvements installed by a subdivider or developer which meet the following conditions:

- A. The completed improvements comply with the design standards of Article 6; have been constructed in accordance with Article 7; and have been installed in accordance with the approved plans;
- B. All final inspections required by this article have been completed and the bonded improvements were found to be acceptable;
- C. The subdivider or developer has prepared and submitted three (3) sets of prints of plans that accurately depict the bonded improvements as actually built (as-built plans); and

- D. The subdivider or developer, by appropriate instrument, has conveyed to the appropriate governmental entity good title, free of all liens, to all public improvements for which such governmental entity is to be responsible for operation and maintenance. Any required easement shall be deeded to the appropriate governmental entity by instrument approved in form by the Town Attorney and bearing acceptance on behalf of the appropriate entity. The subdivider or developer shall have furnished a copy of the recording receipt to the town prior to bond release.

Any public improvements installed pursuant to the Loudoun County bond within the one mile subdivision jurisdiction area shall be accepted by Loudoun County in accordance with County bonding policy. (Amended 1/21/99)

**7.10.7 Street Maintenance Bond**

In the event the town council has accepted the dedication of a street for public use and such street, due to factors other than its quality of construction, is not acceptable into the secondary system of state highways, the subdivider or developer may be required to post a maintenance and indemnifying bond, with acceptable surety, in an amount sufficient for and conditioned upon the maintenance of such street until such time as it is accepted into the secondary system. In lieu of a bond, the town may accept payment of a negotiated sum of money sufficient for and conditioned upon the maintenance of such street until such time as it is accepted into the secondary system and, in this event, assume the subdivider or developer's liability for maintenance of such street. "Maintenance of such street" shall mean maintenance of the pavement, curb, gutter, drainage facilities, utilities or other improvements, including the correction of defects or damages and the removal of snow or debris, to keep such street reasonably open for public usage.

Streets to be dedicated to Loudoun County within the one mile subdivision jurisdiction area shall meet the requirements of the County bonding policy. (Amended 1/21/99)