

Proposed: September 6, 2011
Public Hearing: September 19, 2011

Weston Planning & Zoning Commission
Proposed Amendments to Section 4.6 of the Subdivision Regulations

NB: Substitute Senate Bill No. 860; Public Act No. 11-79 is effective October 1, 2011

A. Section 4.6 of the Subdivision Regulations is deleted in its entirety and replaced as follows:

4.6 Public Improvements

4.6.1 Street and Public Utilities. Each subdivision approval shall prescribe the extent to which and the manner in which streets shall be graded and improved and public utilities and services provided (the “Public Improvements”) pursuant to Connecticut General Statute §8-25(a).

4.6.2 Conditional Approvals; Bonds and Sureties; Assessments. In lieu of the completion of the Public Improvements prior to the final approval of the subdivision plan, the commission may:

- (a) accept a bond in an amount and with surety and conditions satisfactory to it securing to the town the actual construction, maintenance and installation of such Public Improvements; or
- (b) accept an assessment or other method whereby the town is put in an assured position to complete the Public Improvements at the expense of the owners of the property within the subdivision.

4.6.3 Completion Date. With respect to each conditional approval, the commission shall determine a date by which the Public Improvements shall be completed (the “Completion Deadline”). In the event the commission fails to determine such date, the Completion Deadline shall be the date such conditional approval shall lapse.

4.6.4 Phased Development. The commission may, in its discretion, approve a subdivision for development in phases.

4.6.5 Required Bond or Surety. In the event the commission elects to accept a bond or surety pursuant to subsection 4.6.2(a) above, such bonds or surety may be required to include:

- (a) Erosion Control Bond. A sum not to exceed one hundred thirty percent (130%) of the estimated cost of all erosion control reasonably necessary to complete all Public Improvements in all phases of development (each an “Erosion Control Bond”).

- (b) Construction Bond. A sum not to exceed one hundred thirty percent (130%) of the estimated cost of constructing all roads, streets and other improvements for each phase of development.
- (c) Interim Maintenance Bond. A sum not to exceed one hundred thirty percent (130%) of the estimated cost of maintaining roads, streets and other improvements until such improvements have been accepted by the town.

The commission's estimate of the above-referenced costs shall be dispositive.

4.6.6 When Posting of Bond or Surety is Due. Except as set forth herein, any bond or surety required hereunder may, in the discretion of the person posting such bond or surety, be posted at any time before all Public Improvements are constructed and installed. Notwithstanding the foregoing, (i) no construction or installation of any kind may be commenced until any required Erosion Control Bond is posted, and (ii) for any subdivision that is approved for development in phases, no construction or installation approved for any phase may be commenced until any bond or surety required in connection with the previous phase is posted.

4.6.7 No Transfer Prior to Posting of Bonds and Sureties. No lot shall be transferred to a buyer before any required bond or surety is posted.

4.6.8 Draw Down of Bonds and Sureties: Bond and sureties shall be drawn down following the Completion Deadline in the event the Public Improvements have not been completed and maintained in a satisfactory manner.

4.6.9 Assessments: In the event the commission elects to accept an assessment pursuant to subsection 4.6.2(b) above, each owner of property within the subdivision will be assessed an amount equal to the total estimated cost of constructing the Public Improvements and maintaining such Public Improvements until such time as they are accepted by the town multiplied by a fraction the numerator of which is the assessed value of such owner's property within the subdivision, and the denominator of which is aggregate assessed value of all owners' property within the subdivision (excluding property owned by the town or any conservation organization). Assessments shall be levied and become immediately payable following the Completion Deadline in the event the Public Improvements have not been completed and maintained in a satisfactory manner.

4.6.10 Release of Bonds and Sureties: Bond and sureties shall be released pursuant to the requirements of Connecticut General Statute §8-25(d)(2).

4.6.11 Maintenance of Public Improvements. All owners of property within the subdivision (excluding property owned by the town or any conservation organization) shall be jointly and severally liable for the repair and maintenance of all Public

Improvements (including keeping all roadways and drainage facilities free of ice, snow and debris) until such time as such Public Improvements are accepted by the town.

4.6.12 Recorded Site Plan Disclaimer; Bonds and Sureties: Any recorded site plan or other document evidencing conditional approval of a subdivision where posting of a bond or surety is required shall bear the following disclaimer prominently:

WARNING: PURSUANT TO C.G.S §8-25(d)(1), NO LOT SHALL BE TRANSFERRED TO A BUYER BEFORE ANY BOND OR SURETY REQUIRED PURSUANT TO THIS APPROVAL IS POSTED.

4.6.13 Recorded Site Plan Disclaimer; Assessments: Any recorded site plan or other document evidencing conditional approval of a subdivision where an assessment is required shall bear the following disclaimer prominently:

WARNING: AN ASSESSMENT SECURING THE CONSTRUCTION OF PUBLIC IMPROVEMENTS AT THE EXPENSE OF THE OWNERS OF THE PROPERTY WITHIN THIS SUBDIVISION MAY BE IMPOSED PURSUANT TO C.G.S §8-25(a)(1) AND SUBDIVISION REGULATION §4.6.

Pursuant to C.G.S. §8-3a(a), the Commission finds that these regulations are consistent with the 2010 Town Plan of Conservation and Development.

The foregoing amendments shall be effective upon publication.

B. Existing Section 4.6, Performance Bond

4.6 Performance Bond

4.6.1. Where the approved subdivision plan requires the construction of specific facilities, the developer shall file with the Commission a performance bond or letter of credit adequate to secure the satisfactory construction and completion of all required work. Such performance bond shall be filed with the Commission secretary on or before the signing of the final mylar. (Amended 3/16/87)

4.6.2. The bond or letter of credit shall be satisfactory in form and content to the Town's legal counsel, and shall require Commission approval. Specific provisions to be made in the bond are as follows:

- a. Obligations of the developer and the surety guarantor shall be to the Town of Weston and shall include all construction and installations shown on the approved plans. These plans shall be specifically

incorporated by reference.

- b. Surety is to be provided in cash or other acceptable and unencumbered property assigned to the Town of Weston, or in the financial guarantee of a reliable surety company licensed in Connecticut.
- c. Surety provided is to have a dollar value sufficient to cover the estimated cost of all work to be completed, plus a 15% contingency allowance to cover the cost of maintenance and repair of constructed facilities during their wearing period before release of the bond.
- d. The fifteen percent (15%) contingency allowance shall be retained by the Town for a period of one year from the date all work is completed to insure the proper seasoning and performance of the completed work.
- e. A required completion date is to be established.
- f. Any extension of the allowed construction period shall require the written consent of the surety guarantor of the bond, the demonstration of substantial construction progress and probability of completion within the extended period, and Commission approval. In no event, however, shall any allowed period plus extensions exceed five (5) years in duration.
- g. Any transfer of obligation to another party shall require Commission approval.
- h. Surety shall become payable on demand to the Town of Weston after the required (or extended) completion date or for the purpose of completing or correcting any required work which if found by Town inspection to be unsatisfactory.
- i. During the period of the developer's bonded obligation to the Town, the developer agrees to maintain all constructed facilities in safe condition and proper working order. The developer shall specifically maintain all constructed roads and drainage facilities free of ice, snow, and debris where they serve occupied dwellings.
- j. The bond shall remain in full force and effect until finally released by the Commission. The bonded obligations may be reduced by the Commission in proportion to work satisfactorily completed as determined by the Town Engineer.
- k. In event of any default by the developer and recovery of the funds by the Town under subsections d or h, the Town shall have the authority to apply whatever amount of

said funds is necessary to properly complete the required work. The unused balance (if any) remaining one year after completion, shall be returned to the surety guarantor or developer as appropriate.