

**Linda**

**From:** "Bernie Waugh" <bernie.waugh@gardner-fulton.com>  
**Date:** Wednesday, December 05, 2012 3:21 PM  
**To:** "Linda" <mtview@roadrunner.com>  
**Cc:** "Bill Dowling" <billdowling1@roadrunner.com>; "Donna Foster" <fostercpm@roadrunner.com>; "Erik Bergun" <ebergum@worldsurfer.net>; "Ernie Temple" <gerniet@roadrunner.com>; "Evan Karpf" <drevannh@gmail.com>; "Kenneth Mills" <skydive3995@gmail.com>; "Richard Nelson" <NelsonRA25@gmail.com>; <twinmtn@roadrunner.com>  
**Subject:** RE: Bond language  
 Hi Linda:

I'm sorry I didn't respond previously on this, and Evan tells me by phone that the Board is going to act on this tomorrow. At the end of this E-mail is what I would suggest for the total wording of Section 4.19 of the Subdivision Regulations, based on the wording of that section as appears on your website and the suggested language you sent. I think most of my draft is self-explanatory, but specific comments are as follows:

- I do strongly recommend that you add an irrevocable letter of credit as one of the security options. Generally these are more flexible than surety company bonds, and cause the least problems when you truly need to call on the money.
- I agree that the form of any bond or letter of credit should be reviewed by legal counsel at the expense of the applicant.
- I agree that the security should be issued in the name of the owner or applicant as the secured party (the party which undertakes the obligation to perform the work by having sought approval) -- rather than, for example, that person or entity's agent or contractor.
- I do not see why the engineer providing the estimates has to provide a notarized letter. The key thing is that the engineer be one acceptable to the Board.
- I don't see any need for your regulations to mandate a specific security template, as long as each bond (or whatever) is subject to legal review.
- The cash or savings book is OK to keep in there (if the Board wants to retain it as an option) -- the only legal aspect of that is that cash or passbook cannot be the *only* type of security the Town will accept.
- The last paragraph of this section (covering maintenance security) is unclear and I have attempted to re-work it a bit.
- State law RSA 676:12 prohibits a town from withholding building permits if proper security has been provided.
- Obviously my draft does not constitute your only option. To some degree it incorporates policy choices -- which are of course up to the Board, not to me. I have tried to make as few changes from the existing regulations as possible, in terms of the policy options.

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#### 4.19 Performance and Maintenance Security; Phased Development.

A. Except in the case of a subdivision in which each lot is on an existing improved Town road and no utilities other types of public improvements are required, no subdivision plat filed with the Board shall be given final approval by being signed, or shall be recorded in the Registry of Deeds, until the subdivider shall have filed with the Board an estimate, submitted by an engineer acceptable to the Board, of the costs of streets, drainage structures, utilities, and any other public improvements, together with an estimate of any potential damages to any existing public streets abutting the proposed subdivision, which may be caused by reason of the work to be performed as part of said subdivision, together with maps, plans and supporting data, accompanied by one of the following:

1. Cash, or a savings bank book, properly endorsed by the Town, in an amount to be determined by the Board, to be deposited in escrow with the Town's governing body, or

2. A surety bond, issued by a surety company authorized to do business in New Hampshire, in an amount to be determined by the Board, to be deposited with the governing body, or
3. An irrevocable letter of credit from a bank authorized to do business in New Hampshire, in an amount to be determined by the Board.

B. The amount of the security shall be based upon the submissions in paragraph A above, and shall include fees for the inspection of improvements by agents of the Town as set forth in C below. A security bond or irrevocable letter of credit shall comply with the following:

1. The format shall be reviewed by the Town's legal counsel at the expense of the applicant.
2. The secured party named in the bond or letter of credit shall be the person or entity which is legally obligated by the Board's decision to perform the work (usually the landowner or applicant).
3. The bond or letter of credit shall include a clear and detailed description of the work to be performed, or a specific cross-reference to a document where such work is detailed (for example board minutes or a notice of action), together with the date of the board's approval.
4. The bond or letter of credit shall also contain a specific reference to the deadline by which the improvements are required to be completed, according to the Board's decision and regulations, and shall not be subject to expiration or cancellation until a date at least six months later than that deadline; provided, however, that the Board may, in its discretion, accept a bond or letter of credit which is capable of expiration or cancellation prior to that time, but only if it also provides, on its face:

(a) That at least 60 days prior to any such cancellation or expiration, notice of the date thereof must be required to be sent by certified mail to (i) the Chair of the Planning Board, (ii) the Town's Land Use Board Secretary, and the Chair of the Board of Selectmen; and

(b) That if the Town receives such notice of cancellation or expiration prior to the completion of the required work, and has not received any replacement security which conforms to these regulations, then such notice shall entitle the Town to call the security prior to the expiration, and utilize said amount to perform the work.

C. The performance security shall not be released until the Board of Selectmen, Building Inspector, Town Engineer, or Road Agent (as appropriate) has certified to the Board that the streets, utilities, and other required improvements have been completed in substantial accordance with the requirements of the Board, and all necessary easements, rights-of-way and drainage easements are submitted in a form satisfactory to the Town's legal counsel. All recording fees shall be borne by the subdivider.

D. As an alternative to providing security as set forth in A and B above, and if permitted by the Board, the subdivider may elect to complete all streets and other public improvements prior to the final approval and recording of the plat, and prior to the issuance of any building permits. If this alternative is utilized, final approval and recording of the plat shall occur only after inspection and certification as set forth in C above.

E. If a development is proposed to occur in phases, then each phase must be presented to the Board separately for approval, and each phase separately will be subject fully to the security requirements contained in this Section. All streets and other requirements in one phase must be completed prior to final approval of any subsequent phase.

F. Upon completion of the improvements and approval by the Town as set forth in C above, the Board may, upon recommendation by its engineer, require security guaranteeing the maintenance of the improvements, and/or securing them against latent defects, for a period not to exceed two (2) years from the time of such completion.

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Please don't hesitate to get back to me with comments or questions.

Sincerely,  
Bernie Waugh