

**The Bond Release Process for New Subdivision Developments:  
An Overview for Homeowners Associations  
DRAFT (6-4-08), Revised (9-25-08)**

Fairfax County requires developers to post a performance bond if they are building public infrastructure within a new housing subdivision. This brochure summarizes:

- What is public infrastructure?
- What are performance bonds?
- Why are performance bonds collected from developers?
- How and when these performance bonds are returned to developers?
- What role homeowners associations play in bond release?

**What is public infrastructure?**

When a developer builds a new housing subdivision, they often must construct public infrastructure. This infrastructure typically includes:

- Public Streets
- Public Sidewalks
- Public Sewers
- Storm Drainage Facilities
- Waterlines
- Traffic Signals
- Landscaping required by the county
- Streetlights

**What are performance bonds?**

When building public infrastructure, a developer must enter into an agreement with the county; the agreement details what public infrastructure must be built and by when. As part of the agreement, a developer must also post a security. This security is often called a “bond,” although the security may take other forms of financial guarantees, such as a letter of credit or cash deposit.

**[Federation suggested addition: *Insert a few sentences briefly explaining how subdivision development can be phased in, and in what sequence the key phases occur.*]**

The performance bond's amount is equal to the approximate cost of building the public infrastructure shown on an approved site plan.

In addition to a performance bond, a developer may be required to provide a conservation deposit. This deposit is required if the development disturbs more than 2,500 square feet of land. It ensures that erosion and sediment controls are installed and maintained properly during the project. The deposit also can be used to clean-up or repair any damage caused by erosion or sediment from the project.

**[Note from Federation: *See our question below on **the conservation deposit**, in the section entitled **What are the conditions for releasing a performance bond?** ]***

**What's the purpose for a performance bond?**

A performance bond ensures that the county can pay to build the required public infrastructure if the developer fails to do so.

**s a bond required if a developer promises to build private amenities, such as driveways?**

No. Under state law, Fairfax County cannot require developers to post security for any private improvements, including:

- Driveways
- Private walkways
- Mailboxes
- Sprinklers
- Landscaping other than that required by county ordinance

However, private improvements can be required as a result of a specific condition approved in a zoning action by the Board of Supervisors. These improvements must be specifically set forth in the condition or shown on the plat that was approved as part of the zoning action.

**Which county agency collects the performance bond?**

The Environmental and Facilities Inspections Division (EFID) collects the performance bond from a developer. EFID also inspects public infrastructure to make sure it is built as shown on the site plan and meets the minimum county and state standards.

**When is a performance bond returned to a developer?**

A performance bond is returned after all of the required public infrastructure has been built and accepted for maintenance by the appropriate public agency. This process is commonly called “bond release.”

If a developer fails to build the required infrastructure, the county may take steps to acquire the performance bond and use those funds to complete the improvements. The county may *not* give this money to individuals or homeowners associations to complete the improvements on their own.

**[Federation question and comment:** *Who possesses the bond? The phrase above "... may take steps to acquire the bond..." is confusing to us, because the previous wording led us to believe that the county already possessed the bond, and would not therefore need to "acquire" it. Please add some wording to clarify this. ]*

**What are the conditions for releasing a performance bond?**

Generally, there are two main conditions that must be met before the county may release a performance bond. First, the public infrastructure must meet minimum county and state codes and construction standards. Secondly, the appropriate state or county agency must accept any infrastructure that such state or county agency will be responsible for maintaining. For example, any street or road dedicated to the public must meet the standards of the Virginia Department of Transportation (VDOT) to be accepted into the state system for maintenance by VDOT.

Before a performance bond can be released, county and state agencies will inspect the public infrastructure constructed by the developer. The infrastructure must pass all inspections for the performance bond to be released. If it does not, the developer is provided a list of what must be improved or completed. This is commonly called a “punch list.”

If a subdivision was approved through a zoning action of the county, a tree inspection also will be conducted to determine whether any of the trees required to remain on the developed property need to be replaced.

In some cases, the county may release a performance bond before it returns the conservation deposit to the developer. The conservation deposit is held until erosion and conservation measures are completed and pass inspection.

**[Federation question:** *Does the HOA have a role in the release of the conservation deposit? If the answer is yes, then the Federation has the following suggestion addition: Explain more thoroughly what inspection(s) are done for ensuring compliance with conservation measures. A specific question we would like answered is: To what extent may the developer alter the 100-year flood plain? Perhaps conservation deposit issues should be addressed in a separate section. ]*

### **What does the county inspect as a condition for performance bond release?**

The county inspects public infrastructure and only those private improvements that are required as a result an approved zoning action. Such private improvements are not inspected for any minimum standards—unless some standard is required as a condition of an approved zoning action. If so, the county does require that private improvements required as part of an approved zoning action are installed as set forth in the specific condition required by the zoning approval.

Generally, the county requires that:

- The grading and drainage facilities have been completed in general conformance with the approved grading plan.
- The grading and steepness of slopes are in general conformance with the approved plan and county regulations.
- The developer has not created any obstructions that could result in flooding of a dwelling unit if the storm sewer failed or became clogged. This is called overland relief.
- All areas are permanently stabilized to prevent erosion. (The county may release the performance bond prior to completion of this work but hold the conservation deposit as a guarantee for the completion of stabilization of the site.)
- All dead and hazardous trees within the limits of the site have been removed. (The county may release the performance bond prior to completion of this work but will then hold the conservation deposit as a guarantee for the removal of hazardous trees.)
- All required landscaping that is depicted on the approved plan is installed and healthy. (The county may release the performance bond prior to completion of this work but will then hold the conservation deposit as a guarantee that required landscaping is planted. However, the county does not require a maintenance performance bond or a guarantee that plants will survive.)
- All applicable required conditions as a result of an approved zoning action have been installed or implemented.
- The required sight distance has been provided at all intersections within the bonded development. The code requires a clear path of sight at intersections. The required length of the required sight distance is determined based on the design speed or posted speed of the adjacent roadway.
- The public street or road right-of-way has been accepted for maintenance by the Virginia Department of Transportation.
- The sanitary sewer has been accepted for maintenance by the county's Wastewater Collection Division.
- The water line has been approved and accepted for maintenance by the appropriate water authority.
- The required streetlights (if any) are installed or have been paid for.
- The required sidewalks and trails are in good condition without cracks, excessive differential settlement between sidewalk panels, or excessive surface deterioration of the concrete. The inspection includes verification that the required cross slope has been provided and that there are no areas in the sidewalk or trail where water collects and remains for several days.
- Driveway aprons in the public right-of way are not cracked or show signs of excessive surface deterioration.
- All the required parking spaces are delineated as shown on the approved plan.
- All storm drainage facilities have been installed in accordance with the approved plans and county regulations.

- The fire marshal has inspected and approved all required fire lanes.
- The county has received the results of all required third-party geotechnical testing and corresponding certifications required by county regulations.
- Damage to properties from erosion and sediment or overclearing has been corrected.
- The removal of temporary erosion and sediment controls, such as silt fences. (The county may release the performance bond prior to completion of this work but hold the conservation deposit as a guarantee for the completion of stabilization of the site.)
- A property corner certification has been provided by the developer's engineer or surveyor.

#### **What doesn't the county inspect as a condition of bond release?**

- Private improvements that are not shown on the conditions adopted in a zoning action.
- Performance standards for any *private* improvements that developers install, such as driveways, sprinklers or landscaping, unless they are in the conditions adopted in a zoning action. The county limits its involvement to ensuring that the private improvements that are depicted on the approved plan are installed.
- Construction quality of the house, private driveway or landscaping that is not required or shown on the approved plan.
- Relocation of utility boxes, storm drainage structures and infrastructure that exist in established easements.
- Offsite property damage that resulted from work that was performed by utility companies.
- Property damage that resulted from work that was performed by the developer, other than from a failure of the erosion and sediment controls.
- Property damage that was caused by a homeowner or their contractor.
- Drainage problems that are the result of work that was performed by a homeowner or their contractor.
- Quality of construction that exceeds the minimum applicable standards of county and state regulations or the Virginia Department of Transportation's standards and specifications. Existing conditions outside the limits of clearing and grading.
- Traffic controls and signals that are not depicted on the approved plan.
- Installation of "no parking" signs that are not on the approved plan.
- Providing a greater number of parking spaces than what is depicted on the approved plan or required by county regulations.
- High ground water conditions that do not result in wet yards.
- Quality or aesthetics of private amenities, such as fences, entrance features and private street light fixtures (unless they are specifically required by the approved conditions of a zoning action).

#### **How is a performance bond released?**

First, the public infrastructure must pass final inspection, and a county or state agency must accept it for maintenance. Then, county inspectors submit paperwork to the county's Bonds and Agreement Branch. Assuming the developer has met all of the conditions, the performance bond will be released after this paperwork is reviewed and any outstanding fees to the county are paid.

#### **What happens after bond release?**

After a performance bond is released, a developer is not obligated to perform any additional work on the public infrastructure within the subdivision. After release, the public infrastructure will be maintained by the appropriate county or state agency.

### **How can homeowners associations participate in the bond release process?**

Before a performance bond is released, county inspectors and the developer will make a walk-through inspection of the project. A representative of the homeowners association is invited and encouraged to join the walk-through inspection because:

- It is an efficient way for an association representative to clarify any outstanding concerns they have about the public infrastructures in the development.
- county staff can point out any infrastructure in the area owned by the association that it is responsible for maintaining, such as rain gardens, wet ponds, tot lots, common areas, etc.

Before the inspection, homeowners associations can contact inspectors with the Environmental and Facilities Inspections Division if they have questions or concerns about the public infrastructure. However, association members should contact the county's Code Enforcement Division at 703-324-1937, TTY 711, if they have questions about the construction of homes.

Homeowners associations can provide input, but they cannot require additional improvements that exceed the site plan requirements or the approved conditions of a zoning action. The county also cannot require a developer to upgrade infrastructure that meets the minimum standards of Fairfax County's "Public Facilities Manual" or Virginia Department of Transportation standards and specifications.

### **What can delay bond release?**

If private improvements are installed in a public right-of-way without a permit, the county cannot release the performance bond. These improvements include sprinkler systems, masonry mailboxes, lighting and landscaping. The public right-of-way is the property that is required to be dedicated to the county for a public use such as a roadway, street or sidewalk.

Private structures or landscaping, including trees, walls, brick or stone patios, or walkways, are not allowed in any sanitary or storm-drainage easements. Property owners should review the plats to determine the location of any easements on their property before they install any improvements.

If private improvements are installed in county storm-drainage or sanitary sewer easements or in the right-of-way dedicated to the county without a permit, developers are required to remove them.

### **How to get answers to your questions and concerns**

Call Fairfax County's Environmental and Facilities Inspections Division at 703-324-1950, TTY 711, if you have questions about the public infrastructure or bond release process, including:

- What is considered public versus private infrastructure in your development?
- What public infrastructure will be installed in your development?
- What are the minimum standards for the public infrastructure in your development?
- What are the opportunities for homeowners association input into the process?

Fairfax County Department of Public Works and Environmental Services  
Environmental and Facilities Inspection Division  
12055 Government Center Parkway, Suite 334  
Fairfax, VA 22035  
Tel: (703) 324-1950, TTY 711

To request this information in an alternate format, call the Department of Public Works and Environmental Services Environmental and Facilities Inspection Division at (703) 324-1950, TTY 711.