

**Proposed Revision to the Subdivision Regulations – Performance Guarantees**  
**(2/6/2024)**

**§ 401-13 Performance guarantee.**

**A. Final approval with bond or surety.**

(1) Before endorsement of a definitive plan, the subdivider shall either file a performance bond, or deposit money or negotiable securities in an amount determined by the Board to be sufficient to cover the cost plus 30% of all or any part of the improvements specified herein, or follow the procedure set forth below. Letters of credit are not acceptable. Passbooks shall be accompanied by a form assigning same to the Town of Sterling. A bond estimate may be requested by the Board; such estimate shall remain effective for 90 days. The estimate shall reflect the cost for the Town to complete work under adverse conditions which may necessitate legal fees, public bidding, and additional Town staff time. Ordinarily the Board shall require an amount covering the total cost of construction of all roads and other improvements within and without the subdivision. Such bond or security, if filed or deposited, shall be approved as to form and manner of execution by the Planning Board Legal Counsel and as to sureties by the Town Treasurer. Such bond or security shall be contingent on the completion of such improvements not later than four years from the date of the endorsement of the definitive plan. Failure to so complete shall result in the automatic rescission of the approval of the definitive plan by the Board, unless the Board extends said period, for good cause shown, after the written request of the applicant prior to the expiration of said period.

(2) In determining the amount of the bond or surety, the Board shall be guided by the following formula in setting the sum of the security:

(a) The Board's estimate of the cost to complete the work; plus

~~(b) A 10% margin of error; plus~~

~~(c) An appropriate rate of inflation over a five-year period.~~

**1401-6.1 Release of Performance Guarantee**

Upon completion of the improvements required under Article **IV**, or the performance of any covenant with respect to any lot, the applicant shall send by certified mail to the Town Clerk a statement, in duplicate, that said construction or installation in connection with any bond, deposit, or covenant has been completed in accordance with the requirements of Article **IV**. Such statement shall contain the name and address of the applicant, and the date of filing with the Town Clerk.

The Town Clerk shall forthwith furnish a copy of the statement to the Board. If the Board determines that said construction or installation has been completed, in accordance with § **401-15** above, it shall release the interest of the Town in such bond or deposit and return the bond or deposit, less any portion thereof as may be stated in the Board's order of conditions of approval for the subdivision, pending final receipt of the Board approved as-built plan and the Town Counsel approved deed for the way(s), including any easements, to the person who furnished same, or issue a release of covenant in a form acceptable for recording. **Note that the 30% of bond value specified under Section 401-13, Item A.1 shall be retained until after Town Meeting road acceptance.**

If the Board determines that said construction or installation has not been completed, it shall specify to the applicant, in writing, the details wherein said construction or installation fails to comply with the provisions of Article **IV**. Upon failure of the Board to so notify the applicant within 45 days after the receipt by the Clerk of said statement, all obligations under the bond shall cease and terminate by operation of law, and deposit shall be returned, and any covenant shall become void. In the event that such forty-five-day period expires without notification by the Board, or without the release and return of the bond, or the return of the deposit, or the release of the covenant, the Town Clerk shall issue a certificate to such effect, duly acknowledged, which shall be recorded by the applicant.

**A.**

Ways and services. The Board shall release from covenants only those lots for which installation and construction of ways and services has been completed, in accordance with these rules and regulations. The applicant shall submit the appropriate form when applying for the release of a lot from a covenant.

**B.**

Pavement. The Board shall not release any bond, deposit, or covenant nor shall a building permit be granted for any lot until the first course of pavement has been installed with manhole covers and other structures set therein at the level of such first course.

**401-16.2 Partial Performance Release**

**Prior to the Final release of the Performance Guarantee Bond, the developer/ principal may request the Planning Board for a Partial Release of said bond. All requests must be in writing.**

**Included in this request must be the name and address of the developer/principal and the name and address of the project for which the request is being made, and a copy of the recorded covenant, release and bond item detail.**

The request must also include a written determination by the Town of Sterling's peer review engineer, that the items requested for release have been completed and found satisfactory. The determination must also include each item and their costs as listed on the recorded Performance Guarantee Bond being requested for Partial Release.

The Planning Board may grant no more than two Partial Releases from the required Performance Guarantee Bond for completed work. Note that the 30% of bond value specified under Section 401-13, Item A.1 shall be retained until after Town Meeting road acceptance.

No reduction in the amount of the Performance Guarantee Bond shall reduce the Performance Guarantee Bond value below the recorded estimated cost of completing the remaining unfinished work.