



BONDING REQUIREMENTS AND PROCEDURES

ORDINANCE RATIFYING THE REQUIREMENT FOR BONDING:

(From the Unified Development Ordinance Adopted August 1, 2000 – As Amended)

7.5.9 Schedule of Installation

- A) Subdivision improvements shall be installed on the site in the following sequence:
- 1) Street grading and installation of water distribution lines, sanitary sewers and storm sewers. Connections for each system shall be extended beyond the curb line to preclude subsequent cutting of pavement.
 - 2) Curbing and gutter.
 - 3) Street base material.
 - 4) Street paving.
 - 5) Sidewalks.
 - 6) Installation of electric, gas, telephone and cablevision service lines. Connections for each system shall be extended beyond the curb line to preclude subsequent cutting of pavement.
- B) Any public recreational facility requirements shall be completed prior to completion of 50 percent of a subdivision.
- C) All road improvements within a public right-of-way (including but not limited to road widening, road extension, lane striping/re-striping, curb and gutter installation, sidewalk installation, crosswalk striping, signal installation and signal upgrades) shall be completed as noted in Sections 7.5.9(C)(1) and (2) below. **No bonding is allowed to extend these completion requirements except as noted.**
- 1) *Non-residential development*
 - a) All road improvements required per the Town of Apex Thoroughfare and Collector Street Plan, all proposed roadways to be constructed within existing or proposed public right-of-way as part of the approved development plan and all additional offsite road improvements required to mitigate development traffic impacts to existing facilities must be completed prior to the first building permit in the development, except in cases where the Town Council approves a phasing plan with different completion milestones.
 - b) All other road improvements (including but not limited to drives, private roads, and alleys) must be completed prior to the last CO in the development or per the approved phase plan for the project, whichever is first.
 - c) Signal installations or upgrades which are required improvements in the TIA shall be installed based on NCDOT and Town of Apex approvals. Bonding for signals shall be in accordance with Sec 7.5.13.

2) *Residential development*

- a) All road improvements required per the Town of Apex Thoroughfare and Collector Street Plan, all proposed roadways to be constructed within existing or proposed public right-of-way as part of the approved development plan and all additional offsite road improvements required to mitigate development traffic impacts to existing facilities must be completed prior to the first plat approval for single family residential and townhomes and prior to the first CO for multi-family, apartments and/or condominiums, except in cases where the Town Council approves a phasing plan with different completion milestones.
- b) All other road improvements (including but not limited to drives, private roads, and alleys) must be completed prior to completion of ninety-five (95%) percent of the COs within the development or per the approved phase plan for the project, whichever is first.
- c) Sidewalk installation is preferred prior to the first plat being signed. Sidewalks may be bonded in accordance with Sec. 7.5.13 but must be installed lot line to lot line prior to any single family or townhome CO. However, all sidewalks required per the approved development plan shall be installed by the time that 95% of CO's for the subdivision phase have been issued.
- d) Signal installations or upgrades which are required improvements in the TIA shall be installed based on NCDOT and Town of Apex approvals. Bonding for signals shall be in accordance with Sec. 7.5.13.

7.5.10 Installation of and Reimbursement for Oversized and/or On-Site/Off-Site Improvements

Where the Town Council deems it necessary in the interest of the health, safety and general welfare of the residents of the Town, the subdivider shall make certain improvements at sizes in excess of those which would normally be required. Where such oversized improvements are required, the Town shall reimburse the subdivider for the cost of materials incurred over and above those required to serve such subdivider's subdivision. Such reimbursement shall be made in accordance with the policies regarding Town participation in oversized and/or on-site/off-site utility projects as may be amended from time to time. The timing of the installation of the oversized and/or on-site/off-site road improvements shall follow the requirements of Section 7.5.9(C).

7.5.11 Ownership of Completed Improvements

All water, sanitary sewerage and storm drainage facilities, hydrants, pumps, valves, blowoffs, manholes, service meters and all other appurtenances and fixtures associated with such systems which are installed in public rights-of-way and utility or drainage easements under the requirements of this article shall become the sole property of the Town upon acceptance. All electric service facilities installed in public rights-of-way and utility easements located within the municipal electric service area shall become the sole property of the Town upon acceptance.

7.5.12 Installation Prerequisite to Approval of Final Plat and Extension of Town Services or Utilities

- A) Prior to approval of a final plat for subdivision, the subdivider shall have installed improvements specified in this chapter or guaranteed their installation as provided in this section.
- B) No municipal services or utilities shall be extended or furnished to any subdivision either within or outside the Town until the subdivider shall have installed the improvements specified in this chapter or guaranteed their installation as provided.

7.5.13 Performance Guarantee in Lieu of Construction Prior to Acceptance of Final Plat

In lieu of prior construction of the improvements required by this article, the Town may, for the purpose of approving a final plat, accept a guarantee from the subdivider that such improvements will be carried out according to the Town's specifications at subdivider's expense. Such guarantee may be in the form of a surety bond enforceable at the sole discretion of the Town, a letter of credit that meets the specifications of Sec. 7.5.17 *Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance*, certified check drawn in favor of the Town, or cash deposited with the Town. The subdivider shall install sufficient improvements to provide functional fire protection (with adequate street access and water supplies for the fire-fighting equipment). Such guarantee shall be in an amount of not less than 125 percent of the estimated cost of the construction of the required improvements. The developer shall submit his estimate of this amount subject to review, modification, and approval, which shall be by the Town Engineer. Performance guarantees shall run for a period of one year and may be renewed once for a like period upon written approval from the Town Engineer. All required construction of improvements, less the final lift of asphalts and adjustments, shall be completed within one year from approval of the final plat. The obligation to maintain Performance Guarantees for the final lift of asphalt and utility adjustments is independent of the additional obligation to provide the Defects Guarantee.

7.5.14 Defects Guarantee

- A) The Town Engineer shall require a bond (enforceable at the sole discretion of the Town) guaranteeing utility taps, curbs, gutters, street pavement, sidewalks, drainage facilities, water and sewer lines and other improvements against defects for one year. All guarantees must remain in force in the Town's favor for a period of no less than the longer of 1) one year from the satisfactory completion of the performance inspection, or 2) until 60% of the lots in the bonded phase have been issued a Certificate of Occupancy. If during the one-year defects period substantial corrections to the required improvements are made, then such corrections must be bonded for an additional one year after acceptance by the Town. Substantial corrections are defined as follows:
 - 1) *Roadway*. Total repair area exceeds 15 percent of the original construction.
 - 2) *Curb and gutter*. Total linear feet of repairs exceeds 15 percent of the original construction.
 - 3) *Water system*. The system experiences two or more failures with the piping or any associated components.
 - 4) *Sewer system*. The system experiences two or more failures with the piping or any associated components.
 - 5) *Storm water collection system*. The system experiences two or more failures with the piping or any associated components.
- B) This bond shall be in the amount determined by the Town Engineer and shall be in cash or be made by a surety company authorized to do business in North Carolina.

7.5.15 Maintenance Guarantee

The Town Engineer shall secure from all subdividers a bond or guarantee in which each subdivider shall agree to maintain the backfill and any improvements located thereon and therein and any ditch, which has been dug in connection with the installation of such improvements. Such bond or guarantee shall be binding on the subdivider for a period of one year after the acceptance of such improvements by the Town.

7.5.16 Final Plat Review Contingent on Execution of Guarantees

No final plat will be accepted for review by the Planning Director and the Town Engineer unless such plat is in compliance with Sections 7.5.12 through 7.5.15.

7.5.17 Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance

Whenever by this section a surety bond, certified check, or cash bond is required to guarantee performance by any person or to guarantee against defects, the security for said guaranty may be in the form of an irrevocable letter of credit from any commercial bank doing business in the state and addressed to the Town in the sum and the terms required by such bond, guaranty, or deposit.

BONDING REQUIRED FOR PLATTING:

All development projects within the Town of Apex will be required to place security funds in the Town's favor prior to receiving the project plat or obtaining a Certificate of Occupancy for non-residential construction. The amount of these funds must receive prior approval by the Engineering Department (see "Approved Methods for Submitting Bond Amounts for Approval"). Under no circumstance will the Town of Apex accept a bond from multiple contractors on a project. The Town will accept a bond from a single contractor, for the entire approved amount, for the whole project. As of June 1, 2006, all Letters of Credit submitted as security must have the issuing Bank's place of collection in the State of North Carolina.

BONDING REQUIRED FOR WARRANTY:

After satisfactory completion of a construction inspection of all development projects within the Town of Apex, the developer must provide a Warranty Bond in the Town's favor guaranteeing the improvements against defects for a period of one year. The Warranty Bond must be in the amount of 25% of the construction costs for utility taps, curbs, gutters, street pavement, sidewalks, drainage facilities, water and sewer lines and other improvements. The amount of these funds must receive prior approval by the Engineering Department (see "Approved Methods for Submitting Bond Amounts for Approval"). Warranty Bonds will be held for one year and until at least 60% of the lots/units in the bonded phase have been issued a Certificate of Occupancy.

DEFINITIONS RELATED TO BONDING:

Bond - A security instrument to guarantee work, typically issued by an insurance company

Letter of Credit - A security instrument to guarantee work, typically issued by a lending institution.

Bond Language - Specific wording placed within the contents of the security instrument that allows for drafts by the Obligee.

Obligee - Entity that is entitled to make drafts against the security instrument. This will be the Town of Apex.

Principal - Entity that is performing the guaranteed work. This will be the developer. Also referred to as the Applicant.

Performance Inspection - An inspection completed by the Town of Apex to initiate the Warranty Period. This inspection is typically performed after all utilities and roadways are constructed (less the final lift of asphalt).

Final Inspection - An inspection completed by the Town of Apex at the end of the Warranty Period. Upon satisfactory completion of the Final Inspection, the Town of Apex will accept the project and release the developer from his obligation to maintain the project. This inspection is typically performed after all utilities and roadways are found to be free of defects and the final lift of asphalt has been installed.

Performance Bond - A security instrument (Bond or Letter of Credit) in the Town's favor, which protects the Town from the developer's default to install improvements.

Maintenance Bond - A security instrument (Bond or Letter of Credit) in the Town's favor, which protects the Town from the developer's default to maintain the installed improvements. May be referred to as a Defects Bond or Warranty Bond.

Bond Amount - An amount supplied by the developer to be approved by the Engineering Department. The amount must be approved prior to the submittal of the bond.

APPROVED METHODS FOR SUBMITTING BOND AMOUNTS FOR APPROVAL:

Certified estimate prepared, signed, and sealed by a professional engineer. Estimate must include construction costs and material quantities for all public street improvements (including curbs, gutters, sidewalks and handicap ramps, pavement, and storm drainage), road widening, water and sewer facilities, and engineered storm water retention facilities.

Invoices or contract documentation from all sub-contractors. Invoices or contract documents must include construction costs for all public street improvements (including curbs, gutters, sidewalks and handicap ramps, pavement, and storm drainage), road widening, water and sewer facilities, and engineered storm water retention facilities. Project Continuation Sheets are a valid form of contract documentation, provided that the Continuation Sheets most nearly match the installed improvements.

BOND LANGUAGE:

The following language must be included in all Bonds or Letters of Credit. It is encouraged that Bonds include a "Save Harmless" agreement when possible.

Performance Bond

Letter signed by an authorized representative of the Town of Apex stating that _____
(applicant/developer) _____ has defaulted in their agreement to construct public street improvements (including curbs, gutters, pavement, sidewalks, and storm drainage), sewer and water facilities and engineered stormwater retention facilities to serve _____ (name of project/
subdivision including phase #s, section #s, and lot #s) _____ in Apex, North Carolina.

Warranty/Maintenance Bond

A certified statement evidencing the applicant's non-performance or default to correct, repair or replace defects in materials or workmanship for street improvements (including curbs, gutters, pavement, sidewalks, and storm drainage), sewer and water facilities and engineered stormwater retention facilities to serve name of project/subdivision including phase #s, section #s, and lot #s in Apex, North Carolina.

Save Harmless Agreement – Performance Bond

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall construct, or have constructed, the improvements herein described and shall save the Obligee harmless from any loss, cost or damage by reason of its failure to complete said work, then this obligation shall be null and void; otherwise to remain in full force and effect.

Save Harmless Agreement – Maintenance Bond

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall remedy without cost to the Obligee, any defects which may develop during a period of one (1) year from the date of completion and acceptance of the work performed, caused by defective or inferior materials or workmanship, then this obligation shall be null and void; otherwise to remain in full force and effect.

Warranty/Maintenance Bond (including final lift of asphalt)

A certified statement evidencing the applicant's non-performance or default to correct, repair or replace defects in materials or workmanship for street improvements (including curbs, gutters, pavement, sidewalks, and storm drainage), sewer and water facilities and engineered stormwater retention facilities to serve name of project/subdivision including phase #s, section #s, and lot #s in Apex, North Carolina or a certified statement evidencing the applicant's non-performance or default to install pavement in accordance with Section 3.03 of the Standard Specifications and Construction Details, Town of Apex, North Carolina dated December 2002, in (name of project) in Apex, North Carolina.

COLLECTION AND DRAFTS:

The Town of Apex, at its discretion, will collect on a security instrument or request a draft for any of the following (*this list shall not be construed as being all inclusive*):

- 1) Failure of the Applicant to perform or correct defects in the project's construction.
- 2) Failure of the Applicant to renew or extend an expiring bond when the Town of Apex has not accepted the project.
- 3) When the Applicant causes damage to the Town's existing utilities and roadway system and refuses to make prompt and/or correct repairs.
- 4) Failure of the Applicant to perform construction in accordance with the *Town of Apex Standard Specifications and Construction Details* and/or at the Town Engineer's direction.

