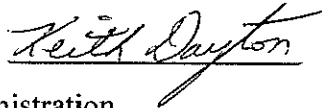


**ACTION ITEM
BOARD OF SUPERVISORS**

DATE: May 19, 2009

TO: Board of Supervisors

FROM: Keith C. Dayton
Director of Code Administration



ISSUE: Authorize Revisions to the Stafford County Developer Security Policy

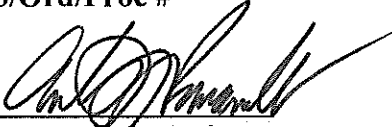
STAFF RECOMMENDATION: Approval

BUDGET IMPACT: N/A


ATTACHMENTS: (3)

- [1] Background Report [3] Reso/Ord/Proc # R09-225
- [2] Updated Security Policy [] Reso/Ord/Proc #
- [] [] Reso/Ord/Proc #

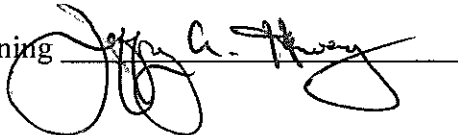
REVIEW: [X] County Administrator's Office



[X] Legal



[X] Planning and Zoning



- [X] Consent Agenda [] Other Business [] Public Hearing
- [] Discussion Item [] Presentation [] Unfinished Business
- [] New Business

PRESENTATION BY: N/A

ELECTION DISTRICT: N/A

BACKGROUND REPORT

Stafford County has a Security Policy in place to provide guidance in matters related to the establishment of monetary security for privately-constructed infrastructure improvements. These improvements are proposed by developers in conjunction with approved subdivision and site plans. Securities in the form of cash, letter of credit, or surety bond are held by the County to ensure the ultimate completion of the promised improvement in case the private developer or builder defaults on their obligation. Examples of public infrastructure improvements typically secured include roads, water and sewer improvements, erosion and sediment control and stormwater management facilities. The County presently holds nearly \$120,000,000 in securities on developer improvements and nearly \$5,000,000 in securities for the completion of individual building lots.

The current Security Policy for the County was adopted in October 2000. Since that time, the Commonwealth of Virginia has modified the statutory requirements pertaining to securities held by localities, requiring the County to amend the Security Policy to comply with state law. Furthermore, staff, with assistance from a consultant, formed a committee consisting of representatives from the Departments of County Administration, County Attorney, Planning and Zoning, Utilities, Code Administration and the Office of Transportation to review current security policies and develop recommendations for improvement. This committee identified numerous recommendations to the Policy to provide better protection to the County and make the process more efficient. Some of the more significant changes are identified below.

- Modified language to allow the reduction of security from the presently allowed 125% of total estimated value to 110% as recently mandated by state law.
- Restricted the period of performance agreements to an initial period of two years, with extensions up to a maximum of three years. The present policy restricts the initial period of performance to one year, but allows agreements to be extended indefinitely.
- Modified to allow road, water and sewer security for site plans in an amount up to 10% of the total estimated construction value. At present, the County doesn't require security for water, sewer and road improvements for site plans.
- Established the interest rate paid on cash security at 2% and restricted the obligation to pay interest for only security to only the period of the original performance agreement. The present policy stipulates that funds shall be deposited in interest bearing accounts. The vast majority of securities are held in the form of surety bonds or letters of credit. Interest payments typically apply only to individual lot securities.
- Required that all performance agreements and security documents use forms provided by the County. The County presently receives securities on a variety of forms with varying conditions.
- Stipulated that engineered cost estimates be provided with all security extension requests. There is at present, no requirement for cost estimates with security extensions.

- Stipulated that securities for road related improvements would be released only after acceptance of the streets into the state secondary highway system. This is not a requirement in the current policy.
- Clarified requirements for maintenance securities during the warranty period.
- Stipulated that the County may pursue compensation for the additional funds necessary to complete public improvements in a court of law. The present policy is silent in this regard.

Staff recommends authorization of the new Security Policy with an effective date of July 1, 2009.

STAFFORD COUNTY
SECURITY POLICY

Amended

May 2009

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SECURITY POLICY

DEFINITIONS

For the purpose of this policy, terms used herein shall be interpreted and defined as follows: Words used in the present tense shall include the plural and the singular unless the natural construction of the word indicates otherwise; the word "shall" is mandatory and not discretionary; the word "approve" shall be considered to be followed by the words "or disapprove". All gender-oriented references shall include male and female genders. Actions not specifically declared to be the responsibility of the Agent or other party shall be considered the responsibility of the Developer.

- AGENT:** The County Administrator of Stafford County or his designee.
- DEVELOPER:** An individual, corporation, trustee, joint venture, partnership or other entity having legal or equitable title to any tract or parcel of land to be developed or improved who submits plans pursuant to the Site Plan, Subdivision, Erosion and Sediment Control, Utility Ordinances of Stafford County, or the successor(s) in interest to such individual corporation, trustee, joint venture, partnership or other legal entity.
- QUALIFIED PROFESSIONAL** Individual licensed as a professional engineer or surveyor in the Commonwealth of Virginia.
- PERSON:** The word person shall extend, and be applied to associations, firms, partnerships and bodies politic and corporate as well as to individuals.
- PROJECT:** The term project shall include all subdivisions, site plans, utility plans, erosion and sediment control plans, and storm water management plans or sections thereof required to be submitted for approval under the Stafford County Code. The term project shall not include individual house site plans submitted for the issuance of building permits.
- SECURITY:** The term security as used in this policy means cash escrow, certified checks, cashier's checks, letters of credit and surety bonds.
- SURETY:** An individual, corporation, bank, savings and loan, insurance company, firm, or partnership who undertakes to pay money in the event the developer fails to complete his obligation.
- VDOT:** The Virginia Department of Transportation.

SECTION 100.

PURPOSE

To obtain an acceptable guarantee of performance to assure the timely construction and completion of site and subdivision physical improvements in accordance with approved plans and profiles, current County standards and specifications, and County and State requirements.

SECTION 100.005

APPLICABILITY

Any builder, developer or other person(s) seeking to gain approval of a subdivision plat/site plan/construction plan or public improvement plan in the County shall enter into a Performance Agreement with the County, which details the agreed-upon elements of the improvements, and is supported by Security in the amount not greater than 125% of the estimated cost of construction. The Performance Agreement and Security shall be required from any builder, developer or other person except the Stafford County Board of Supervisors.

SECTION 100.01

PERFORMANCE AGREEMENTS

An agreement and security shall be required for all projects except those exempted above, which shall obligate the developer to construct required improvements in approved subdivisions, site plans, or public improvement projects in a timely manner and in accordance with all applicable standards.

- A. The maximum period of the agreement shall be twenty-four (24) months, with the exception of agreements relating to telecommunication facilities which shall be for a maximum period of five (5) years.
- B. The agreement shall be between the developer and the Board of Supervisors.
- C. Any and all forms of security shall be not greater than one hundred and twenty-five per cent (125%) of the estimated cost of improvements as determined by a Qualified Professional with the approval of the Agent.
- D. Notwithstanding the requirements of Paragraph C of this section, security for erosion and sediment control measures on individual building lots shall be as defined by ordinance.
- E. Notwithstanding the requirements of paragraph C of this section, security for water and sanitary improvements for site plans shall be 10% of the total construction cost estimate as approved by the Agent, or \$5,000, whichever is greater. This amount shall be adjusted annually based upon the Engineering News Record Construction Cost Index.
- F. Notwithstanding the requirements of paragraph C of this section, Road and Road Stormwater Management/Drainage system security for site plans shall be 10% of the total construction cost estimate as approved by the Agent, or \$15,000, whichever is greater. This amount shall be adjusted annually based upon the Engineering News Record Construction Cost index.

Cash, Cash Escrow, Certified Checks, Cashier's Checks, Letters of Credit, and Surety Bonds are the required forms of security. Whatever its form, the security is designed to guarantee the County funding for completion of required improvements in the event the developer fails to discharge the obligations of his performance agreement. The shared obligation of all sureties is to pay the designated funds on demand.

A. Cash Escrow:

The face amount of the security shall be submitted to the Agent who shall deposit same with the Treasurer of Stafford County. Interest shall be paid at the rate of 2% per year for a period not longer than the term of the original Performance Agreement, payable upon satisfaction of all obligations for which the security was issued and at the time the security is returned.

B. Letters of Credit: Letters of Credit shall meet the following minimal conditions:

1. The lending institution shall be insured by an agency of the United States government.
2. There shall be no minimum time for which security is posted; with the exception of landscaping, which shall be for two (2) years.
3. A minimum of a ninety (90) day notification period of a lending institution's election not to extend the letter of credit is required and shall be sent by certified mail to the Agent. Failure to give notice as required shall automatically extend the letter of credit for an additional six (6) month period. Such provision shall be stated in the letter of credit.
4. All lending institutions must at all times be satisfactory to the County in accordance with rating criteria reported in the "Bank and S & L Quarterly" published by Highline Financial. Standby letters of credit will be acceptable only from lending institutions assigned a composite peer group rating of 25 or better in the most recent issue of the Quarterly.
5. Notwithstanding paragraph 4 above, the County may accept a standby letter of credit issued by a non-qualifying lending institution, where that institution causes to be issued to the Board of Supervisors as beneficiary, an additional letter of credit of equal value from a qualifying institution; which letter of credit shall serve as additional collateral to secure project involved.
6. Letters of credit shall not be accepted from a lending institution that has declined to honor a Letter of Credit issued to the County or that is also the developer of the project for which the Letter of Credit is offered.

C. Surety Bonds:

1. Bonds to secure public and private improvements by developers and erosion and sediment control measures on individual building lots shall be acceptable only when issued by insurance companies satisfactory to the County. Such satisfactory insurance companies shall be those companies that are rated A or better by A. M. Best Company and are licensed to do business in the Commonwealth of Virginia.
2. Surety bonds shall be issued for a period that extends until the Agent provides written notice that the terms of the Agreement have been satisfied, or until satisfactory substitute security has been received.

SECTION 100.03

FORMS

The Agent shall prepare, approve and may amend, from time to time, standard forms which shall be used for any performance agreement and security.

SECTION 100.04

EXTENSIONS AND REBONDING OF AGREEMENTS

- A. When a developer enters into an agreement with the County, it is understood that all the necessary physical improvements shall be completed in the specified time. Should a developer need additional time to complete the required public improvements he may request that the completion period be extended by making a request of the Agent. If all the physical improvements are not completed within the time specified, and no extension has been obtained, or a replacement agreement has not been submitted and approved with a new expiration date, the agreement shall be in default.
- B. The maximum initial term of a Performance Agreement shall be two (2) years. The developer shall have the opportunity to request an extension of time in a maximum increment of one (1) year in accordance with the requirements of this policy if the physical improvements are not completed within sixty (60) days prior to the expiration of the agreement AND provided that the developer has exhibited good faith in the progress of the construction. The maximum period for satisfaction of the requirements of the Performance Agreement shall be five (5) years. Approval of the request for time extension shall be at the sole discretion of the Agent, who shall provide reasons for denial to the developer in writing.
- C. The developer shall make a written request to the Agent for an extension no later than thirty (30) days prior to the expiration date of the agreement. The developer shall state the reasons and conditions which have precluded him from completing the required physical improvements. The developer shall obtain the written consent of all sureties to the extension request.

- D. If the developer has requested an extension or a substitute agreement and security, the Agent shall review an inspection report prepared by the appropriate County Department on the project and the request submitted by the developer. The factors considered by the Agent shall include the following:
1. The extent to which the project has been completed as determined by the percentage of construction finished, the number of homes completed, occupied, and served by public facilities and other such information as the Agent deems pertinent.
 2. Rate of construction activity. Any extension or re-bonding approval may be conditioned upon an increase in the face amount of the security to reflect increases in the estimated cost of completion.
- E. A current cost estimate prepared by a Qualified Professional will be required for an extension of any security. The cost estimate shall be reviewed and approved by the Agent.

SECTION 100.05

SECURITY REDUCTIONS

- A. Securities issued in accordance with Section 100.01, paragraph C may be reduced in accordance with the provisions of Section 22-131, Article VI, Chapter 22 of the Stafford County Code. The amount of security retained shall be not greater than one hundred twenty-five per cent (125%) of work remaining to be done
- B. No reduction, release or extension shall be approved if the performance agreement is in default; however, a reduction request may be considered concurrently with an extension request.
- C. A developer seeking partial release of any security shall submit a written security reduction request to the Agent. No request shall be deemed received unless it is submitted in accordance with this section and meets the following minimum requirements:
1. If an extension of the time to complete the improvements is sought in association with a reduction request, every requirement for an extension request shall be met, including, but not limited to, the submission of written consent by the surety to any such request.
 2. The developer's request shall identify the project, performance agreement, security, and completion date; and the request shall specify the reduction sought. Such request shall also:
 - a. certify the percentage of the project completed,
 - b. provide a current cost estimate prepared by a qualified professional stipulating the nature and cost of the work remaining, and

- c. include a projected timetable for completion.
3. The developer shall furnish a certificate of completion from a qualified professional that the work described has been performed in conformity with approved plans or in accordance with as-built plans submitted therewith, and that the work meets all applicable standards.
4. The Agent shall approve or disapprove any reduction request within thirty (30) days of receipt. If the request is disapproved, the Agent shall notify the developer in writing of the specific reasons for disapproval.

SECTION 100.06 **SECURITY AND AGREEMENT RELEASE PROCEDURES**

- A. After all physical improvements required by the STAFFORD COUNTY CODE are completed; the developer shall notify the Agent and request an inspection by the appropriate County department(s) and/or State agency(s). Upon receipt of a request for inspection, the Agent shall notify all parties and set a date for a joint field inspection.
 1. The Agent shall prepare a punch list of those items requiring correction.
 2. The developer shall be sent a copy of the punch list and shall have thirty (30) days to complete necessary improvements. This punch list does not relieve the developer of liability for defective work later discovered. If the punch list corrections are not completed within thirty (30) days, the entire project shall be subject to re-inspection.
 3. The developer shall notify the Agent that he has completed the punch list items and requests final inspection. The Agent shall then set a date for joint inspection with the appropriate department(s) and/or agency(s) and the developer.
- B. After the joint inspections, if all improvements have been satisfactorily completed, the following steps shall be taken:
 1. The County department(s) and/or State agency(s) shall forward a letter to the Agent indicating that the inspection disclosed that the project meets County and/or State standards. The Agent shall, upon receipt of such letter(s), prepare the necessary resolution for consideration by the Board of Supervisors if the security covers road improvements.

2. Securities for road construction and road stormwater management/drainage system dedicated to public use will be completely released after the streets and drainage systems in the right of way have been accepted into the state system of secondary highways.
3. If the security covers road improvements, the Agent shall notify applicable State Agencies and County Departments of the completed inspections and the pending request for a Board Resolution. The Agent shall contact all applicable agencies and the County Departments for written confirmation that:
 - a. All appropriate Code enforcement complaints are satisfied.
 - b. All utility appurtenance and as-built plans have been accepted by the County.
 - c. All as-built plans of roads and road drainage facilities have been accepted.
 - d. All fees have been collected.
 - e. All contributions for off-site drainage, sewer, or other improvements have been made.
 - f. All physical improvements covered by agreements have been approved and accepted.
 - g. All collateral agreements have been satisfied.
4. Following the adoption of the resolution for road acceptance by the Board of Supervisors, copies shall be forwarded to the VDOT and other applicable County Departments. For all other required improvements, all applicable stipulations of Section 100.06 must be met.

The Agent shall then process the release of the security, and shall release the security upon receipt of notification of street acceptance by VDOT or when all stipulations pertinent to the required improvements are met, as set forth by this Section.

In the event any dedicated road cannot be taken into the State System for reasons other than quality of construction, the developer may seek release in accordance with the provisions of this section, provided that he shall comply with the requirements of Section 100.07 "Securities During Warranty Period".

SECTION 100.07

SECURITIES DURING WARRANTY PERIOD

- A. The maintenance security for water and sanitary sewer improvements shall be ten percent (10%) of the current approved engineer's construction cost estimate for the improvements. For site plans, the full security required by section 100.01, paragraph E shall be retained as a maintenance security. Maintenance securities for subdivisions shall be released following satisfactory completion of the final inspection.
- B. Maintenance security for site plans shall be released upon the final inspection which shall not be earlier than one year after final approval of the as-built drawings.
- C. Road Maintenance Security – If provided for in the Subdivision Ordinance and in the event the county has accepted the dedication of a road for public use and such road due to facts other than the quality of construction is not acceptable into the secondary system of state highways and the responsible party desires to be released from security obligations, then the responsible party shall furnish the county with a maintenance and indemnifying corporate surety bond, letter of credit or cash security in accordance with the requirements of this policy. The security shall be in an amount sufficient for and conditioned upon the maintenance of secured roads until such time as it is accepted into the secondary system of state highways.

SECTION 100.08

DEFAULT PROCEDURES

- A. If the developer fails to complete the required public improvements in the time specified in the agreement or any approved extension thereof, the developer shall be in default.
- B. Upon default, the Agent shall make a demand of the surety for payment. Upon receipt of the funds the Agent shall complete the required public improvements. If the funds prove insufficient to complete the project, including County staff time, the County, at its option, may delay the completion of the public improvements until such time sufficient resources become available. Furthermore, the County reserves the right to bring suit in a court of law to recover the difference. If the County prevails, court costs will be charged to the Developer.

APPENDIX #1

List of Forms

1. Building Lot Performance Agreement
2. Building Lot Letter of Credit
3. Development Performance Agreement
4. Development Letter of Credit
5. Surety Bond
6. Request for Security Extension
7. Request for Security Reduction
8. Request for Security Release
9. Request for Project Status Inspection

PROPOSED

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 19th day of May, 2009:

MEMBERS:

George H. Schwartz, Chairman
Harry E. Crisp II, Vice Chairman
M. S. "Joe" Brito
Mark Dudenhefer
Paul V. Milde III
Cord A. Sterling
Robert "Bob" Woodson

VOTE:

On motion of , seconded by , which carried by a vote of , the following was adopted:

A RESOLUTION AUTHORIZING ADOPTION OF THE
SECURITY POLICY

WHEREAS, the Security Policy now in effect was adopted in October 2000;
and

WHEREAS, this Policy includes provisions which are not in compliance with
the requirements of recent changes made by the Commonwealth of Virginia; and

WHEREAS, a committee comprised of County staff and consultants examined
the current Security Policy and made recommendations to comply with current state law
along with other modifications intended to protect the interests of the County;

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of
Supervisors on this the 19^h day of May, 2009, that the Board be and hereby does amend
the Security Policy effective July 1, 2009.

AJR:kd