



HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.

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Business*

February 18, 2011

To: Senator Steve Cassano, Co-Chairman
Representative Linda M. Gentile, Co-Chairman
Members of the Planning and Development Committee

From: Bill Ethier, Chief Executive Officer

Re: Senate Bill 860, AAC Bonds for Approved Subdivisions

The HBA of Connecticut is a professional trade association with 1,100 member firms statewide, employing tens of thousands of Connecticut citizens. Our members, all small businesses, are residential and commercial builders, land developers, home improvement contractors, trade contractors, suppliers and those businesses and professionals that provide services to our diverse industry. Our members build 70% to 80% of all new homes and apartments in the state each year.

We thank the committee for raising this bill to fix the performance bond issues related to subdivisions. However, as drafted we cannot support lines 5-6, and the proposal does not go far enough to address a myriad of issues surrounding development bond requirements. We, therefore, attach and request your consideration of a proposed draft that would enact needed changes.

As background, municipal planning and zoning commissions have the authority when approving subdivisions and site plans to require that applicants provide performance bonds or other surety for the approved improvements to land (i.e., roads, sidewalks, utilities, grading and other site development work). This surety protects the ultimate buyers of homes or other users of the developed site, i.e., the municipality exercises its rights under the bond or surety to complete work the applicant fails to do. As improvements are made, towns inspect and approve the work and eventually release the surety back to the permittee.

However, municipalities have widely varying practices and, in our view, many abuse their performance bond authority. Many require specific types of surety that is more expensive for applicants. Some require excessive surety, and many impose substantial delays in releasing the surety that is provided, costing applicants significant financial loss. It does not have to be this way.

Our attached proposal is designed to correct some of the abuses and adopt a more rational, flexible approach that guarantees the public's enjoyment of development improvements as approved by local commissions. Regarding SB 860, as drafted, the provision, "provided work on the subdivision shall not commence prior to the posting of such bond" must be deleted. That line alone would make matters much worse since often developers, allowed by a town, will make improvements prior to providing the required surety in order to "buy down" the amount of surety that is necessary.

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Section 1 and section 2 of our proposal addresses, respectively, site plans under sec. 8-3 and subdivisions under sec. 8-25 of the general statutes.

Both sections require the zoning and planning commission to accept, at the discretion of the permittee, common alternate forms of surety, such as letters of credit, cash bonds, and passbook savings account.

Both sections allow such surety to be provided, at the discretion of the permittee, at any time up to and just prior to the first certificate of occupancy. After all, the purpose of the surety is to protect the ultimate owner or user, who cannot enter the property prior to a certificate of occupancy. Requiring the provision of surety at an earlier time just causes the permittee more unnecessary expense for no additional public benefit. The proposal also accommodates the common practice of approving developments in phases and the posting of bonds or surety for each phase.

Further, our proposal lays out conditions and a timeline for the release of a performance bond or other surety.

Also contained in section 2 of our proposal, at line 98, and since it deals with the same statutory section, is a fix to the municipal open space exaction process. Under our subdivision law, when a town requires the payment of an open space fee, or requires a combination of a fee and the actual dedication of open space land, the amount is limited to 10% of the value of the property prior to subdivision approval. However, if a town takes only land, there is no upper limit. And, many towns are savvy to this quirk in the law and exercise their authority to take 30%, 40%, even 50% of your private property. Some even apply the 50% to the developable land that is left after deducting wetlands, steep slopes and ridgelines, effectively taking a majority of your land. We believe this violates the Constitution and U.S. Supreme Court precedent, but no home builder has the resources to fight this battle. We're asking you to fix this wrong.

Finally, section 3 of our proposal fixes another growing trend of municipalities requiring the provision of cash bonds, the interest on which, funds the lifetime or long-term maintenance of public improvements, such as storm water detention basins. These public maintenance costs should be borne by the property taxes all citizens pay. It's a perniciously expensive cost to new developments to have to front principal amounts enough to generate interest for long-term maintenance of public amenities. If this is not stopped, there is nothing to prevent towns from requiring such maintenance bonds for whatever public improvements they can dream of. Please include section 3 of our proposal in legislation that you move forward.

We look forward to working with the committee to address these bonding and open space wrongs we and other development applicants face, and request that you consider the attached as a favorable substitute to SB 860.

Thank you for considering our comments on this important legislation.

Proposal to fix the municipal bonding process for site plans (8-3) and subdivisions (8-25). Also, under 8-25, the open space provisions, as between transfers of land, payment of open space fees, or a combination thereof, is also clarified (see line 98):

1 Section 1. Amend Conn. Gen. Stat. § 8-3(g), as follows:
2

3 (g) The zoning regulations may require that a site plan be filed with the commission or other
4 municipal agency or official to aid in determining the conformity of a proposed building, use or
5 structure with specific provisions of such regulations. If a site plan application involves an
6 activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, the applicant shall submit an
7 application for a permit to the agency responsible for administration of the inland wetlands
8 regulations not later than the day such application is filed with the zoning commission. The
9 commission shall, within the period of time established in section 8-7d, accept the filing of and
10 shall process, pursuant to section 8-7d, any site plan application involving land regulated as an
11 inland wetland or watercourse under chapter 440. The decision of the zoning commission shall
12 not be rendered on the site plan application until the inland wetlands agency has submitted a
13 report with its final decision. In making its decision, the commission shall give due
14 consideration to the report of the inland wetlands agency and if the commission establishes
15 terms and conditions for approval that are not consistent with the final decision of the inland
16 wetlands agency, the commission shall state on the record the reason for such terms and
17 conditions. A site plan may be modified or denied only if it fails to comply with requirements
18 already set forth in the zoning or inland wetlands regulations. Approval of a site plan shall be
19 presumed unless a decision to deny or modify it is rendered within the period specified in
20 section 8-7d. A certificate of approval of any plan for which the period for approval has expired
21 and on which no action has been taken shall be sent to the applicant within fifteen days of the
22 date on which the period for approval has expired. A decision to deny or modify a site plan
23 shall set forth the reasons for such denial or modification. A copy of any decision shall be sent
24 by certified mail to the person who submitted such plan within fifteen days after such decision
25 is rendered. The zoning commission may, as a condition of approval of any modified site plan,
26 require a bond in an amount and with surety and conditions satisfactory to it, securing that any
27 modifications of such site plan are made or may grant an extension of the time to complete
28 work in connection with such modified site plan, provided the zoning commission shall accept,
29 at the sole election of the permittee, surety bonds, letters of credit, cash bonds, passbook or
30 statement savings accounts or other surety, such as the deed to an approved building lot, in a
31 sufficient, but no greater, amount necessary to perform the approved improvements. Such
32 bond or other surety provided under this section may, at the sole election of the permittee, be
33 provided at any time up to and just before the first certificate of occupancy is issued for any
34 building or unit within a building. For any such site plan that is approved to be developed in
35 phases, the surety provisions of this section shall be applied to each phase as if each phase was
36 approved as a separate site plan. [The commission may condition the approval of such
37 extension on a determination of the adequacy of the amount of the bond or other surety
38 furnished under this section.] The commission or its agent shall release any bond or other
39 surety provided under this section within thirty days of the permittee requesting such release,
40 or a portion thereof, provided the commission or its agent is reasonably satisfied that the

41 improvements relevant to such request have been completed. If the commission or its agent is
42 not so satisfied, the permittee shall be notified, with objective specificity, within 15 days what
43 further work is necessary to complete the improvements relative to such request. The
44 commission shall publish notice of the approval or denial of site plans in a newspaper having a
45 general circulation in the municipality. In any case in which such notice is not published within
46 the fifteen-day period after a decision has been rendered, the person who submitted such plan
47 may provide for the publication of such notice within ten days thereafter. The provisions of this
48 subsection shall apply to all zoning commissions or other final zoning authority of each
49 municipality whether or not such municipality has adopted the provisions of this chapter or the
50 charter of such municipality or special act establishing zoning in the municipality contains
51 similar provisions.

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53 Section 2. Amend 8-25(a), as follows:

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55 Sec. 8-25. Subdivision of land. (a) No subdivision of land shall be made until a plan for such
56 subdivision has been approved by the commission. Any person, firm or corporation making any
57 subdivision of land without the approval of the commission shall be fined not more than five
58 hundred dollars for each lot sold or offered for sale or so subdivided. Any plan for subdivision
59 shall, upon approval, or when taken as approved by reason of the failure of the commission to
60 act, be filed or recorded by the applicant in the office of the town clerk not later than ninety
61 days after the expiration of the appeal period under section 8-8, or in the case of an appeal, not
62 later than ninety days after the termination of such appeal by dismissal, withdrawal or
63 judgment in favor of the applicant but, if it is a plan for subdivision wholly or partially within a
64 district, it shall be filed in the offices of both the district clerk and the town clerk, and any plan
65 not so filed or recorded within the prescribed time shall become null and void, except that the
66 commission may extend the time for such filing for two additional periods of ninety days and
67 the plan shall remain valid until the expiration of such extended time. All such plans shall be
68 delivered to the applicant for filing or recording not more than thirty days after the time for
69 taking an appeal from the action of the commission has elapsed or not more than thirty days
70 after the date that plans modified in accordance with the commission's approval and that
71 comply with section 7-31 are delivered to the commission, whichever is later, and in the event
72 of an appeal, not more than thirty days after the termination of such appeal by dismissal,
73 withdrawal or judgment in favor of the applicant or not more than thirty days after the date
74 that plans modified in accordance with the commission's approval and that comply with section
75 7-31 are delivered to the commission, whichever is later. No such plan shall be recorded or
76 filed by the town clerk or district clerk or other officer authorized to record or file plans until its
77 approval has been endorsed thereon by the chairman or secretary of the commission, and the
78 filing or recording of a subdivision plan without such approval shall be void. Before exercising
79 the powers granted in this section, the commission shall adopt regulations covering the
80 subdivision of land. No such regulations shall become effective until after a public hearing held
81 in accordance with the provisions of section 8-7d. Such regulations shall provide that the land
82 to be subdivided shall be of such character that it can be used for building purposes without
83 danger to health or the public safety, that proper provision shall be made for water, sewerage
84 and drainage, including the upgrading of any downstream ditch, culvert or other drainage
85 structure which, through the introduction of additional drainage due to such subdivision,
86 becomes undersized and creates the potential for flooding on a state highway, and, in areas

87 contiguous to brooks, rivers or other bodies of water subject to flooding, including tidal
88 flooding, that proper provision shall be made for protective flood control measures and that
89 the proposed streets are in harmony with existing or proposed principal thoroughfares shown
90 in the plan of conservation and development as described in section 8-23, especially in regard
91 to safe intersections with such thoroughfares, and so arranged and of such width, as to provide
92 an adequate and convenient system for present and prospective traffic needs. Such regulations
93 shall also provide that the commission may require the provision of open spaces, parks and
94 playgrounds when, and in places, deemed proper by the planning commission, which open
95 spaces, parks and playgrounds shall be shown on the subdivision plan. Such regulations may,
96 with the approval of the commission, authorize the applicant to pay a fee to the municipality or
97 pay a fee to the municipality and transfer land to the municipality in lieu of any requirement to
98 provide open spaces. Such transfer of open space, payment of a fee, or combination of
99 payment and the fair market value of land transferred shall be equal to not more than ten per
100 cent of the fair market value of the land to be subdivided prior to the approval of the
101 subdivision. The fair market value shall be determined by an appraiser jointly selected by the
102 commission and the applicant. A fraction of such payment the numerator of which is one and
103 the denominator of which is the number of approved parcels in the subdivision shall be made
104 at the time of the sale of each approved parcel of land in the subdivision and placed in a fund in
105 accordance with the provisions of section 8-25b. The open space requirements of this section
106 shall not apply if the transfer of all land in a subdivision of less than five parcels is to a parent,
107 child, brother, sister, grandparent, grandchild, aunt, uncle or first cousin for no consideration,
108 or if the subdivision is to contain affordable housing, as defined in section 8-39a, equal to
109 twenty per cent or more of the total housing to be constructed in such subdivision. Such
110 regulations, on and after July 1, 1985, shall provide that proper provision be made for soil
111 erosion and sediment control pursuant to section 22a-329. Such regulations shall not impose
112 conditions and requirements on manufactured homes having as their narrowest dimension
113 twenty-two feet or more and built in accordance with federal manufactured home construction
114 and safety standards or on lots containing such manufactured homes which are substantially
115 different from conditions and requirements imposed on single-family dwellings and lots
116 containing single-family dwellings. Such regulations shall not impose conditions and
117 requirements on developments to be occupied by manufactured homes having as their
118 narrowest dimension twenty-two feet or more and built in accordance with federal
119 manufactured home construction and safety standards which are substantially different from
120 conditions and requirements imposed on multifamily dwellings, lots containing multifamily
121 dwellings, cluster developments or planned unit developments. The commission may also
122 prescribe the extent to which and the manner in which streets shall be graded and improved
123 and public utilities and services provided and, in lieu of the completion of such work and
124 installations previous to the final approval of a plan, the commission may accept a bond in an
125 amount and with surety and conditions satisfactory to it securing to the municipality the actual
126 construction, maintenance and installation of such public improvements and utilities within a
127 period specified in the bond, provided the commission shall accept, at the sole election of the
128 permittee, surety bonds, letters of credit, cash bonds, passbook or statement savings accounts
129 or other surety, such as the deed to an approved building lot, in a sufficient, but no greater,
130 amount necessary to perform the approved improvements. Such bond or other surety
131 provided under this section may, at the sole election of the permittee, be provided at any time
132 up to and just before the first certificate of occupancy is issued for any building or unit within a

133 building. For any such subdivision that is approved to be developed in phases, the surety
134 provisions of this section shall be applied to each phase as if each phase was approved as a
135 separate subdivision. Such regulations may provide, in lieu of the completion of the work and
136 installations above referred to, previous to the final approval of a plan, for an assessment or
137 other method whereby the municipality is put in an assured position to do such work and make
138 such installations at the expense of the owners of the property within the subdivision. Such
139 regulations may provide that in lieu of either the completion of the work or the furnishing of a
140 bond or other surety as provided in this section, the commission may authorize the filing of a
141 plan with a conditional approval endorsed thereon. Such approval shall be conditioned on (1)
142 the actual construction, maintenance and installation of any improvements or utilities
143 prescribed by the commission, or (2) the provision of a bond or other surety as provided in this
144 section. Upon the occurrence of either of such events, the commission shall cause a final
145 approval to be endorsed thereon in the manner provided by this section. The commission or its
146 agent shall release any bond or other surety provided under this section within thirty days of
147 the permittee requesting such release, or a portion thereof, provided the commission or its
148 agent is reasonably satisfied that the improvements relevant to such request have been
149 completed. If the commission or its agent is not so satisfied, the permittee shall be notified,
150 with objective specificity, within 15 days what further work is necessary to complete the
151 improvements relative to such request. Any such conditional approval shall lapse five years
152 from the date it is granted, provided the applicant may apply for and the commission may, in its
153 discretion, grant a renewal of such conditional approval for an additional period of five years at
154 the end of any five-year period, except that the commission may, by regulation, provide for a
155 shorter period of conditional approval or renewal of such approval. Any person who enters
156 into a contract for the purchase of any lot subdivided pursuant to a conditional approval may
157 rescind such contract by delivering a written notice of rescission to the seller not later than
158 three days after receipt of written notice of final approval if such final approval has additional
159 amendments or any conditions that were not included in the conditional approval and are
160 unacceptable to the buyer. Any person, firm or corporation who, prior to such final approval,
161 transfers title to any lot subdivided pursuant to a conditional approval shall be fined not more
162 than one thousand dollars for each lot transferred. Nothing in this subsection shall be
163 construed to authorize the marketing of any lot prior to the granting of conditional approval or
164 renewal of such conditional approval.

165
166 Section 3. (NEW) No municipal regulation, ordinance or municipal charter provision, nor any
167 provision of any special act municipality, shall provide authority to require of a site plan
168 applicant under chapter 124, subdivision applicant under chapter 126, or development under
169 any special act authority, the provision of a maintenance bond or other surety intended to
170 securitize or pay for the maintenance of roads, streets, or other improvements associated with
171 the site plan or subdivision approved under such chapters or special act authority.

172