

DRAFT
[FOR DISCUSSION PURPOSES ONLY]

Policy Memo

Policy for Partial Cash Bonding in Connection with Distressed Properties

[To be used in discretion of Town Staff only – not at option of developer/owner]

Ordinance Provision

6.10.2 Bond or Other Surety Required to Secure Construction of Required Improvements

Whenever occupancy, use or sale is allowed before the completion of all facilities or improvements intended for dedication, the Applicant shall post a performance bond or other sufficient surety to guarantee such facilities or improvements shall be completed by the Applicant within two years (unless otherwise mandated by State law). The amount of such performance bond or other surety shall be equal to 1.5 times the estimated cost of installing all required improvements, such estimate to be determined by the Town or its authorized agent.

Policy

A developer/owner is not able to record a final subdivision plat, sell a lot, or obtain a building permit to construct a residential house unless either (i) all improvements required by the UDO (“Required Improvements”)¹ are completed or (ii) all Required Improvements are bonded in accordance with the above-referenced ordinance provision.

Town staff understands that current economic conditions are such that performance bonds and other sufficient surety (e.g. letters of credit) are more difficult for owners to obtain. Especially in connection with partially developed developments, it may be desirable to encourage the completion of developments and may be willing to consider other means for a developer to provide “other sufficient surety.” One such means for a developer to provide a cash bond (“Cash Bond”) that is increased over time as lots are sold. This policy memo will serve as a guideline for the Town staff (and contracted Mecklenburg County staff) to implement such an approach.

Specifically, at the request of a developer/owner, the Town staff may consider accepting a Cash Bond in installments in accordance with the following guidelines:

- No disputes re: amount of Cash Bond. This approach shall be used only if there is no dispute regarding the total amount of the Cash Bond. The total amount of the Cash Bond (1.5 times the estimated cost of installing all Required Improvements) shall be acknowledged and agreed to in writing by the developer/owner.

¹ For example, streets, sidewalks, water quality BMPs.

- Build the amount of the Cash Bond. Town staff and developer/owner shall mutually agree on a schedule for installment payments consistent with the following parameters:
 - The installment plan shall include an initial Cash Bond in the minimum amount of at least 20% of the total amount of the Cash Bond.
 - The total amount of the Cash Bond is paid no later than the stage of the development that the Required Improvements are eligible to be accepted by the Town.ⁱ
 - The developer/owner shall instruct the closing agent on the sale of each lot to pay the agreed upon “per closing” amount (the “Cash Bond Addition”). Upon receipt of a Cash Bond Addition the Town agrees to remove the hold placed on the issuance of building permit(s) for the identified lot.

The specific terms of the “installment plan” shall be documented in writing. Such writing may be via e-mail or other written document reasonably satisfactory to both developer/owner and Town staff.

- Developer/owner pays for work. The developer/owner must pay for the work from other available funds. The Cash Bond is not a source for the developer/owner to pay for work and the Town shall not be involved in paying “draw requests” or multiple payments from the Cash Bond on behalf of the developer.
- Town holds the Cash Bond until Required Improvements are accepted. The Town shall hold the Cash Bond until such time as all Required Improvements are (a) completed by developer/owner, (b) inspected and approved by applicable governmental authorities, and (c) the Required Improvements are accepted by the Town or other applicable governmental entity. At such time, the Town shall return the Cash Bond, less the agreed upon administrative charge as provided below.
- Miscellaneous.
 - The Town Manager may reduce the amount of a Cash Bond or waive the requirement for a Cash Bond Addition at any time it is determined that the existing Cash Bond amount is sufficient to be 1.5 times the estimated amount of the estimated cost to complete the remaining Required Improvements.
 - The developer agrees to pay a reasonable amount to the Town to reimburse the Town for administrative and legal cost associated with implementing this approach. A minimum charge shall be \$1,000.
 - If developer/owner fails to complete the Required Improvements in accordance with applicable deadlines, the Town may use the Cash Bond to pay for Requirement Improvements or any other legal purpose.

This policy is not intended to supersede or replace any legal requirements. This policy is intended to be followed only in situations where partially developed projects are “distressed” and Town staff determines that the approach for bonding outlined in this policy memorandum is a reasonable and practical approach. While all circumstances cannot be anticipated in advance, the expectation is that this approach will be used only in circumstances where a previous bond has been cashed and funds are not likely to otherwise be available to complete the Required Improvements absent a foreclosure or change of ownership. In other words, this Policy is not “mandatory” and a developer/owner is not entitled to have a project bonded in this matter and has no legal right to such a bonding approach, it being solely in the Town staff’s discretion as to whether such an approach is reasonable under the facts and circumstances of a particular situation. This policy is solely for the purpose of providing guidance to the Town staff if it so chooses to exercise its discretion to pursue such an approach.

ⁱ Thus, for example, if a 100 lot subdivision is platted, the total estimated cost of Required Improvements to be bonded is \$50,000, and the streets are eligible to be accepted when 75% of the lots are developed, then: (i) the Cash Bond total shall be \$75,000, (ii) at least \$7,500 shall be the initial amount of the Cash Bond and (iii) the entire \$75,000 Cash Bond shall be due in installments such that \$75,000 is deposited with the Town no later than the date a building permit is issued for the 75th lot.