

# **Bonding For Site Plan and Subdivision Approvals After Public Act No. 11-79**

Moderator: Daniel E. Casagrande, Esq.

Panelists: Attorney Gail E. McTaggart  
Christopher S. Wood, AICP  
Christopher J. Smith, Esq.



## Presentation Agenda

1. Material Highlights of P.A. 11-79;
2. First Responders – What are the immediate actions land use agencies and departments should take regarding their bonding practices?
3. Proposed local regulatory amendments;
4. Proposals for further statutory amendments;  
and
5. Interactive panel / audience discussion on all of the above.

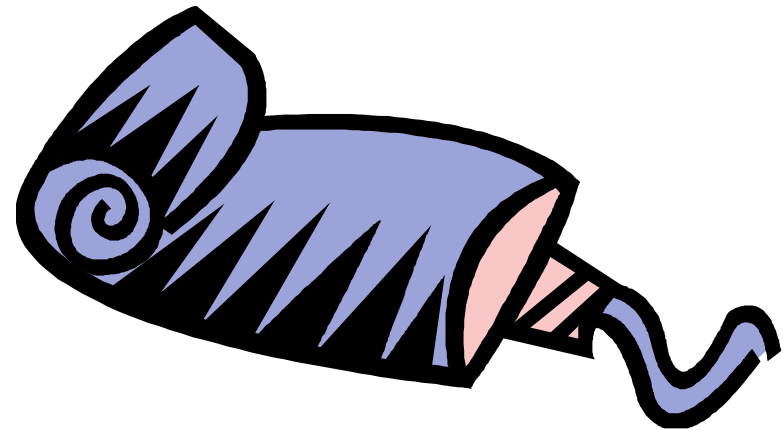


# History and Future

Be Careful What You Ask  
For: You Might Get It

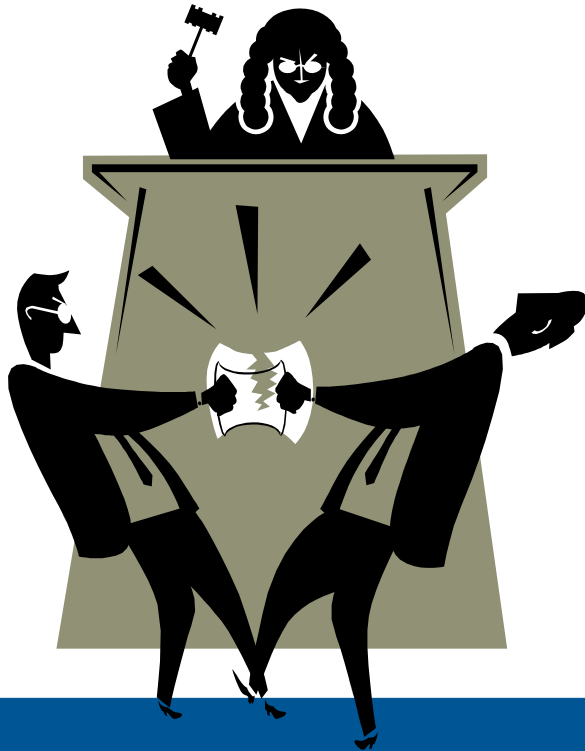


Try to Put the Toothpaste  
Back in the Tube



# Professional Stakeholders

Land Use Attorneys



Municipal Counsel



Truth,  
Justice,  
and the  
American  
Way!



## Professional Planners



# Public Act No. 11-79

- Performance guaranty options (bonds)
- Site plans and subdivisions



## Public Act No. 11-79

- Proposed by CTHBA – opposed by CCM and CCAPA
- Effective October 1, 2011



# Public Act No. 11-79

## Purpose:

- Provide performance guaranty options in bonding process
- Ensure improvements completed
- Provide greater flexibility in process to enable financially challenged developments to be completed



# Public Act No. 11-79

## Result:

- New requirements for and limitations on bonding process
- Unanswered questions concerning some core elements



# Pre-Public Act No. 11-79

Very broad bonding authority:

Commissions could require a “bond in an amount and with surety and conditions satisfactory to it. . . .”



# Public Act No. 11-79

- Timing
- Type / form
- Contingency amounts and caps
- Phasing
- Long-term maintenance bonds
- Procedure for releasing bonds

# Public Act No. 11-79

## Timing:

- Post any time prior to completion of improvements
- Site plans – no certificate of occupancy shall issue until bond posted or improvements complete
- Subdivisions – no lot may be conveyed until bond posted or improvements complete
- Exception: bonding for soil and erosion prior to construction commencing



# Public Act No. 11-79

## Type/Form:

- Discretion of developer; however,
- Surety: commission may “reject” based upon “form”
- Letter of credit: financial institution must be “acceptable” to commission
- Undefined terms: “form” (surety) and “acceptable” (letter of credit)



# Public Act No. 11-79

## Contingency:

- 10% cap for site plans (not addressed for subdivisions)
- No provision to revisit bond amounts for extensions
  - Public Act No. 11-5 (extends time periods for certain site plan and subdivision approvals)



# Public Act No. 11-79

## Phasing:

- May post bonds by phasing



# Public Act No. 11-79

## Maintenance bonds:

- Prohibited after improvements accepted by Town



# Public Act No. 11-79

## Release:

- Request partial or full release of bond
- Within sixty-five (65) days, commission must
  - Release if reasonably satisfied with improvements
  - If not reasonably satisfied, provide a written explanation why, and identify what work needs to be done

# Possible Town Problems

Surety Access

Unbonded and  
Incomplete



# Problems towns might have with new provisions

- Surety bonds - untrustworthy
- Discretionary bonding – walk away from incomplete development
- Maintenance bonding – shoddy workmanship
- Bond release – expedited inspection and certification



# Possible reactions by towns

## Nuclear:

- No bonds allowed
- Moratorium

## Ensure Regulatory Consistency:

- Can't prohibit surety bonds
- Can't require maintenance bond after acceptance of improvements
- Can't require bond before filing of map



# Possible reactions by towns

Procedures (may be necessary to facilitate administration and avoid delays):

- One year maintenance period before accepting new public improvements
- Criteria for acceptable form of bond and financial institution
- Bond calculation methodology
- Clarify “conditional approval” procedures
- Require prior phase completion before next phase bonding



# Possible reactions by towns

## Protections (physical, financial and legal):

- Require updated bond estimates and revise bond before approving bond extension
- Require separate erosion control bond
- Provide separate public works bond for new connections to existing infrastructure
- Prohibit lot sales prior to public improvement completion or bond filing
- Require detailed construction progress reporting and inspections, including qualifications of inspectors, etc.
- Provide penalties or cost recovery for expenses incurred to call surety bond
- Require detailed punch list review of construction and installation to expedite bond release requests

## Possible “Fix”

Watch for  
proposed  
amendments

Contact your  
legislators



# Possible Statutory Modification to Address PA 11-79

- Discretionary acceptance of surety bonds
- Allow maintenance bond following public improvement acceptance
- Clarify “financial guarantee”, “surety”, “bond or other surety”
- Clarify “modifications” vs “improvements”, “site plan” vs “modified site plan”
- Prohibit lot sales prior to public improvement completion or bond filing

# OPEN DISCUSSION

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