



Planning & Development
208 Sanford Road, Wells, Maine 04090

Phone: (207) 646-5187, Fax: (207) 646-7046

Website: www.wellstown.org

<i>Michael G. Livingston, Town Engineer/Planner</i>	mlivingston@wellstown.org
<i>Shannon L.M. Belanger, Assistant Planner</i>	sbelanger@wellstown.org

Memo

Date: May 6, 2022

To: Planning Board

From: Michael G. Livingston, Town Engineer/Planner

Re: Performance Guaranty Review for Site Plans

Background:

Town Ordinances related to performance guaranties are attached, see 145-74.H and I. See also the Standard Conditions of Approval adopted by the Planning Board many years ago.

The purpose of performance guaranties is to have some level of assurance that developments are constructed according to the approvals and Town Ordinances and minimizing the development's impacts to abutters.

Performance guaranties can include the following:

- Monetary escrow to cover the cost to recover/reclaim the site after disturbed. An amount of \$3,500/acre of disturbed soil area has been used for this potential cost which is based on MDEP standard costs to reclaim areas.
- Monetary costs for 3rd party inspections
- Monetary costs for completing an as-built plan after construction
- Approval conditions which require components of the approved plans to be completed prior to a building permit or occupancy permit being issued by the Code Office
- These types of performance guarantees have been used by the Town for approximately 15 to 20 years.

Examples:

- The site disturbance escrow is intended to protect the Town and abutters from the possibility of a developer starting a project and not completing it after disturbing the soil. The Town could use this fund to maintain erosion control measures and establish vegetation to permanently stabilize the site.
- 3rd party inspections by a Town contracted engineer to inspect the project during construction and consult with the Town to determine if the project is completed per approvals or to determine if Field Change approvals are appropriate.
- The developer providing an as-built plan once construction is completed is critical in determining if the project has been constructed as approved. Having an escrow fund for this purpose expresses the importance to the developer and gives the ability of the Town to complete if needed.

Questions:

- Why can't the Town rely on the developer and contractor to build a project according to the approvals?
 - History has proven that for multiple reasons this is not a realistic expectation
- Is 3rd party inspection always necessary?
 - No, on small projects (approx.. 1 acre or less), the Town can usually inspect a project with on-staff personnel.

- Can the design engineer inspect a project?
 - A 3rd party inspector needs to be contracted to represent the Town without a conflict of interest with a developer
 - Possibly on small projects where impacts are minimal to the Town or abutters, the design engineer could submit reports to the Town. Not true 3rd party, but might be acceptable as a performance standard method
- How are these standards determined?
 - By the Planning Board on a case by case basis although there are long standing practices that have been followed.

Discussion Items:

- Does the Planning Board have any thoughts on these current practices or if any should be reconsidered?
- These performance guaranties do increase the costs of developments.
- Are there different or new methods that are desired to be investigated or tried?