

Home Builders & Remodelers Association of Connecticut
**Public Act 12-182 (House Bill 5320) – An Act Concerning Bonds and Other
Surety for Approved Site Plans and Subdivisions**
(June 15, 2012)

Summary: Effective June 15, 2012, PA 12-182 improves the local process for requiring financial guarantees from developers for completing approved site work. Also supported by municipal planners and attorneys, it removes a mandate on municipalities created by PA 11-79 and allows municipalities to require 1-year maintenance guarantees of public improvements. The new law also prohibits municipalities from requiring the establishment of a homeowners association in order to avoid the process reforms of PA 11-79 and corrects a conflict between two statutes.

More Detail: The performance bond process provides a financial guaranty from developers to municipalities that site improvements (e.g., roads, sidewalks, soil and erosion controls) approved with a site plan or subdivision will be completed to the municipality's standards. The municipality is responsible for exercising the guarantee and completing the improvements if the developer does not. PA 11-79 adopted reforms to that process, which became effective on Oct. 1, 2011, and PA 12-182 makes further changes to the law, as follows:

Fixes confusing terms in PA 11-79 without repealing the process reforms obtained in that law. PA 12-182, Section 1 deals with site plan approvals, section 2 with subdivision approvals, and section 3 resolves a conflict between PA 11-79 and another statute.

Changes the mandatory "shall" to "may" regarding posting a surety bond. PA 11-79 allows developers to offer alternative forms of financial guarantees; but inadvertently mandated the acceptance of surety bonds, which are expensive and difficult to obtain. Both developers and municipalities do not favor this form of financial guaranty so the mandate specific to surety bonds is removed.

Clarifies that municipalities may require developers to maintain site improvements for one year. PA 11-79 stated that municipalities cannot require long-term or lifetime financial guarantees by developers for maintenance of approved public site improvements (i.e., the posting of money, held by the town, that the developer never gets back), but inadvertently swept into the prohibition of this unfair exaction the normal one-year maintenance requirement to ensure site improvements are done correctly (i.e., through a full freeze/thaw cycle). PA 12-182 specifically authorizes these one-year maintenance requirements.

Prevents the mandatory establishment of homeowners associations as a way to circumvent the process reforms enacted in 2011. Mandating the establishment of a homeowners association, which are expensive and often not desired by homeowners, to take over the maintenance of public site improvements is no longer allowed as it could harm homeowners caught in an underfunded association trap and places an unjustified burden on developers.

Cleans up language about which all stakeholders have been confused: e.g., changes “bond or surety” to “financial guarantee” because that is really what it is – the statutes read much more clearly using the broader term; language is added to guide municipalities regarding the appropriate amount to charge for a financial guarantee (i.e., “anticipated actual costs for completion ... plus a contingency amount not to exceed ten percent ...” – That amount is more than adequate if towns do a good job at calculating what their costs would be if a developer defaults, plus ten percent).

The effective date of PA 12-182, is June 15, 2012, the date the Governor signed the bill. Sections 1 and 2 are also applicable to prior approved site plans and subdivisions when an extension is approved.

Section 3 of HB 5320 resolves a conflict between PA 11-79 and 8-27 of the statutes:

- PA 11-79 allows a developer to “build down” the amount of the financial guarantee provided to a town by completing improvements prior to posting the guarantee, i.e., the more site improvements are satisfactorily done, the less financial guarantee must be provided to ensure completion.
- Under PA 11-79, the guarantee may be posted up to, but prior to issuance of 1) a certificate of occupancy (C.O.) for a site plan, or; 2) the transfer of the first lot in a subdivision. Thus, the public is protected by either completion of the site improvements or posting of the financial guarantee with the town before the public comes onto the site. After satisfactory completion of site improvements, they are then “accepted” by the municipality and become public improvements.
- But, sec. 8-27 (prior to PA 12-182) authorized municipalities to deny a *building permit* prior to street acceptance and, therefore, sidestep the reform that allows a developer to “build down” the guarantee up to the point of a C.O. Of course, you have to get a building permit first, build a building, then get a C.O. Therefore, a developer would never get to use the PA 11-79 benefits of “building down” the amount of site improvement guarantees if a town uses its authority under 8-27 to circumvent PA 11-79.
- PA 12-182, section 3, fixes this conflict by providing an exception to the 8-27 authority.

A copy of PA 12-182 is attached (underlined language is new language added to the law; [bracketed language] is language deleted from the law):

Public Act No. 12-182

Substitute House Bill No. 5320

AN ACT CONCERNING BONDS AND OTHER SURETY FOR APPROVED SITE PLANS AND SUBDIVISIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (g) of section 8-3 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to all approvals or extensions granted on or after said date*):

(g) (1) The zoning regulations may require that a site plan be filed with the commission or other municipal agency or official to aid in determining the conformity of a proposed building, use or structure with specific provisions of such regulations. If a site plan application involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, the applicant shall submit an application for a permit to the agency responsible for administration of the inland wetlands regulations not later than the day such application is filed with the zoning commission. The commission shall, within the period of time established in section 8-7d, accept the filing of and shall process, pursuant to section 8-7d, any site plan application involving land regulated as an inland wetland or watercourse under chapter 440. The decision of the zoning commission shall not be rendered on the site plan application until the inland wetlands agency has submitted a report with its final decision. In making its decision, the commission shall give due consideration to the report of the inland wetlands agency and if the commission establishes terms and conditions for approval that are not consistent with the final decision of the inland wetlands agency, the commission shall state on the record the reason for such terms and conditions. A site plan may be modified or denied only if it fails to comply with requirements already set forth in the zoning or inland wetlands regulations. Approval of a site plan shall be presumed unless a decision to deny or modify it is rendered within the period specified in section 8-7d. A certificate of approval of any plan for which the period for approval has expired and on which no action has been taken shall be sent to the applicant within fifteen days of the date on which the period for approval has expired. A decision to deny or modify a site plan shall set forth the reasons for such denial or modification. A copy of any decision shall be sent by certified mail to the person who submitted such plan within fifteen days after such decision is rendered. The zoning commission may, as a condition of approval of [any] a site plan or modified site plan, require a [bond in an amount not to exceed the cost to perform any modifications required by such modified site plan plus an additional amount of up to ten per cent of the amount of the bond and with surety and conditions satisfactory to it, securing that any modifications of such site plan are made

or may grant an extension of the time to complete work in connection with such modified site plan] financial guarantee in the form of a bond, a bond with surety or similar instrument to ensure (A) the timely and adequate completion of any site improvements that will be conveyed to or controlled by the municipality, and (B) the implementation of any erosion and sediment controls required during construction activities. The amount of such financial guarantee shall be calculated so as not to exceed the anticipated actual costs for the completion of such site improvements or the implementation of such erosion and sediment controls plus a contingency amount not to exceed ten per cent of such costs. At any time, the commission may grant an extension of time to complete any site improvements. The commission shall publish notice of the approval or denial of site plans in a newspaper having a general circulation in the municipality. In any case in which such notice is not published within the fifteen-day period after a decision has been rendered, the person who submitted such plan may provide for the publication of such notice within ten days thereafter. The provisions of this subsection shall apply to all zoning commissions or other final zoning authority of each municipality whether or not such municipality has adopted the provisions of this chapter or the charter of such municipality or special act establishing zoning in the municipality contains similar provisions.

(2) To satisfy any [bond or surety] financial guarantee requirement, the commission [shall] may accept surety bonds [,] and shall accept cash bonds, passbook or statement savings accounts and other [surety] financial guarantees other than surety bonds including, but not limited to, letters of credit, provided such [bond or surety] other financial guarantee is in a form acceptable to the commission and the financial institution or other entity issuing any letter of credit is acceptable to the commission. Such [bond or surety] financial guarantee may, at the discretion of the person posting such [bond or surety] financial guarantee, be posted at any time before all [modifications of the site plan] approved site improvements are [complete] completed, except that the commission may require a [bond or surety] financial guarantee for erosion [control] and sediment controls prior to the commencement of any such [modifications] site improvements. No certificate of occupancy shall be issued before a required [bond or surety] financial guarantee is posted or the approved site improvements are completed to the reasonable satisfaction of the commission or its agent. For any site plan that is approved for development in phases, the [surety] financial guarantee provisions of this section shall apply as if each phase was approved as a separate site plan. Notwithstanding the provisions of any special act, municipal charter or ordinance, no commission shall (A) require a [bond or other surety to securitize] financial guarantee or payment to finance the maintenance of roads, streets, retention or detention basins or other improvements [associated] approved with such site plan for [maintenance occurring after] more than one year after the date on which such improvements have been completed to the reasonable satisfaction of the commission or its agent or accepted by the municipality, or (B) require the establishment of a homeowners association or the placement of a deed restriction,

easement or similar burden on property for the maintenance of approved public site improvements to be owned, operated or maintained by the municipality, except that the prohibition of this subparagraph shall not apply to the placement of a deed restriction, easement or similar burden necessary to grant a municipality access to such approved site improvements.

(3) If the person posting a [bond or surety] financial guarantee under this section requests a release of all or a portion of such [bond or surety] financial guarantee, the commission or its agent shall, not later than sixty-five days after receiving such request, (A) release or authorize the release of any such [bond or surety] financial guarantee or portion thereof, provided the commission or its agent is reasonably satisfied that the [modifications] site improvements for which such [bond or surety] financial guarantee or portion thereof was posted have been completed, or (B) provide the person posting such [bond or surety] financial guarantee with a written explanation as to the additional [modifications] site improvements that must be completed before such [bond or surety] financial guarantee or portion thereof may be released.

Sec. 2. Section 8-25 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to all approvals or extensions granted after said date*):

(a) No subdivision of land shall be made until a plan for such subdivision has been approved by the commission. Any person, firm or corporation making any subdivision of land without the approval of the commission shall be fined not more than five hundred dollars for each lot sold or offered for sale or so subdivided. Any plan for subdivision shall, upon approval, or when taken as approved by reason of the failure of the commission to act, be filed or recorded by the applicant in the office of the town clerk not later than ninety days after the expiration of the appeal period under section 8-8, or in the case of an appeal, not later than ninety days after the termination of such appeal by dismissal, withdrawal or judgment in favor of the applicant but, if it is a plan for subdivision wholly or partially within a district, it shall be filed in the offices of both the district clerk and the town clerk, and any plan not so filed or recorded within the prescribed time shall become null and void, except that the commission may extend the time for such filing for two additional periods of ninety days and the plan shall remain valid until the expiration of such extended time. All such plans shall be delivered to the applicant for filing or recording not more than thirty days after the time for taking an appeal from the action of the commission has elapsed or not more than thirty days after the date that plans modified in accordance with the commission's approval and that comply with section 7-31 are delivered to the commission, whichever is later, and in the event of an appeal, not more than thirty days after the termination of such appeal by dismissal, withdrawal or judgment in favor of the applicant or not more than thirty days after the date that plans modified in accordance with the commission's approval and that comply with section 7-31 are delivered to the commission, whichever is later.

No such plan shall be recorded or filed by the town clerk or district clerk or other officer authorized to record or file plans until its approval has been endorsed thereon by the chairman or secretary of the commission, and the filing or recording of a subdivision plan without such approval shall be void. Before exercising the powers granted in this section, the commission shall adopt regulations covering the subdivision of land. No such regulations shall become effective until after a public hearing held in accordance with the provisions of section 8-7d. Such regulations shall provide that the land to be subdivided shall be of such character that it can be used for building purposes without danger to health or the public safety, that proper provision shall be made for water, sewerage and drainage, including the upgrading of any downstream ditch, culvert or other drainage structure which, through the introduction of additional drainage due to such subdivision, becomes undersized and creates the potential for flooding on a state highway, and, in areas contiguous to brooks, rivers or other bodies of water subject to flooding, including tidal flooding, that proper provision shall be made for protective flood control measures and that the proposed streets are in harmony with existing or proposed principal thoroughfares shown in the plan of conservation and development as described in section 8-23, especially in regard to safe intersections with such thoroughfares, and so arranged and of such width, as to provide an adequate and convenient system for present and prospective traffic needs. Such regulations shall also provide that the commission may require the provision of open spaces, parks and playgrounds when, and in places, deemed proper by the planning commission, which open spaces, parks and playgrounds shall be shown on the subdivision plan. Such regulations may, with the approval of the commission, authorize the applicant to pay a fee to the municipality or pay a fee to the municipality and transfer land to the municipality in lieu of any requirement to provide open spaces. Such payment or combination of payment and the fair market value of land transferred shall be equal to not more than ten per cent of the fair market value of the land to be subdivided prior to the approval of the subdivision. The fair market value shall be determined by an appraiser jointly selected by the commission and the applicant. A fraction of such payment the numerator of which is one and the denominator of which is the number of approved parcels in the subdivision shall be made at the time of the sale of each approved parcel of land in the subdivision and placed in a fund in accordance with the provisions of section 8-25b. The open space requirements of this section shall not apply if the transfer of all land in a subdivision of less than five parcels is to a parent, child, brother, sister, grandparent, grandchild, aunt, uncle or first cousin for no consideration, or if the subdivision is to contain affordable housing, as defined in section 8-39a, equal to twenty per cent or more of the total housing to be constructed in such subdivision. Such regulations, on and after July 1, 1985, shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and

requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. The commission may also prescribe the extent to which and the manner in which streets shall be graded and improved and public utilities and services provided and, in lieu of the completion of such work and installations previous to the final approval of a plan, the commission may accept a [bond] financial guarantee of such work and installations in an amount and with surety and conditions satisfactory to it securing to the municipality the actual construction, maintenance and installation of such public improvements and utilities within a period specified in the [bond] financial guarantee. Such regulations may provide, in lieu of the completion of the work and installations above referred to, previous to the final approval of a plan, for an assessment or other method whereby the municipality is put in an assured position to do such work and make such installations at the expense of the owners of the property within the subdivision. Such regulations may provide that in lieu of either the completion of the work or the furnishing of a [bond or other surety] financial guarantee as provided in this section, the commission may authorize the filing of a plan with a conditional approval endorsed thereon. Such approval shall be conditioned on (1) the actual construction, maintenance and installation of any improvements or utilities prescribed by the commission, or (2) the provision of a [bond or other surety] financial guarantee as provided in this section. Upon the occurrence of either of such events, the commission shall cause a final approval to be endorsed thereon in the manner provided by this section. Any such conditional approval shall lapse five years from the date it is granted, provided the applicant may apply for and the commission may, in its discretion, grant a renewal of such conditional approval for an additional period of five years at the end of any five-year period, except that the commission may, by regulation, provide for a shorter period of conditional approval or renewal of such approval. Any person who enters into a contract for the purchase of any lot subdivided pursuant to a conditional approval may rescind such contract by delivering a written notice of rescission to the seller not later than three days after receipt of written notice of final approval if such final approval has additional amendments or any conditions that were not included in the conditional approval and are unacceptable to the buyer. Any person, firm or corporation who, prior to such final approval, transfers title to any lot subdivided pursuant to a conditional approval shall be fined not more than one thousand dollars for each lot transferred. Nothing in this subsection shall be construed to authorize the marketing of any lot prior to the granting of conditional approval or renewal of such conditional approval.

(b) The regulations adopted under subsection (a) of this section shall also encourage energy-efficient patterns of development and land use, the use of solar and other renewable forms of energy, and energy conservation. The regulations shall require any person submitting a plan for a subdivision to the commission under subsection (a) of this section to demonstrate to the commission that such person has considered, in developing the plan, using passive solar energy techniques which would not significantly increase the cost of the housing to the buyer, after tax credits, subsidies and exemptions. As used in this subsection and section 8-2, "passive solar energy techniques" means site design techniques which maximize solar heat gain, minimize heat loss and provide thermal storage within a building during the heating season and minimize heat gain and provide for natural ventilation during the cooling season. The site design techniques shall include, but not be limited to: (1) House orientation; (2) street and lot layout; (3) vegetation; (4) natural and man-made topographical features; and (5) protection of solar access within the development.

(c) The regulations adopted under subsection (a) of this section, may, to the extent consistent with soil types, terrain, infrastructure capacity and the plan of development for the community, provide for cluster development, and may provide for incentives for cluster development such as density bonuses, or may require cluster development.

(d) (1) To satisfy any [bond or surety] financial guarantee requirement in this section, the commission [shall] may accept surety bonds [,] and shall accept cash bonds, passbook or statement savings accounts and other [surety] financial guarantees other than surety bonds including, but not limited to, letters of credit, provided such [bond or surety] financial guarantee is in a form acceptable to the commission and the financial institution or other entity issuing any letter of credit is acceptable to the commission. Such [bond or surety] financial guarantee may, at the discretion of the person posting such [bond or surety] financial guarantee, be posted at any time before all approved public improvements and utilities are [constructed and installed] completed, except that the commission may require a [bond or surety] financial guarantee for erosion [control] and sediment controls prior to the commencement of any [such construction or installation] improvements. No lot shall be transferred to a buyer before any required [bond or surety] financial guarantee is posted or before the approved public improvements and utilities are completed to the reasonable satisfaction of the commission or its agent. For any subdivision that is approved for development in phases, the [surety] financial guarantee provisions of this section shall apply as if each phase was approved as a separate subdivision. Notwithstanding the provisions of any special act, municipal charter or ordinance, no commission shall (A) require a [bond or surety to securitize] financial guarantee or payment to finance the maintenance of roads, streets, retention or detention basins or other improvements [associated] approved with such subdivision for [maintenance occurring after] more than one year after the date on which such improvements have been completed to the reasonable satisfaction of the commission or its agent or accepted by the municipality, or (B)

require the establishment of a homeowners association or the placement of a deed restriction, easement or similar burden on property for the maintenance of approved public site improvements to be owned, operated or maintained by the municipality, except that the prohibition of this subparagraph shall not apply to the placement of a deed restriction, easement or similar burden necessary to grant a municipality access to such approved site improvements.

(2) If the person posting a [bond or surety] financial guarantee under this section requests a release of all or a portion of such [bond or surety] financial guarantee, the commission or its agent shall, not later than sixty-five days after receiving such request, (A) release or authorize the release of any such [bond or surety] financial guarantee or portion thereof, provided the commission or its agent is reasonably satisfied that the [modifications] improvements for which such [bond or surety] financial guarantee or portion thereof was posted have been completed, or (B) provide the person posting such [bond or surety] financial guarantee with a written explanation as to the additional [modifications] improvements that must be completed before such [bond or surety] financial guarantee or portion thereof may be released.

Sec. 3. Section 8-27 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Any municipality having a planning commission may, by ordinance, prohibit or regulate the issuance of building permits for the erection of buildings or structures on lots abutting unaccepted highways or streets. No such ordinance shall prevent the issuance of a building permit for the construction of (1) farm or accessory buildings which are not in violation of any lawful zoning or building regulations of the municipality, or (2) any building or structure on a site plan approved on or after the effective date of this section pursuant to subsection (g) of section 8-3, as amended by this act, or in a subdivision approved on or after the effective date of this section pursuant to section 8-25, as amended by this act, provided the approval for such site plan or subdivision has not expired. Any building erected in violation of any such ordinance shall be deemed an unlawful structure, and the municipality through the appropriate officer may bring action to enjoin the erection of such structure or cause it to be vacated or removed. Any person, firm or corporation erecting a building or structure in violation of any such ordinance may be fined not more than two hundred dollars for each building or structure so erected in addition to the relief herein otherwise granted to the municipality.