

**MINUTES OF PUBLIC HEARING
HELD BY THE PLANNING AND ZONING COMMISSION
JUNE 3, 2013**

ROLL CALL:

Members Present: Eric Prause, Chair
Andy Kidd, Vice Chair
Horace Brown, Secretary
Michael Stebe
Chirag Thaker

Alternates Absent: Anthony Petrone
Susan Shanbaum

Also Present: Mark Pellegrini, Director of Planning
Renata Bertotti, Senior Planner
Matthew Bordeaux, Environmental Planner
and Wetlands Agent
Ginger MacHattie, Recording Secretary

The Chairman opened the Public Hearing at 7:06 p.m. The Secretary read the legal notice for the application when the call was made.

TOWN OF MANCHESTER PLANNING AND ZONING COMMISSION – to amend the regulations regarding financial guarantees to comply with recent revisions to the State statutes – Subdivision Regulation Amendment (2013-025)

Ms. Bertotti explained this application is to amend Manchester's subdivision regulations to address certain legislative changes with regard to municipal performance bond practices. In 2011, the State passed Public Act 11-79 which significantly altered the manner in which municipalities are allowed to regulate municipal bonding practices, she said. The original act had some language inconsistencies and three controversial issues. In June 2012, the governor signed Public Act 12-182, which resulted in the General Statutes being changed. She said this Public Act addressed performance bonding for public improvements with subdivisions and site plans. She reviewed the changes to the General Statutes. The changes to Manchester's regulations will include changes to Conditions Relating to Soil Erosion and Sediment Control, Bonding Requirements, and Final Acceptance Procedure for Public Improvements.

Ms. Bertotti described the main aspects of the revised statutes. She said the types of financial instruments that can be used to fulfill a bond requirement for site plans and subdivision approvals have expanded. Prior to the changes to the statutes, there were municipalities that restricted the acceptable bonding instruments and refused surety bonds or letters of credit. Some municipalities went as far as accepting only cash payments, she said. Manchester was accepting surety bonds, cash or letters of credit. Under the revised statutes the municipalities may accept surety bonds, and shall accept cash bonds, passbook or statement savings accounts and other financial guarantees other than surety bonds including, but not limited to, letters of credit. The

statutory language is streamlined, she said. References to bonds, surety and other financial instruments are replaced with the term “financial guarantee”. The changed statutes limit the types of site improvements and activities for which a commission can require a bond to: (1) site improvements that will be conveyed to or controlled by the Town; and (2) erosion and sediment controls required during construction. Ms. Bertotti said the statutes now allow the posting of a bond to be done at any time before all approved public improvements and utilities are accepted by the Town. The time of posting is up to the discretion of the developer and municipalities can no longer hold issuance of building permits because bonds are not posted. The process is controlled by the issuance of a Certificate of Occupancy instead. The revised statutes also require a municipality to release the bond within 65 days of a request by the developer. If the municipality is not satisfied that the public improvements were completed as approved, within that same time frame, a letter detailing outstanding items must be provided to the developer. Ms. Bertotti said the maintenance bonds were one of the most contested aspects of the original act. PA 11-79 prohibited commissions from requiring bonds to secure the maintenance of roads, streets, or other improvements associated with a site plan or subdivision for maintenance occurring after a municipality has accepted the improvements. PA 12-182 and the revised general statutes allowed commissions to require guarantees for maintenance purposes for up to one year after the improvements were completed to the reasonable satisfaction of the commission or its agent, or accepted by the municipality. This applies to the maintenance of retention and detention basins as well, she said. The revised statutes specifically bar commissions from requiring payments, not just financial guarantees, to secure the long term maintenance. In addition commissions cannot require developers to establish a homeowners association or place a deed restriction or easement on the property to maintain approved public site improvements that will be owned, operated, or maintained by the municipality. It specifies that this prohibition does not apply to any deed restriction or easement that is necessary to give the municipality access to the improvements. The amount of the bond is capped at the anticipated actual costs for completing the site improvements or erosion and sediment controls plus a contingency amount not to exceed 10% of such costs.

Ms. Bertotti reviewed the proposed subdivision regulations amendments for Commission members. At Section 4.17.04, Conditions Relating to Soil Erosion and Sediment Control, the general term “financial guarantee” was added to mean all forms of bonds or surety and at Section 4.17.04 (b) text was added to ensure the types and the amount of financial guarantees are specified in Section 8.00. Surety bonds are now allowed rather than required. She said towns must now accept cash bonds, passbook or statement savings accounts and other financial guarantees other than surety bonds including, but not limited to, letters of credit provided such financial guarantees are in a form acceptable to the Commission and the financial institution.

Ms. Bertotti said at Section 8.00, Bonding, the requirements language has been streamlined. The Town is required to issue a building permit regardless of whether or not a financial guarantee has been posted, and the financial guarantee is to be posted prior to issuance of a Certificate of Occupancy. Alternatively, a Certificate of Occupancy can be issued after public improvements and utilities are completed without posting a financial guarantee, she said. Also, the conveyance of subdivision lots is still subject to completing public improvements or posting of a financial guarantee.

Ms. Bertotti said the revised regulations list the types of financial guarantees and address the timing of the posting and the release of financial guarantees. At Section 10.00 the proposed amendment addresses the release of maintenance bonds within a year of the acceptance of public improvements.

In response to a question from Mr. Kidd, Ms. Bertotti explained that most of these proposed changes are a direct result of the changes in the statutes.

In response to a question from Mr. Prause, Ms. Bertotti explained that the release of maintenance bonds within a year is not a big change from the current policy. The most significant change is the ability to issue a building permit before the performance bond is collected. Under the revised regulations, the Building Department instead delays issuing a Certificate of Occupancy until either the financial guarantee has been posted or public improvements completed.

Chairman Prause asked if any member of the public wished to speak in favor of or in opposition to this application. No member of the public came forward at this time.

In response to a question from Mr. Kidd, Ms. Bertotti explained that the State statutes supersede town regulations and every item addressed in the State statutes is now addressed in our regulations. The State statutes often enable our regulations, she said.

In response to a question from Mr. Brown, Mr. Pellegrini said the Manchester regulations did not conflict with the State statutes prior to 2011. There were some municipalities whose regulations were a bit extreme and resulted in a pushback from the developers and the building community.

The public hearing on this item was closed.

TOWN OF MANCHESTER PLANNING AND ZONING COMMISSION – to amend the regulations regarding financial guarantees to comply with recent revisions to the State statutes – Zoning Regulation Amendment (2013-026)

Ms. Bertotti explained this application is to amend Manchester's zoning regulations to address certain legislative changes with regard to municipal performance bond practices. In 2011, the State passed Public Act 11-79 which significantly altered the manner in which municipalities are allowed to regulate municipal bonding practices. The original act had some language inconsistencies and three controversial issues. In June 2012, the governor signed Public Act 12-182, which resulted in the General Statutes being changed. This Public Act addressed performance bonding for public improvements for subdivisions and site plans. Ms. Bertotti reviewed the statutory changes and described proposed changes to the zoning regulations.

A new section, Section 22, Financial Guarantee Requirements, is proposed to be added to Article IV. The new section includes language regulating the financial guarantees for erosion and sedimentation control measures and public improvements for site plans.

Ms. Bertotti said, in accordance with the general statutes, the Commission may accept surety bonds, and must accept cash bonds, passbook or statement savings accounts and other financial guarantees provided the issuing financial institution is acceptable to the Commission and the financial guarantee is in a form that is acceptable to the Commission. The financial guarantee

amount is set to cover an estimated cost plus a contingency amount not to exceed 10% of such cost. Under the revised regulations, the financial guarantee for erosion and sediment control measures shall be provided before work can begin. Financial guarantees for approved site plans can be posted at any time during the construction; however, a Certificate of Occupancy cannot be issued until either the financial guarantee is posted or the public improvements are accepted by the Town, she said. When a subdivision is developed in phases, the financial guarantee may be posted in phases. Ms. Bertotti said the regulations still require that 25% of the financial guarantee (or up to \$100,000) be provided either as cash, passbook or letter of credit. The Director of Public Works must either release the financial guarantee or provide a written list of the items that are not satisfactorily completed within 65 days of the release request. Maintenance bonds must be released within a year of the acceptance of public improvements. In addition miscellaneous articles and sections of the zoning regulations were revised to reference and comply with the proposed new section, Article IV Section 22, she said.

Ms. Bertotti said there are no outstanding Town staff comments on this application. The application has been submitted to CRCOG and they responded indicating the amendment does not conflict with regional plans and policies.

Chairman Prause asked if any member of the public wished to speak in favor of or in opposition to this application. No member of the public came forward at this time.

The Chairman closed the Public Hearing portion of the meeting at 7:44 p.m.

NOTICE: A DIGITAL RECORDING OF THIS PUBLIC HEARING CAN BE HEARD IN THE PLANNING DEPARTMENT.