



Overview of the Surety Bonding Process in New Hampshire

Shanna B. Saunders, Director of Planning & Development, City of Rochester
Natch Greyes, Government Affairs Counsel, NHMA

August 30, 2023

Today's Presenters



Shanna Saunders, Director of
Planning and Development,
City of Rochester



Natch Greyes, Government
Affairs Counsel, NHMA

The Basics of Surety Bonds



A surety bond is a promise to be liable for the debt, default, or failure of another. It is a three-party contract by which one party (the surety) guarantees the performance or obligations of a second party (the principal) to a third party (the obligee).



In the case of developments occurring in municipalities, RSA 674:36, III and IV give planning boards authority to require certain construction standards to be met for infrastructure and utilities and to require the securing of a bond in order for the developer to proceed with the project.

So... what does this really look like for a Planner?



RSA 676:12 V does not allow a BP to be withheld if surety is in place... however no building shall be occupied prior to completion of required streets and utilities.



In some cases, communities allow a builder to start work on a subdivision prior to “Final approval” and the subdivision plan being recorded. This is to assure lots cannot be conveyed prior to project completion.



In some cases, communities require 100% of construction costs prior to BP.



In most cases, surety is obtained as incentive to require the developer to complete the project and so it is often a % of costs at the BP stage.



Make sure the finance department is a part of these discussions from the beginning.

Legislative Changes to the Process in 2023

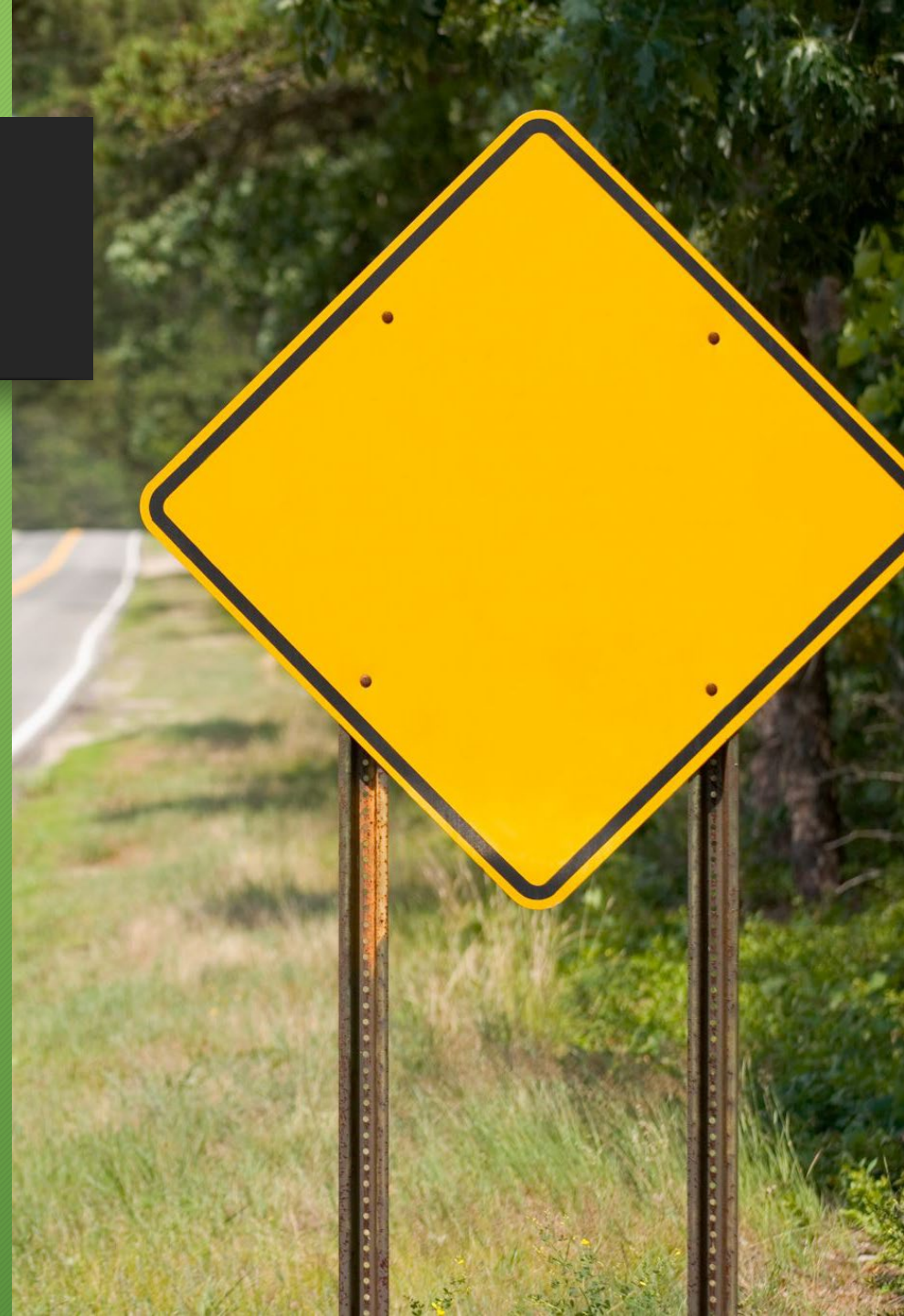
In 2023, SB 78 was introduced, passed by the legislature, and signed into law by the governor.



SB 78 changed a number of practices surrounding surety bonding, including altering when during construction bonds may be required, establishing timelines for action, and providing requirements for when bonds may be 'called.'

Subdivision Regulations

- Planning boards have the authority to stipulate, as part of their subdivision regulations, requirements relative to infrastructure, including but not limited to roadway requirements, utilities (including water and sewer), and other such facilities.
- Additionally, the planning board's regulations must provide for acceptance of a surety to ensure that completion of street work and utility installations prior to final approval.



So... what does this really look like for a Planner?



As part of your subdivision approval, you must have a series of conditions to allow this process to happen.



A. Submittal of construction costs - earth, utility and amenity costs only. No residential/multi structures.



B. Submittal of partial surety based on these construction costs - 10% of 110% of construction costs is typical.



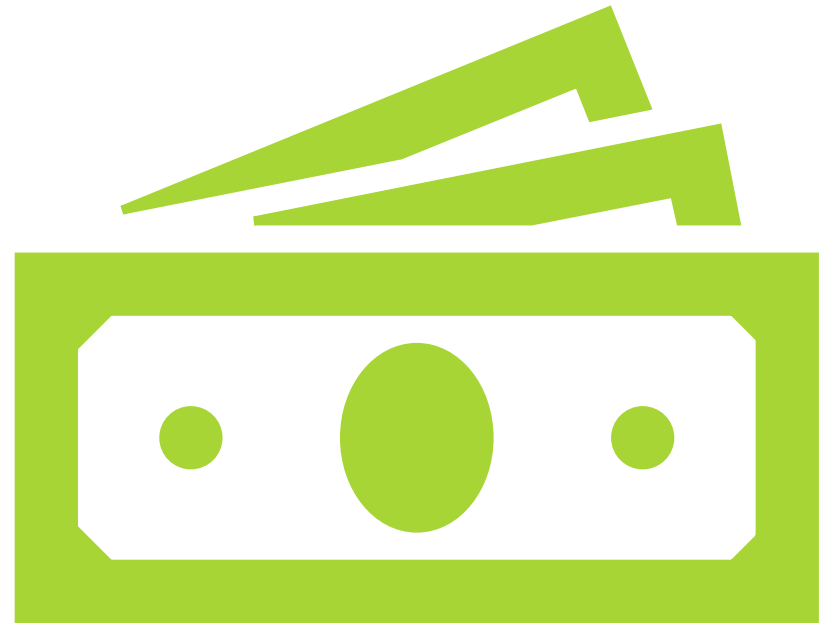
C. Requirement of progress as-builts at the CO stage.



D. Conversion of partial surety to full surety before COs.

What Is Acceptable As A Surety?

- Sureties allowed by statute include:
 - Performance bonds
 - Irrevocable letters of credit
 - Other types of surety as specified in the subdivision regulations
- A planning board may determine which types of sureties are acceptable but may not limit the type to only letter of credit, cash, or passbook.
- Note: forfeiture or automatic call bonds are barred by statute.



How Much Is the Surety?

- In calculating the amount of the surety, the planning board may apply cost escalation factors not to exceed 15% per year.
 - Cost escalation factors should reasonably approximate cost increases for:
 - Labor
 - Equipment
 - Material
- However, no cost escalation factors are allowed for engineering, administration, or other non-construction reason.



So... what does this really look like for a Planner?



Work with your Legal Counsel to have a template Letter of Credit that contains the language your community is comfortable with.



Make sure your DPW is ready to review Construction Cost Estimates for accuracy.



Review the Surety annually to assure inflation and cost escalation factors are taken into account.



Have an as-built review process already drafted to assure timely turn-around.



Make sure all Departments are included: DPW, Fire, Finance...

When Must A Surety Be In Place?



Road and utility construction must be allowed to start without a surety in place, however, a surety is required prior to:

The sale of any parcel within the subdivision, or
A request for a building permit for structures for human occupation.



(Note: Many holders of sureties require a bond to be in place prior to construction beginning.)



A planning board may specify the length of time a developer has to finish construction of the infrastructure.

Release of Sureties



- Sureties must be partially released according to the development phases or portions when substantial improvements are made.
- These releases must be calculated to reflect the value of the completed improvements or installations.

Timing of Bond Release Process



30 Business Days: Municipal inspection after written request for release of bond.



15 Business Days: Municipal written notification of any deficiency.



30 Days: Bonded party to fix the deficiency after notification.



15 Business Days: Municipal reinspection after notification of fix.



90 Days: Release of bond after final sign-off.

So... what does this really look like for a Planner?



Set the expectation for progress as-builts early in the process. Understand the Municipal review process for this.



Make sure you keep track of how many Building Permits and COs are being requested and/or issued.



Have a Drawdown Request form already drafted for the developer to fill out.



Require the developer to submit for remaining work yet to be completed. NOT % of work already done.



Have a process for formally approving as-builts so there is documentation of time frames.

What Happens if Building Stops Prior to Completion?



The municipality may enforce sureties using all available legal and equitable remedies.



Typically, in bonding, municipalities will start by notifying the holder of the surety, which will then take action to motivate the developer to comply with existing requirements.

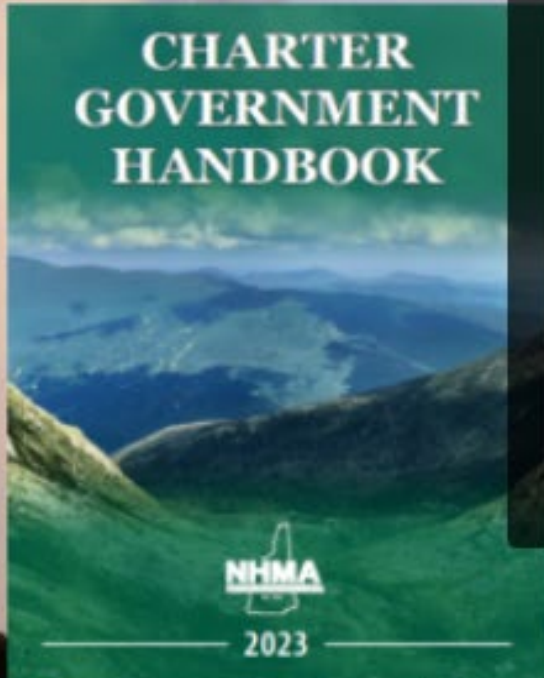
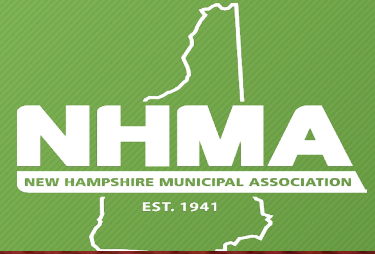


If that party is unable to motivate the developer or find another developer to finish building, then the municipality may receive the value of the surety and complete the improvements.

Questions?



Upcoming Webinars



Charter Government in New Hampshire Webinar

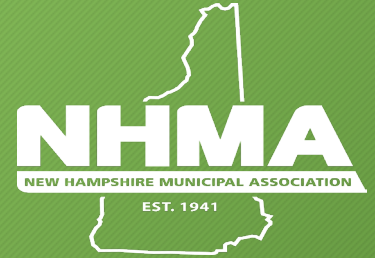
12:00 noon - 1:30 pm, Thursday, September 7, 2023. Presentation by NHMA attorneys will provide city and town council members, and alderpersons, a thorough introduction to the governance of municipalities with municipal charters.

REGISTRATION OPEN!

[REGISTRATION OPEN!](#)

legalinquiries@nhmunicipal.org/603.224.7447/www.nhmunicipal.org

Upcoming Workshops



Registration Now Open for Budget & Finance Workshops!

9:00 am - 4:45 pm, Tuesday, September 12 (Derryfield Country Club, Manchester) and **Tuesday, September 19** (Littleton Opera House). Cost is \$100 in-person and \$70 virtual. **A must for local officials involved in the budget process.**

Registration Open!



Thank you sponsors!



[REGISTRATION NOW OPEN!](#)

legalinquiries@nhmunicipal.org/603.224.7447/www.nhmunicipal.org

Upcoming Webinars



Municipal Immunities: What They Are, How They Work, and Why They Are Important Webinar

12:00 noon - 1:00 pm, Thursday, September 21, 2023. Join Primex General Counsel Mike Ricker and NHMA's Natch Greyes as they discuss legislative- and judicially-recognized protections for municipal officials including police, fire, and EMTs.

REGISTER NOW!

[REGISTRATION OPEN!](#)

legalinquiries@nhmunicipal.org/603.224.7447/www.nhmunicipal.org

Upcoming Webinars



Learn About UNH's Digitized City and Town Annual Reports Collection Webinar

12:00 noon - 1:00 pm, Tuesday, September 26, 2023. Join Eleta Exline, UNH Scholarly Communication Librarian and Sarah Stinson, UNH Digital Collections Coordinator, who will review the project's history and show us how to best access these vital resources.

REGISTRATION OPEN!

UNH Library Digitizes Town Reports for

[REGISTRATION OPEN!](#)

legalinquiries@nhmunicipal.org/603.224.7447/www.nhmunicipal.org

NHMA's 82nd Annual Conference & Exhibition



SAVE THE DATES: Zap the Gap: How to Make Peace & Work Effectively in a Multigenerational World

Join us for NHMA's 82nd Annual Conference and Exhibition on Wednesday, November 15 and Thursday, November 16 at the DoubleTree by Hilton Manchester Downtown Hotel.

REGISTRATION TO OPEN SOON!

Thank you sponsors!



Browse our Municipal Marketplace!



Check Out New Online Municipal Marketplace!

Browse our online guide to municipal products and services. Thank you to these business and organizations who support New Hampshire's municipal governments.

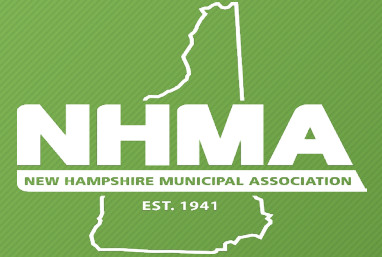
[Browse Now!](#)

[MUNICIPAL MARKETPLACE IS OPEN!](#)

legalinquiries@nhmunicipal.org/603.224.7447/www.nhmunicipal.org



*For attending
our Webinar
Today!*



NHMA'S MISSION

Through the collective power of cities and towns, NHMA promotes effective municipal government by providing education, training, advocacy and legal services.



603-224-7447

www.nhmunicipal.org

legalinquiries@nhmunicipal.org