



Loudoun County, Virginia

Department of Building and Development

1 Harrison Street, S. E., P. O. Box 7000, Mailstop #60A, Leesburg, VA 20177-7000

(703) 777-0220

Fax Numbers: Permits (703) 771-5522 – Engineering (703) 737-8993

Technical and Procedural Newsletter

September 26, 2016

TO: Members of the Land Development and Engineering Design Community

FROM: Michael Seigfried, Director

The purpose of this correspondence is to inform the Land Development and Engineering Design Community of technical and procedural updates that have recently transpired. Please distribute this information to applicable personnel within your organization.

IN THIS EDITION: *New Public Street Bonding Process to Eliminate Double Bonding*

Background:

When the developer of a project is required by proffers, subdivision approval, or site plan approval to construct a segment of or addition onto a public road, the developer is required to furnish a financial guarantee in the form of corporate surety bond, letter of credit, or cash (collectively referred to as “Bond”) which the County may call upon to complete the improvements if the developer defaults on its obligation. In some instances the construction must encroach into the existing right-of-way of a road that is in the state system under the exclusive jurisdiction of VDOT. No work may be performed in VDOT’s right-of-way until the developer obtains a VDOT Land Use Permit (“LUP”) and posts a Bond with VDOT. While the purpose of the VDOT Bond is to *either* complete the work or return the roadway to a stable condition, safe for the traveling public, the purpose of the County Bond is solely to assure that the improvement will be completed. Since the VDOT Bond does not guarantee the completion of the work, this has resulted in developers having to post two separate bonds for the same work. After years of unsuccessful attempts to resolve this issue, recent meetings among VDOT, Building and Development Bonds Management, representatives from the private sector, and the office of the County Attorney have resulted in an agreed protocol that would eliminate the need for double bonding.

The key element of the new process is that the County executes the VDOT permit application and be the permittee under the LUP for such construction, and no Bond will be required of the County. VDOT shall instead accept and rely upon a continuing Resolution adopted by the Board of Supervisors in 1991. Pursuant to this continuing Resolution, the County agrees to be responsible for compliance with VDOT permit conditions for construction within the right-of-way. Based upon this action by the County, VDOT has agreed that no separate Bond for the LUP will be required. The protocol provides that the County will not execute the LUP application until the developer has furnished the required Bond to the County to guarantee completion of the work.

New Public Street Bonding Process to Eliminate Double Bonding:

As early as possible, during the review of the initial submission of a land development application such as Construction Plans and Profiles (CPAP) or Site Plan (STPL), the reviewing project manager (PM) will consult with the applicant to determine whether the plan proposes any work within existing or supplemental VDOT right-of-way, and would, therefore, require a VDOT Land Use Permit (LUP). Supplemental right-of-way is defined by VDOT directive MDD 6.02 dated January 11, 2010 as “a strip of land situated along and abutting the right of way of an existing roadway under VDOT jurisdiction that is intended to provide the land necessary or envisioned for the subsequent improvement of that roadway.”

No change in the bonding process is needed if none of the proposed work requires a VDOT permit,

However, if the proposed work requires a VDOT Permit, the PM will consult with and advise the applicant that if the applicant desires to avoid submitting two bonds, one bond to VDOT and a second bond to the County, the applicant needs to ensure that the following is done:

- a. The plan must be phased so that the proposed work within existing or supplemental VDOT right-of-way is shown as a separate phase, to be bonded separately from the remainder of the project.
- b. The plan approval letter must clearly distinguish the “VDOT phase”.
- c. No land disturbance within the “VDOT phase” will be permitted (i.e. no grading permit may be issued) until the VDOT phase has been approved and bonded to the County.
- d. Associated with the submission of the bonding documents for the VDOT phase, the applicant shall submit an LUP application, filled out for signature by the Director of Building and Development on behalf of the County as Permittee, and signed by the applicant as Agent of the County. The County will provide a version of this form that has the County information (name, address, contact name, phone number... etc.) pre-filled in and the “indemnify and save harmless” provision deleted/stricken through. The existing County Resolution will be used as a Surety for all permits.
- e. Once the bond to the County for the VDOT phase is approved and posted, the Director will sign the LUP for the County as Permittee, and the executed LUP, along with a letter from the County to VDOT guaranteeing to use any bond proceeds from the County’s Bond for completion of the VDOT phase and a copy of the performance bond, will be forwarded/delivered to VDOT by the applicant.
- f. Building and Development Quality Assurance team will flag the VDOT phase of the project for regular inspection to assure appropriate progress and no discernable deficiencies.

For the remainder of the project excluding the VDOT phase, the plan review and bonding process will go forward as normal.

County staff may extend invitation to VDOT staff to accompany County staff on bond reduction inspections of these VDOT phases and offer an opportunity to provide comments regarding same.

APPLICABLE STANDARDS:

Loudoun County Facilities Standards Manual, 8.300 Performance Agreement and Bonding.