

MEMORANDUM

FROM: OFFICE OF THE CITY ATTORNEY  
MIDDLETOWN, CONNECTICUT 06457

TO: Anthony S. Marino, Mayor  
Planning & Zoning Commission

DATE: August 24, 1976

RE: Opinion re Authority of Planning & Zoning Commission  
To Accept Arrangement For Subdivider's Attorneys To  
Hold Cash Deposit As Security For Completion of  
Sidewalks In A Subdivision

The Snipes Terrace subdivision is a residential subdivision of ten lots. Sidewalks are required to be installed to serve the entire subdivision.

The subdivider wants to defer construction of the sidewalks until construction of the residences on all lots. He desires to secure his obligation to construct the sidewalks by a cash deposit to be held by his attorneys. The Commission has not accepted such cash arrangements from other subdividers.

Is the Planning & Zoning Commission authorized to accept the proposed cash deposit arrangement as security for completion of the sidewalks?

The present Planning & Zoning Commission is a combined Planning & Zoning Commission with planning and zoning powers under the General Statutes. Charter, Chapter V, Sec. 3 and 3A.

The planning statutes include §8-25 which pertains, among other things, to the adoption of subdivision regulations and construction and installation of improvements and utilities in subdivisions. Section 8-25 provides for three methods of

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securing the actual construction and installation of improvements and utilities;

1. Completion before final approval of the plan,
2. Acceptance of a bond in an amount and with surety and conditions satisfactory to the commission securing to the City the actual construction and installation of the improvements and utilities within a period specified in the bond,
3. Provision for an assessment or other method whereby the City is put in an assured position to do the work and make the installations at the expense of the owners of the property within the subdivision.

Words used in statutes are to be construed according to the commonly approved usage of the language and technical words and phrases that have acquired a peculiar and appropriate meaning in the law shall be construed and understood accordingly. General Statutes §1-1(a). A "bond" is an obligation in writing binding the signatories to pay a sum certain upon the happening of an event. 12 Am.Jur.2d, Bonds, §1. A "surety" is one who undertakes to pay the debt or perform any act for which another has bound himself by contract, in the event the latter fails therein. 74 Am.Jur.2d, Suretyship, §3. General Statutes §1-26 provides that unless otherwise provided by the statutes, whenever

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any person is by law required to give a bond, such requirement shall mean a bond with surety. Section 8-25, as one of the alternatives, provides for a written obligation for construction and installation of improvements and utilities with the subdivider as principal and another as surety. While the Legislature could have provided for the acceptance of a cash deposit as security for the obligation to complete the improvements and utilities, it did not do so and the commission may not accept it or other means of insuring completion other than that specified by the statute. Where the statute provides that a thing shall be done in a certain way, it carries with it an implied prohibition against doing it in any other way. *Barlow v Kaminsky*, 144 Conn. 612; *New Haven v Whitney*, 36 Conn. 373; *Poulos v Caparrelli*, 25 Conn. Sup. 370; 2 *McQuillan, Municipal Corporations* (3d Rev. 1966) §10.27. Therefore, the Commission may not accept the cash deposit arrangement.

The Planning & Zoning Commission is required to enact appropriate regulations before it may exercise the power under the statute to accept a bond with surety, or provide a means for assessing against the property within the subdivision in lieu of requiring completion of improvements and utilities prior to final approval. In my view, the assessment procedure

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is undesirable and should not be used. There is presently no provision in the subdivision regulations for the acceptance of a bond with surety by the commission. If it is desired to accept bonds, the subdivision regulations should be amended to specify, at a minimum, the improvements or utilities for which bonds will be accepted, that each bond shall have as a surety an insurance company authorized to do business in Connecticut and acceptable to the commission, that the bond shall be in an amount equal to one hundred percent of the estimated cost of completing the improvement as of the last date by which the improvement is required to be completed, and that the bond specify the completion date. If bonds are permitted, they will have to be accepted from any subdivider who meets the requirements of the subdivision regulations.

Chapter 26 of the City Code pertains to subdivision bonds. This Chapter is insufficient for acceptance of bonds for subdivisions at this time, because the bond required is obviously inadequate to insure construction of the improvements, and these regulations were adopted by the Council and are not contained in the subdivision regulations as is now required by the General Statutes.

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