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### Legislation Passed to Reform Land Development

#### Bond Requirements in New Jersey

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##### THE WAY THINGS WERE

Up until now, people interested in making substantial improvements to real estate had to pay twice for site work: the first time in the form of a performance bond to the municipality; the second time for the actual construction of the drainage, pavement, site lighting, landscaping and all other improvements associated with a site plan or subdivision approval. Only after the municipal engineer and the local governing body accept the installed work is the bond released, which always takes more time that the developer can afford. Also, there are many developers who do not qualify for a surety bond and have no option but to pay cash for the entire bond, creating a significant financial burden.

I have always wondered why municipalities in New Jersey required performance bonds on all site improvements associated with a site plan. We are told that the bond gives the municipality the financial ability to install site improvements should the land developer not finish the project. But will a municipality continue to construct the site improvements if the land developer abandons a project? No, absolutely not! So why bond all the site improvements in the first place?

Then there are times when a site plan approval is contingent upon the installation of special building features such as sound barriers for rooftop air conditioning units. But items on a building are never part of the bond even though they may be more important to the neighbors than a menial site item such as a shrub. If a sound barrier is not required to be bonded, why are the pavement stripes?

For these reasons, the bond process never made sense to me. Maybe it is because the statute had been too broadly interpreted by municipalities. Apparently others have been asking the same questions. Now the law has changed.

##### THE NEW LAW

On January 15, 2018, **Senate Bill 3233/Assembly Bill 1425** was adopted to modify the Municipal Land Use Law (40:55D-53). The law restricts municipal authority to require bonding for: ***“only those improvements required by an approval or developer’s agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed ...”***

In other words, municipalities no longer have the authority to require that bonds be posted for the site improvements on private property, only for the improvements on public property.



##### Author

Calisto J. Bertin, PE  
President

The bill does give municipalities the authority to: ***“...require a performance guarantee to include, within an approved phase or section of a development privately-owned perimeter buffer landscaping, as required by local ordinance or imposed as a condition of approval.”***

This is a reasonable protection for the neighbors should the project stop.

There are other provisions in the law that gives the municipality the right to impose **“maintenance bonds”** for on-site drainage systems. This also makes sense because today’s drainage systems have become very complex and require regular maintenance, which most land owners do not understand or appreciate.

There is also a provision for **“temporary certificate of occupancy bond”** and **“safety and stabilization bond”**. The first enables a developer to occupy the project or portion of the project after posting a performance bond for the unfinished associated site work. The latter gives municipalities the ability to bring an uncompleted construction site to a safe condition if construction stops for a period of at least 60 consecutive days.

##### PASS IT ON

This law has been in effect for a few months now, but very few in the real estate development field seem to be aware of it.

Everyone benefits from the law: The municipality can ensure that important public improvements are installed, and that construction sites are safe when projects are not completed; Residential neighbors can get the buffers to screen them from commercial development even if the project stops; There is an additional level of oversight to protect our surface and ground water; and Developers have a more formal mechanism to obtain a temporary C of O, and are relieved of the unnecessary financial burden to bond all of the site work.

There are other provisions in the law not addressed here dealing with inspection fees and escrows. Please review the law yourself by searching the referenced bill.