



BOND RELEASE PROCESS FOR NEW SUBDIVISION DEVELOPMENTS IN FAIRFAX COUNTY

An Overview for Homeowners Associations



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*For more information or to request this document in an alternate format, contact
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Fairfax County requires developers to post a security, commonly called a bond, if they are building public infrastructure in a new housing subdivision. After the infrastructure is built, the county returns the security to a developer in a process called “bond release.” Because homeowners associations can play a role in the process, this brochure answers some commonly asked questions:

- What is public infrastructure?
- What are bonds?
- Why are bonds collected from developers?
- How and when are bonds returned to developers?
- What role do homeowners associations play in bond release?

What is public infrastructure?

It typically includes:

- Public streets
- Public sidewalks
- Public sewers
- Storm drainage facilities
- Waterlines
- Traffic signals
- Landscaping required by county ordinance
- Streetlights



What is a bond and its purpose?

When developers build public infrastructure, they must post a security with the county. This security guarantees that the county can pay to build the required public infrastructure if a developer fails to do so. The security may be a performance bond, letter of credit or cash, but no matter what type, it is commonly called a “bond.” Performance bonds are issued by a bonding company and are similar to an insurance policy.

Is a bond required if a developer promises to build private amenities, such as driveways?

No. Under state law, Fairfax County cannot require developers to post a bond for any private improvements, including:

- Driveways.
- Private walkways.
- Mailboxes.
- Sprinklers.
- Landscaping not required by county ordinance.

However, there is one exception. Bonds can be required if the private improvements are a result of a specific condition in a zoning action by the Fairfax County Board of Supervisors. These improvements must be specifically set forth in the condition or shown on the plat or plan that was approved as part of the zoning action.



Which county agency collects the bond?

Bonds are collected by the Department of Public Works and Environmental Services Environmental and Facilities Inspections Division (EFID). EFID also inspects public infrastructure to make sure it is built as shown on the site plan and meets the minimum county and state standards.



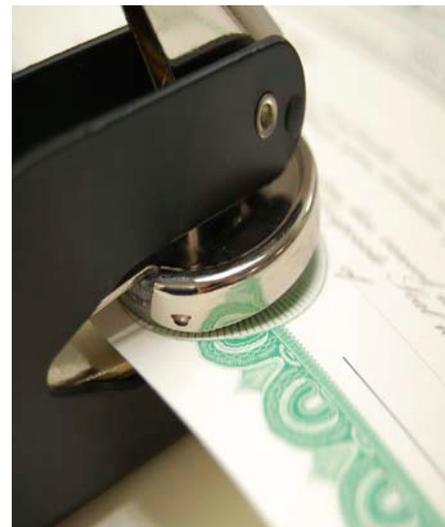
When is a bond returned to a developer?

A bond is returned after all the required public infrastructure has been built and accepted for maintenance by the appropriate entity.

What are the conditions for releasing a bond?

Generally, there are two main conditions that must be met before the county may release a bond. First, the public infrastructure must meet minimum county and state codes and construction standards. Second, the county or state agency must have accepted any infrastructure that they will maintain. For example, the Virginia Department of Transportation (VDOT) must have accepted any street or road it will maintain.

Before a bond can be released, county and state agencies will inspect the public infrastructure to make sure it meets minimum standards. The county also will conduct a tree inspection if a subdivision was approved through a zoning action; inspectors check whether any new trees that were required to be planted or existing trees that were damaged during construction need to be replaced.



If the developer does not pass these inspections, the county will provide a list of what must be improved or completed. Before the bond can be released, the developer must address the issues on this list, which is commonly called a “punch list.”



How does the county acquire bond funds?

If a developer fails to build the required infrastructure, the county will take steps to acquire the funds and use the money to complete the improvements. If a performance bond was posted as security and the bonding company refuses to pay the county, the county must take legal action to obtain the bond money. Also, the county may **not** give this money to individuals or homeowners associations to complete the improvements on their own.

What does the county inspect as a condition for bond release?

The county only inspects public infrastructure and private improvements that are required as a result of a zoning action. Private improvements are not inspected for any minimum standards — unless set forth by a zoning action.

Generally, the county requires that:

- Grading and steepness of slopes are in general conformance with the approved plan and county regulations.
- The developer has not created any obstructions that could result in homes being flooded if the storm sewer failed or became clogged. This is called overland relief
- All areas are permanently stabilized to prevent erosion.*
- All dead and hazardous trees within the limits of the site have been removed.*
- All required landscaping that is depicted on the approved plan is installed and healthy.*
- All required conditions as a result of a zoning action have been installed or implemented.
- Required sight distance has been provided at all intersections within the bonded development. The code requires a clear path of sight at intersections. The required length of the required sight distance is determined based on the design speed or posted speed of the adjacent roadway.
- Public street or road right-of-way has been accepted for maintenance by the Virginia Department of Transportation.
- Sanitary sewer has been accepted for maintenance by the county's Wastewater Collection Division.
- Water line has been approved and accepted for maintenance by the appropriate water authority
- Required streetlights (if any) are installed or have been paid for.
- Required sidewalks and trails are in good condition without cracks, excessive differential settlement between sidewalk panels, or excessive surface deterioration of the concrete. The inspection includes verification that the required cross slope has been provided and that there are no areas in the sidewalk or trail where water collects and remains for several days.
- Driveway aprons in the public right-of way are not cracked or show signs of excessive surface deterioration.
- All required parking spaces are delineated as shown on the approved plan.
- All storm drainage facilities have been installed in accordance with the approved plans and county regulations.
- The fire marshal has inspected and approved all required fire lanes.
- County has received the results of all required third-party geotechnical testing and corresponding certifications required by county regulations.
- Damage to properties from erosion and sediment or overclearing has been corrected.
- Temporary erosion and sediment controls, such as silt fences, have been removed.*
- Property corner certification has been provided by the developer's engineer or surveyor.



** If only minor work needs to be finished, the county may release the bond, but hold a developer's conservation deposit as a guarantee. This is a deposit separate from the bond, and the county and developers are the only parties involved in its return.*

What doesn't the county inspect as a condition of bond release?

The county does not inspect the following:

- Private improvements that are not required in a zoning action by the Board of Supervisors.
- Performance standards for any private improvements that developers install — such as driveways, sprinklers or landscaping — unless they are in the conditions adopted in a zoning action. In this case, the county only ensures that the private improvements that are depicted on the approved plan are installed.
- Construction quality of homes, private driveways or landscaping, which is not required or shown on the approved plan.
- Relocation of utility boxes, storm drainage structures and infrastructure that exist in established easements.
- Offsite property damage that resulted from work that was performed by utility companies.
- Property damage that resulted from work that was performed by the developer, other than from a failure of the erosion and sediment controls.
- Property damage that was caused by a homeowner or their contractor.
- Drainage problems that are the result of work that was performed by a homeowner or their contractor.
- Quality of construction that exceeds the minimum applicable standards of county and state regulations or the Virginia Department of Transportation.
- Existing conditions outside the limits of clearing and grading.
- Traffic controls and signals that are not depicted on the approved plan.
- Installation of “no parking” signs that are not on the approved plan.
- Providing a greater number of parking spaces than what is depicted on the approved plan or required by county regulations.
- High groundwater conditions that do not result in wet yards.
- Quality or aesthetics of private amenities, such as fences, entrance features and private street light fixtures (unless they are specifically required by the approved conditions of a zoning action).

How can homeowners associations participate in the bond release process?

Before a bond is released, county inspectors and the developer will make a walk-through inspection of the project. A representative of the homeowners association is encouraged to join this inspection because:

- It is an efficient way for an association representative to clarify any outstanding concerns they have about the public infrastructures in the development.
- County staff can point out any infrastructure in the area owned by the association that it is responsible for maintaining, such as rain gardens, wet ponds, tot lots, common areas, etc.

Before the inspection, associations can contact inspectors with the Environmental and Facilities Inspections Division if they have questions or concerns about the public infrastructure. If they have questions about the construction of homes, however, association members should contact the Department of Public Works and Environmental Services Code Enforcement Division at 703-324-1937, TTY 711.

Homeowners associations can provide input, but they cannot require additional improvements that exceed the site plan requirements or the approved conditions of a zoning action. The county also cannot require a developer to upgrade infrastructure that meets the minimum standards of Fairfax County's “Public Facilities Manual” or the Virginia Department of Transportation's standards and specifications.

Before bond release, are there restrictions on what a homeowners association can do on their common grounds?

Yes. Until the bond is released, associations should not undertake major landscape projects in their common areas, such as planting trees or improving the soil of grassy areas. As a condition of bond release, the county inspects common areas to make sure they conform to the approved site plan. Landscaping projects may delay bond release.

Are there restrictions on what property owners or a homeowners associations can do in public rights-of-way or easements?

Yes. Property owners or associations are not allowed to build private improvements in a public right-of-way without a permit. These improvements include sprinkler systems, masonry mailboxes, lighting and landscaping.

Private structures or landscaping are not allowed in any sewer or storm-drainage easements — including trees, walls, brick or stone patios, or walkways.

The county cannot release a bond if improvements are built without a permit or in sewer or storm-drainage easements. In fact, developers are required to remove these improvements before a bond can be released.

Property owners and associations should review their plats to determine the location of public rights-of-way and easements before they install any improvements. The public right-of-way is the property that has been dedicated to the county for a public use, such as a road or sidewalk.

How is a bond released?

The public infrastructure must pass final inspection, and a county or state agency must have accepted it for maintenance. Afterwards, county inspectors submit paperwork to the Department of Public Works and Environmental Services Bonds and Agreement Branch. Assuming the developer has met all of the conditions, the bond will be released after this paperwork is reviewed and any outstanding fees to the county are paid.

What happens after bond release?

After a bond is released, a developer is **not** obligated to perform any additional work on the public infrastructure within the subdivision.

County or state agencies will maintain the public infrastructure after bond release. Homeowners associations will be responsible for maintaining any private infrastructure, such as landscaping, private streelights, etc.

How to get answers to your questions and concerns?

Call Fairfax County's Environmental and Facilities Inspections Division at 703-324-1950, TTY 711, if you have questions about public infrastructure or the bond release process, including:

- What is considered public versus private infrastructure in your development?
- What public infrastructure will be installed in your development?
- What are the minimum standards for the public infrastructure in your development?
- What are the opportunities for homeowners association input into the process?