

TOWN OF WEST SENECA



Legal Department

TOWN SUPERVISOR
Gary A. Dickson

TOWN COUNCIL
Robert J. Breidenstein
Joseph J. Cantafio
Susan K. Kims
Jeffrey A. Piekarec

To: Town Board

From: Chris G. Trapp, Attorney for the Town

Re: Local Law Amendment

Date: April 4, 2022

*Local Law No. 5
Modification to Chapter 93, Public
Improvement Construction*

A modification to Chapter 93 dealing with Public Improvement Construction is required to conform more closely with Town Law as it applies to requiring a developer to post a performance bond or cash when installing a public improvement which will ultimately be transferred to the Town. Currently, the practice has been to simply add the requirement to the PIP form and process. Town Law provides that a Town may require it as part of the initial approvals of the Planning Board. In the event that the Planning Board does not include it as a condition of any approval, in the past, it has still been required by the Engineering and Code Enforcement Departments. The current Town Code, however, only requires the acquisition of a bond "upon property to which the Town of West Seneca has acquired title" which would not cover many developments where roads and other public improvements are installed on private property which is later turned over to the town upon completion. At the time it is turned over to the Town, a maintenance bond is put in place as a condition of the transfer. By requiring a performance bond or some other form of security, the Town can ensure that the road is completed by the developer or the surety if a bond is put in place. Without it, the Town would be relying on the good faith of the developer to complete the project.

In the past, the developers have not questioned the requirement process as currently constituted. Due to the cost of performance bonds now, a question has been raised and so it was determined that the best course of action would be to modify the local law at this time to close the loophole that existed. It is still recommended that the Planning Board add this as a condition of any subdivision requirements.

Chapter 103 dealing with subdivisions merely refers back to the requirements set forth in Chapter 93.

A public hearing is required since this is a modification of a Local Law.

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93-4 Cash deposit or surety bond

A. If the improvements to be installed or constructed are upon real property to which the Town of West Seneca has acquired title or will acquire title in the future, the holder of the permit or any developer which seeks to ultimately transfer ownership of any public improvement, including, but not limited to any street, roadway, highway, lighting, sewer lines and/or system, and any water lines and/or systems to the Town of West Seneca, before commencing any work in connection therewith, shall deliver to the Town of west Seneca cash or a surety bond, executed by a solvent surety corporation authorized to do business in the Sate of New York, in a sum equal to the cost of the work to be performed, which bond shall be approved by the Town of West Seneca, guaranteeing the faithful performance of all work in accordance with the specifications and requirements of the Town of West Seneca.