

27. Criterion 9(G) (Private utility services)

I. Requirements for Issuance of a Permit

Criterion 9(G) provides that a permit will be granted:

for a development or subdivision which relies on privately-owned utility services or facilities, including central sewage or water facilities and roads, whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the privately-owned utility services or facilities are in conformity with a capital program or plan of the municipality involved, or adequate surety is provided to the municipality and conditioned to protect the municipality in the event that the municipality is required to assume the responsibility for the services or facilities.

10 V.S.A § 6086(9)(G).

II. Burden of proof

The applicant bears the burden of proving compliance with Criterion 9(G). 10 V.S.A. § 6086(a).

II. Analysis

Does the project rely on privately owned utility services or facilities? These include roads, and central sewage or water, and may include other shared facilities, Such as gas lines, stormwater management systems, fire ponds.

If so, does the project comply with any town plan or capital program?

or

Should the applicant provide a surety to the municipality?

Purpose of Criterion 9(G). Criterion 9(G) is intended to prevent private utilities from becoming a burden to municipalities should some event occur that requires the municipality to provide service it did not plan for. For instance, if a proposed subdivision or housing development has a private road, what if the town has to take over the road? Should a surety be required? Or a condition requiring no further development or use of that utility?

In *Re: Raymond Duff*, #5W0921-2R-EB (Revised) Findings of Fact, Conclusions of Law, and Order (Jun. 14, 1991), the Environmental Board held that the applicant's posting of various bonds and sureties protected the municipality from unwarranted expenses. See also *In re Hawk Mountain Corp.*, 149 Vt. 179 (1988). In addition, in *Re: The Mirkwood Group and Barry Randall*, #1R0780-EB, Findings of Fact, Conclusions of Law, and Order (Aug. 19, 1996), the Board held that a radio tower complied with Criterion 9(G) when, instead of providing a surety, the applicant stipulated to a condition that the power line would only be used by the project, thereby protecting the municipality from any unwarranted expense.

Last Revised: October 16, 2006

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