

ARTICLE XIII

IMPROVEMENT and CONSTRUCTION ASSURANCES

Section 1301. Guarantee of Completion of Improvements as Prerequisite to Final Plan Approval

- a. No building permits shall be issued unless the streets shown on the approved Final Plan have been constructed to a mud-free or otherwise permanently passable condition, unless otherwise approved by the Township Building and Zoning Officer and any walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm sewers and other improvements as deemed necessary by the supervisors for reasonable human habitation, have been installed in accordance with this ordinance. The developer shall provide for the deposit with the Township of financial security in an amount sufficient to cover the costs of such improvements or common amenities including, but not limited to, roads, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, or buffer or screen plantings which may be required. The applicant shall not be required to provide financial security for the costs of any improvements for which financial security is required by and provided to the Department of Transportation in connection with the issuance of a Highway Occupancy Permit pursuant to Section 420 of the Act of June 1, 1945 (P.L. 1242, No. 428), known as the "State Highway Law."
- b. When requested by the developer, in order to facilitate financing, the Board of Supervisors shall furnish the developer with a signed copy of a resolution indicating approval of the Final Plan contingent upon the developer obtaining a satisfactory financial security. The Final Plan or record plan shall not be signed nor recorded until the financial improvements agreement is executed. The resolution or letter of contingent approval shall expire and be deemed to be revoked if the financial security agreement is not executed within ninety (90) days unless a written extension is granted by the Board of Supervisors; such extension shall not be unreasonably withheld and shall be placed in writing at the request of the developer.
- c. Without limitation as to other types of financial security which the Township may approve, which approval shall not be unreasonably withheld, Federal or Commonwealth chartered lending institution irrevocable letters of credit, restrictive or escrow accounts in such lending institutions or mortgage commitment letters shall be deemed acceptable financial security for the purposes of this section.

- d. Such financial security shall be posted with a bonding company or Federal or Commonwealth chartered lending institution chosen by the party posting the financial security, provided said bonding company or lending institution is authorized to conduct such business within the Commonwealth.
- e. Such bond, or other security shall provide for, and secure to the public, the completion of any improvements which may be required by the formal action of approval of the Plan.
- f. The amount of financial security to be posted for the completion of the required improvements shall be equal to one hundred ten (110%) percent of the cost of completion estimated as of ninety (90) days following the date scheduled for completion by the developer. Annually, the Township may adjust the amount of financial security by comparing the actual cost of the improvements which have been completed and the estimated cost for completion of the remaining improvements as of the expiration of the 90th day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the Township may require the developer to post additional security in order to assure that the financial security equals said one hundred ten (110%) percent.
- g. The amount of financial security shall be based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or developer and prepared by a Professional Engineer licensed as such by the Commonwealth of Pennsylvania. The engineer shall certify the amount of security to be a fair and reasonable estimate of such cost. The Board of Supervisors, upon the recommendation of the Township Engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and the Township are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another Professional Engineer licensed as such in the Commonwealth and chosen mutually by the Township and the applicant or developer. The estimate certified by the third engineer shall be presumed fair and reasonable, and shall be the final estimate. In the event a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Township and the applicant or developer.
- h. If the party posting the financial security requires more than one year from the date of posting of the financial security to complete the required improvements, the amount of financial security may be increased by an additional ten (10%) percent for each one-year period beyond the first anniversary date from posting of financial security or to an amount not exceeding one hundred ten (110%) percent of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the above procedure.

- i. In the case where development is projected over a period of years, the Board of Supervisors may authorize submission of Final Plan by section or stages of development subject to such requirements or guarantees as to improvements in future sections or stages of development as it finds essential for the protection of any finally approved section of the development.
- j. As the work of installing the required improvements proceeds, the party posting the financial security may request the Board of Supervisors to release or authorize the release, from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed, to the Board of Supervisors and Township Engineer. When the Township Engineer certifies that such portion of the work upon the improvements has been completed in accordance with the approved Plan, then the Board of Supervisors will authorize release by the bonding company or lending institution of an amount as estimated by the Township Engineer fairly representing the value of the improvements completed. The Board of Supervisors shall have forty-five (45) days from receipt of such request within which to allow the Township Engineer to certify, in writing, to the Board of Supervisors, that such portion of the work upon the improvements has been completed in accordance with the approved Plan. Upon such certification, the Board of Supervisors shall authorize release by the bonding company or lending institution of an amount as estimated by the Township Engineer fairly representing the value of the improvements completed. If the Board of Supervisors fails to act within the forty-five (45) day period, the Board of Supervisors shall be deemed to have approved the release of funds requested. The Board of Supervisors may, prior to final release at the time of completion and certification by the Township Engineer, require retention of ten (10%) percent of the estimated cost of the aforesaid improvements.
- k. If water mains or sanitary sewer lines, or both, along with apparatus or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the Township, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required by this section.
- 1. If financial security has been provided the Township shall not condition the issuance of building, grading or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as depicted upon the Final Plan, upon actual completion of the improvements depicted upon the approved Final Plan. Moreover, if said financial security has been provided, occupancy permits for any building or buildings to be erected shall not be withheld following: the improvements of the streets providing access to and from existing public roads to such building or buildings to a mud-free or otherwise

permanently passable condition, as well as the completion of all improvements as depicted upon the approved plan, either upon the lot or lots or beyond the lot or lots in question if such improvements are necessary for the reasonable use of or occupancy of the building or buildings.

- m. Where the Board of Supervisors, after receiving “as-built” plans prepared according to Section 1203 and a deed of dedication in acceptable form, accepts dedication of all or some of the required improvements following completion, the Board of Supervisors may require the posting of financial security to secure the structural integrity of said improvements as well as the functioning of said improvements in accordance with the design and specifications as depicted on the Final Plan for a term not to exceed eighteen (18) months from the date of acceptance of dedication. Said financial security shall be of the same type as otherwise required in this Section with regard to installation of such improvements, and the amount of financial security shall not exceed fifteen (15%) percent of the actual cost of installation of said improvements.

Section 1302. Inspection During Construction

The Board of Supervisors shall authorize and direct the Township Engineer and/or Township Roadmaster to cooperate with the applicant in arranging for the Engineer's and/or Township Roadmaster's periodic presence at the site of the work and construction of the required facilities and improvements during such phases thereof as will enable him to determine whether or not such construction is in conformity with the Final Plan and all Township requirements.

- a. No underground pipes, structures, subgrades or base courses shall be covered until inspected and approved by the duly authorized official of the Township. Failure in compliance with this regulation shall provide cause for uncovering of such work, at the applicant's expense, to permit the required inspection.
- b. Notice shall be given to the Township at least forty-eight (48) hours in advance of commencement of any construction operation to provide for required inspection.
- c. Whenever any work or materials are found to be not in compliance with the Final Plan and/or applicable Township requirements, the Township Engineer or any other duly authorized Township representative, may stop work on the job until such non-compliance or variance is eliminated and any work or materials installed which are not in compliance are made to comply. It shall be unlawful to do or perform any work in violation of such stop order, except as may be necessary to prevent injury or damage to person or property. Such stop order may be revoked by the Board of Supervisors.

- d. Whether or not such construction or work shall have been accomplished in accordance with Township requirements shall be determined by the Township Engineer and/or Township Roadmaster upon the basis of his on-site inspections during such phases thereof as in his judgment will enable him to make such determination. The Engineer shall submit a written report to the Board of Supervisors in regard thereto.

Section 1303. As-Built Plan

After Final Plan approval and upon the completion of all required improvements, the applicant shall submit an As-Built Plan prepared by a Professional Engineer or Registered Surveyor. Said Plan shall indicate that the constructed improvements are in conformance with the previously approved drawings and specifications. Said plan shall also note any and all deviations from the previously approved drawings and specifications. Three (3) copies of the As-Built Plan shall be filed with the Township.

The As-Built Plan shall be drawn to the same scale as the Final Plan, certified to by the Engineer or Registered Surveyor of the landowner or developer, and approved by the Township Engineer. Said Plan shall indicate the actual location, dimensions and/or elevations of all completed improvements, including but not limited to:

- a. Concrete monuments.
- b. The centerline and edge of the cartway and top of the curb for both sides of each street.
- c. Sanitary sewer mains, manholes and laterals.
- d. Storm sewers, inlets and culverts.
- e. Water mains and fire hydrants.
- f. Landscaping and screen planting.
- g. Permanent sedimentation, erosion control and stormwater management structures.
- h. All easements.

Section 1304. Release from Improvement Bond

When the approved plan site is substantially developed, the developer has completed all of the required and necessary improvements and has submitted and received approval of as-built plans, the developer shall notify the Board of Supervisors, in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the Township Engineer.

Section 1305. Remedies to Effect Completion of Improvements

In the event that any improvements which may be required have not been installed as provided in This Ordinance or in accordance with the approved Final Plan, the Board of Supervisors shall have the power to enforce any corporate bond, or other security by appropriate legal and equitable remedies. If proceeds of such bond or other security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security the Board of Supervisors may, at its option, install part of such improvements in all or part of the subdivision or land development and may institute appropriate legal or equitable action to recover the moneys necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the developer or both, shall be used solely for the installation of the improvements covered by such security, and not for any other Township purpose.

Section 1306. Fees for Inspection of Improvements

The Board of Supervisors shall prescribe that the applicant shall reimburse the Township for the reasonable and necessary expense incurred for the inspection of improvements. Such reimbursement shall be based upon a schedule adopted by Resolution of the Board of Supervisors upon enactment of this Ordinance, or as such schedule may be amended. A copy of said fee schedule shall be available for review at the Township Office. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the Township Engineer or consultants for work performed for similar services in the community, but in no event shall the fees exceed the rate or cost charged by the engineer or consultant to the Township when fees are not reimbursed or otherwise imposed on applicants.

In the event that the inspection fees accumulated by the Township Engineer or consultants are projected to exceed the fees listed in the aforementioned Fee Schedule, the Township Engineer or consultants, within seventy-two (72) hours of determination of said exceeding of fees, shall notify the applicant by Registered Mail.

Section 1307. Disputes Over Fees

If the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, within fourteen (14) working days of the applicant's receipt of the bill, notify the Township that such expenses are disputed as unreasonable or unnecessary, in which case the Township shall not delay or disapprove a subdivision or land development application or any approval or permit related to development due to the applicant's request over disputed engineer or consultant expenses.

In the event that the Township and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant and the Township shall follow the procedure for dispute resolution as set forth below:

- a. If within twenty (20) days from the date of billing, the Township and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant and Township shall jointly, by mutual agreement, appoint another professional of the same profession or discipline as the person whose fees are being disputed, licensed as such in the Commonwealth of Pennsylvania to review such expenses and make a determination as to the amount thereof which is reasonable and necessary.
- b. The professional so appointed shall hear such evidence and review such documentation as the professional in his or her sole opinion deems necessary and render a decision within fifty (50) days of the billing date. The applicant shall be required to pay the entire amount determined in the decision immediately.
- c. In the event that the Township and the applicant cannot agree upon the professional to be appointed within 20 days of the billing date, then upon application of either party, the President Judge of the Court of Common Pleas of the judicial district in which the Township is located (or if at the time there be no President Judge, then the senior active judge then sitting) shall appoint such professional, who, in that case, shall be neither the Township engineer nor any professional who has been retained by, or performed services for, the Township or the applicant within the preceding five (5) years.
- d. The fee of the appointed professional for determining the reasonable and necessary expenses shall be paid by the applicant if the amount of payment required in the decision is equal to or greater than the original bill. If the amount of payment required in the decision is \$1,000 or less than the original bill, the Township shall pay the fee of the professional, but otherwise the Township and the applicant shall each pay one-half of the fee of the appointed professional.