

ARTICLE XIII

IMPROVEMENTS AND CONSTRUCTION ASSURANCES

1301. Completion of Improvements or Guarantee Thereof Prerequisite to Final Plan Approval

- a. No such plan shall be finally approved unless the streets shown on such plan have been improved to a mud-free or otherwise permanently passable condition, or improved as may be required by this Ordinance, and any walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm sewers, and other improvements as required by this Ordinance have been installed in accordance with such Ordinance.
- b. In lieu of the completion of any improvements required as a condition for the final approval of a plan, 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.
 - (1) 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.
 - (2) The final plan or record plan shall not be signed nor recorded until the financial improvements agreement is executed.
 - (3) 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.
 - (a) Such extension shall not be unreasonably withheld and shall be placed in writing at the request of the developer.
 - (b) Any request for extension shall be submitted in writing by the developer not more than ninety (90) days following the date of contingent approval.

- (c) Said request shall specify the reasons for the extension and the developer shall show good cause for the granting thereof.
 - (d) The Township may require a written agreement of extension conditioned upon such terms as are deemed necessary and reasonable.
- (4) 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 and restrictive or escrow accounts in such lending institutions shall be deemed acceptable financial security for the purposes of this section.
- (5) 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.
- (6) Such bond, or other security shall provide for, and secure to the public, the completion of any improvements which may be required on or before the date fixed in the formal action of approval or accompanying agreement for completion of the improvements.
- (7) 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 on ninety (90) days following the date scheduled for completion by the developer.
 - (a) 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.
 - (b) 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.

- (8) 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.
 - (a) The Board of Supervisors, upon the recommendation of the Township Engineer, may refuse to accept such estimate for good cause shown.
 - (b) 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.
 - (c) 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.
- (9) 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 re-established on or about the expiration of the preceding one-year period by using the above procedure.
- (10) In the case where development is projected over a period of years, the Board of Supervisors may authorize submission of final plans by section of 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.

- (11) 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.
- (a) Any such requests shall be in writing addressed to the Board of Supervisors.
 - (b) The Board of Supervisors shall have forty-five (45) days from receipt of such request within which to allow the Township Engineer to recommend in writing that such portion of the work upon the improvements has been completed in accordance with the approved plan.
 - (c) If the Board of Supervisors fails to act within said forty-five (45) day period, the Board of Supervisors shall be deemed to have approved the release of funds as requested.
 - (d) 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.
 - (e) The Board of Supervisors may, prior to final release at the time of completion and certification by its engineer, require retention of ten (10%) percent of the estimated cost of the aforesaid improvements.
- (12) 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.
- (13) If financial security has been provided in lieu of the completion of improvements required as a condition for the

final approval of a plan as set forth in this section, 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 other 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.

1302. Inspection During Construction

- a. The Board of Supervisors shall authorize and direct the Township Engineer to cooperate with the applicant in arranging for the Engineer's periodic presence at the site of the work and construction of the required facilities and improvements during such phases thereof as in the judgement of the Engineer will enable him to determine whether or not such construction is in general conformity with the Final Plan and all Township requirements. The Township Engineer is not a Resident Engineer. The developer's contractor shall be responsible for such inspections, etc., that are needed to insure that the constructed improvements are in conformance with the approved plans and specifications.
- b. 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.
- c. 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.
- d. In those cases where the Township Engineer deems necessary, the developer, through his contractor, shall retain the services of a certified Soils or Geotechnical Engineer to perform moisture and density testing in order to determine compaction or the extent

thereof as related to the requirements of such Township construction and materials specifications as have been or may be adopted by the Board of Supervisors pursuant to Article XII herein.

- e. The wearing course on all streets proposed to be dedicated to the Township shall not be placed until at least seventy-five (75%) percent of the lots within the development have been built upon.
- f. 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 material 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 a stop order may be revoked by the Board of Supervisors.
- g. Whether or not such construction or work shall have been accomplished in accordance with Township requirements shall be determined by the Township Engineer upon the basis of his on-site inspections during such phases thereof as in his judgement will enable him to make such determination. The Engineer shall submit a written report to the Board of Supervisors in regard thereto.

1303. As-Built Plan

- a. 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 Professional Land Surveyor.
- b. Said Plan shall indicate that the constructed improvements are in conformance with the previously approved drawings and specifications.
- c. Said plan shall note any and all deviations from the previously approved drawings and specifications.
- d. A stable film reproducible and two (2) copies of the As-Built Plan shall be filed with the Township.
- e. The As-Built Plan shall be drawn to the same scale as the Final Plan, certified to by the Designer of the Plan and approved by the Township Engineer.

- f. Said Plan shall indicate the actual location, dimensions and/or elevations of all completed improvements, including but not limited to:
 - (1) Concrete monuments.
 - (2) The edge of the cartway and top of the curb for both sides of each street.
 - (3) Sanitary sewer mains, manholes and laterals.
 - (4) Storm sewers, inlets and culverts.
 - (5) Water mains and fire hydrants.
 - (6) Street lights.
 - (7) Landscaping and screen planting.
 - (8) Permanent sedimentation, erosion control and stormwater management structures.
 - (9) All easements.

1304. Maintenance Period

- a. Where the Board of Supervisors accepts dedication of all or some of the improvements following completion, the Board of Supervisors may require the posting of financial security to secure 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.
- b. The Maintenance Period shall be for a term not to exceed eighteen (18) months from the date of acceptance of dedication.
- c. The Maintenance Period shall not begin until the As-Built Plan has been approved by the Township Engineer, and any improvements offered for dedication have been formally accepted by the governing body.
- d. Said maintenance security shall be of the same type as otherwise required in Section 1301 herein with regard to installation of such improvements.

- e. The amount of the financial security shall not exceed fifteen (15%) percent of the actual cost of installation, or 15% of the original security, whichever is greater.

1305. Release From Improvement Bond

- a. When the developer has completed all of the required and necessary improvements, has submitted the required As-Built Plan, and the structural integrity and the functioning of the improvements have been secured through successful completion of a maintenance period when required, the developer shall notify the Board of Supervisors of such in writing.
- b. The Board of Supervisors shall, within ten (10) days after receipt of such notice, direct and authorize the Township Engineer to inspect all of the required improvements.
- c. The Township engineer shall, thereupon, file a report, in writing, with the Board of Supervisors, and shall promptly mail a copy of the same to the developer by certified or registered mail. The report shall be made and mailed within thirty (30) days after receipt by the Township Engineer of the authorization for inspection by the Board of Supervisors.
- d. The report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the Township Engineer, said report shall contain a statement of reason for non-approval or rejection.
- e. The Board of Supervisors shall notify the developer, within fifteen (15) days of receipt of the Engineer's report, in writing by certified mail or registered mail, of the action of the Board with relation thereto.
- f. If the Board of Supervisors or the Township Engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the developer shall be released of all liability, pursuant to its performance guaranty bond or other security agreement.
- g. If any portion of the said improvement shall not be approved or shall be rejected by the Board of Supervisors, the developer shall

proceed to complete the same, and upon completion, the same procedure of notification as listed above shall be followed.

- h. Nothing herein, however, shall be construed in limitation of the developer's right to contest or question by legal proceedings or otherwise, any determination of the Board of Supervisors or the Township Engineer.

1306. Remedies to Effect Completion of Improvements

- a. 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.
- b. 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.
- c. 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.

1307. Fees for Inspection of Improvements

- a. 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.
- b. 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.
- c. A copy of said fee schedule shall be available for review at the Township office.
- d. Such expense shall be reasonable and in accordance with the ordinary and customary wages paid to the Township Engineer or

fees charged by consultants for work performed for similar services in the community, but in no event shall the fees exceed the rate or cost for the Engineer or charged by consultant to the Township when fees are not reimbursed or otherwise imposed on applicants.

1308. Disputes over Fees

- a. If the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, within ten (10) working days of the date of billing, 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 expenses.
- b. 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:
 - (1) 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 engineer 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.
 - (2) The professional engineer so appointed shall hear such evidence and review such documentation as the professional engineer 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.
 - (3) In the event that the Township and the applicant cannot agree upon the professional engineer to be appointed within twenty (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 engineer, who, in that case, shall be neither the Township engineer nor any

professional engineer who has been retained by, or performed services for, the Township or the applicant within the preceding five (5) years.

- (4) The fee of the appointed professional engineer 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 less than the original bill by \$1,000 or more, the Township shall pay the fee of the professional engineer, but otherwise the Township and the applicant shall each pay one-half of the fee of the appointed professional engineer.