

ARTICLE 4

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Article 4

ASSURANCES FOR COMPLETION OF IMPROVEMENTS

401 Completion of Improvements: No plan shall be finally approved unless the streets shown have been improved as required by this Ordinance, and any walkways, curbs, gutters, street lights, street signs, fire hydrants, shade trees, water mains, sanitary sewers, storm sewers and any other required improvements have been installed as required by this Ordinance.

1. Notice of Starting Work: The Township Engineer shall be given at least twenty-four (24) hours notice by the subdivider or developer prior to commencement of work at the site. Work shall not begin without such prior notification.
2. Inspection of Improvements During Construction: The Township Engineer may make as many unannounced visits as he deems necessary to the site during normal working hours during the construction of improvements in order to inspect the construction work for conformance with the approved plans.
3. Filing of Report: The Township Engineer shall file a report, in writing, with the Board of Supervisors with a copy to the Planning Commission after each such inspection and shall promptly mail a copy of the same to the developer or subdivider by certified or registered mail.

The report shall be made and mailed within five (5) days of the inspection and shall indicate whether the improvements are being constructed in accordance with the approved plan or whether they have been found to be defective. The report shall contain a detailed statement of the defects found. A time schedule for correction of the defects shall be provided, and the subdivider or developer shall be notified that no further work will be conducted until the corrections are made and approved.

4. Completion of Improvements: The same procedures shall be followed as itemized in Subsections 403 (1), (2), (3), (4), (5), (6), and (7), except that consideration of financial security shall not apply.
5. Financial Security for Maintenance of Improvements (See Section 402.13.)

402 Guarantee of Completion of Improvements: In lieu of the completion of any improvements required as a condition for the final approval of a plan, including improvements or fees required pursuant to Section 402.8 Phasing of Development, the deposit with the Township of a financial security shall be required in the amount sufficient to cover the costs of such improvements or common amenities which may be required, 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. All final documentation of financial security shall be submitted to the Township Solicitor for his review fourteen (14) days prior to the public meeting at which the plan will be submitted for final approval; otherwise, the plan will be denied.

1. Types of Financial Security: Without limitation as to other types of financial security which the Township may approve, which approval shall not be unreasonably withheld, irrevocable letters of credit and restrictive or escrow accounts from Federal or Commonwealth chartered lending institutions shall be deemed acceptable financial security for the purposes of this Ordinance.

Section 402 (cont'd)

2. Posting of Financial Security: 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.
3. Action to Facilitate Financing: When requested by the developer, in order to facilitate financing, the Township Board of Supervisors or the financing agency, if designated, shall furnish the developer with a signed copy of a resolution indicating approval of the final plan contingent upon the developer's 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 Township Board of Supervisors; such extension shall not be unreasonably withheld and shall be placed in writing at the request of the developer.

4. Time Period for Completion of Improvements: 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.
5. Amount of Financial Security: The amount of financial security to be posted for the completion of the required improvements shall be equal to one hundred ten percent (110%) 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 the financial security by comparing the actual cost of the improvements which have been completed and the estimated cost for the 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 percent (110%). Any additional security shall be posted by the developer in accordance with this subsection.

6. Establishment of Improvement Cost: The amount of financial security required 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 to be a fair and reasonable estimate of such cost.

The Township, upon the recommendation of the Township Engineer, may refuse to accept such estimate for good cause shown.

If the applicant or the developer and the Township are unable to agree on 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

Section 402 (cont'd)

fair and reasonable and shall be the final estimate.

In the event that 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.

7. Increase in Time Period and Amount of Financial Security for Completion of Improvements: If the party posting the financial security requires more than one (1) 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 percent (10%) for each one-year period beyond the first anniversary date from posting of the financial security or to an amount not exceeding one hundred ten percent (110%) of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the procedure described in (5) above.
8. Phasing of Developments: In the case where development is projected over a period of years, the Board of Supervisors may authorize the submission of final plans by sections or phases of development subject to such requirements or guarantees as to improvements in future sections or phases of development as it finds essential for the protection of any finally approved section of the development.
9. Notice of Starting Work: The Township Engineer shall be given at least twenty-four (24) hours notice by the subdivider or developer prior to commencement of work at the site. Work shall not begin without such prior notification.
10. Inspection of Improvements During Construction: The Township Engineer may make as many unannounced visits as he deems necessary to the site during normal working hours during the construction of improvements in order to inspect the construction work for conformance with the approved plans.
11. Filing of Report: The Township Engineer shall file a report, in writing, with the Board of Supervisors with a copy to the Planning Commission after each such inspection and shall promptly mail a copy of the same to the developer or subdivider by certified or registered mail.

The report shall be made and mailed within five (5) days of the inspection and shall indicate whether the improvements are being constructed in accordance with the approved plan or whether they have been found to be defective. The report shall contain a detailed statement of the defects found. A time schedule for correction of the defects shall be provided, and the subdivider or developer shall be notified that no further work will be conducted until the corrections are made and approved.

12. Release of Portions of Financial Security: 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, of such portions of the financial security necessary for payment to the contractor or contractors performing the work.

Any such request shall be in writing addressed to the Board of Supervisors, and 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

Section 402 (cont'd)

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 as fairly representing the value of the improvements completed. Failure of the Board of Supervisors to act within the said forty-five day period shall be deemed an approval of the release of the funds requested.

The Board of Supervisors may require retention of ten percent (10%) of the estimated cost of the aforesaid improvements prior to final release at the time of completion and certification by its Engineer.

13. Financial Security for Maintenance of Improvements: Where the Board of Supervisors accepts dedication of all or some of the required improvements following completion, it 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 shown 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 the financial security shall not exceed fifteen percent (15%) of the actual cost of installation of said improvements.

14. Financial Security for Improvements Under Jurisdiction of Public Utility or Municipal Authority: 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 municipality, 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.
15. Issuance of Permits When Financial Security Has Been Posted: If financial security has been provided in lieu of the completion of improvements required as a condition for final plan approval as set forth in this Section, the Township shall not condition the issuance of zoning, building, grading or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as shown on the final plan upon actual completion of the improvements shown on the approved final plan.
16. Certificates of Zoning Compliance (Occupancy) Not to be Withheld Under Certain Conditions: If said financial security has been provided, certificates of zoning compliance, or occupancy permits, for any building or buildings to be erected shall not be withheld following:
 - a. the improvement 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

Section 402 (cont'd)

- b. the completion of all other improvements as shown on the approved final plan, either upon the lot or lots beyond the lot or lots in question, if such improvements are necessary for the reasonable use of or occupancy of the building or buildings.

Any ordinance or statute inconsistent herewith is hereby expressly repealed.

403 Release from Improvement Guarantee

1. Notification of Completion of Improvements: When the developer or subdivider has completed all of the necessary and appropriate improvements, the developer or subdivider 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.
2. Authorization of Inspection of Improvements: 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 aforesaid improvements. The Township Engineer shall be a duly registered Professional Engineer (PE) employed by the Township or engaged as a consultant thereto.
3. Filing of Report: The Township Engineer shall thereupon file a report, in writing, with the Board of Supervisors with a copy to the Planning Commission and shall promptly mail a copy of the same to the developer or subdivider by certified or registered mail.

The report shall be made and mailed within thirty (30) days after receipt by the Township Engineer of the aforesaid authorization from the Board of Supervisors. The report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part. 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 the reasons for such nonapproval or rejection.

4. Notification of Township Action: The Board of Supervisors shall notify the developer or subdivider, within fifteen (15) days of receipt of the Engineer's report, in writing, by certified or registered mail, of the action of said Board of Supervisors with relation thereto. The Board of Supervisors shall also notify the Planning Commission, in writing, of its action.
5. Failure of Township to Act Within Time Limit: 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 or subdivider shall be released from all liability, pursuant to its performance guarantee bond or other security agreement.
6. Responsibility of Developer Upon Disapproval of Improvements: If any portion of the said improvements shall not be approved or shall be rejected by the Board of Supervisors, the developer or subdivider shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined in this Section, shall be followed.
7. Developer's Right to Contest Action: Nothing herein, however, shall be construed in limitation of the developer's or subdivider's right to contest or question by legal

Section 403 (cont'd)

proceedings or otherwise any determination of the Board of Supervisors or Township Engineer.

- 404 Reimbursement for Inspection of Improvements: The Township may 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 established by ordinance or resolution. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the Township Engineer or consultant 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 the fees are not reimbursed or otherwise imposed on the applicants.

1. Applicant's Dispute of Inspection Fees: In the event 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.
2. Appointment of Second Engineer: 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 the said expenses and make a determination as to the amount thereof which is reasonable and necessary.
3. Procedures of Second Engineer: 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.
4. Dispute on Appointment of Second Engineer: In the event that the Township and 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.
5. Fees of Appointed Second Engineer: The fee of the appointed Professional Engineer for determining the reasonable and necessary expenses shall be paid by the applicant if the amount of the 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

Section 404 (cont'd)

Township and the applicant shall each pay one-half of the fee of the appointed Professional Engineer.

405 Remedies to Effect Completion of Improvements

1. Enforcement of Financial Security: In the event that any improvements which may be required have not been installed as provided in this Ordinance or in accord with the approved final plan, the Board of Supervisors can enforce any corporate bond or other security by appropriate legal and equitable remedies.
2. Insufficiency of Financial Security: If the 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.
3. Proceeds from Financial Security Limited as to Use: All of the proceeds, whether resulting from the security or from any legal or equitable action or from both, brought against the developer or subdivider shall be used solely for the installation of the improvements covered by such security, and not for any other municipal purpose.

406 Consumer Protection Legislation and Conflict of Interest Statutes

1. Violation of Consumer Protection Laws: No zoning permit or certificate of zoning compliance (occupancy permit) shall be granted or issued if a developer or subdivider shall have violated any Federal, State, or local law pertaining to consumer protection of real estate land sales, promotion, or practices, or any applicable conflict-of-interest legislation with respect to the lot or parcel of land which is the subject of the permit or certificate, until so ordered by a court of competent jurisdiction.
2. Revocation of Permits: With respect to said lot or parcel of land, in the event a zoning permit or certificate of zoning compliance (occupancy permit) has been granted or issued, it shall be subject to revocation by the Township until so ordered otherwise by a court of competent jurisdiction, provided that in no event shall the rights of intervening innocent third parties in possession of a certificate of zoning compliance (occupancy permit) be prejudiced by any such revocation.
3. Subdivision Ordinance Violation: Any violation of a Federal, State, or local consumer protection law (including but not limited to: the Postal Reorganization Act of 1970, the Federal Trade Commission Act of 1970, the Interstate Land Sales Full Disclosure Act, the Truth in Lending Act, the Uniform Commercial Credit Code) or conflict of interest statute, law, or ordinance shall be deemed a violation of the regulations of this Ordinance and subject to all the penalties and proceedings as set forth in Article 9.