

ARTICLE VIII
IMPROVEMENTS GUARANTEES

801. GUARANTEE OF IMPROVEMENTS INSTALLATION REQUIRED.

- A. Before approving any subdivision or land development plan for recording, Borough Council shall require that the Borough be assured by means of a proper Development Agreement and Performance Guarantee that the improvements required by this Ordinance and the improvements appearing on the plan will be installed in strict accordance with the standards and specifications of this Ordinance, unless:
1. if a developer chooses to install all required improvements prior to construction of any building, in place of using performance guarantees, in which case, the Borough shall as deemed necessary require the developer to have adequate insurance, hold harmless agreements and an escrow account to cover the costs of inspections.
- B. Purpose of Security. The security required by this Article shall stand as security for compliance with all Borough ordinances, other laws, covenants, stipulations, conditions and rules applicable to the subdivision or land development for which it is filed.
- C. Completion of Improvements.
1. No construction of buildings or paving or sales of any individual lot or condominium unit within a subdivision or land development shall take place in any subdivision unless applicable plans have been granted final approval and:
 - a) there is on file, with the Borough, a current duly executed performance bond (and security escrow agreement if necessary) or
 - b) all rough grading is complete and all required public improvements, utilities, streets, drainage facilities, sewers and street lights have previously been completed and found acceptable by Borough Council based upon professional inspections.
 2. A principal building shall not be occupied unless, at an absolute minimum, it:
 - a) is safe and substantially completed in conformity to all applicable ordinances, laws and plans,
 - b) has electric and telephone service,
 - c) is served by any required water, fire hydrants and sanitary sewage service and
 - d) has access to an existing dedicated public street via a clearly permanently passable approved street/accessway/parking court with at least a complete paving base course and any required curbing installed.
 3. In extenuating circumstances, the Borough may allow the temporary occupancy of a building pending the completion of certain specific improvements within a certain specific time limit.

802. IMPROVEMENTS TO BE PROVIDED BY THE APPLICANT.

- A. The subdivider or land developer shall be responsible to ensure the installation of all improvements required by this Ordinance.
- B. The Borough Engineer or the Borough's designee shall make such inspections of the required improvements at such intervals as may be reasonably necessary to assure compliance with this Ordinance. The reasonable costs of such inspection shall be borne by the subdivider or developer, and held in an escrow account.

803. DEVELOPMENT AGREEMENT.

A. Development Agreement Required.

- 1. All applicants proposing any subdivision or land development which provides for the installation of improvements required by this Ordinance or any improvements or amenities which appear on the plan shall be required to enter into a legally binding Development Agreement with the Borough prior to Final Plan approval.
- 2. The Development Agreement shall guarantee the installation of said improvements in strict accordance with all Borough requirements.
- 3. The Final Plan shall not be approved by the Commission or the Board Borough Council prior to the execution of this agreement and the delivery of the Performance Guarantee.

B. Terms of Development Agreement. The Development Agreement shall be in the manner and form approved by the Borough Solicitor and it shall consist of the following terms, where applicable, unless waived by Borough Council:

- 1. The construction depicted on the approved plans, listed in itemized format, including but all approved streets, drainage facilities, utility lines and other improvements.
- 2. A work schedule setting forth the beginning and maximum ending dates of such work tied to the construction of the development, and provisions to allow proper inspection by the Borough Engineer or other authorized inspector.
- 3. The provision of a Performance Guarantee for completion of required improvements in compliance with Section 804, including a detailed breakdown of the estimated costs of the improvements, including the total amount of the Performance Guarantee.
- 4. Provisions concerning the developer's responsibilities for damage to other property, including maintenance by the developer of public liability insurance for the duration of improvements construction, with a hold harmless clause to protect the Borough from liability related to such work. A copy or other evidence of such liability coverage shall be provided to the Borough prior to such work.

5. Provisions concerning measures to prevent erosion, sedimentation and water damage to the subject and adjacent properties.
6. Provisions for the dedication of streets, water and sewer lines and any other easements or improvements approved to be dedicated.
7. See Section 902 concerning the requirement for a "RECORD" plan and section 805.H. concerning "AS-BUILT" plans.
8. Provisions for the developer to re-imburse the Borough for all reasonable engineering and legal costs directly related to the review, construction and inspection of the proposed development and to the review and preparation of the development agreements.
9. Provisions concerning any violations of the Development Agreement.
10. Any other lawful terms which the Borough Council may require to carry out the provisions of this Ordinance.
11. Signatures. The development agreement shall be signed by all landowners and/or developers.

C. Ownership of Land and Guarantee.

1. A certificate of ownership in the form of Appendix C shall be executed in the exact name in which title is held. If the developer(s) of a subdivision is someone other than the landowner(s) of the subdivision, the developer shall also execute this affidavit, along with a performance bond and security agreements.
2. Change in Ownership or Developer. Any conveyance of all or a substantial portion of the unimproved lots or public improvements or streets of any subdivision or change in developers, whether voluntary or by action of law or otherwise, shall require the prior approval of the Borough Council. In giving or denying said approval, the Borough Council shall require that such new landowner and/or developer fully assume all applicable responsibilities under the development agreement and post all the appropriate bonds and security agreements.

D. Utility Agreements. If a development will connect into a public water or public sanitary sewage system, the applicable authority, agency or company may also require separate development agreements.

804. PERFORMANCE GUARANTEE. The Performance Guarantee for completion of required improvements shall meet the following requirements:

A. Security.

1. The Guarantee shall be secured by the credit of any of the following:
 - a. An irrevocable and unconditional letter of credit of a Federal or State chartered lending institution,

- b. A restrictive or escrow account in a Federal or State chartered lending institution, or
 - c. Such other financial security approved by the Borough Council (which approval shall not be unreasonably withheld), but not including a second or third mortgage on the unimproved lands.
 - 2. Such bond, or other security shall provide for, and secure to the public, the completion of any improvements which may be required within 1 year of the date fixed in the Development Schedule (see Section 604.F.) for the completion of such improvements.
 - 3. Such financial security shall be posted with a bonding company or Federally issued or State 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 State.
 - a. The Borough Council may require that evidence be provided that such institution or company has sufficiently adequate and secure assets to cover the security.
 - b. The Borough shall be an authorized signatory on any account in which the escrow funds are held and all escrow funds from sales of lots shall be paid directly to such fund, and a monthly statement shall be furnished to the Borough.
- B. Amount.
- 1. The amount of financial security to be posted for the completion of the required improvements shall be equal to 110 percent of the cost of completion estimated as of 90 days following the date scheduled for completion by the developer in the official development schedule (see Section 604.G.), and within the process for increases to cover inflation as permitted by the State Planning Code.
 - 2. The cost of the improvements shall be established by an estimate prepared by a PA. Registered Professional Engineer, within the process established by the State Planning Code.
 - 3. If the party posting the financial security requires more than 1 year from the date of posting of the financial security to complete the required improvements, the amount of financial security shall be increased by an additional 10 percent for each one-year period beyond the first anniversary date from posting of financial security or to an amount not exceeding 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 bidding procedure.

- C. Multi-Year or Multi-Stage Development. In the case where development is projected over a period of years, the Borough Council may authorize submission of final plans by phases/stages of development subject to such requirements or guarantees as to improvements in future sections or stages of development as it finds necessary for the proper functioning of each phase and for the eventual development as a whole.

805. APPROVAL OF IMPROVEMENTS.

- A. In General. As the work of installing the required improvements proceeds, the party posting the financial security may request the Borough Council to release or authorize the release, from time to time, such portions of the financial security necessary for payment to the contractor(s) performing the work.

- B. Notice of Completion. When the developer has completed an improvement, the developer shall notify the Borough Council in writing by certified or registered mail of such completion and request for release and shall send a copy thereof to the Borough Engineer.

C. Engineer's Report.

1. Within 30 days of the receipt of such request, the Borough Engineer shall submit a written report certifying which improvements have been completed in accordance with the approved plan to the Borough Council and mail a copy of such report by certified or registered mail to the developer or his/her representative at his/her last known address.
2. This report shall be based on the inspections made according to the approved inspection schedule included in the Development Agreement and shall recommend approval or rejection of the improvements, either in whole or in part.
3. If the Borough Engineer finds any or all of the improvements to be not as required, he/she shall include a statement of the reasons for recommending their rejection in the report.

D. Decision by Borough Council.

1. At its first regularly scheduled meeting after receiving the Engineer's Report (but not later than 45 days of the receipt of the request) the Borough Council shall review the Borough Engineer's report and shall authorize release of an amount as estimated by the Borough Engineer fairly representing the value of the improvements completed.
2. The Borough Council shall be deemed to have approved the release of funds as requested if the Borough Council fails to act within 45 days of receipt of the developer's request.
3. Until final release (completion of all improvements), the Borough Council may require retention of 10 percent of the cost of each completed improvement.

4. The Borough Council shall notify the developer in writing by certified or registered mail of the decision.
- E. Completion of Unapproved Improvements. The developer shall proceed to complete any improvements not approved by the Borough Council and, upon completion, request approval in conformance with the procedures specified in Section 805.
 - F. Final Release.
 1. When the developer has completed all of the necessary and appropriate improvements, the developer shall request Final Release in conformance with the procedures specified in Section 805. See time limitations and procedures in Section 510 of the Municipalities Planning Code.
 2. Such Final Release shall include all moneys retained under Section 805.D.3.
 - G. Appeal. Nothing herein, however, shall be construed to limit the developer's right to contest or question by legal proceedings or otherwise any determination of the Borough Council or the Borough Engineer.
 - H. As-Built Plans. The developer shall provide to the Borough a set of plans showing improvements as actually built within 90 days after each phase of improvements are completed.
806. REMEDIES TO EFFECT COMPLETION OF IMPROVEMENTS.
- A. Enforcement of Security.
 1. 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, or in the event of the bankruptcy of the owner or developer, the Borough Council is hereby granted the power to elect to enforce any security posted under this Ordinance by appropriate legal and equitable remedies.
 - a. This may include taking all actions necessary to obtain moneys under said bond, including but not limited to seizure of undeveloped lots, confession of judgment, suit on the bond, seizure of escrow funds, revocation of building permits and prosecution under this Ordinance.
 2. Rate of Construction. Failure of a developer to construct streets and other public improvements reasonably at the same time or prior to the construction of the buildings served by those streets or public improvements, and at the same rate in time at which buildings are completed, shall be a violation of this Ordinance and a cause for default.

- B. Completion by Borough. 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 Borough Council 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. Proceeds for Installation of Improvements. The proceeds from use of the security and/or from any legal or equitable action brought against the developer shall be used solely for the installation of the improvements covered by such security.

807. MAINTENANCE AGREEMENT.

A. Maintenance Agreement Required.

1. All applicants proposing any subdivision or land development which provides for the dedication of improvements required by this Ordinance or any improvements or amenities which appear on the Plan shall be required to enter into a legally binding Maintenance Agreement with the Borough prior to acceptance of dedication by the Borough.
2. The dedication of any improvement shall not be accepted by the Borough prior to the execution of a Maintenance Agreement and the delivery of the Maintenance Guarantee.

B. Terms of Maintenance Agreement. The Maintenance Agreement shall be in the manner and form approved by the Borough Solicitor, and shall include all of the following:

1. that the Applicant make any repair or reconstruction of any improvement stipulated in the Maintenance Agreement which is specified by the Borough Council if needed because of faulty construction, workmanship, or materials, prior to acceptance of such improvement by the Borough,
2. that the Applicant maintain at his/her own cost all improvements stipulated in the Maintenance Agreement, up to a maximum period of 18 months from the date of acceptance or dedication by the Borough, except for any special purpose escrow or maintenance agreements required by the Borough,
3. that the applicant post 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, for a maximum term of 18 months from the date of acceptance of dedication, and
4. that the developer plow snow and maintain all streets until such time as the Borough may accept such streets.

- C. Public Utilities and Authorities. If water mains or sanitary sewer lines, or both and related apparatus or facilities are to be installed under the jurisdiction and under the rules and regulations of a public utility or municipal authority, 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. This amount of financial security shall not also be required by the Borough if it is required by such utility or authority.

808. MAINTENANCE GUARANTEE.

- A. Security. The Maintenance Guarantee shall be secured by the credit of any of the following:
1. An irrevocable and unconditional letter of credit of a Federal or State chartered lending institution,
 2. A restrictive or escrow account in a Federal or State chartered lending institution, or
 3. Such other financial security approved by the Borough Council (which approval shall not be unreasonably withheld).
- B. Terms. Such Maintenance Guarantee shall be in the form approved by the Borough Solicitor and Borough Council, payable to the Borough, to guarantee the maintenance and repair of the streets and other public improvements in the subdivision or land development for 18 months from the date of acceptance thereof by the Borough. The applicant shall prove to the satisfaction of the Borough Council that there will be an acceptable system for the long-term maintenance of any storm water detention basins.
- C. Amount. The amount of the Maintenance Guarantee shall be determined by the applicant's engineer, conditioned upon acceptance by Borough Council, but shall not exceed 15 percent of the actual cost of installation of such improvements.
- D. Release. After a maximum of 18 months from the date of acceptance of said improvements, the Borough shall release the Maintenance Guarantee to the developer (or party posting said Maintenance Guarantee) if all improvements are in satisfactory condition.

ARTICLE IX

RECORDING OF FINAL PLAN

901. RECORDING OF FINAL PLAN.

- A. Deadline. The Applicant is responsible to ensure that the Final Plan as approved by the Borough Council is recorded in the Office of the Recorder of Deeds of the County within 90 days of such final approval. If the Final Plan approval included official conditions that must be met prior to recording, then the plan shall be recorded within 90 days following the applicant proving to the Borough that the conditions have been met, up to a maximum total of 1 year following the final plan approval. In any case, an extension of these time periods may be granted in writing by Borough Council. If the Borough does not agree to transport the plans for recording, then the applicant shall send or deliver a receipt of the recording to the Borough Offices.
- B. At its option, the Borough may agree to record a Final Plan, in which case the applicant shall compensate the Borough for such costs.
- C. The Final Plan shall not be recorded unless the applicant proves that they have met all required conditions that the Borough Staff determine would impact the recorded Final Plan.

902. RECORD PLAN. The applicant shall provide one clear and legible paper copy and one mylar copy of the official Record Plan to the Borough, in addition to the type of copy required to be provided to the County. The Borough's copy shall be made after recording. Such Record Plan, at an absolute minimum, shall include all of the following:

- A. street right-of-ways,
- B. common open spaces,
- C. easements, and any covenants that the Borough required to be placed on the Final Plan,
- D. lot lines and lot dimensions,
- E. water lines, sanitary and storm sewer lines and stormwater drainage facilities,
- F. the required signatures of Borough officials and the JPC staff and
- G. whether the streets, any common open space and other proposed improvements are proposed to be offered or not offered for dedication to the Borough.

903. EFFECT OF RECORDING.

- A. Official Map. If the Borough has adopted or does adopt an official map, any streets and common open space on the Record Plan shall be considered to be part of that Official Map.

B. Private Improvements. Every street, park, or other improvement shown on a subdivision or land development plan that is recorded, as provided herein, shall be deemed to be a private street, open space, or improvement until such time it may be offered and officially accepted for dedication to the Borough, or is duly condemned.