

ARTICLE V

IMPROVEMENT CONSTRUCTION ASSURANCES

Section 501

Improvement Required. No project shall be considered in compliance with this Ordinance until the streets, street signs, sidewalks and walkways, gutters and curbs within street rights-of-way, buffer planting, shade trees, storm drainage facilities, sanitary sewer facilities for dedication (exclusive of laterals), water supply facilities (exclusive of laterals), fire hydrants, lot line markers, survey monuments, street lights, street trees and other improvements as may be required have been installed in accordance with this Ordinance.

SECTION 502

Plan Improvements.

502.01

Improvements Required. No plan shall be signed by the Board of Supervisors for recording in the office of the Lancaster County Recorder of Deeds unless all improvements required by this Ordinance have been installed in accordance with this Ordinance, except as provided in Section 503.

502.02

Improvement Construction. Upon approval of the improvement construction plans specified in this Ordinance, the applicant may construct the required improvements shown on the plan. The developer shall indicate the intent to construct the required improvements by executing the applicable memorandum of understanding to be submitted at the time an application is made for approval of a improvement construction plan.

502.03

Inspection of Required Improvements. As stipulated in the executed memorandum of understanding, the Township Engineer shall be responsible for inspection and approval of the required improvements. (See Appendix No. 14) The Township Engineer and developer shall agree upon a notification procedure and a schedule of inspections to be made during construction and upon completion of all improvements.

502.04

Recording of Final Plan. Upon completion of the required improvements and notification from the Township Engineer that all improvements have been completed in accordance with this Ordinance, the developer may proceed to submit final plans. Final plans shall be prepared and submitted in conformance with the requirements of this Ordinance. Upon review and approval of the final plans by the Board of Supervisors as stipulated in this Ordinance, the plans may be recorded in the Office of the Lancaster County Recorder of Deeds. The final plans shall be recorded before the sale of any lots or the construction and occupancy of buildings shown on the plans.

SECTION 503

Improvement Construction Guarantee. In lieu of the construction and completion of the improvements required by this Ordinance prior to recordation, the developer may deposit financial security in an amount sufficient to cover the costs of such improvements or common amenities. Said improvement construction guarantee shall be prepared in accordance with this Ordinance and is subject to the acceptance by the Board of Supervisors, or a municipal authority where applicable. The developer shall indicate the intent to provide an improvement construction guarantee by executing the applicable memorandum of understanding to be submitted as stipulated at the time application is made for approval of a final plan.

The administration of improvement construction assurances shall comply with the provisions of this Article and other applicable laws of the Commonwealth.

All guarantees shall be prepared by the developer in the form required by the Board of Supervisors, or the municipal authority where applicable.

503.01

Form of Financial Security. The following are acceptable forms of guarantees. All other forms of guarantees must be individually approved by the Board of Supervisors.

- A. Surety Performance Bond. A security bond from a surety bonding company authorized to do business in the Commonwealth of Pennsylvania. The bond shall be payable to Fulton Township, or to the municipal authority where applicable.
- B. Escrow Account. A deposit of cash either with (1) the Board of Supervisors, or with the municipal authority where applicable, or (2) in escrow with a Federal or Commonwealth chartered financial institution. In the case of an escrow account, the developer shall file, with the Board of Supervisors or municipal authority, an agreement between the financial institution and himself guaranteeing the following:
 - (1) That the funds of said escrow account shall be held in trust until released by the Board of Supervisors, or municipal authority where applicable, and may not be used or pledged by the developer as security in any other matter during that period.
 - (2) In the case of a failure on the part of the developer to complete said improvements, the institution shall

immediately make the funds in said account available to the Board of Supervisors, or to the municipal authority where applicable, for use in the completion of those improvements.

- C. Letter of Credit. An irrevocable commercial letter provided by the developer from a Federal or Commonwealth chartered financial institution or other reputable institution. This letter shall be deposited with the Board of Supervisors, or with the municipal authority where applicable, and shall certify the following:
- (1) The amount of credit.
 - (2) In case of failure on the part of the developer to complete the specified improvements within a time period specified in a written agreement between the Board of Supervisors, or municipal authority where applicable, the creditor shall pay to the Board of Supervisors, or to the municipal authority where applicable, immediately and without further action, upon presentation of a sight draft drawn on the issuing lending institution in an amount to which the Board of Supervisors or municipal authority is entitled, or upon presentation of the original letter of credit, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
 - (3) The letter of credit is irrevocable and may not be withdrawn, or reduced in amount, until release or partially released by the Board of Supervisors, or municipal authority where applicable.

503.02 Amount of Guarantee.

- A. 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 Board of Supervisors, or the municipal authority where applicable, 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 ninetieth (90th) day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the developer shall 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.

- B. 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 an engineer and certified by such engineer to be a fair and reasonable estimate of such cost. The Board of Supervisors, or municipal authority where applicable, upon the recommendation of the Township Engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and the Board of Supervisors or municipal authority are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another engineer chosen mutually by the Board of Supervisors 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 that a third engineer is so chosen fees for the services of said engineer shall be paid equally by the applicant or developer and the Board of Supervisors, or municipal authority where applicable.
- C. 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 each posting of 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 (1) year period by using the above bidding procedure.

503.03 **Protection of Final Phases.** In the case where development is projected over a period of years, the Board of Supervisors may authorize submission of final plats 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.

503.04 **As-Built Plan.** After final plan approval and upon completion of all required improvements, the developer shall submit an as-built plan showing the location, dimension and elevation of all improvements. Such plan shall indicate that the required grading, storm water management facilities and erosion and sediment control practices have been installed in

substantial conformance with the previously approved final plan. The as-built plan shall specify all deviations from the previously approved drawings. Two (2) copies of the plan shall be submitted to the Board of Supervisors.

503.05 Partial Release of Funds. As the work of installing the required improvements proceeds, the party posting the financial security may request the Board of Supervisors, or municipal authority where applicable, 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, or to the municipal authority where applicable, and shall be accompanied by as-built drawings. The Board of Supervisors, or the municipal authority where applicable, shall have forty-five (45) days from receipt of such request within which to allow the Township Engineer to certify, in writing, that such portion of the work upon the improvements has been completed in accordance with the approved plat. Upon such certification the Board of Supervisors, or municipal authority where applicable, shall authorize release by the bonding company or lending institution of an amount fairly representing the value of the improvements completed. If the Board of Supervisors or municipal authority fails to act within said forty-five (45) day period, the Board of Supervisors, or municipal authority where applicable, shall be deemed to have approved the release of funds as requested. Prior to final release at the time of completion and certification by the Township Engineer, the Board of Supervisors, or municipal authority where applicable, may require retention of ten percent (10%) of the estimated cost of the aforesaid improvements.

503.06 Release from Improvement Bond.

- A. When the developer has completed all of the necessary and appropriate improvements, the developer shall notify the Board of Supervisors, or the municipal authority where applicable, in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the Township Engineer. The Board of Supervisors, or the municipal authority where applicable, shall, within ten (10) days after receipt of such notice, direct and authorize the Township Engineer to inspect the improvements. A detailed report of the inspection shall be prepared and mailed to the Board of Supervisors or municipal authority within thirty (30) days of such authorization. A copy of the report shall also be mailed by registered or certified mail to the developer. The report shall contain the Township Engineer's recommendations of approval or rejection, either in whole or in

part, of any improvements. If any improvement is not approved by the Township Engineer, the Township Engineer shall report to the Board of Supervisors, or municipal authority where applicable, the conditions and reasons upon which the disapproval is based.

- B. The Board of Supervisors, or municipal authority where applicable, shall notify the developer within fifteen (15) days of receipt of the Township Engineer's report, in writing by certified or registered mail, of the decision to accept or not accept the improvements.
- C. If the Board of Supervisors or the municipal authority 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 from all liability, pursuant to its performance guaranty bond or other security agreement.
- D. If any portion of the said improvements shall not be approved or shall be rejected, the developer shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.
- E. Nothing herein, however shall be construed in limitation of the developer's right to contest or question by legal proceedings or otherwise, any determination.

SECTION 504

Inspection During Construction.

504.01

Inspections Required. The Board of Supervisors, or the municipal authority where applicable, shall require inspections of the plans for correctness, and inspections of the construction of the improvements. The Board of Supervisors or municipal authority may elect to perform inspections of the construction for any improvement that will be accepted under its jurisdiction, in which case the financial guarantee will be deposited in the name of the Board of Supervisors, or the municipal authority where applicable, by notifying the Board of Supervisors for each project that inspection responsibility will be assumed. The applicant shall agree to pay the cost of any such inspections. 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 Township Engineer or

consultant to the Board of Supervisors or the municipal authority when fees are not reimbursed or otherwise imposed on applicants.

- A. In the event the applicant disputes the amount of any such expense in connection with the inspection, the applicant shall within ten (10) working days of the date of billing, notify the Board of Supervisors, or the municipal authority where applicable, that such expenses are disputed as unreasonable or unnecessary. A subdivision or land development application or any approval or permit related to development shall not be delayed or disapproved due to the applicant's request over disputed engineer expenses.
- B. If, within twenty (20) days from the date of billing, the Board of Supervisors, or the municipal authority where applicable, and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant and the Board of Supervisors shall jointly, by mutual agreement, appoint another engineer to review the said expenses and make a determination as to the amount thereof which is reasonable and necessary.
- C. The engineer so appointed shall hear such evidence and review such documentation as the engineer in his or her sole opinion deems necessary and render a decision within fifty (50) days of the billing date. The applicant shall pay the entire amount determined in the decision immediately.
- D. In the event that the Board of Supervisors and applicant cannot agree upon the 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 engineer who has been retained by, or performed services for, the Township, or the municipal authority where applicable, or the applicant within the preceding five (5) years.
- E. The fee of the appointed 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 one thousand dollars (\$1,000) or more, the Board of Supervisors, or municipal authority where applicable,

shall pay the fee of the engineer, but otherwise each party shall pay one-half of the fee of the appointed engineer.

- F. The developer shall provide at least twenty-four (24) hours notice prior to the start of construction of any improvements that are subject to inspection.

SECTION 505

Dedication of Improvements. All improvements shall be deemed to be private improvements and only for the benefit of the specific development until such time as the same have been offered for dedication and formally accepted by the Board of Supervisors or municipal authority by ordinance, resolution, deed, or other formal document. No responsibility of any kind with respect to improvements shown on the final plan shall be transferred until the improvements have been formally accepted. No improvement shall be accepted for dedication except upon submission of as-built plans by the developer and inspection of the final construction.

SECTION 506

Maintenance Guarantee. When the Board of Supervisors, or a municipal authority where applicable, has accepted dedication of certain improvements, it may, at its discretion, require the applicant to submit 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 plans. Such guarantee shall be posted for a period not to exceed eighteen (18) months from the date of acceptance of dedication of said improvements. Such financial security shall be of the same type as required to guarantee construction of improvements, and shall not exceed fifteen percent (15%) of the actual cost of installation of said improvements.