

# ARTICLE V

## IMPROVEMENT CONSTRUCTION ASSURANCES

### Section 501 Completion of Improvements or Guarantee Thereof

#### Prerequisite to Final Plan Approval

- A. No plan shall be finally approved unless the streets shown on such plan have been improved as may be required by this Ordinance, and any walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm drains, storm water management facilities, or other improvements as may be required by this Ordinance have been installed in accordance with this Ordinance, except that the surface course of streets shall not be completed until such time as ninety (90) percent of the lots in the subdivision or land development have been improved by the construction of a dwelling if approved for residential development or by the construction of the proposed commercial or industrial structures if the lots are approved for such uses.
- B. In lieu of the construction and completion of the improvements required by this Ordinance as a condition for final plan approval, the developer may deposit with the Borough and/or the Authority, as applicable, a letter of credit, or other financial security authorized by the Municipalities Planning Code and acceptable to the Council and/or the Authority in an amount equal to one hundred ten (110) percent of the estimated cost of the required improvements at a time ninety (90) days following the date scheduled for completion of the respective improvements by the developer.
- C. The amount of financial security required by the Borough shall be based upon an estimate of the cost of the improvements, submitted by a developer and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The estimated cost of the surface course shall be computed separately from the estimated cost of completing the other improvements and shall be based upon the developer's projected timetable for completion of the development. The Borough, upon the recommendation of the Borough Engineer, may refuse to accept such estimate for good cause shown. If the developer and the Borough are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Borough and the 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 Borough and the developer.
- D. Annually the Borough and/or the Authority may adjust the amount of required financial security by redetermining the estimated cost for completion of the uncompleted improvements as of the expiration of the ninetieth (90th) day after either date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the Borough may require the developer to post additional security in order to insure that the financial security equals one hundred ten (110) percent of the estimated cost of the Borough and/or the Authority completing the improvements at a time ninety (90) days following the date scheduled for completion or alternatively reduce the required security so that it equals such amount. Any additional security shall be posted by the developer within thirty (30) days after being notified of the same. The amount of financial security required by

the Authority shall be computed in accordance with the Authority's rules and regulations.

- E. As the work of installing the required improvements proceeds, the party posting the financial security may request the Borough to release or authorize the release from time to time, such portions of the financial security necessary for the payment to the contractor or contractors performing the work. Any such request shall be in writing and addressed to the Council and the Council shall have forty-five (45) days from the receipt of such request to allow the Borough Engineer to certify, in writing, to the Council that such portion of the work has been completed in accordance with the approved plan. Upon such certification, the Council shall authorize release from the required financial security of an amount as estimated by the Borough Engineer as representing the value of the work completed.
- F. The value of the work completed shall be determined by subtracting one hundred ten (110) percent of the estimated cost of the completion of the remaining uncompleted work from the total amount of security deposited.
- G. At such time as ninety (90) percent of the lots in the subdivision have been improved as set forth above, or at the expiration of the time agreed to by the applicant and the Council for completion of all improvements excepting the surface course has been completed, less than ninety (90) percent of the lots have been so improved, the Borough may notify the developer to complete the surface course within sixty (60) days from the date of such notice. In computing the sixty (60) day requirement, the period from October 1 to April 1 shall not be counted.
- H. If at the time the surface course is completed, ninety (90) percent of the lots are not improved as set forth above, the developer shall post with the Borough financial security in an amount equal to fifteen (15) percent of the reasonable cost of the surface course as security to guarantee that damages to the road or street would not occur during the completion of the improvements on the unimproved lots in such developer's subdivision or land development. The Borough shall hold such financial security and utilize it to pay for the repair of any damage occurring to the road during the period between the commencement of improvements on any particular unimproved lot and the completion of such improvements irrespective of whether or not it can be established that the damage to the road was caused by contractors or other persons working in and about the construction of such improvements. The financial security shall be in a form acceptable to the Borough.

## **Section 502 Release from Financial Security**

- A. When the developer has completed all of the improvements as shown on the final plans, the developer shall notify the Council, in writing, by certified or registered mail, of the completion of the aforesaid improvements, enclosing therewith certification by the engineer responsible for the design of the improvements that they have been installed as designed, and shall send copies of the notice and certification to the Borough Engineer. All requests shall include as-built plans as specified in Section 508 and of any other improvements to be dedicated to the Borough and/or the Authority and of all streets, whether or not such streets shall be dedicated.
- B. The Council shall, within ten (10) days after receipt of such notice, direct and authorize the Borough Engineer to inspect all of the aforesaid improvements. The Borough Engineer shall thereupon file a report, in writing, with the Council 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 Borough Engineer of the aforesaid authorization from the Council,

said 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 Borough Engineer, said report shall contain a statement of the reasons for such non-approval or rejection. Improvements shall not be considered completed unless the developer can demonstrate compliance with the requirements of this Ordinance, and all other applicable ordinances, statutes and regulations.

- C. The Council shall notify the developer within fifteen (15) days of receipt of the engineer's report, in writing by certified or registered mail, of its action with relation thereto. If the Council or Borough Engineer fails to comply with the time limitation provisions contained herein, or such time limitations as contained in the Municipalities Planning Code, whichever requirements shall contained a longer time period for action by the Borough, all improvements will be deemed to have been approved and the developer's posted financial security shall be released.
- D. If any portion of the said improvements shall not be approved or shall be rejected by the Council, 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 of the Council or Borough Engineer.

### **Section 503 Remedies to Effect Completion of Improvements**

In the event that any improvements that may be required have not been installed as provided in this Ordinance or in accordance with the approved final plan, the Council may enforce any letter of credit or other financial security by appropriate legal and equitable remedies. If proceeds of such financial security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the Council may, at its option, install such improvements in all or part of the subdivision or land development and may institute appropriate legal or equitable action or recover the monies necessary to complete the remainder of the improvements. All the proceeds, after deducting the costs of collection, whether resulting from the financial 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 Borough purpose.

### **Section 504 Inspection During Construction**

The Borough and/or the Authority shall inspect the improvements during construction. The developer shall pay the cost of any such inspection in accordance with the provisions of Article V of the Municipalities Planning Code. 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. All inspections of completed items shall be requested, in writing, at least forty-eight (48) hours in advance of the inspection time and date.

It is generally required that the following phases of site construction have mandatory inspection. This general list of phases may be amended by mutual agreement of the Borough and developer when the site requires special construction procedures. The inspection schedule must be recorded with the final plan or shown on the approved improvement construction plan.

A. **General Site Construction**

1. Upon completion of preliminary site preparation including stripping of vegetation, stockpiling of topsoil and construction of temporary erosion and sedimentation control devices.
2. Upon completion of rough grading, but prior to placing topsoil, permanent drainage, or other site development improvements and ground covers.
3. During the construction of permanent storm water management and BMP facilities.
4. Upon the final completion of permanent storm water management and BMP facilities, including the establishment of ground covers and plantings.
5. After review of the as-built drawings, required by Section 508, but prior to final release of the financial guarantee for completion of final grading, vegetative controls required by the BMP standards, or other site restoration work.

B. **Street Construction**

1. **Preparation of Road Subgrade.** At the time of this observation, the subgrade should be proof rolled and the proposed crown and grade should be checked. It is recommended that a developer's/contractor's representative accompany the observer when the crown and grade are checked. Proof rolling should be performed with a fully loaded, tandem-axle dump truck.
2. **Placement and Compaction of Road Subbase.** At the time of this observation, the depth of subbase should be checked after compaction, the subbase should be proof rolled in the same manner as the subgrade and the crown and grade should be checked again. This observation must occur prior to any binder or base course being placed.
3. **Placement and Compaction of the Binder/Base Course.** At the time of this observation, the depth of the binder/base course should be checked, ambient temperature should be monitored (this is important in early spring and late fall days when the temperature can go below acceptable limits), the temperature of the bituminous material should be checked (if possible), and it is recommended that copies of the weight slips for each truckload are obtained. The crown and grade should also be checked again. This observation must occur prior to the wearing course being placed.
4. **Placement and Compaction of the Wearing Course.** At the time of this observation, the guidelines for the placement and compaction of the binder/base course should be followed.

- C. In addition to the above outlined observations, additional observations will be made at the request of the developer for reduction of financial securities. Random observations should be made at the frequency desired by the municipality. At the time of any of the above listed observations, all ongoing construction (i.e. storm drainage, sanitary sewer, water, erosion control, etc.) should also be checked for compliance with the approved plans and the findings reported. Since the above inspections are mandatory, it is recommended that requests for reduction of financial guarantee to be submitted to coincide with the above inspections.

## **Section 505 Offers of Dedication**

- A. Any offer to dedicate any street or portion thereof shall be made on forms provided by the Borough, along with all required supporting documentation and required fees. Offers for dedication may be submitted to the Borough at any time during the calendar year, however, the Borough will not formally act upon any offer of dedication prior to April 15 nor later than September 1 of any calendar year.
- B. The offer to dedicate streets, parks or other areas or portions of them does not impose any duty upon the Borough and/or the Authority concerning maintenance or improvement until the proper authorities of the Borough and/or the Authority have made actual acceptance of the dedication by ordinance or resolution or by entry or improvement.
- C. Where the Borough accepts dedication of all or some of the required improvements following completion, the Borough 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 for a term of eighteen (18) months from the date of acceptance of dedication. Said financial security shall be of the same type as otherwise required in Section 501 of this Ordinance with regard to installation of such improvements and the amount of such financial security shall not exceed fifteen (15) percent of the actual cost of the installation of the said improvements.
- D. Where the Authority accepts dedication of some or all of the required improvements, the Authority may require the posting of financial security in accordance with its rules and regulations and applicable law.

## **Section 506 Effect of Plan Recording on Dedication and Reservations**

Recording of the final plan after approval of the Borough Council has the effect of an irrevocable offer to:

- A. Dedicate all streets and other public ways to public use, unless such streets are indicated on said plan as private streets.
- B. Dedicate all neighborhood parks and all areas shown on the plan as being local recreation sites to public use.

## **Section 507 Maintenance of Streets**

The developer shall maintain all streets in the subdivision or development in travelable condition, including the prompt removal of snow therefrom, until such time as the streets are accepted by the Borough as part of the Borough highway system; or, if such streets are not to be dedicated, until a homeowners' association or other entity responsible for the maintenance of the streets has been formed and affirmatively accepts responsibility therefore.

## Section 508 As-Built Plan

Prior to the final release of the financial security, the developer shall provide the Borough with one (1) Mylar and two (2) prints of the final as-built plan showing the following:

- A. Actual location of all concrete monuments which were set at all angle breaks, points of curvature and tangents around the perimeter of the total tract. When the outside perimeter of a tract falls within or along an existing road right-of-way, then the right-of-way of that roadway shall be monumented at the above referenced points.
- B. Actual location of all iron pins or drill holes in curbs for all individual lot lines.
- C. Actual cul-de-sac radius.
- D. Actual horizontal and vertical location of cartway centerline versus right-of-way centerline.
- E. Actual location of floodplain by elevation and dimension from property line.
- F. Actual location and cross section of swales and accompanying easements.
- G. Actual horizontal and vertical location of storm water management facilities including type and size of storm drainage pipes.
- H. Detention basin:
  - 1. Actual contours of the detention basin.
  - 2. Actual outlet structure details including type, size and inverts of outlet pipes.
  - 3. Actual elevation of the embankment and emergency spillway.
  - 4. A table showing the stage/storage/discharge curve for the constructed conditions.
  - 5. A table providing a comparison of the approved design vs. the as-built discharge rates from all detention facilities.