

## ARTICLE VIII

### IMPROVEMENTS GUARANTEES

#### 801. GUARANTEE OF IMPROVEMENTS INSTALLATION REQUIRED.

801.A. Before approving any subdivision or land development plan for recording, the Planning Commission shall require that the City be assured by means of proper Financial Security that the improvements required by this Ordinance will be installed in strict accordance with the standards and specifications of this Ordinance, except:

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 City shall as deemed necessary require the developer to provide adequate insurance, hold harmless agreements, an escrow account to cover the costs of inspections and a professional estimate of the costs of the improvements (to be used to establish the amount of the inspections escrow).

801.B. Purpose of Security. The security required by this Article shall stand as security for compliance with all City ordinances, other laws, covenants, stipulations, conditions and resolutions applicable to the subdivision or land development for which it is filed.

801.C. In any case, no construction of buildings or sales of any individual lot or condominium unit within a subdivision or land development shall take place unless:

1. there is on file, with the City, current duly executed and approved financial security, or
2. all rough grading is complete and all required public improvements, utilities, streets, drainage facilities, sewers and any street lights have been completed and accepted by the Governing Body.

#### 802. IMPROVEMENTS TO BE PROVIDED BY THE APPLICANT.

802.A. The applicant for a subdivision, or the future purchaser of the entire subdivision shall have the primary responsibility to ensure installation of all improvements required by this Ordinance, unless the Planning Commission specifically approves certain improvements being made the responsibility of future purchasers of individual lots.

802.B. The City Engineer or other City 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 land developer, through use of an escrow account.

#### 803. DEVELOPMENT AGREEMENT.

803.A. Development Agreement.

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 Final Plan shall be required to enter into a legally binding Development Agreement with the City prior to recording of the Final Plan, unless: a) the applicant agrees to meet Section 801 concerning the construction of all improvements prior to the construction of any buildings or the sale of any lots or homesites, or b) the Governing Body determines that a Development Agreement is not necessary.

2. The Development Agreement shall guarantee the installation of said improvements in strict accordance with all City requirements.
3. See Section 801.A. concerning financial security.

803.B. Terms of Development Agreement. The Development Agreement shall be acceptable in legal form to the City Solicitor and shall be acceptable in content to the Governing Body. The City may require that a Development Agreement include any of the following items, where applicable, and such additional items as are necessary to carry out this Ordinance:

1. The construction depicted on the approved plans, listed in itemized format, including all approved streets, drainage facilities, utility lines and other improvements.
2. A work schedule setting forth the beginning and ending dates of such work tied to the construction of the development, and provisions to allow proper inspection by the City Engineer.
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 City from liability related to such work. A copy or other evidence of such liability coverage shall be provided to the City prior to such work.
5. Provisions requiring that the applicant and/or other responsible entities ensure that erosion, sedimentation and stormwater management plans are complied with.
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.
8. Provisions for the developer to re-imburse the City for all reasonable engineering 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 Governing Body may require to carry out the provisions of this Ordinance.
11. Signatures. The development agreement shall be signed by all responsible landowners and/or developers.

803.C. Ownership of Land and Guarantee.

1. A certificate of ownership in the form of Appendix B 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 security agreement.

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 prior approval by the Governing Body. Any such conveyance shall automatically require that the new landowner and/or developer fully assume all applicable responsibilities under the development agreement and post all the appropriate security agreements.

803.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:

804.A. **Security.**

1. The Guarantee shall be secured by 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 City (which approval shall not be unreasonably withheld), but not including a second or third mortgage on unimproved lands.
2. Such approved security shall provide for, and secure to the public, the completion of any improvements which may be required within the date fixed in the Development Schedule for the completion of such improvements. It is the responsibility of the developer to ensure that such security remains in effect during the entire time period of construction of improvements. The City Staff may withhold or suspend the issuance of permits if such security lapses.
3. Such financial security shall be posted with an approved institution or entity authorized to conduct such business within Pennsylvania.
  - a. The Mayor may require that evidence be provided that such institution or entity has adequate and sufficiently secure assets to cover the security.
  - b. The City shall be the authorized signatory on any account in which the escrow funds are held.

804.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 803).
2. The cost of the improvements shall be established by an estimate prepared by a PA. Registered Professional Engineer, which shall be reviewed by the City Engineer, within the arbitration process permitted by the PA. Municipalities Planning Code.

3. **Inflation.** 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 may be increased by a maximum of 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 procedure.
4. **Inspection Fees.** The amount of financial security may also be required to include an additional 5 percent of the estimated cost of completion of the work to guarantee payment of inspection fees and related engineering costs. In any case, the applicant shall compensate the City for all actual costs to the City of the inspections and related engineering, based upon established hourly rates that include compensation for employee benefits. If such costs are higher than the 5 percent security, the applicant shall also fund the difference. If such costs are lower than the 5 percent security, then the remaining funds shall be released by the City.

804.C. **Multi-Year or Multi-Stage Development.** In the case where development is projected over a period of years, the Planning Commission may authorize submission of final plans by phases/stages of development subject to such requirements or improvement guarantees concerning future improvements as it finds necessary for the proper functioning of each phase and for the eventual development as a whole. Such phasing may also be approved through a Development Agreement.

#### **805. APPROVAL OF IMPROVEMENTS.**

805.A. **In General.** As the work of installing the required improvements proceeds, the party posting the financial security may from time-to-time request the City to authorize the release of portions of the financial security related to the work that has been completed.

805.B. **Notice by Developer of Work on Improvements.**

1. The developer or his/her representative shall provide a minimum of 3 days notice to the City Engineer's Office (or other inspection official designated by the Mayor) prior to beginning each major facet of construction, in order to allow the scheduling of inspections.
2. When an improvement has been completed, the developer shall notify the City and request release of related financial security in writing to City Council by certified or registered mail. The developer shall send a copy of letter to the City Engineer at the same time.

805.C. **Engineer's Report.**

1. Within 30 days of the receipt of such request, the City Engineer shall submit a written report certifying which improvements have been completed in accordance with the approved plan to the Mayor 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 site inspections and shall recommend approval or rejection of the improvements, either in whole or in part.
3. The City Engineer shall state if any of the improvements related to the developer's request for release of funds have not been satisfactorily completed as approved.

805.D. Decision by the Governing Body.

1. After receiving the Engineer's Report (but not later than 45 days after the receipt of the request), the Mayor shall review the City Engineer's report and shall authorize the release of funds estimated by the City Engineer to fairly represent the value of the improvements satisfactorily completed.
2. The City shall be deemed to have approved the release of funds as requested if the City fails to act within 45 days of receipt of the developer's request.
3. Until final release (completion of all improvements), the City may require that a maximum of 10 percent of the cost of each completed improvement be retained.
4. The City Engineer shall notify the developer in writing by certified or registered mail of the decision.

805.E. Completion of Unapproved Improvements. The developer shall satisfactorily complete any required improvements that the City determines are not satisfactory or complete. Upon completion, the applicant may request approval in conformance with the procedures specified in this Section 805.

805.F. Final Release.

1. When the developer has satisfactorily completed all of the required improvements, the developer shall request Final Release in conformance with the procedures specified in this Section 805. See time limitations and procedures in Section 510 of the PA. Municipalities Planning Code.
2. Such Final Release shall include all moneys retained under Section 805.D.3.

805.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 City or the City Engineer.

805.H. Certificates of Occupancy and Completion of Improvements.

1. A temporary or final certificate of occupancy shall not be issued and a structure shall not be occupied unless all principal buildings have access to a clearly permanently passable street with at least a complete paving base course and any required curbing installed.
2. In addition to part "H.1." above, no final certificate of occupancy shall be issued until the structure is completed as approved with service by all required utilities and with all access onto a street completed to required standards, if applicable.

806. REMEDIES TO EFFECT COMPLETION OF IMPROVEMENTS.

806.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 City 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 security, including but not limited to seizure of undeveloped lots, 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 of the security.

806.B. **Completion by City.** If the proceeds of such security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the City 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.

806.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 and closely related administrative expenses.

### **807. MAINTENANCE GUARANTEE.**

807.A. **Maintenance Guarantee Required.** All applicants proposing any subdivision or land development which provides for the public dedication of improvements required by this Ordinance shall be required to provide a legally binding Maintenance Guarantee to the City prior to acceptance of dedication of the improvements by the City. In most cases, this Guarantee will be part of the Security Agreement.

807.B. **Terms of Maintenance Guarantee.** The Maintenance Guarantee shall be acceptable in legal form to the City Solicitor and in content to the Governing Body, 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 Governing Body if needed because of faulty construction, workmanship, or materials, prior to acceptance of such improvement by the City,
2. that the Applicant maintain at his/her own cost all improvements stipulated in the Maintenance Agreement, including a maximum period of 18 months after the date of dedication, unless a lesser period is specified otherwise,
3. that the applicant post financial security to secure structural integrity of and proper functioning of such required improvements in accordance with the design and specifications as depicted on the final plan, for a maximum period of 18 months after the date of dedication, and
4. that the developer plow snow and maintain all streets until such time as the City may accept such streets.

807.C. **Public Utilities and Authorities.** If water mains and/or sanitary sewer lines and related 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 City if it is required by such utility or authority.

- 807.D. Type of Security. The Maintenance Guarantee shall be secured by the same form of security as is permitted for the improvements guarantees.
- 807.E. Security. The financial security shall be payable to and enforceable by the City of Scranton.
- 807.F. Amount. The amount of the Maintenance Guarantee shall be determined by the applicant's engineer, conditioned upon acceptance by the City, but shall not exceed 15 percent of the actual cost of installation of such improvements.
- 807.G. Release. After a maximum of 18 months from the date of completion of said improvements, the City shall release the Maintenance Guarantee to the developer (or party that posted the guarantee) if all improvements are in satisfactory condition, as determined by the City.