

## Part 6

## Contracts, Fees and Contributions

Section 601. Improvement Guarantees and Contracts.(a) Completion of Improvements or Guarantees.

(1) No subdivision or land development plan shall be granted final approval unless the streets, curbs, gutters, sidewalks, walkways, street lights, water mains, sanitary sewers, fire hydrants, storm sewers, storm water detention and/or retention basins, other related drainage facilities, shade trees, buffer or screen plantings, recreational facilities, open space improvements and other infrastructure improvements as required by this Chapter, have been provided and installed in accordance with this Chapter.

(2) In lieu of the completion of any improvements which may be required as a condition for the final approval of the subdivision or land development plan, including improvements and fees required by this Chapter, the applicant shall deposit with the Township an amount as hereinafter calculated to cover the costs of such required improvements or common amenities, including but not limited to streets, curbs, gutters, walkways, street lights, water mains, sanitary sewers, fire hydrants, storm sewers, storm water detention and/or retention basins, other related drainage facilities, shade trees, buffer or screen plantings, recreational facilities, open space improvements and other required improvements.

(3) A note shall be provided on all Plans indicating that all improvements shall be located, designed, installed and/or constructed in accordance with all standards specified by the Township. The note shall also stipulate that all improvements shall be reviewed, inspected and approved by the Township Engineer prior to the issuance of any building permits and/or release of funds from escrow.

(b) Certification of Approval.

(1) When requested by the applicant to facilitate financing, the Board of Supervisors shall furnish the applicant with a signed copy of a resolution indicating approval of the Final Plan contingent upon the applicant obtaining satisfactory financial security and executing a development agreement.

(2) The Final Plan shall not be signed nor recorded until the financial security is tendered and a development agreement is executed. The resolution or letter of contingent approval shall expire and be deemed to be revoked if the financial security is not tendered and the development agreement is not executed within ninety (90) days of the date of the resolution or contingent approval. The Board of Supervisors may, at its discretion, grant a written extension which shall be placed in writing at the request of the applicant.

(c) Acceptable Security. In addition to cash deposits and escrow accounts, Federal or Commonwealth chartered lending institution irrevocable letters of credit extending for a term of one (1) year beyond completion of all improvements and restrictive or escrow accounts in such lending institution shall be deemed acceptable financial security for the purposes of securing the completion of the required improvements. Such

financial security shall be posted with the Township by a bonding company or Federal or Commonwealth chartered lending institution chosen by the applicant, provided such bonding company or lending institution is authorized to conduct business within the Commonwealth of Pennsylvania. 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.

(d) Amount of Security.

(1) 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 applicant, and all administrative and engineering inspections, fees, costs and expenses.

(2) The Township may adjust the amount of the financial security on an annual basis by comparing the actual cost of the improvements which have been completed and the estimated cost for completion of the remaining improvements as of the expiration of the ninetieth (90<sup>th</sup>) day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the Township shall require the applicant to post additional security in order to assure that the financial security equals the one hundred ten percent (110%) and administrative and engineering costs as specified above. Any additional security shall be posted by the applicant.

(3) The amount of required financial security shall be based upon an estimate of the cost of completion and inspection of the required improvements, submitted by the applicant or applicants and prepared by a professional engineer licensed as such in the Commonwealth and certified by such engineer to be a fair and reasonable estimate of all such costs.

(4) The Township, upon the recommendation of the Township Engineer, may refuse to accept such estimate for good cause shown. If the applicant or applicants and the Township are not able to agree upon 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 applicants. The estimate certified by the third engineer shall be presumed fair and reasonable.

(e) Increases in the Amount of Security. If the applicant requires more than one (1) year from the date of posting the financial security to complete the required improvements, the amount of financial security shall be increased by an additional ten percent (10%) for each one (1) year period or portion thereof beyond the first anniversary date from posting of financial security or to an amount not exceeding one hundred ten percent (110%) of the cost of completion and inspection of the required improvements as reestablished on or about the expiration of the preceding one (1) year period by using the procedure described above.

(f) Completion in Stages. In the case where development is projected over a period of years, the Township may at its discretion authorize approval of Final Plans by sections, stages or phases of development with the understanding that no sale of lots and no work within the areas reserved from development may commence until the required contracts are signed and the financial security posted with respect to those areas reserved from development. The Township shall also have the

right to impose additional requirements and conditions in connection with the phases as they are approved so as to assure that each section or phase will not be dependent for access or other improvement or common amenity upon completion of improvements in the subsequent phase or stage.

(g) Releases of Escrow. 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. 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 the Township Engineer shall certify, in writing, to the Township whether such portion of the improvements has been completed in accordance with the approved Plan and applicable specifications. Upon certification of completion, the Township shall authorize release by the bonding company or lending institution of an amount as estimated by the Township Engineer fairly representing the value of the improvements completed or, if the Township fails to act within said forty-five (45) day period, the Township shall be deemed to have approved the release of funds as requested.

(h) Retention of Ten Percent. The Township shall, prior to release at the time of completion and certification by the Township Engineer, require retention of ten percent (10%) of the estimated cost of the required improvements.

(Ordinance 135, November 18, 1992, Section 601; as amended by Ordinance 165, April 26, 1999, Section 23)

Section 602. Acceptance of Streets and Other Improvements.

(a) The Board of Supervisors shall at its discretion accept a part or all of the required improvements if satisfied that the applicant has complied with the approved Plan and all specifications and ordinances of the Township.

(b) The applicant shall furnish the Township with legal descriptions for all roads and easements. In addition, the applicant shall provide two (2) complete sets of prints of the completed required improvements, including drainage, profiles and utilities; and pay all costs for the Clerk of Courts and Recorder of Deeds of Berks County regarding the petition and resolution of the Board of Supervisors for its acceptance of the required improvements and any deed of dedication for the same.

(c) Unless permitted by the Township, no roads or other subsequent improvements will be accepted by the Township during the period from October 15 to April 15 of each year.

(Ordinance 135, November 18, 1992, Section 602)

Section 603. Maintenance Guarantee. Where the Township accepts dedication of all or some of the required improvements following completion, the Township shall require the posting of financial security to secure the structural integrity of said improvements as well as the functioning of said improvements in accordance with the design standards and specifications as shown on the Final Plan. The maintenance period shall be eighteen (18) months from the date of acceptance of dedication. The financial security shall be of the same type as described previously in this Chapter. The amount of financial security for maintenance shall be fifteen percent (15%) of the actual cost of the installation of said improvements. (Ordinance 135, November 18, 1992, Section 603)

Section 604. Public Utilities and Municipal Authorities. 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 Township, 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 the Township. (Ordinance 135, November 18, 1992, Section 604)

Section 605. Final Release from the Improvement Bond.

(a) Procedural Requirements.

(1) When the applicant has completed all of the necessary and appropriate improvements, the applicant shall notify the Township, in writing, by certified or registered mail, return receipt requested, postage prepaid, of the completion of the required improvements and shall send a copy thereof to the Township Engineer. The Township shall, within ten (10) days after receipt of such notice, direct and authorize the Township Engineer to inspect all of the required improvements. The Township Engineer shall thereupon file a report, in writing, with the Township and shall promptly mail a copy of the same to the applicant by certified or registered mail, return receipt requested, postage prepaid. The report shall be made and mailed within thirty (30) days after receipt by the Township Engineer of the aforesaid authorization from the Township; and said report shall be detailed and shall indicate approval or rejection of said improvements, or any portion thereof.

If the improvements are not approved or shall be rejected by the Township Engineer, said report shall contain a statement of reasons for such non-approval or rejection. The Township shall notify the applicant, within fifteen (15) days of receipt of the Engineer's report, in writing, by certified or registered mail, return receipt requested, postage prepaid, of the action of the Township.

(2) If the Township or the Township Engineer fails to comply with the time limitation provisions contained within this Chapter, all improvements will be deemed to have been approved and the applicant shall be released from liability for installation, pursuant to its performance guarantee bond, or other security agreement, but shall be liable for and shall provide a maintenance guarantee as otherwise provided for herein.

(3) If any portion of said improvements shall not be approved or shall be rejected by the Township, the applicant shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined above, shall be followed.

(b) Reimbursement of Inspection Expenses. The applicant shall reimburse the Township for the reasonable and necessary expenses incurred for the inspection of the improvements. Fees shall be based on a fee schedule adopted by resolution of the Board of Supervisors from time to time.

(c) Remedies to Effect Completion of Improvements. In the event that any required improvement have not been installed as provided for in these regulations, or in accordance with the approved Final Plan, the Township shall have the power to enforce any corporate bond, or other security, by appropriate legal and equitable remedies. If the proceeds of such bond, or other security, are insufficient to pay the cost of installing or making repairs or corrections to all of the improvements covered by said security, the Township may, at its option, install part of

or all such improvements in the subdivision or land development and may institute appropriate legal action to recover the monies necessary to complete the remainder of the improvements.

(d) Improvement Contract. In addition to the posting of security, the applicant shall be required to enter into a contract with the Township, in a form acceptable to the Township Solicitor, covering the completion of the required improvements. The contract shall also provide for engineering inspections, insurance, reimbursement of expense to the Township, procedure upon default, and other subjects deemed necessary by the Township Solicitor to ensure proper and reasonable development of the land.

(Ordinance 135, November 18, 1992, Section 605)  
Section 606. Contributions and Fees.

(a) The applicant shall reimburse the Township for all reasonable administrative and professional expenses, including but not limited to engineering, legal and/or consultant fees. Prior to the filing of a Preliminary Plan, and prior to the filing of a Final Plan, the applicant shall pay to the Township the appropriate non-refundable filing fee and an escrow deposit to defray the professional expenses incurred by the Township in accordance with the fee schedule adopted by the Board of Supervisors. Thereafter, as the escrow deposit for expenses is expended, the applicant shall make further deposits upon notice from the Township until approval of the Plan. Upon approval of the Final Plan, the Township shall refund any uncommitted portion of the deposit remaining after expenses incurred by the Township have been paid in full by the applicant.

To the engineering and legal fees required to be paid to the Township by this Part, there shall be added a percentage of these costs (in accordance with the fee schedule adopted by the Board of Supervisors from time to time) as reimbursement to the Township of the costs incurred by the Township for the collection of such fees and the disbursement of the same to the Township Engineer and the Township Solicitor.

(b) All fees and contributions which may be required for transportation improvements, recreation facilities, community facilities and/or other infrastructure improvements shall be paid by the applicant prior to final approval of the subdivision or land development plan.

(Ordinance 135, November 18, 1992, Section 606)