

# *article VII*

## *Public Improvements*

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### **SECTION 700 CONSTRUCTION REQUIRED**

- A. The applicant shall construct all roads, streets, or alleys, and all other public improvements, including grading, paving, curbs, gutters, sidewalks, street lights, fire hydrants, water mains, street signs, shade trees, storm drainage facilities, sanitary sewers, landscaping, traffic control devices, open space and restricted areas, and erosion and sediment control measures in conformance with the final plan as approved, the applicable provisions of the Pennsylvania Department of Transportation Specifications, or latest revision, and all other applicable regulations.
- B. No plat shall be finally approved for recording, and no building permits shall be issued until the developer has completed all required improvements or has provided a performance guarantee in accordance with Section 313 hereof.

### **SECTION 701 INSPECTIONS**

- A. All land disturbance work shall be performed in accordance with an inspection and construction control schedule approved by the Borough Engineer. No work shall proceed to a subsequent phase until inspected and approved by the representing agent of the Borough, who shall then file a report thereon with the Borough. The construction or installation of all public improvements shall at all times be subject to inspections by representatives of the Borough. If such inspection reveals that work is not in accordance with approved plans and specifications, that construction is not being done in a satisfactory manner, or that erosion or sediment controls are failing to prevent accelerated erosion or water or the sediment from leaving the site of construction, the Borough Engineer or the Code Enforcement Officer shall be empowered to require corrections to be made and when necessary, shall issue a cease and desist order, which shall provide that no further construction shall take place on the site including construction on buildings for which permits are held by the developer except that construction necessary to remedy the defects cited. The cease and desist order may include any or all of the following sanctions:
  - 1. That no lot in the subdivision shall be conveyed or placed under agreement of sale;
  - 2. That all construction of any lot for which a building permit has been issued shall cease; and/or
  - 3. That no further building permits for any lots, buildings or structures shall be issued.
- B. The said cease and desist order shall be terminated upon the determination by Borough representatives that the said defects or deviations from plan requirements have been corrected.

- C. After commencement of initial earthmoving operations, the Borough Engineer or his representing agent shall make inspections. Such inspections are at the discretion of the Borough Engineer and may include the following points in the development of the site, or of each stage thereof;
1. Upon completion of stripping, the stockpiling of topsoil, the construction of temporary stormwater management and erosion control facilities, disposal of all unsuitable materials, and preparation of the ground.
  2. Upon completion of rough grading, but prior to placing topsoil, installing permanent drainage or other site improvements, or establishing covers.
  3. During construction of the permanent public facilities, at such time(s) as specified by the Borough Engineer.
  4. Upon completion of permanent stormwater management facilities, including established ground covers and plantings for that purpose.
  5. Upon completion of final grading, vegetative control measures, and all other site restoration work undertaken in accordance with the approved plan and permit.
  6. The Borough Engineer may make random inspections as he deems necessary and appropriate.
- D. Underground pipes, structures, subgrades or base course shall not be covered until inspected and approved by the Borough. The Borough Engineer or his representing agent shall make inspections of the site. Such inspections at the discretion of the Borough Engineer may be effected as follows:
1. Excavation and completion of grade.
  2. Excavation, installation, and completion of drainage, structures, community sewage systems or water supply systems.
  3. Before placing first base course.
  4. Before binder course is put in place.
  5. Before wearing course is put in place.
  6. Final inspection shall occur in accordance with Section 702, Release From Performance Guarantee.
- E. The developer shall notify the designated representatives of the Borough at least seventy-two (72) hours in advance of commencement of any construction operations requiring an inspection.

- F. In the review of any stormwater management plan, the Borough Engineer shall have discretion to modify or waive the otherwise applicable inspection schedule called for in this section.
- G. The Borough Council may prescribe that the applicant shall reimburse the Borough for the reasonable and necessary expense incurred for the inspection of improvements. Such reimbursement shall be based upon a schedule established by resolution. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the Borough Engineer or consultant including wetland consultants for work performed for similar services in the Borough, but in no event shall the fees exceed the rate or cost charged by the engineer or consultant to the Borough when fees are not reimbursed or otherwise imposed on applicants.
1. In the event the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, within ten (10) working days of the date of billing, notify the Borough that such expenses are disputed as unreasonable or unnecessary, in which case the Borough shall not delay or disapprove a subdivision or land development application or any approval or permit related to development due to the applicant's request over disputed engineer expenses.
  2. If, within twenty (20) days from the date of billing, the Borough and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant and Borough shall jointly, by mutual agreement, appoint another professional engineer licensed as such in the Commonwealth of Pennsylvania to review the said expenses and make a determination as to the amount thereof which is reasonable and necessary.
  3. The professional engineer so appointed shall hear such evidence and review such documentation as the professional engineer in his sole opinion deems necessary and render a decision within fifty (50) days of the billing date. The applicant shall be required to pay the entire amount determined in the decision immediately.
  4. In the event that the Borough and applicant cannot agree upon the professional 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 Chester County shall appoint such engineer, who, in that case, shall be neither the Borough Engineer nor any professional engineer who has been retained by, or performed professional services for, the Borough or the applicant within the preceding five (5) years.
  5. The fees of the appointed professional engineer for determining the reasonable and necessary expense 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 by one-thousand (1000) dollars or more, the Borough shall pay the fee of the professional engineer, but otherwise the Borough and the applicant shall each pay one-half (1/2) of the fee of the appointed professional engineer.

**SECTION 702 RELEASE FROM PERFORMANCE GUARANTEE**

- A. When the developer has completed all the necessary public improvements, the developer shall notify the Council, in writing, by certified mail, of the completion of the aforesaid improvements and shall send a copy thereof to the Borough Engineer. 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 file a report in writing with the Council, and shall promptly mail a copy of the same to the developer by certified 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. The 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 reasons for such non-approval or rejection.
- B. The Council shall notify the developer, by certified mail, within fifteen (15) days of the action of the Council with relation to approval, non-approval or rejection of improvements.
- C. If any portion of the public improvements is not 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.
- D. Improvement bonds, or funds in escrow, may be released in stages as construction of a significant portion of the street, including all other improvements, is completed and approved by the Council. The Council shall only release the amount specifically provided for the public improvements in the performance guarantee agreement.
- E. The developer shall be responsible for maintenance of all subdivision or land development improvements until such improvements are offered for dedication and acceptance by the Borough. Fifteen (15) percent of the performance guarantee shall be retained until a maintenance guarantee, as provided for in Section 705, Maintenance Guarantee, has been posted and as-built plans are verified and accepted by the Borough.

**SECTION 703 AS-BUILT PLANS**

- A. Within thirty (30) days after completion and approval by the Borough of subdivision and land development improvements as shown on final plans, and before acceptance of such improvements, the applicant shall submit to the Council a corrected copy of said plans showing actual dimensions and conditions of streets and all other improvements, certified by a professional engineer, to be in accordance with actual construction.

- B. The plan shall indicate the actual location, dimensions and/or elevations of all completed improvements, including but not limited to:
1. Concrete monuments and iron pins.
  2. Cartway edges or top of curbs for both sides of each street.
  3. Finish grades including, but not limited to all improvements, and topography.
  4. Storm sewers, mains, manholes, inlets, and culverts.
  5. Permanent stormwater management structures or basins.
  6. Electrical and all other underground utilities.
  7. Sanitary sewer main, manholes and laterals, where applicable.
  8. Water lines and fire hydrants, where applicable.
  9. Street lights, where applicable.
  10. Landscaping and planting material.
  11. All easements.

**SECTION 704 DEDICATION AND ACCEPTANCE OF PUBLIC IMPROVEMENTS**

- A. Upon completion of any public improvement shown on an approved subdivision plan and within ninety (90) days after approval of such public improvements as herein provided, the developer shall submit written offer of such public improvements for dedication to the Borough. The offer shall include a Deed of Dedication covering said public improvements, together with satisfactory proof establishing the developer's clear title to said property. Such documents are to be filed with the Borough Administrator for review by the Borough Solicitor. Deeds of Dedication for public improvements may be accepted by resolution of the Council at a regular meeting thereof. The Council may require that at least fifty (50) percent of the lots in any approved subdivision or development (or phase thereof, if final plan approval has been in phases) have certificate of occupancy or dwellings occupied thereon prior to acceptance of dedication. Should the above mentioned roads or streets, even though constructed according to these specifications, deteriorate before the said fifty (50) percent of the lots have dwellings occupied thereon, such roads or streets shall be repaired in a manner acceptable to the Council before being accepted by the Borough.

- B. If financial security has been provided in lieu of the completion of improvements required as a condition for the final approval of a plat as set forth in this Section, the Borough shall not condition or withhold the following:
  - 1. The issuance of building, grading, or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as depicted upon the final plan upon actual completion of the improvements depicted upon the approved final plan.
  - 2. The issuance of occupancy permits for any building or buildings to be erected following:
    - a. The improvements of the streets providing access to and from existing public roads to such building or buildings to a mud-free or otherwise permanently passable condition.
    - b. The completion of all other improvements as depicted upon the approved plat, either upon the lot or lots or beyond the lot or lots in question if such improvements are necessary for the reasonable use or occupancy of the building or buildings.
- C. If the developer fails to offer dedication of said improvements, then the Borough Council may, in addition to any other remedies provided by law, require the developer, or his heirs, successors, executors, or assigns, to make an offer of dedication at any time in the future so that the best interests of the Borough are served by the dedication and acceptance of the public improvements.
- D. The Borough shall have no obligation to takeover and make public any street, other improvement or park unless:
  - 1. The required improvements, utility mains and laterals, have been certified by the Borough Engineer as having been constructed in accordance with the provisions of this Ordinance.
  - 2. It is established to the satisfaction of the Borough Council that there exists a need for the improvements to be taken over and made public.
- E. The Borough shall have no responsibility with respect to any park, street, or other improvement, notwithstanding the use of same by the public, unless the park, street, or other improvement has been accepted by ordinance or resolution by the Borough Council.
- F. The Borough Council may require that certain subdivision and land development improvements remain undedicated, with maintenance the responsibility of individual lot owners, a homeowner's association or similar entity, or an organization capable of carrying out maintenance responsibilities.

**SECTION 705 MAINTENANCE GUARANTEE**

- A. Where the Borough Council accepts dedication of all or some of the required public improvements following completion (whether such dedication is of the fee or of an easement), the Council shall require the posting of financial security to secure the structural integrity of the improvements and the functioning of the improvements in accordance with the design and specifications as depicted on the final plan. The security shall be in the form as is authorized for the deposit of the performance guarantee, as described in Section 313 hereof, the security shall be for a term of eighteen (18) months from the date of the acceptance of dedication and shall be in an amount equal to fifteen (15) percent of the actual cost of installation of the improvements so dedicated.
  
- B. Where maintenance of stormwater management facilities is to be the responsibility of individual lot owners, a homeowner's association or similar entity, or an organization capable of carrying out maintenance responsibilities shall be set forth in perpetual covenants or deed restrictions binding on the landowners' successors in interest, and may further require that an initial maintenance fund be established in a reasonable amount.