

MILFORD TOWNSHIP
SUBDIVISION ORDINANCE
ARTICLE V
IMPROVEMENT CONSTRUCTION GUARANTEES

501 General

No project shall be considered in compliance with this Ordinance until the streets, parking facilities, storm drainage facilities, water and sewer facilities, lot line markers and survey monuments and all other required improvements have been installed in accord with this Ordinance.

No final plan shall be signed by the Township for recording in the office of the Pike County Recorder of Deeds until:

- 1) All improvements required by this Ordinance are installed to the specifications contained in Article VI of this Ordinance and other Township requirements and such improvements are certified by the Township Engineer.
- 2) An Improvements Construction Guarantee in accord with Section 503 has been accepted by the Township.

502 Sections/Stages

Where the submission of the Final Plan in sections or stages has been approved, the Township shall require the construction or guarantee of any and all development improvements located in any preliminary approved section essential for the service or protection of any section or stage of the development proposed for final approval.

503 Improvement Construction Guarantees

503.1 Acceptable Guarantees - The following are acceptable forms of improvement construction guarantees.

- 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 the Township.

B. Escrow Account - A deposit of cash either with the Township or in escrow with a financial institution. The use of a financial institution for establishing an escrow account shall be subject to approval by the Township. In the case of an escrow account, the developer shall file with the Township an agreement between the financial institution and the Developer guaranteeing the following:

1. That the funds of said escrow account shall be held in trust until released by the Township 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 Township for use in the completion of those improvements.

C. Letter of Credit - A letter of credit provided by the Developer from a financial institution or other reputable institution subject to the approval of the Township. This letter shall be deposited with the Township and shall certify the following:

1. That the creditor does guarantee funds in an amount equal to the established cost of completing all required improvements.
2. In case of failure on the part of the Developer to complete the specified improvements within the required time period, the creditor shall pay to the Township immediately, and without further action, 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 may not be withdrawn, or reduced in amount, until released by the Township.

503.2 Amount of Security - The amount of financial security shall be equal to one hundred ten percent (110%) of the cost of the required improvements for which financial security is being posted.

A. The cost of the improvements shall be established by the submission to the Township of a bona fide bid or bids from the contractor or contractors

chosen by the Developer to complete the improvements.

- B. In the absence of such bona fide bid or bids, the costs shall be established by an estimate prepared by the Developer's engineer and approved by the Township.
- C. If the Developer requires more than one (1) year from the date of posting the guarantee to complete the required improvements, the amount of the guarantee shall be increased by an additional ten (10) percent for each one (1) year period beyond the first anniversary date of posting the guarantee or to an amount not exceeding one hundred ten (110) percent of the cost of completing the the improvements as established on or about the expiration of the preceding one (1) year period using the procedure established by Section 503.2 A and B.

503.3 Terms of Guarantee

Construction guarantees shall be submitted in a form and with such surety as approved by the Township to assure that all improvements shall be completed within a fixed period of time but not to exceed five (5) years from the date of Preliminary Plan approval.

- A. Upon receipt of a written application signed both by the obligor and surety of a construction guarantee, the Township may extend the period for improvements completion for a period not to exceed one (1) additional year.

503.4 Release of Improvement Construction Guarantees

- A. Partial Release - The developer may request the release of such portions of the construction guarantee for completed improvements.
 - 1. Request - All such requests shall be in writing to the Board of Supervisors and a copy to the Township Engineer and shall include a certification from the Developer's engineer that the subject improvements have been completed in accord with the approved plans and Township standards.
 - 2. Inspection - Within forty-five (45) days of receipt of such request the Board of Supervisors shall direct the Township Engineer

to inspect the subject improvements and certify to the Board of Supervisors their completion in accord with the approved plans and Township standards; and the Board of Supervisors shall authorize release of such portion of the construction guarantee established by the Township Engineer to represent the value of the completed improvements.

3. Retention - The Board of Supervisors may, require retention of ten (10) percent of the estimate cost of the aforesaid improvements.

B. Final Release - When the Developer has completed the construction of all required improvements the Developer shall so notify the Board of Supervisors.

1. Notification - Such notification shall be in writing, by certified or registered mail, with a copy to the Township Engineer; and shall include a certification from the Developer's engineer that all required improvements have been completed in accord with the approved plans and Township standards.

2. Inspection - Within ten (10) days of receipt if said notice the Board of Supervisors shall direct and authorize the Township Engineer to make a final inspection of the subject improvements.

3. Report - The Township Engineer shall within thirty (30) days of said authorization, file a written report with the Board of Supervisors, with a copy mailed to the Developer by certified or registered mail, recommending 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, said report shall contain, by specific Ordinance reference, a statement of reasons for non-approval or rejection.

4. The Board of Supervisors shall act upon the Engineer's report and shall notify the Developer in writing by certified mail of their action within sixty (60) days after the Developer's official letter of notification to the Board of Supervisors of his completion of the subject improvements.

5. Rejected or Unapproved Improvements - If any portion of the subject improvements are not approved or are rejected by the Board of Supervisors, the Developer shall proceed to rectify and/or complete the same and, upon completion, the same procedure of notification, as outlined in this Section shall be followed.
6. Enforcement Remedies - 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 plan, the Board of Supervisors may enforce any corporate bond, or other guarantee by appropriate legal and equitable remedies. If proceeds of the guarantee are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by the said security, the Board of Supervisors may, at its option, install part of such improvements in all or part of the subdivision and/or development and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the guarantee 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 municipal purposes.

504 Improvements Construction

This section shall apply to all construction of improvements whether the improvements are completed prior to final plan approval or guarantees are provided.

504.1 Schedule - The Developer shall, prior to the initiation of construction of any required improvements, submit to the Township a schedule of construction for all required improvements.

504.2 Inspections - Based upon the construction schedule and the nature of the required improvements and within thirty (30) days of receipt of the said construction schedule, the Township Engineer shall prepare a Township Inspection Schedule to assure the construction of the required improvements in accord with the approved plan and Township standards. In addition to all final inspections required for all

improvements, inspections shall be required at all phases of construction when a failure to inspect would result in a physical impossibility to verify compliance at the time of the final inspection (eg. back filling of sewer or water line trenches).

504.3 Notice - The Developer shall provide a minimum of two (2) working days notice prior to the time when construction will have proceeded to the time of an inspection required by the Township Inspection Schedule.

504.4 Cost - The cost of all inspections conducted by the Township shall be borne by the Developer.

505 Improvement Maintenance Guarantee

505.1 - Before acceptance, as approved, of any street, drainage facility or other improvements, the Developer shall provide to the Township a maintenance guarantee in an amount not less than fifteen (15%) percent of the Township Engineer's estimate of the cost of all required improvements.

A. Such maintenance guarantee shall be in a form and with a surety approved by the Township and guaranteeing that the Developer shall maintain all improvements in good condition during the eighteen (18) months after the completion of construction or installation and formal acceptance of all improvements.

1. If the Developer is negligent or fails to maintain all improvements in good condition during the eighteen (18) month period following acceptance, the Township may enforce the maintenance guarantee bond or other surety by appropriate and equitable remedies.

a. If proceeds of such bond or other surety are insufficient to pay the cost of maintaining the improvements during the said eighteen (18) month period, the Township, at its option, may institute appropriate legal or equitable action to recover the monies necessary for maintaining the improvements in good condition.

B. After the expiration of the eighteen (18) months from the date of the formal acceptance of the

subject improvements, the Township shall release the said maintenance guarantee and surety to the Developer or party posting the said maintenance guarantee and surety.

506 Continued Ownership and Maintenance of Improvements

The Developer shall provide to the satisfaction of the Township and prior to Final Plan approval, evidence of the provision for the succession of ownership and responsibility for maintenance of development improvements and/or common areas.

506.1 Land Developments - In the case of land developments such provision shall be in the form of deed covenants and restrictions clearly placing the responsibility of maintenance of all development improvements and common areas with the owner of the land development.

506.2 Residential Developments - In the case of subdivisions, cluster developments, multi-family housing projects and other residential developments involving the transfer of property, the Developer shall provide, by deed covenants and restrictions, for the creation of a Property Owners Association to assume the ultimate ownership of all development improvements and common areas and responsibility for maintenance of such improvements and common areas. Membership in the Property Owners Association shall be mandatory for all property owners in the development.

507 Subdivision and/or Land Development Improvements Agreement

All applicants proposing any subdivision and/or land development requiring the installation of improvements as required by this Ordinance shall, prior to final plan approval by the Board of Supervisors, enter into a legally binding development agreement with the Township of Milford guaranteeing the installation of the required improvements in accord with the approved plan and all Township requirements.

507.1 The development agreement shall be in a form suitable for execution by the Board of Supervisors and shall provide for the following, where applicable:

- A. The construction of all facilities authorized by the approved plans (streets, drainage, etc.) in itemized format.

- B. Installation of survey monuments and lot markers.
- C. Installation of all public utility lines.
- D. Prevention of erosion, sedimentation and water damage to the subject, adjacent and downstream properties.
- E. Developer's responsibility for all damages to properties.
- F. A work schedule setting forth the beginning and ending dates, and such other details as the Township deems fit and appropriate, for improvements contained herein.
- G. The estimated cost of the improvements not yet completed, including the amount of performance guarantee to be submitted.
- H. Security in the form of a construction guarantee approved by the Township to insure the installation of the required improvements.
- I. Security in the form of a maintenance guarantee approved by the Township for the repair or reconstruction of improvements which are found by the Township Engineer to be defective within eighteen (18) months from the date of formal acceptance of the said improvements, together with provisions for disbursement thereof.
- J. A set of reproducible "AS BUILT" plans prepared by and certified to by a Registered Professional Engineer or a Registered Professional Surveyor of all roadways and streets, bridges, drainage systems, sewage collection and treatment systems and water distribution systems.
- K. Dedication of any improvements.
- L. Public liability insurance for the duration of improvements construction. A copy of the said policy or other evidence of coverage shall be submitted to the Township.
- M. A save harmless clause to protect the Township from any and all liability.
- N. The Developer's responsibility for all reasonable engineering and legal costs and expenses for

inspection, consultations and preparation of agreements, to the extent such costs and expenses exceed the monies paid by the Developer in accordance with the standard fee schedules.

- D. Provisions for changing the approved final plan, supporting plans, profiles, data, specifications and related documents.
- F. Provisions for violations of the development agreement.
- G. Provisions for severability of any article.
- R. Provisions for any additional agreements deemed necessary.

507.2 The final plan shall not be approved by the Board of Supervisors prior to the execution of this agreement.