

ARTICLE VII
IMPROVEMENTS

700 GENERAL

All applications for subdivision and land development that include improvements shall be made in accordance with this Section. This Section applies to all improvements, regardless of whether they are to be dedicated to a public entity or not.

701 COMPLETION OF IMPROVEMENTS

No application for Final Plan approval of a subdivision or land development shall be approved by the Commission, nor shall any plan be considered in compliance with this Ordinance, until all required improvements, including but not limited to, streets, sidewalks, curbs, gutters, street signs, street lights, street trees, fire hydrants, water mains, sanitary sewers, storm sewers and drainage facilities, survey monuments, lot line markers, and shade trees and landscaping have been installed in accordance with this Ordinance.

702 IMPROVEMENT GUARANTEE IN LIEU OF CONSTRUCTION

In lieu of the construction and completion of improvements required by this Ordinance prior to plan approval and recordation, the applicant or developer may deposit a financial security acceptable to the Commission and follow the procedures contained herein.

703 AMOUNT OF IMPROVEMENT GUARANTEE

- A. The amount of the financial security to be posted for the completion of the required improvements shall be equal to 110% of the cost of completion estimated as of 90 days following the date scheduled for completion by the developer.
- B. Annually the Commission may adjust the amount of the financial security by comparing the actual cost of the improvements that have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the 90th day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to such adjustment, the Commission may require the developer to post additional security in order to assure that the financial security equals said 110%. The developer in accordance with this Ordinance shall post any additional security.

704 BASIS OF IMPROVEMENT GUARANTEE AMOUNT

- A. The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or developer and prepared by a professional engineer licensed as such in this Commonwealth and certified by the engineer to be a fair and reasonable estimate of such cost. The Commission, upon the recommendation of the Commission Engineer, may refuse to accept such estimate for good cause shown.
- B. If water mains and 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 a municipal authority separate and distinct from the municipality, 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 this section. The applicant or developer shall provide evidence that financial security in an amount sufficient to secure the completion of all

sewer and/or water facilities to be dedicated to such public utility or municipal authority has been provided and accepted by such entity.

- C. If the applicant or developer and the Commission 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 Commission and the applicant or 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 County and the applicant or developer.

705 ACCEPTABLE FORMS OF FINANCIAL SECURITY

The following are acceptable forms of financial security.

- 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 County and shall be in a form satisfactory to the Commission.
- B. **Escrow Account.** A deposit of cash with the County in escrow with a Federal or Commonwealth chartered financial institution. In the case of an escrow account, the applicant or developer shall file with the Commission an agreement between the financial institution and the applicant or developer guaranteeing the following:
 - 1. That the funds of the escrow account shall be held in trust until released by the County 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 the said improvements, the institution shall immediately make the funds available to the County for use in the completion of those improvements.
 - 3. Withdrawals from the account to pay for completed improvements shall be pursuant to Section 810 of this Ordinance.
- C. **Letter of Credit.** An irrevocable commercial letter of credit provided by the applicant and/or developer from a Federal or Commonwealth chartered financial institution. This letter shall be deposited with the County and shall certify the following:
 - 1. The amount of credit.
 - 2. In the case of failure on the part of the developer to complete the specified improvements within a time period specified in a written agreement between the County, the creditor shall pay to the County 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 is irrevocable and may not be withdrawn, or reduced in amount, until released or partially reduced by the County.
- D. **Certified Check.** A certified check payable to the County drawn on a Federal or Commonwealth chartered financial institution.
- E. **Other Forms of Security.** Any other form of guarantee acceptable to the Commission.

706 IMPROVEMENTS NOT COMPLETED IN FIRST YEAR

If the party posting the financial security requires more than one (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 an additional 10% for each one (1) year period beyond the first anniversary date from posting of financial security or to an amount not exceeding 110% 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 established estimating procedure in Section 704.

707 INSURANCE REQUIREMENT

- A. The applicant and/or developer shall protect, defend, indemnify, and save harmless the County, its officers, employees, appointees, and agents thereof from all claims, suits, actions, and proceedings of every nature and description which may be or on account of any injuries or damages to persons, including wrongful death, to public or private property, because any materials or appliances used in the work, or by or on account of improper materials or workmanship, or for or on account of any accident or any other act, negligence or omission of said applicant and/or developer or his officers, employees, appointees, and agents thereof and the County shall not in any way be liable therefore, during the period of the work progress and for a period of eighteen (18) months following the acceptance of work.
- B. The applicant and/or developer shall secure and maintain, at its sole cost and expense, General Liability Insurance in an amount not less than \$1,000,000.00 per each occurrence. A Certificate of Insurance shall be furnished naming the County, Commission Engineer, and municipality as "Additionally Insured".

708 IMPROVEMENT CONSTRUCTION

During construction of improvements the applicant and/or developer shall be responsible for the following:

- A. Constructing all improvements in strict accordance with the approved subdivision and land development plan and this Ordinance.
- B. Implementing all necessary plans to control, mitigate, and eliminate any forms of pollution, disturbance, or destruction resulting from noise, odor, stormwater, and/or excessive loads or repetitions of loads that may occur during construction.
- C. **Work Zone Traffic Control.** The applicant and/or developer shall furnish the necessary guards, watchmen, warning lights and similar items necessary to maintain state highway and other street traffic in accordance with Penn DOT Publication 203 requirements. When traffic cannot be detoured, a minimum of one half (1/2) the roadway shall be open at all times with traffic control. In limited and unique circumstances, with the approval of the Commission, local municipality and/or Penn DOT limited closure might be warranted.

709 IMPROVEMENT INSPECTION DURING CONSTRUCTION

- A. The Commission and the applicant or developer shall mutually agree upon a schedule of inspections by the Commission Engineer and/or other necessary consultants during construction, which shall be made part of a Memorandum of Understanding/Developer's Agreement executed between the County and the applicant and/or developer. At a minimum the Commission will require inspections at critical stages of construction determined by the Commission and Commission Engineer and/or other consultants. See Appendix G for example Memorandum of Understanding/Developer's Agreement.

- B. The applicant or developer shall notify the Commission of the construction schedule at least forty-eight (48) hours prior to commencement of the work stages identified in 709.(A) above.
- C. The applicant and/or developer shall correct any portion of the work that does not comply with the approved plan and this Ordinance. No work may proceed on any subsequent phase of the construction until necessary corrections have been made.
- D. Site improvements shall not advance to subsequent stages of construction until authorized to do so after the satisfactory inspection of the previous stage.

710 PARTIAL RELEASE OF IMPROVEMENT GUARANTEE

As the work of installing the required improvements proceeds, the party posting the financial security may request the Commission to release or authorize the release, from time to time, such portions of the financial security as are necessary for payment to the contractor or contractors performing the work. Any such requests shall be made in writing addressed to the Commission, and the Commission shall have 45 days from receipt of such request to allow the Commission Engineer to certify, in writing, that a portion of the work upon the improvements has been completed in accordance with the approved plan. Upon certification the Commission shall authorize release by the bonding company or lending institution of an amount estimated by the Commission Engineer to be the value of the improvements completed. If the Commission fails to act within the 45-day period, the Commission shall be deemed to have approved the release of funds as requested. The Commission may, prior to final release at the time of completion and certification by the Commission Engineer, require retention of 10% of the estimated cost of aforesaid improvements.

711 AS BUILT PLAN

After Final Plan approval and upon completion of all required improvements, the applicant or developer shall submit an As Built Plan showing the location, dimension, and elevation of all improvements. Such plan shall indicate that the required grading, drainage structures, and/or drainage systems and erosion and sediment control practices have been installed in substantial conformance with the previously approved Final Plan. The As Built Plan shall specify all deviations from the previously approved drawings. Five (5) copies of the As Built Plan shall be submitted to the Commission.

712 FINAL IMPROVEMENT INSPECTION AND RELEASE FROM GUARANTEE

- A. **Notice of Completion.** When the developer has completed all of the agreed-upon improvements, the developer shall notify the Commission and the municipal governing body in writing, by certified or registered mail, of the completion of the improvements, and shall send a copy also to the Commission Engineer. The Commission shall, within ten (10) days after receipt of such notice, direct the Commission Engineer to inspect all of the improvements. The Commission Engineer shall file a written report with the Commission and the municipal governing body, and the Commission or Commission Engineer shall promptly mail a copy of it to the developer by certified or registered mail. The report shall be mailed within thirty (30) days after receipt by the Commission Engineer of the authorization from the Commission; the report shall be detailed and shall indicate approval or rejection of the improvements, either in whole or in part. If the Commission Engineer does not approve the improvements, or any portion of them, the report shall contain a statement of reasons for such non-approval or rejection.
- B. The Commission shall notify the developer within fifteen (15) days of receipt of the engineer's report, in writing by certified or registered mail, of the decision to accept or not accept the improvements.

- C. If the Commission fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved, and the developer shall be released from all liability, pursuant to its performance guaranty bond or other security agreement.
- D. If any portion of the improvements shall not be approved or shall be rejected by the Commission or the municipal governing body, the developer shall proceed to complete the same and, upon completion, the same procedure of notification as outlined in this Section shall be followed.
- E. 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 Commission, municipality, or the Commission or municipal engineer.

713 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 accord with the approved Final Plan, the County is hereby granted the power to enforce any corporate bond, or other security by appropriate legal and equitable remedies. If the proceeds of the improvements bond or other security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the County and/or municipality may, at its option, install part of such improvements in all or part of the subdivision or land development and may institute appropriate legal proceedings, whether resulting from the security or from any legal or equitable action brought against the developer, or both. All monies drawn against the improvements bond or other security shall be used solely for the installation of the improvements covered by such security, and not for any other purpose.

714 IMPROVEMENT MAINTENANCE GUARANTEE

Where a municipality has accepted dedication of certain improvements, it may, at its discretion, require the applicant or developer to post financial security to secure the structural integrity of the improvements and the functioning of the improvements in accordance with the design and specifications as shown on the final plan for a term not to exceed 18 months from the date of acceptance of dedication. The financial security shall be of the same type as otherwise required in this Section and the amount of the financial security shall not exceed 15% of the actual cost of installation of said improvements.

715 DEDICATION AND ACCEPTANCE OF IMPROVEMENTS

A municipality accepting dedication of improvements for public ownership shall do so by the governing body adopting an ordinance, resolution, deed or other formal document of acceptance. A municipality shall not be responsible for accepting dedication, and improvements shall be deemed private, until the following items are satisfied:

- A. The Commission and/or Municipal Engineer conducts a final inspection certifying that all improvements have been satisfactorily installed according to the approved Final Plan.
- B. All inspection fees are paid.
- C. An appropriate improvement maintenance guarantee has been posted.
- D. A deed of dedication is provided.

716 IMPROVEMENTS NOT DEDICATED OR NOT ACCEPTED FOR DEDICATION

All improvements constructed as required by this Ordinance that **will not** be publicly dedicated or accepted for dedication shall also meet the following requirements:

- A. **Ownership and Maintenance Responsibility/Entity.** A viable entity responsible for ownership and maintenance of all non-dedicated improvements shall be established by the developer and approved by the Commission and the municipality. Ownership and maintenance responsibilities may be assigned to either the developer or among the property owners or an association of property owners within the subdivision or land development through the use of a Declaration and other documents approved by the Commission. Such documents shall be in conformance with the Uniform Planned Community Act of December 19, 1996, No. 180 (68 Pa. C.S.A. 5101) as amended. The Association shall be formed and operated under the minimum provisions contained in Appendix V of this Ordinance.
- B. **Improvements Benefiting Multiple Lots.** For all non-dedicated improvements that will not be owned and maintained by the developer and are situated on an individual lot or a series of contiguous lots but serve multiple lots, units or the entire subdivision or land development (e.g. stormwater management ponds), the responsibility for ownership and maintenance of such improvements shall be borne by all lot owners benefiting or served and not solely the lot owner on whose lot the improvements are situated.
- C. **Ownership and Maintenance Agreement.** A private agreement suitable for recording in the Union County Recorder of Deeds Office shall be prepared, properly executed, and recorded with the final subdivision or land development plan, shall run with the land, and shall clearly identify the individual or entity responsible for the ownership and maintenance of non-dedicated improvements. The agreement shall be reviewed and approved by the Commission, Commission Engineer and the municipality and, at a minimum, shall stipulate the following:
1. That the owners, an association of property owners, successors and assigns shall keep all improvements in a safe and attractive manner, and the owners shall convey to the municipality easements and/or rights-of-way to assure access for periodic inspections by the municipality, and maintenance if required.
 2. That if the owners, association of property owners, successors and assigns, fail to maintain the improvements following due notice by the municipality to correct problems, the municipality may perform the necessary work or corrective action. The owners or association of property owners shall reimburse the municipality for these services and any administrative costs. The municipality shall have the authority to assert a judgment lien against the said owners or association of property owners for failure to make the reimbursement(s).
- D. **Deed Reference.** All deeds created for lots that contain non-dedicated improvements shall make clear and specific reference as to the following:
1. Description of all improvements not dedicated;
 2. The individual(s) or entity responsible for ownership and maintenance of the improvements in accordance with Sections 716.A, 716.B, and 716.C of this Ordinance;
 3. The Ownership and Maintenance Agreement as required by Section 716.C of this Ordinance.
 4. Terms and conditions of the required maintenance;
 5. Provision that no improvements shall be eliminated or altered without the written approval of the Commission and the municipality.
 6. Provision that in the event improvements are altered, eliminated, or improperly maintained the municipality may prescribe necessary corrective measures and a

reasonable time period to perform such work, and that if such action is not taken in the time period specified, the municipality may cause the work to be performed and invoice the ownership and maintenance entity, including the assertion of a judgment lien against it.

7. Provision that all improvements not offered for dedication may be offered in the future if the improvements meet the minimum standards of this and/or applicable municipal ordinances in effect at the time the offer of dedication is made. If the improvements do not conform to the minimum standards in effect, the municipality shall have no obligation to accept the improvements until the improvements are improved to meet the standards, all costs of which shall be borne by the owner, association of property owners, or their successors and assigns.