

**TOWNSHIP OF LONG HILL
ORDINANCE #410-18**

**AN ORDINANCE CONCERNING PERFORMANCE AND MAINTENANCE
GUARANTEES AND AMENDING SECTION 183 OF THE TOWNSHIP LAND USE
ORDINANCE ENTITLED “PERFORMANCE AND MAINTENANCE GUARANTEES,
ENGINEERING INSPECTION FEES” AND SECTION 184 ENTITLED
“IMPROVEMENTS”**

WHEREAS, Chapter 312 of the Laws of 2016, which became effective January 16, 2018, and which is codified as N.J.S.A. 40:55D-53, made significant changes to the performance and maintenance provisions of the Municipal Land Use Law (“MLUL”); and

WHEREAS, the Township Land Use Ordinance must be amended to reflect those changes;

NOW THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Long Hill in the County of Morris, State of New Jersey, that Section 183 of the Township Land Use Ordinance (1996) as supplemented and amended, and Section 184 entitled “Improvements” are further ~~supplemented and~~ amended as follows:

Section 1. Subsection 183.1 entitled “Performance Guarantees” is amended in its entirety as set forth on Exhibit “A”, and Subsection 184.2 entitled “Performance Guarantees Required for Certain Installations” is amended and Subsection 184.3 entitled “Amount or Equivalent of Guaranty” is hereby repealed:

[See Appendix “A”, which is attached hereto and incorporated herein by reference.]

Section 2. Any and all other ordinances or parts thereof in conflict or inconsistent with any of the terms hereof are hereby repealed to such extent as they are so in conflict or inconsistent.

Section 3. In case any article, section or provision of this ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect any other article, section or provision of this ordinance except insofar as the article, section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 4. This ordinance shall take effect immediately upon final passage and publication as required by law.

NOTICE

The foregoing ordinance having been introduced and passed on first reading by the Township Committee of the Township of Long Hill, in the County of Morris on Wednesday, March 14, 2018 will be considered for final passage and adoption at a public hearing held at a meeting beginning at 7:00 p.m. on Wednesday, April 25th, 2018 at the Municipal Building, 915 Valley Road, Gillette, New Jersey, when and where or at such time and place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning said ordinance.

Deborah Brooks, RMC, CMR, Clerk

1st Reading and Introduction: March 14, 2018

1st Publication: March 22, 2018

Referral to Planning Board: March 15, 2018

Notice to County Planning Board Prior to Adoption: April 6, 2018

Notice to Clerks of Adjoining Municipalities (if required): April 6, 2018

2nd Reading and Adoption: April 25, 2018

2nd Publication: May 3, 2018

Filing with County Planning Board: May 3, 2018

APPENDIX A

INSPECTION FEES

183-1 Guarantees required; surety; release.

a. Before filing a final subdivision plat or recording a minor subdivision deed or as a condition of final site plan approval or as a condition to the issuance of a zoning permit pursuant to subsection d. of *N.J.S.A. 40:55D-65*, a developer shall furnish a performance guarantee, and provide for a maintenance guarantee in accordance with paragraphs (1) and (2) of this subsection.

(1)

(a) The developer shall furnish a performance guarantee in favor of the Township in an amount not to exceed 120% of the cost of installation of only those improvements required by an approval or developer's agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed, which cost shall be determined by the Township Engineer, according to the method of calculation set forth in section 15 of [*P.L.1991, c.256 \(C.40:55D-53.4\)*](#), for the following improvements as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, as shown on the final map and required by "the map filing law," P.L.1960, c.141 ([*C.46:23-9.9*](#) et seq.; repealed by section 2 of [*P.L.2011, c.217*](#)) or N.J.S.[*46:26B-1*](#) through N.J.S.[*46:26B-8*](#), water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements.

A successor developer must furnish a replacement performance guarantee, as a condition to the approval of a permit update under the State Uniform Construction Code, for the purpose of updating the name and address of the owner of property on a construction permit,

The Township Engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor.

(b) A performance guarantee shall include, within an approved phase or section of a development privately-owned perimeter buffer landscaping, as required by Township ordinance or imposed as a condition of approval.

At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.

(c) In the event that the developer shall seek a temporary certificate of

occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to herein as a “temporary certificate of occupancy guarantee,” in favor of the Township in an amount equal to 120% of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy for the development, unit, lot, building or phase of development and which are not covered by an existing performance guarantee. Upon posting of a “temporary certificate of occupancy guarantee,” all sums remaining under a performance guarantee, required pursuant to subparagraph (a) of this paragraph, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. The scope and amount of the “temporary certificate of occupancy guarantee” shall be determined by the zoning officer, Township Engineer, or other municipal official designated by ordinance. At no time may the Township hold more than one guarantee or bond of any type with respect to the same line item. The “temporary certificate of occupancy guarantee” shall be released by the zoning officer, Township Engineer, or other municipal official designated by ordinance upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building, or phase as to which the temporary certificate of occupancy relates.

(d) A developer shall furnish to the Township a “safety and stabilization guarantee,” in favor of the Township. At the developer’s option, a “safety and stabilization guarantee” may be furnished either as a separate guarantee or as a line item of the performance guarantee. A “safety and stabilization guarantee” shall be available to the Township solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition, only in the circumstance that:

(i) site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure, and

(ii) work has not recommenced within 30 days following the provision of written notice by the Township to the developer of the Township’s intent to claim payment under the guarantee. The Township shall not provide notice of its intent to claim payment under a “safety and stabilization guarantee” until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. The Township shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.

The amount of a “safety and stabilization guarantee” for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.

The amount of a “safety and stabilization guarantee” for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of the bonded improvement costs of the development or phase of development as follows:

\$5,000 for the first \$100,000 of bonded improvement costs, plus two and a half percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one percent of bonded improvement costs in excess of \$1,000,000.

The Township shall release a separate “safety and stabilization guarantee” to a developer upon the developer’s furnishing of a performance guarantee which includes a line item for safety and stabilization in the amount required under this paragraph.

The Township shall release a “safety and stabilization guarantee” upon the Township Engineer’s determination that the development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

(2)

(a) The developer shall post with the Township, prior to the release of a performance guarantee required pursuant to subparagraph (a), subparagraph (b), or both subparagraph (a) and subparagraph (b) of paragraph (1) of this subsection, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the improvements which are being released.

(b) If required, the developer shall post with the Township, upon the inspection and issuance of final approval of the following private site improvements by the Township Engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system, if any, which cost shall be determined according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4).

(c) The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.

(3) In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Township for such utilities or improvements.

b. The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the governing body by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation, which cost shall be determined by the Township Engineer according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4) as of the time of the passage of the resolution.

c. If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Township for the reasonable cost of the improvements not completed or corrected and the Township may either prior to or after the receipt of the proceeds thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

d.

(1) Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the obligor may request of the governing body in writing, by certified mail addressed in care of the municipal clerk, that the Township Engineer prepare, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to subsection a. of this section, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the obligor shall send a copy of the request to the Township Engineer. The request shall indicate which bonded improvements have been completed and which bonded improvements remain uncompleted in the judgment of the obligor. Thereupon the Township Engineer shall inspect all bonded improvements covered by obligor's request and shall file a detailed list and report, in writing, with the governing body, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.

(2) The list prepared by the Township Engineer shall state, in detail, with respect to

each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory. The report prepared by the Township Engineer shall identify each bonded improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory bonded improvement, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to subsection a. of this section.

e.

(1) The governing body, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the Township Engineer, or reject any or all of these bonded improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to subsection a. of this section. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Township Engineer. Upon adoption of the resolution by the governing body, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those approved bonded improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that 30% of the amount of the total performance guarantee and “safety and stabilization guarantee” posted may be retained to ensure completion and acceptability of all improvements. The “safety and stabilization guarantee” shall be reduced by the same percentage as the performance guarantee is being reduced at the time of each performance guarantee reduction.

For the purpose of releasing the obligor from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to subsection a. of this section, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70 percent of the total amount of the performance guarantee, then the Township may retain 30 percent of the amount of the total performance guarantee and “safety and stabilization guarantee” to ensure completion and acceptability of bonded improvements, as provided above, except that any amount of the performance guarantee attributable to bonded improvements for which a “temporary certificate

of occupancy guarantee” has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the Township below 30 percent.

(2) If the Township Engineer fails to send or provide the list and report as requested by the obligor pursuant to subsection d. of this section within 45 days from receipt of the request, the obligor may apply to the court in a summary manner for an order compelling the Township Engineer to provide the list and report within a stated time and the cost of applying to the court, including reasonable attorney’s fees, may be awarded to the prevailing party.

If the governing body fails to approve or reject the bonded improvements determined by the Township Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the Township Engineer’s list and report, the obligor may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to subsection a. of this section; and the cost of applying to the court, including reasonable attorney’s fees, may be awarded to the prevailing party.

(3) In the event that the obligor has made a cash deposit with the Township or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee, provided that if the developer has furnished a “safety and stabilization guarantee,” the Township may retain cash equal to the amount of the remaining “safety and stabilization guarantee” .

f. If any portion of the required bonded improvements is rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion or correction, the same procedure of notification, as set forth in this section shall be followed.

g. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the governing body or the Township Engineer.

h.

(1) The obligor shall reimburse the Township for reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements; which fees

shall not exceed the sum of the amounts set forth in subparagraphs (a) and (b) of this paragraph. The Township may require the developer to post the inspection fees in escrow in an amount:

(a) not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee under subparagraph (a), subparagraph (b), or both subparagraph (a) and subparagraph (b) of paragraph (1) of subsection a. of this section; and

(b) not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under subparagraph (a) of paragraph (1) of subsection a. of this section, which cost shall be determined pursuant to section 15 of P.L.1991, c.256 (C.40:55D-53.4).

(2) For those developments for which the inspection fees total less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be 50% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Township Engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees.

(3) For those developments for which the inspection fees total \$10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited in escrow by a developer shall be 25% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Township Engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.

(4) If the Township determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to subparagraphs (a) and (b) of paragraph (1) of this subsection, is insufficient to cover the cost of additional required inspections, the Township may require the developer to deposit additional funds in escrow provided that the Township delivers to the developer a written inspection escrow deposit request, signed by the Township Engineer, which: informs the developer of the need for additional inspections, details the items or undertakings that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections.

I. In the event that final approval is by stages or sections of development pursuant to subsection a. of section 29 of P.L.1975, c.291 (C.40:55D-38), the provisions of this section shall be applied by stage or section.

j. To the extent that any of the improvements have been dedicated to the Township on the subdivision plat or site plan, the municipal governing body shall be deemed, upon the release of any performance guarantee required pursuant to subsection a. of this section, to accept dedication for public use of streets or roads and any other improvements made thereon according to site plans and subdivision plats approved by the approving authority, provided that such improvements have been inspected and have received final approval by the Township Engineer.

184 IMPROVEMENTS

184.2—Performance Guaranties Required for Certain Installations Underground Utilities; Topsoil

— Prior to the granting of final approval of a major subdivision, the applicant shall have installed or shall have furnished performance guarantees in accordance with the provisions of this Section for the ultimate installation of the following where deemed necessary or appropriate by the approving authority:

a. — All improvements to be constructed in accordance with road, water and sewer ordinances in the Township.

b. — Curbs and/or gutters are to be installed on both sides of all roads and shall conform to all Township ordinances as required by the approving authority. Sidewalks are to be provided for as specified by the approving authority.

c. — Street signs shall match those in use throughout the Township.

d. — The applicant shall install street lights, including fixtures. Street lights shall be installed so as to minimize future maintenance costs to the Township while still providing adequate lighting for purposes of traffic and safety. Street lights be installed in accordance with the standards of Section 153.2.

e. — Shade trees to be located as directed by the Township Shade Tree Committee in accordance with the requirements set forth in Section 1S3.

~~f. Monuments, to be of the size and shape required by N.J.S.A. 47:23-9.9 et seq., as amended and supplemented, and to be placed in accordance with said statute.~~

~~g. Water mains, culverts and storm sewers shall be properly connected with an approved system and shall be adequate to handle all present and probable future development. All sewer connection fees for all lots shall be paid to the Township. All the above listed improvements shall be subject to inspection and approval of the Township Engineer, who shall be notified by the developer at least forty eight (48) hours prior to construction.~~

~~h. Public improvements of open space and, in the case of site plans only, other on-site improvements and landscaping.~~

i. In all developments where underground installation of utilities is required, the developer shall arrange with the serving utility for the underground installation of the utility's local distribution service lines and service connections in accordance with the provisions of the applicable standard terms and conditions incorporated as a part of its tariff as the same are then on file with the State of New Jersey Board of Regulatory Commissioners and shall submit to the approving authority prior to the granting of final approval, a written instrument from each serving utility which shall evidence full compliance with the provisions of this subsection; provided, however, that lots in such subdivisions which abut existing streets where overhead electric or telephone distribution supply lines have therefore been installed on any portion of the streets involved may be supplied with electric and telephone service from such overhead lines or extensions thereof, but the service connections from the utilities overhead lines shall be installed underground; provided, also, that telephone service pedestals, distribution transformers; switches and appurtenances may be above the ground. No underground installation should be covered until inspected and approved. No topsoil shall be removed from the site nor used as spoil unless approved by the Township Committee. ~~Topsoil moved during the course of construction shall be redistributed so as to provide at least six (6) inches of cover to all area of the subdivision and shall be stabilized by seeding or planting.~~

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184.3 Amount or Equivalent of Guaranty
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————— No final plats shall be approved by the approving authority until the completion of all such required improvements has been certified through the approving authority by the Township Engineer, unless the applicant shall have filed with the Township the performance guaranty and the engineering inspection escrow required by this Section and shall have executed a developer's agreement as required by Section 184.1. In addition, no final plat shall be approved until the required maintenance guaranty is filed for all completed improvements.