

Township of Lawrence
County of Mercer

Ordinance No. 2304-18

ORDINANCE AMENDING CHAPTER 9, "FEES, GUARANTEES, INSPECTIONS AND OFF-TRACT IMPROVEMENTS," OF THE LAND USE CODE OF THE TOWNSHIP OF LAWRENCE SO AS TO CONFORM TO AMENDMENTS TO THE MUNICIPAL LAND USE LAW

WHEREAS, P.L. 2017, c. 312 was recently signed into law, amending N.J.S.A. 40:55D-53 of the Municipal Land Use Law with regard to performance, maintenance and other guarantee requirements; and

WHEREAS, the Township of Lawrence wishes to modify the Land Use Code to conform with the above-referenced legislation.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Township of Lawrence, County of Mercer, in the State of New Jersey that Chapter 9, "Fees, Guarantees, Inspections and Off-tract Improvements," hereby is amended as follows (additions are underlined and deletions are [bracketed]):

Section 1. Subsection 902, "Guarantees required for On- and Off-tract Improvements," of the Land Use Code Amended.

§ 902 Guarantees required for On- and Off-tract Improvements

A. Guarantee Required. Before recording final subdivision plats or recording of minor subdivision deeds or as a condition of final site plan approval or as a condition to the issuance of a zoning permit pursuant to *N.J.S.A. 40:55D-65d*, the Township or approving Board, for the purposes of assuring the installation and maintenance of on-and off-tract (pursuant to *N.J.S.A. 40:55D-42*) improvements, shall require and accept in accordance with the standards adopted by this Ordinance, the following:

1. The furnishing of a performance guaranteed in favor of the Township of Lawrence in an amount not to exceed 120% of the cost of [installation, which cost shall be determined by the Municipal Engineer according to the method of calculation set forth in § 903.B for improvements which the Board may deem necessary or appropriate, including: streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, as shown on the final subdivision plat and required by the Map Filing Law (*N.J.S.A. 46:23-9.9 et seq.*), culverts, storm sewers, drainage structures, public improvements and landscaping. A separate estimate shall be prepared for soil erosion and sedimentation control devices.] 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 developer and approved by the Municipal Engineer, according to the method of calculation set forth in *N.J.S.A. 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 (*N.J.S.A. 46:23-9.9 et seq.*), water mains, sanitary sewers, community septic systems,

drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements. The performance guarantee may also be required to include, at the discretion of the Township or approving Board, a guarantee for the installation of privately-owned perimeter buffer landscaping. At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping. The developer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee for review and approval by the Municipal Engineer, which improvements shall be appended to each performance guarantee posted by the obligor.

2. [Provision of a maintenance guarantee to be posted with the Township Council for an period not to exceed two years after final acceptance of the improvement, in an amount not to exceed 15% of the cost of the improvement, which cost shall be determined by the Municipal Engineer according to the method of calculation set forth in § 903.B. 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 municipality for such utilities or improvements.] The developer shall post with the Township, prior to the release of the performance guarantee, a maintenance guarantee in an amount equal to 15% of the cost of the installation of the improvements covered under the performance guarantee, along with 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 itemized cost shall be determined by the developer and approved by the municipal engineer according to the method of calculation set forth in *N.J.S.A. 40:55D-53.4*. 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. [The Municipal 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 developer.] The furnishing of a "safety and stabilization guarantee" in favor of the Township of Lawrence to ensure that the Township has an adequate guarantee to return the property that has been disturbed to a safe and stable condition or otherwise implement measures to protect the public from access to an unsafe or unstable condition. The Township shall be permitted to access the guarantee when (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 municipality to the developer of the municipality's intent to claim payment under the guarantee. At the developer's option, the "safety and stabilization guarantee" may be included as a line item for safety and stabilization in the performance guarantee rather than in the form of a separate guarantee. The amount of the safety and stabilization guarantee shall be calculated pursuant to *N.J.S.A. 40:55D-53.4* as follows:

- a. \$5,000 for the first \$100,000 of bonded improvement costs, plus
- b. Two and a half percent (2.5%) of bonded improvement costs in excess of \$100,000 up to \$1,000,000; plus
- c. One percent (1%) of bonded improvement costs in excess of \$1,000,000.

B. Time Period for Installation. All public improvements shall be completed within six (6) months of issuance of the last Certificate of Occupancy or five (5) years of issuance of a Soil Disturbance Permit whichever comes first. The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the Township Council by resolution. As a condition or 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 Municipal Engineer according to the method of calculation set forth in § 903.B] as determined by the developer and approved by the municipal engineer according to the method of calculation set forth in *N.J.S.A. 40:55D-53.4* as of the time of the passage of the resolution.

C. Developer Liability. If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the developer 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 proceed thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law (*N.J.S.A. 40A-11-1 et seq.*).

Section 2. Paragraphs B and C of Subsection 903, “Certification or Guarantee required; Estimate of Guarantee,” of the Land Use Code Repealed in their Entirety.

Paragraph B, “Determination of Performance Guarantee Estimate,” and Paragraph C, “Determination of Maintenance Guarantee Estimate,” of Subsection 903 are hereby repealed in their entirety.

Section 3. Subsection 907, “Reduction of Guarantee,” of the Land Use Code Amended.

§ 907 Reduction of Guarantee.

A. Upon substantial completion of all required street improvements (except for top course) and appurtenant utility improvements, and the connection of same to the public system, the developer may request of the Township Council in writing, by certified mail address in care of the Township Clerk, that the Municipal Engineer shall prepare, in accordance with the itemized cost estimate [prepared by the Municipal Engineer and appended to the performance guarantee pursuant to] provided to the Municipal Engineer in accordance with § 902.A, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the developer shall send a copy of the request to the Municipal Engineer. As-built plans, pursuant to § 910.B, shall be submitted prior to the request for a reduction in the guarantee. The request shall indicate which bonded improvements have been completed and which bonded improvements remain uncompleted in the judgment of the developer. Thereupon the Municipal Engineer shall inspect all bonded improvements covered by the developer’s request and shall file a detailed list and report, in writing, with the Township Council, and shall simultaneously send a copy thereof to the developer not later than 45 days after receipt of the developer’s request.

B. The list prepared by the Municipal Engineer shall state, in detail, with respect to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extended of the incompleteness of each incomplete bonded 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 Municipal 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 Municipal Engineer and appended to the performance guarantee pursuant to] provided to the Municipal Engineer in accordance with § 902.A.

C. The Township Council, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the Municipal 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 Municipal Engineer and appended to the performance guarantee pursuant to] provided to the Municipal Engineer in accordance with § 902.A. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Municipal Engineer. Upon adoption of the resolution by the Township Council, the developer 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 bonded 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 developer 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 which formed the basis of the performance guaranty and appended to the performance guarantee pursuant to § 902.A, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70% of the total amount of the performance guarantee, then the municipality may retain 30% 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 municipality below 30%.

I. The developer shall reimburse the municipality for all reasonable inspection fees paid to the Municipal Engineer for the foregoing inspection of improvements[; provided that the Township of Lawrence may require of the developer a deposit for a portion of the reasonably anticipated fees to be paid for such inspection. The initial deposit made by the developer shall not exceed 25% of the reasonably anticipates inspection fees unless the developer offers to pay an additional deposit. The developer shall be required to maintain the deposit at not less than 10% of the balance of the anticipated inspection fees as that balance is adjusted from time to time by the amount paid to the Township Engineer for inspection. For those developments for which the reasonably anticipated fees are less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited by a developer shall be 50% of the reasonably anticipated fees. When the balance on deposit drops to 10% of the reasonably anticipated fees because the amount deposited by the

developer has been reduced by the amount paid to the Township Engineer for inspection, the developer shall deposit the remaining 50% of the anticipated inspection fees. For those developments for which the reasonably anticipated inspection fees are \$10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited by the developer shall be 25% of the reasonably anticipated fees. When the balance on deposit drops to 10% of the reasonably anticipated 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 reasonably anticipated fees. The Township Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit.] ,which fees shall not exceed the sum of the amount set forth in N.J.S.A. 40:55D-53. The municipality may require the developer to post the inspection fees in escrow in an amount calculated as follows: (a) except for extraordinary circumstances, the greater of \$500 or 5% of the cost of the improvement subject to a performance guarantee; plus (b) an amount not to exceed 5% of the cost of the private site improvements not subject to a performance guarantee, which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4.

If the Township determines that the amount in escrow for the payment of inspection fees, as calculated herein, 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 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.

K. 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 of Lawrence 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 this Chapter, that 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 Municipal Engineer, and shall include any incomplete improvements as required by the approval of the Board of jurisdiction. The “temporary certificate of occupancy guarantee” shall be released by the Municipal Engineer 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.

L. If the property or any part of same is sold, or otherwise conveyed to a successor developer prior to the completion and acceptance of all improvements, an Assignment of Developer’s Agreement, and new performance, maintenance or other guarantees shall be required from the new owner or successor developer. Upon the transfer of ownership of property that is the subject of a

construction permit, and prior to beginning or continuing work authorized by the construction permit, the new owner or successor developer shall file with the building department an application for a permit update to notify the building department of the name and address of the new owner or successor developer and of all other changes to information previously submitted to the building department. The building department shall not approve the application for a permit update until it receives notification from the governing body or its designee that the new owner or successor developer has furnished adequate replacement performance, maintenance or other guarantees and Assignment of Developer's Agreement.

Section 4. Severability

If any section, paragraph, subdivision, clause or provision of the Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

Section 5. Effective Date

This ordinance shall take effect twenty (20) days after adoption and posting of proper signage in accordance with law.

Adopted: August 28, 2018

RECORD OF VOTE

COUNCIL	AYE	NAY	PRESENT	ABSENT	ABSTAIN	MOVE	SECOND
Mr. Kownacki	X						
Ms. Lewis	X					X	
Dr. Maffei				X			
Mr. Powers	X						X
Mayor Bobbitt	X						