

BOROUGH OF WATCHUNG

ORDINANCE NO. OR: 18/16

AN ORDINANCE OF THE BOROUGH OF WATCHUNG, SOMERSET COUNTY, NEW JERSEY, AMENDING CHAPTER XXVIII ENTITLED "LAND DEVELOPMENT", ARTICLE 900 ENTITLED "APPLICATION FEES, GUARANTEES, INSPECTIONS AND OFF-TRACT IMPROVEMENTS" OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF WATCHUNG BY REPEALING SECTION 28-902 ENTITLED "GUARANTEES, START OF CONSTRUCTION PURSUANT TO AN APPROVED PLAN, AND INSPECTIONS" AND REPLACING WITH NEW SECTION 28-902 ENTITLED "IMPROVEMENTS, GUARANTEES, START OF CONSTRUCTION AND INSPECTIONS."

WHEREAS, on January 16, 2018, P.L. 2017, c.312 was signed into law, amending N.J.S.A.40:55D-53 of the Municipal Land Use Law regarding performance, maintenance and other guarantee requirements; and

WHEREAS, the Council of the Borough of Watchung now desires to amend its Land Use and Development Ordinance to conform to the new legislation.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Watchung, in the County of Somerset, State of New Jersey, as follows:

Section 1. Section 28-902 entitled "Guarantees, Start of Construction Pursuant to Approved Plan, and Inspection" is hereby repealed in its entirety and replaced by new Section 28-902 entitled "Improvements, Guarantees, Start of Construction and Inspections" to read as follows:

Section 28-902 Improvements, Guarantees, Start of Construction and Inspections

For purposes of this section 28-902, the term "public improvements" shall include 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.

A. Requirements Specific to Major Subdivisions.

1. No final major subdivision plat (whether for an entire tract or a section thereof) shall be recorded unless:

a. The Borough Engineer has certified to the Planning Board or Zoning Board of Adjustment, as the case may be, that all public improvements required by the resolution of preliminary approval have been satisfactorily completed; or

b. The developer has entered into a developer's agreement with the Borough, in a form satisfactory to the Borough Attorney and authorized by the Borough Council, requiring the installation and maintenance by the developer and its successors in interest of the public improvements, imposing such limitations, and/or staging of, the development of the subdivision as are necessary to ensure orderly construction of the public improvements, and assuring the installation of the public improvements on or before an agreed date by the filing of a performance guarantee in accordance with Section 28-902D.

2. No construction permit shall be issued for any building within the subdivision until the developer has completed the following public improvements in accordance with the approved subdivision plans and construction plans:

a. All required utility installations and their appurtenances, including water mains, drainage and detention facilities, culverts, storm sewers, sanitary sewers or dry sewers and public improvements of open space;

b. All required grading and the bituminous base course surfacing of all streets;

c. Construction of all required curbs; and/or

d. Filed with the Borough a performance guarantee in accordance with Section 28-902D, sufficient in amount to cover the cost of all remaining required improvements, as estimated by the Borough Engineer, and assuring the installation of said improvements on or before an agreed date and as hereinafter provided.

3. No certificate of occupancy shall be issued for any new construction within the subdivision except in compliance with the provisions for a certificate of occupancy as specified in Chapter XXVIII.

4. Unless provided otherwise elsewhere in this Chapter, the remaining required improvements shall be at least fifty percent (50%) completed as to each category set forth in the

performance guarantee within one (1) year from the date of final approval or by such time as fifty percent (50%) of the lots in the section in question have been conveyed in any manner by the developer, whichever shall first occur. At least seventy-five percent (75%) of the improvements shall be completed as to each category as set forth in the performance guarantee within eighteen (18) months from the date of final approval, or at such time as seventy-five percent (75%) of the lots in the section in question have been conveyed in any manner by the developer; whichever shall first occur. Such improvements shall be one hundred percent (100%) completed and accepted by the Borough within two (2) years from the date of final approval or at such time as all of the lots in the section in question have been conveyed in any manner by the developer, whichever shall first occur.

5. It is the intention of the Borough Council that the foregoing requirements accomplish the following:

a. Provide to those living in each new section of a subdivision a lot that is as complete as possible with respect to tract and individual lot improvements; and

b. Protect the interests of the general public and residents of the development in the total completion of the development.

6. In the case of subdivision having final approval by stages or sections, the requirements of this Section shall be applied by stage or phase.

B. Requirements Specific to Major Site Plans. No final major site plan application (whether for an entire tract or a phase thereof) shall be approved by the Planning Board or Zoning Board of Adjustments, as the case may be, unless:

1. The Borough Engineer has certified to the Board that all public improvements required by the resolution of preliminary site plan approval have been satisfactorily completed or,

2. The developer, with the approval of the Planning Board or the Zoning Board of Adjustment, as the case may be, has entered into a developer's agreement with the Borough in a form satisfactory to the Borough Attorney and authorized by the Governing Body:

a. Requiring the installation and maintenance by the developer (and the developer's successors in interest) of the public improvements; and

b. Imposing such limitations upon, and/or staging of, the development of the site as are necessary to ensure orderly construction of the public improvements on or before an agreed upon date by the filing of a performance guarantee in accordance with Section 28-902D.

C. Requirements Specific to Minor Subdivisions and Minor Site Plans. In the case of a minor site plan and/or minor subdivision, in the event that the developer elects to complete all improvements without posting the performance guarantee specified in Section 28-902D, no construction shall be commenced until a finalized plan is submitted and signed, incorporating all conditions of approval.

1. The developer shall still post the inspection escrow and notify the Borough Engineer prior to commencement of work.

2. All site improvements must be completed prior to the issuance of a certificate of occupancy, or within one hundred twenty (120) days of a Temporary Certificate of Occupancy in the instance where a performance guarantee covering the balance of the uncompleted improvements has been posted.

D. Performance Guarantees.

1. In accordance with the provisions of N.J.S.A. 40:55D-53, the Borough of Watchung, before the filing of 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, may require the developer to post guarantees for the installation and maintenance of certain on-tract improvements. The proposed performance and maintenance guarantee shall be submitted to the Borough Engineer and the Borough Attorney for review as to accuracy and form. The Borough Clerk shall immediately notify the applicable land use board and the Borough Engineer when the performance guarantee has been approved by the Borough Attorney.

2. The Developer shall furnish a performance guarantee in favor of the Borough of Watchung in an amount not to exceed one hundred twenty (120%) percent of the cost of installation of only those improvements required to be dedicated to a public entity, and that have not yet been installed, which cost shall be

determined by the Borough 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 Borough, Planning Board or Zoning Board of Adjustment, 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.

3. The Borough 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.

E. Safety and Stabilization Guarantee.

1. In addition to a performance guarantee required pursuant to Section 28-902D, a developer may be required to furnish to the Borough a separate guarantee, referred to herein as a "safety and stabilization guarantee", in favor of the Borough, to be available to the Borough 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:

a. 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

b. work has not recommenced within 30 days following the provision of written notice by the Borough to the developer of the Borough's intent to claim payment under the guarantee. The amount of the safety and stabilization guarantee shall be calculated as set forth in N.J.S.A. 40:55D-53. 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.

2. 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.

3. The Borough Council 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 Section.

4. The Borough Council shall release a "safety and stabilization guarantee" upon the Borough 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.

F. Posting of Performance Guarantee.

1. The total performance guarantee shall equal one hundred twenty (120%) percent of the performance guarantee cost estimate prepared by the Borough Engineer and shall include a time limit for the proper and complete installation of the improvements for which the guarantee is given. Ten (10%) percent of the performance guarantee shall be in cash. The remainder may be by certified check, surety bond or letter of credit. The surety bond or letter of credit must be issued by a company or bank having an office within the State of New Jersey and must be in a form acceptable to the Borough Attorney and must include a copy of the Borough Engineer's performance guarantee cost estimate. The portion of the performance guarantee consisting of cash or certified check shall be deposited with the Borough by payment to the Borough Clerk who shall issue a receipt therefor.

2. The deposit shall be retained as security for the completion of all required work or in the event of default on the part of the developer, to be used by the Borough to pay the costs of completing the improvements. If the required improvements are not completed or corrected in accordance with the performance guarantee and the standards of the Borough within the stipulated time, the obligor and surety for any bond shall be liable thereon to the Borough for the reasonable cost of the improvements not completed or corrected, and upon authorization by the Borough Council, the Borough Attorney shall take the necessary steps to obtain such cost from the obligor and surety. The Borough may, without prejudice to its rights against the obligor and surety, complete such improvements either prior to or after receipt of the proceeds of the performance guarantee. 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.)

G. Form of Guarantee. The Borough shall accept a performance guarantee or maintenance guarantee which is an irrevocable letter of credit if it:

1. Constitutes an unconditional payment obligation of the issuer running solely to the Borough for an express initial period of time in the amount determined pursuant to N.J.S.A. 40:55D-53;

2. Is issued by a banking or savings institution authorized and doing business in this State;

3. Is for a period of time at least one year; and

4. Permits the Borough to draw upon the letter of credit if the obligor fails to furnish another letter of credit which complies with the provisions of Section 28-902, thirty (30) days or more in advance of the expiration date of the letter of credit or such longer period in advance thereof as is stated in the letter of credit.

H. Time for Installation. The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the Borough 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 one hundred twenty (120%) percent of the cost of the installation, which cost shall be determined by the Borough 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.

I. Temporary Certificate of Occupancy. 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 Borough in an amount equal to one hundred twenty (120%) percent 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 Subsection 28-902I, 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 Borough Engineer. The Temporary Certificate of Occupancy guarantee shall be released by the Borough 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.

J. Construction Phases. In the event that final approval is by stages or sections, the provisions of this Section 28-902 shall be applied by stage or section.

K. Start of Construction. Construction pursuant to a site plan or subdivision approval shall not commence until:

1. The developer has paid all fees and posted all escrows required by Chapter XXVIII.

2. The developer has received all other governmental approvals required by the resolution of memorialization granting subdivision and/or site plan approval.

3. The developer has satisfied all conditions of approval required by the resolution of memorialization granting subdivision and/or site plan approval and all revisions to the submitted plat or plan required by the resolution at the time of subdivision or site plan approval have been filed with and approved by the Borough Engineer and any other individual or group as may have been specified in the applicable resolution of memorialization granting subdivision and/or site plan approval.

4. The developer's construction plans have been filed with and approved by the Borough Engineer.

5. The developer has had a preconstruction meeting with the Borough Engineer for the purpose of forecasting and resolving problems that may arise during the time of construction.

6. Regarding major subdivisions only, the developer has posted the "Sales Map" as required by this Chapter in a prominent location in all offices from which sales of property in the subdivision development will be conducted.

L. Inspections and Tests.

1. All site improvements and utility installations for site plans, subdivisions, plot plans and other realty improvements shall be inspected during the time of their installation under the supervision of the Borough Engineer to ensure satisfactory completion. The cost of said inspection shall be the responsibility of the developer who shall deposit with the Chief Financial Officer of the Borough inspection fees in an amount not to exceed, except for extraordinary circumstances, the greater of five hundred (\$500.00) dollars or five percent (5%) of the cost of the improvements as determined by the Borough Engineer in accordance with Section 28-902D3, provided that:

a. For those developments for which the reasonably anticipated inspection fees are less than ten thousand (\$10,000.00) dollars, the fees may, at the option of the developer, be paid in two (2) installments. The initial amount deposited by the developer shall be fifty percent (50%) of the reasonably anticipated fees. When the balance of deposit fall below ten percent (10%) of the reasonably

anticipated fees because the amount deposited by the developer has been reduced by the amount paid to the Borough for the inspection(s), the developer shall deposit the remaining fifty percent (50%) of the anticipated inspection fees.

b. For those developments for which the reasonably anticipated inspection fees are ten thousand (\$10,000.00) dollars or greater, the fees may, at the option of the developer, be paid in four (4) installments. The initial amount deposited by the developer shall be twenty-five percent (25%) of the reasonably anticipated fees. When the balance of deposit drops to ten percent (10%) of the reasonably anticipated fees because the amount deposited by the developer has been reduced by the amount paid to the Borough Engineer for the inspection(s), the developer shall make additional deposits of twenty-five percent (25%) of the anticipated inspection fees.

2. The inspection escrow shall be deposited by the Chief Financial Officer of the Borough, or his/her designee, in an account for such purposes under the sole control of the Borough. Said inspection escrows may be commingled with similar escrows from other developers, but accurate accounts and records shall be kept so as to identify the particular escrows and charges made against the same. The inspection escrow funds shall be used solely for payment of related inspection fees, expenses and costs incurred on behalf of the Borough during the course of construction.

3. The Borough Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit. Failure of the developer to deposit the required inspection fees in accordance with this Chapter will subject the developer to a "stop-work" order and/or suspension of construction permits.

4. In no case shall any paving work be done without permission from the Borough Engineer. At least two (2) working days notice shall be given to the Borough Engineer prior to any construction so that the Borough Engineer or a qualified representative may be present at the time the work is to be done.

5. Streets shall not be paved with a top course until all heavy construction is completed and, if determined by the Borough Engineer to be necessary, the bituminous base course

has first been restored. Shade trees shall not be planted until all grading and earth moving is completed.

6. The Borough Engineer's office shall be notified at least three (3) working days prior to the commencement of the following phases of work so that he or a qualified representative may inspect the work; the Borough Engineer shall, in turn, notify the landscape architect designated by the Board, if applicable, regarding any seeding and planting:

- a. Road subgrade.
- b. Curb and gutter forms.
- c. Curbs and gutters.
- d. Road paving.
- e. Sidewalk forms.
- f. Sidewalks.
- g. Drainage pipes and other drainage construction.
- h. Street name signs.
- i. Monuments.
- j. Sanitary sewers and pump stations.
- k. Topsoil, seeding and planting.
- l. Underground utilities.
- m. Potable water facilities.
- n. Detention and/or retention basins.

7. When designated by the Planning Board or Zoning Board of Adjustment, as the case may be, the landscape architect shall witness and approve landscaping in a designated area or on a typical lot within a development as deemed appropriate and necessary and/or as directed by the Borough Engineer. A follow-up inspection when the entire site or phase of development is completed shall be conducted in order to confirm compliance for either a phase of development or the entire project:

- a. Plantings shall be checked for compliance with approved plans; i.e., satisfactory condition, correct quantity, size, species and location. Any change or modifications to the approved plans must be reviewed and approved by the landscape architect designated by the

Planning Board or Zoning Board of Adjustment, as the case may be.

b. Lawns shall be inspected for adequate coverage of healthy, vigorously growing grass which is relatively free of weeds and void of bare spots larger than one (1) square foot in area. Bare spots greater than one (1) square foot in area shall be reseeded or resodded and reinspected until acceptable coverage is achieved.

c. Upon completion of the landscaping, the landscape architect shall check for compliance with the landscape plans approved by the Planning Board or Zoning Board of Adjustment, as the case may be. A punch list of outstanding or unsatisfactory items shall be compiled with copies given to the developer and the Borough Engineer, and a final sign-off shall be given after necessary remedial work.

d. Upon successful completion of all landscape work, a written recommendation shall be forwarded by the landscape architect to the Borough Engineer to be included in the inspection report to the Borough Council before the release of performance guarantees.

8. Any improvement installed contrary to the plan or plat approved by the Borough shall constitute just cause by the applicable land use board or designated official to void or deem voidable the municipal approval. Moreover, if a Certificate of Occupancy or construction permit is issued by a Borough official pursuant to this Chapter, such certificate or permit does not indicate acceptance by the Borough of any deviation(s) from the plan or plat as approved by the Planning Board or Zoning Board of Adjustment, as the case may be.

9. Any improvement installed without notice for inspection pursuant to Section 28-902L shall constitute just cause for:

a. Removal of the uninspected improvement;

b. The payment by the developer of any costs for material testing;

c. The restoration by the developer of any improvements disturbed during any material testing; and/or

d. The issuance of a "stop-work" order by the Borough Engineer pending the resolution of any dispute.

10. Inspection by the Borough of the installation of improvements and utilities shall not operate to subject the Borough to liability for claims, suits or liability of any kind that may at any time arise because of defects or negligence during construction or at any time thereafter; it being recognized that the responsibility to maintain safe conditions at all times during construction and to provide proper utilities and improvements is upon the developer, owner and contractor, if any.

11. 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 Borough Council in writing, by certified mail in care of the Borough Clerk, that the Borough Engineer prepare in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee, a list of all uncompleted or unsatisfactory completed improvements.

a. If such a request is made, the obligor shall send a copy of the request to the Borough Engineer. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgment of the obligor.

b. The Borough Engineer shall inspect all the improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the Borough Council, and shall simultaneously send a copy thereof to the obligor not later than forty-five (45) days after receipt of the obligor's request.

c. If the Borough Engineer fails to send or provide the list and report, as requested by the obligor, within forty-five (45) days from the receipt of the request, the obligor may apply to a court of competent jurisdiction in a summary manner for an order compelling the Borough 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.

12. The list prepared by the Borough Engineer pursuant to Section 28-902D3 shall state in detail with respect to each 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 improvement determined

to be unsatisfactory. The report prepared by the Borough Engineer shall identify each 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 improvement, in accordance with the itemized cost estimate prepared by the Borough Engineer and appended to the performance guarantee pursuant to this Chapter.

M. Release.

The Borough Council, by resolution, shall either approve the improvements determined to be complete and satisfactory by the Borough Engineer, or reject any or all of these 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 Borough Engineer and appended to the performance guarantee pursuant to this Chapter. This resolution shall be adopted not later than forty-five (45) days after receipt of the list and report prepared by the Borough Engineer.

1. Upon adoption of the resolution by the Borough Council, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those approved improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that thirty percent (30%) of the amount of the performance guarantee posted may be retained to ensure completion and acceptability of all improvements.

2. In the event that the obligor has made a cash deposit with the Borough or applicable land use board as part of the performance guarantee, then any partial reduction granted in the performance guarantee 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.

3. If any portion of the required improvements is rejected, the obligor shall complete or correct such improvements and, upon completion or correction, shall notify the Borough Council pursuant to Section 28-902J11 and the same procedures shall be followed as in the first instance.

4. Prior to the approval by the Borough Council of the final reduction and release of the performance guarantee, all

easements and open space shall be conveyed to the Borough or such other guarantee as specified on the final plat by deed containing a metes-and-bounds legal description.

5. If the Borough Council fails to approve or reject the improvements determined by the Borough Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within forty-five (45) days from the receipt of the Borough Engineer's list and report, the obligor may apply to a court of competent jurisdiction 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 Borough Engineer and appended to the performance guarantee pursuant to this Chapter, and the cost of applying to a court of competent jurisdiction, including reasonable attorney's fees, may be awarded to the prevailing party.

N. Conditions, Acceptance of Improvements, and Maintenance Guarantees. The approval of any application for development by the Borough shall in no way be construed as acceptance of any street or drainage system or other improvement. No improvements shall be accepted by the Borough Council unless and until all of the following conditions have been met:

1. The final application for development shall have been approved by the Planning Board or Zoning Board of Adjustment, as the case may be, and the developer shall have submitted an affidavit, signed by a licensed New Jersey professional land surveyor, certifying that all required monuments have been set in accordance with the Map Filing Law and any approved subdivision plat.

2. The Borough Engineer shall have certified in writing that the improvements are completed and that they comply with the requirements of this Chapter and the terms of the final application for development approved by the Planning Board or Zoning Board of Adjustment, as the case may be.

3. The owner shall have filed with the Borough Council a maintenance guarantee in an amount equal to and not more than fifteen percent (15%) of the cost of installing the improvements, the cost to be determined by the Borough Engineer in accordance with Section 28-902D3.

a. The maintenance guarantee shall run for a period of two (2) years, provided that the maintenance guarantee shall not terminate until the Borough Council has authorized its release pursuant to a recommendation by the Borough Engineer.

b. The procedures and requirements governing such maintenance guarantee shall be identical with the procedures and requirements for a performance guarantee set forth in this Chapter.

c. The requirements for a maintenance guarantee may be waived by the Borough Council only if the Borough Engineer has certified that the improvements have been in continuous use for not less than two (2) years from the date the Borough Engineer certified completion of such improvements and that during this period the owner has maintained the improvements in a satisfactory manner.

4. An "as built" plan and profiles of all utilities and roads shall be provided with certification signed and sealed by a New Jersey licensed professional engineer as to the actual construction as approved by the Borough Engineer. The "as built" information shall be submitted in the form of: two (2) black and white prints to be sent to the Borough Engineer plus a mylar copy and two (2) black and white prints to be sent to the Administrative Officer; and in electronic format sent to the Borough Engineer in format as required by the Borough Engineer.

O. Extension of Time. The time allowed for the installation of the improvements for which the performance guarantee has been provided may be extended by the Borough Council by resolution, provided that the current cost of installation of such improvements shall first be redetermined by the Borough Engineer, and if such current cost is found to be greater than the cost as originally determined, the developer shall be required to increase the amount of the performance guarantee to an amount equal to one hundred twenty percent (120%) of the installation cost as redetermined. In the event that the redetermined cost shall be less than the cost as originally determined, and in the further event that the developer's performance guarantee exceeds one hundred twenty percent (120%) of such redetermined costs, the developer shall be entitled to a reduction of the performance guarantee to an amount equal to one hundred twenty percent (120%) of such redetermined costs.

P. Default by Developer. If the required improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, under the performance guarantee shall be liable thereon to the Borough for the cost of the improvements not completed or constructed, and the Borough, either prior to or after receipt of the proceeds thereof, may complete the 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.

1. For purposes of this Section, "default" shall mean failure to install the improvements in accordance with Borough standards of construction, including but not limited to failure to install the improvements prior to the expiration of the performance guarantee.

2. The Borough Engineer's certification that the developer has failed to comply with the required standards of construction and installation of improvements shall be the basis for Borough Council action which rejects the improvements, withholds approval, withholds construction permits or formally declares default and authorizes collection on the performance guarantee.

Q. Penalties. In addition to the penalties specified for violation of this Chapter, the Borough Engineer, or another Borough official designated by the Borough Council, is specifically authorized to require the replacement or restoration of any lands, buildings, structures and site improvements (including clearing, whether onsite or offsite) or of any other work commenced or continued on any site for which an approval is required pursuant to this Chapter in violation of any stop-work order or the standards for construction as established by the Borough.

Section 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

Section 3 In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Watchung, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Borough of Watchung Land Use and Development Ordinance are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 4. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Watchung for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

Section 5. This ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of adopted ordinance by the Clerk with the Somerset County Planning Board pursuant to N.J.S.A. 40:55D-16.

ATTEST:

BOROUGH OF WATCHUNG


Michelle DeRocco, Clerk


Stephen K. Pote, Mayor

INTRODUCED BY: Black
PASSED: October 4, 2018
PUBLISHED: October 11, 2018
ADOPTED: November 1, 2018