

ORDINANCE 2018-09

**TOWNSHIP OF WASHINGTON
COUNTY OF WARREN
STATE OF NEW JERSEY**

**AN ORDINANCE OF THE TOWNSHIP OF WASHINGTON, COUNTY OF WARREN,
STATE OF NEW JERSEY AMENDING CHAPTER 64, DEVELOPMENT
REGULATIONS, ARTICLE II, SECTION 12 PERFORMANCE GUARANTEES AND
INSPECTIONS OF THE CODE OF THE TOWNSHIP OF WASHINGTON**

Section 1. Chapter 64: Development Regulations, Article II § 64-12 is hereby repealed and replaced with the following new Guarantees and Inspections section to comply with amendments in the Municipal Land Use Law, N.J.S.A. 40:55D-53 as follows:

§ 64-12 Guarantees and Inspections.

A. General. The developer shall furnish a performance guarantee in favor of the municipality 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 the public entity, and that have not yet been installed, which cost shall be determined 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trees, surveyor's monuments, as shown on the final map and required by "the map filing law," N.J.S.A.46:23-9.9 et seq.; repealed by section 2 of P.L.2011, c.217) or N.J.S.46:26B-1 through N.J.S.46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public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. 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 obligor.

B. Privately-owned perimeter buffer landscaping. The performance guarantee shall include, within an approved phase or section of a development, privately-owned perimeter buffer landscaping, as required by 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. Temporary Certificate of Occupancy Bond. In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, 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 bond," in favor of the municipality 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, building or phase of development. Upon posting of a “temporary certificate of occupancy bond,” all sums remaining under a performance guarantee, required pursuant to § 64-12(A) which relate to the development, unit, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. At no time shall the municipality hold more than one guarantee or bond of any type with respect to the same line item. The temporary certificate of occupancy bond shall be released upon the issuance of a permanent certificate of occupancy with regard to the development, unit, building, or phase as to which the temporary certificate of occupancy relates.

D. Safety and Stabilization Bond. In addition to a performance guarantee required pursuant to § 64-12(A), a developer shall furnish to the municipality a separate guarantee, referred to herein as a “safety and stabilization bond,” in favor of the municipality, to be available to the municipality 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:

- (1) 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
- (2) 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 bond.
- (3) The municipality shall not provide notice of its intent to claim payment under a “safety and stabilization bond” 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 municipality shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.
- (4) The amount of a “safety and stabilization bond” for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.
- (5) The amount of a “safety and stabilization bond” 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.

E. Extension of Time. The time allowed for installation of the 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 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.

F. Liability. 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 municipality for the reasonable cost of the improvements not completed or corrected and the municipality 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," N.J.S.A. 40A:11-1 et seq.

G. Request for List of Uncompleted or Unsatisfactory Completed Improvements. 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 municipal engineer prepare, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to § 64-12(A), a list of all uncompleted or unsatisfactory completed improvements. If such a request is made, the obligor shall send a copy of the request to the municipal engineer. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Thereupon the municipal 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. 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 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 municipal 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 municipal engineer and appended to the performance guarantee pursuant to § 64-12(A).

H. Action by Governing Body. The governing body, 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 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 and the “safety and stabilization bond” 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 § 64-12 (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 governing body, the obligor shall be released from all liability pursuant to its performance guarantee and “safety and stabilization bond,” 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 bond” posted may be retained to ensure completion and acceptability of all improvements. For the purpose of releasing the obligor from liability pursuant to its performance guarantee and “safety and stabilization bond,” the amount of the performance guarantee and “safety and stabilization bond” 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 municipal 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 municipality may retain 30 percent of the amount of the total performance guarantee and “safety and stabilization bond” to ensure completion and acceptability of all improvements, as provided above, except that any amount of the performance guarantee attributable to bonded improvements for which a “temporary certificate of occupancy bond” has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the municipality below 30 percent. If any portion of the required 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.

I. Maintenance Guarantees. The developer shall post with the municipality, prior to the release of a performance guarantee required pursuant to § 64-12 (A) or § 64-12 (B) or both §64-12 (A) and (B) a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the improvements which are being released as follow:

(1) Amount of Maintenance Guarantee. The developer shall post with the municipality, upon the inspection and issuance of final approval of the following private site improvements by the municipal engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: storm water management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the storm water management system, if any, which cost shall be determined according to the method of calculation set forth in N.J.S.A. 40:55D-53.4.

(2) Term. 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.

J. Engineering inspection fees. The obligor shall reimburse the municipality for reasonable inspection fees paid to the municipal engineer for the foregoing inspection of improvements: which fees shall not exceed the sum of the amounts set forth in subparagraphs (1) and (2) of this paragraph. The developer shall post the inspection fees in escrow in an amount:

(1) not to exceed 5% of the cost of bonded improvements that are subject to a performance guarantee under §64-12(A) or §64-12(B) or both §64-12(A) and (B); and

(2) not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under §64-12(A), which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4.

(3) **Installments.** 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 municipal engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees. 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 municipal engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.

(4) **Request for Additional Deposit.** If the municipality determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to subparagraphs (1) and (2) of paragraph (J) of this subsection, is insufficient to cover the cost of additional required inspections, the municipality may require the developer to deposit additional funds in escrow provided that the municipality delivers to the developer a written inspection escrow deposit request, signed by the municipal 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.

Section 2. All other provisions of Chapter 64 not modified herein shall remain unchanged and in full force and effect.

Section 3. Severability. If the provisions of any article, section, subsection, paragraph, subdivision, clause or application of the Ordinance shall be judged invalid by any Court of competent jurisdiction, such order or judgment shall not affect or invalidate the remainder of any such article, section, subsection, paragraph, subdivision, clause or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 4. This ordinance may be renumbered for codification purposes.

Section 5. Effective Date. This Ordinance shall take effect immediately upon final passage, publication according to law, and filing with the Warren County Planning Board.

NOTICE is hereby given that the foregoing Ordinance was introduced and passed on first reading at a meeting of the Township Committee of the Township of Washington held August 21, 2018 and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a meeting of the Township Committee to be held on September 18, 2018 at 7:30 p.m. or as soon thereafter as the matter may be heard, at the Municipal Building, 211 Route 31 North, Washington, NJ, 07882, at which time all persons interested will be given an opportunity to be heard concerning such Ordinance.

Ann Kilduff, RMC
Township Clerk