

AN ORDINANCE AMENDING CHAPTER 148 OF THE LAND USE ORDINANCE OF THE TOWNSHIP OF READINGTON, COUNTY OF HUNTERDON AND STATE OF NEW JERSEY PERTAINING TO PERFORMANCE AND MAINTENANCE GUARANTEES

Ordinance #03-2024

WHEREAS, the Township of Readington wishes to officially amend its Land Use Ordinance to conform with Chapter 312 of the Laws of 2016, which is codified at N.J.S.A. 40:55D-53, et seq., and made significant changes to the performance and maintenance guarantee provisions of the Municipal Land Use Law ("MLUL").

NOW, THEREFORE BE IT ORDAINED by the Mayor and Township Committee of the Township of Readington, County of Hunterdon, State of New Jersey, that the following amendments shall be made to Chapter 148 of the Code of the Township of Readington entitled "Land Use Ordinance".

SECTION 1. Section 148-105 entitled "Guaranties" is hereby deleted in its entirety and shall be replaced with the following provisions:

148.105 Improvement Guarantees

A. Guarantees required. Before recording a final subdivision plat or recording a minor subdivision deed or as a condition of final approval or as a condition of the issuance of a zoning permit pursuant to *N.J.S.A. 40: 55D-65d*, the Township or approving Board shall, for the purposes of assuring the installation and maintenance of certain on-and off-tract improvements require the developer to furnish a performance guarantee and provide for a maintenance guarantee in accordance with paragraphs (1) and (2) of this subsection.

(1) Performance Guarantees for Certain Improvements, Landscaping, Temporary Certificates of Occupancy and Safety/Stabilization

(a) The developer shall furnish a performance guarantee in favor of the Township of Readington 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 Township or other 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 *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monuments, as shown on the final map and required by the "map filing law" P.L. 1960, c. 141 (*C.46:23-9.9* et seq.; repealed by section 2 of *P.L.2011, c.217*) or *N.J.S.46:26B-1* through *N.J.S. 46:26B-8*, water mains, sanitary sewers, community septic systems, drainage structures,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.

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

each performance guarantee posted by the obligor.

(b) 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 within an improved phase or section of a development as a condition of approval. At the developer's option, a separate performance guarantee may be posted by the developer for the privately-owned perimeter buffer landscaping.

(c) In the event that a developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of a development, then as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to 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 remaining to be completed or installed under the terms of the temporary certificate of occupancy and which must 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 as may be designated by ordinance. The Township shall not, at any time, 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" 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. 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 resumed 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,

Per N.J.S.A. 40:55D-53a(1)(d), the amounts to be posted in connection with a "safety and stabilization guarantee" shall be as follows:

- for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.

- for a development with bonded improvements exceeding \$100,000, such guarantee 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 \$100,00 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) Maintenance Guarantees.

(a) 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, the developer shall post with the Township 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 outflow 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.

B. Improvements owned by other entities.

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.

C. Extensions of Time for the installation of bonded improvements.

The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the governing body of the Township 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.

D. Recourse by the Township.

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.).

E. Reduction of Guarantees.

(a) 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 developer may request of the governing body in writing, by certified mail addressed in care of the Township 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 section 1 (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.

(b) The list prepared by the Township Engineer shall state, in detail, as to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each partially completed improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory. The Township Engineer's report shall identify each bonded improvement determined to be complete and satisfactory together with a recommendation as to the amount that the performance guarantee may be reduced 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 subparagraph 1 (a) of this section.

(c) The Township Committee, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the Township Engineer, or reject any or all of those bond improvements upon the establishment of cause for rejection within said resolution, 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 subparagraph 1 (a) of this section. This resolution shall be adopted within 45 days after receipt of the list and report prepared by the Township Engineer. Once the resolution is adopted by the governing body, the developer shall be released from all liability pursuant to its performance guarantee, with respect to the approved bonded improvements, except for that portion adequately sufficient to secure completion or correction of the improvements remaining to be approved; provided that 30% of the amount of the total performance guarantee and "safety and stabilization guarantee" posted may be retained by the municipality to ensure completion and acceptability of all improvements. The "safety and stabilization guarantee" shall be reduced by the same percentage that 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 subparagraph 1(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.

(d) If the Township Engineer fails to send or provide the list and report as requested by the developer pursuant to subparagraph (6)(a) of this section within 45 days from receipt of the request, the developer 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 Township Committee 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 developer 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 subparagraph (1) (a) of this section; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

(e) 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 remaining amount of the "safety and stabilization guarantee".

(f) If any portion of the required bonded improvements is rejected, then the approving authority may require the developer to complete or correct such improvements and, upon completion or correction, the same procedure of notification, as set forth in this subparagraph (6) shall be followed.

(g) Nothing herein, however, shall be construed to limit the right of the developer to contest by legal proceedings any determination of the Township Committee or the Township Engineer.

F. Successor Developers/Owners

If the property or any part of the property 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/or Assignment of the Developer's rights in the project 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 the beginning or continuing work authorized by the construction permit, the new owner or successor developer shall file with the Construction Code Office an application for a permit update to notify the Construction Code Office of the name and address of the new owner or successor developer and of all other changes to information previously submitted to the Township. The Construction Code Office 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 or Developer's rights in the project or property.

G. Final Approval in Stages

In the event that final approval is to be accomplished 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.

SECTION 2. Section 148-107 "Inspection Fees" is deleted in its entirety and replaced with the following:

Section 148-107 Inspection Fees

(a) The developer shall reimburse the Township for reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements. Such fees shall not exceed the sum of the amounts set forth in subparagraphs (i) and (ii) of this paragraph. The Township may require the developer to post the inspection fees into escrow in an amount:

(i) 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 Section 148.105(1) (a), (b) or both subparagraph (a) and subparagraph (b) of paragraph (1) of Section 148.105 this section; and

(ii) not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under Section 148.105(1)(a) , which cost shall be determined pursuant to section 15 of P.L. 1991, c. 256 (C.40:55D-53.4).

(b) 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 of the amount placed on deposit by the developer deposit drops to 10% due to inspection fees paid to the Township Engineer, the developer shall deposit the remaining 50% of the inspection fees.

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

(d) If the Township determines that the amount placed in escrow for the payment of inspection fees, as calculated pursuant to subsections (i) and (ii) of subparagraph(a) of this subsection, is insufficient to cover the cost of additional required inspections, the Township may require the developer to deposit additional funds into escrow provided that the Township delivers to the developer a written inspection escrow deposit request, signed by the Township Engineer which: 1) informs the developer of the need for additional inspections; 2) details the items or undertakings that require inspection; 3) estimates the time required for those inspections; and 4) estimates the cost of performing those inspections.

(e) The Township Engineer shall not be required to perform any inspection if sufficient funds to pay for those inspections are not on deposit.

(f) In the event that final approval is by stage or sections of development, the provisions of this section shall be applied by stage or section.

SECTION 3. Section 148-108 entitled "Acceptance of Improvements" is deleted in its entirety and replaced with the following:

Acceptance of Improvements.

(a) 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. Prior to such acceptance, the developer and/or any successors in interest to developer shall also provide an affidavit stating that there are no liens or other legal encumbrances on any of the improvements or utilities proposed to be dedicated to the Township. Notwithstanding anything contrary within, nothing shall prohibit the Township from formally accepting such improvements via ordinance in accordance with N.J.S.A. 40A: 12-5, et seq.

(b) Prior to acceptance, if applicable, a written statement from the sewerage authority serving the development shall be obtained and submitted to the Township Committee and Township Engineer or applicable other administrative officer confirming that all public sewerage facilities have been installed in accordance with the approved plans and any amendments thereto and in accordance with any applicable Township ordinances and specifications.

SECTION 4. Section 148-103 entitled "Submission of final major subdivision plats and final major site plans" " is hereby amended to provide as follows (underlined language is new, deletions appear with strike-throughs ~~thus~~):

(c) The applicant or developer shall certify in writing to the Board that he has:

[1] Submitted a letter from his engineer [1] stating that the final plat conforms to the preliminary plat as submitted and approved, except for minor variations as required by the Board of the Township Engineer. All changes shall be shown on the final as-built plants;

[2] Installed all improvements in accordance with the requirements of this chapter;
and/or

[3] Posted a performance or other guaranty in accordance with Article XI of this chapter.

[4] Submitted a letter from his engineer indicating that the installed improvements are in conformance with the preliminary plat.

(d) A statement from the Township Engineer that all improvements installed prior to the application have been inspected as provided in Article XI of this chapter and that such improvements installed prior to application for final approval that do not meet or exceed Township standards shall be factored in the required performance or other guaranty.

SECTION 5 Any or all other ordinances or parts thereof in conflict or inconsistent

with any of the terms hereof are repealed to such extent as they are so in conflict or inconsistent.

SECTION 6. If the provision of any article, section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such order or judgment shall not affect, impair or invalidate the remainder of any such article, section, subsection, paragraph, subdivision or clause and, to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 7. The sections, subsections and provisions of this ordinance may be renumbered as necessary or practical for codification purposes.

SECTION 8. This ordinance shall take effect immediately upon final passage and publication in accordance with law and upon filing with the Hunterdon County Planning Board.

I hereby certify that the attached ordinance is a true and correct copy of an ordinance entitled ***AN ORDINANCE AMENDING CHAPTER 148 OF THE LAND USE ORDINANCE OF THE TOWNSHIP OF READINGTON, COUNTY OF HUNTERDON AND STATE OF NEW JERSEY PERTAINING TO PERFORMANCE AND MAINTENANCE GUARANTEES*** which was introduced at the meeting of Readington Township Committee on February 5, 2024 adopted at the meeting of the Readington Township Committee on March 4, 2024.

Karin M Parker, RMC
Municipal Clerk