

**BOROUGH OF NORTH EAST
ORDINANCE NO. 913**

**AN ORDINANCE OF THE BOROUGH OF NORTH EAST, ERIE COUNTY,
PENNSYLVANIA, AMENDING ORDINANCE NO. 796 ESTABLISHING THE
NORTH EAST BOROUGH SUBDIVISION AND LAND DEVELOPMENT
ORDINANCE WITHIN THE BOROUGH OF NORTH EAST:**

PREAMBLE

WHEREAS, on or about May 4, 2020 the Borough of North East enacted Ordinance No. 796 establishing the Subdivision and Land Development requirements for the Borough of North East.

WHEREAS, the Borough of North East desires to amend several sections of Ordinance No. 796 in order to update several provisions of the procedures and to make other substantive changes.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY the corporate authorities of the Borough of North East, County of Erie, and Commonwealth of Pennsylvania and it is hereby enacted by the authority of the same as follows:

SECTION 1. Section 22-305 shall be revised to read as follows:

§ 22-305. Completion of improvements or guarantee.

- A. No plat shall be finally approved unless the streets shown have been improved to a mud-free or otherwise permanently passable condition, or improved as may be required by this chapter, and any walkways, curbs, gutters, streetlights, fire hydrants, shade trees, water mains, sanitary sewers, storm drains and other improvements as may be required by this chapter have been installed in accordance with this chapter. In lieu of the completion of any improvements required as a condition for the final approval of a plat, including improvements or fees required pursuant to Subsection I of this section, this chapter provides for the deposit with the Borough of financial security in an amount sufficient to cover the costs of any improvements or common amenities, including but not limited to roads, stormwater detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements or buffer or screen plantings which may be required. The applicant shall not be required to provide financial security for the costs of any improvements for which financial security is required by and provided to the Department of Transportation in connection with the issuance of a highway occupancy permit pursuant to Section 420 of the Act of June 1, 1945 (P.L. 1242, No. 428), known as the "State Highway Law."
- B. When requested by the developer, in order to facilitate financing, the Borough Council or the Planning Commission, if designated, shall furnish the developer with a signed copy of a resolution indicating approval of the final plat contingent upon the developer obtaining a satisfactory financial

security. The final plat or record plan shall not be signed nor recorded until the financial improvements agreement is executed. The resolution or letter of contingent approval shall expire and be deemed to be revoked if the financial security agreement is not executed within 90 days, unless a written extension is granted by the Borough Council; such extension shall not be unreasonably withheld and shall be placed in writing at the request of the developer.

- C. Without limitation as to other types of financial security which the Borough may approve, which approval shall not be unreasonably withheld, federal- or commonwealth-chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in such lending institutions shall be deemed acceptable financial security for the purposes of this section.
- D. Such financial security shall be posted with a bonding company or federal- or commonwealth-chartered lending institution chosen by the party posting the financial security, provided said bonding company or lending institution is authorized to conduct such business within the commonwealth.
- E. Such bond or other security shall provide for, and secure to the public, the completion of any improvements which may be required on or before the date fixed in the formal action of approval or accompanying agreement for completion of the improvements.
- F. The amount of financial security to be posted for the completion of the required improvements shall be equal to 110% of the cost of completion estimated as of 90 days following the date scheduled for completion by the developer. Annually, the Borough may adjust the amount of the financial security by comparing the actual cost of the improvements which have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the 90th day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the Borough may require the developer to post additional security in order to assure that the financial security equals said 110%. Any additional security shall be posted by the developer in accordance with this subsection.
- G. The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or developer and prepared by a professional engineer licensed as such in this commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The Borough, upon the recommendation of the Borough Engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and the Borough are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this commonwealth and chosen mutually by the Borough and the applicant or developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall

be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Borough and the applicant or developer.

- H. If the party posting the financial security requires more than one year from the date of posting of the financial security to complete the required improvements, the amount of financial security may be increased by an additional 10% for each one-year period beyond the first anniversary date from posting of financial security or to an amount not exceeding 110% of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one-year period by using the above bidding procedure.
- I. In the case where development is projected over a period of years, the Borough Council may authorize submission of final plats by section or stages of development subject to such requirements or guarantees as to improvements in future sections or stages of development as it finds essential for the protection of any finally approved section of the development.
- J. As the work of installing the required improvements proceeds, the party posting the financial security may request the Borough Council to release, or authorize the release of from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such request shall be in writing addressed to the Borough Council, and the Borough Council shall have 45 days from receipt of such request within which to allow the Borough Engineer to certify, in writing, to the Borough Council that such portion of the work upon the improvements has been completed in accordance with the approved plat. Upon such certification, the Borough Council shall authorize release by the bonding company or lending institution of an amount as estimated by the Borough Engineer fairly representing the value of the improvements completed, or, if the Borough Council fails to act within said 45-day period, the Borough Council shall be deemed to have approved the release of funds as requested. The Borough Council may, prior to final release at the time of completion and certification by its Engineer, retain 10% of the original amount of the posted financial security for the aforesaid improvements.
- K. Where the Borough Council accepts dedication of all or some of the required improvements following completion, the Borough Council may require the posting of financial security to secure structural integrity of said dedicated improvements as well as the functioning of said dedicated improvements in accordance with the design and specifications as depicted on the final plat for a term not to exceed 18 months from the date of acceptance of dedication. Said financial security shall be of the same type as otherwise required in this section with regard to installation of such improvements, and the amount of the financial security shall not exceed 15% of the actual cost of installation of said dedicated improvements.

- L. If water mains or sanitary sewer lines, or both, along with apparatus or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the Borough, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required by this section.
- M. If financial security has been provided in lieu of the completion of improvements required as a condition for the final approval of a plat as set forth in this section, the Borough shall not condition the issuance of building, grading or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as depicted upon the final plat upon actual completion of the improvements depicted upon the approved final plat. Moreover, if said financial security has been provided, occupancy permits for any building or buildings to be erected shall not be withheld following the improvement of the streets providing access to and from existing public roads to such building or buildings to a mud-free or otherwise permanently passable condition, as well as the completion of all other improvements as depicted upon the approved plat, either upon the lot or lots or beyond the lot or lots in question if such improvements are necessary for the reasonable use of or occupancy of the building or buildings.

SECTION 2. Section 22-306 shall be revised to read as follows:

§ 22-306. Release from improvement bond.

- A. When the developer has completed all of the necessary and appropriate improvements, the developer shall notify the Borough Council, in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the Borough Engineer. The Borough Council shall, within 10 days after receipt of such notice, direct and authorize the Borough Engineer to inspect all of the aforesaid improvements. The Borough Engineer shall, thereupon, file a report, in writing, with the Borough Council and shall promptly mail a copy of the same to the developer by certified or registered mail. The report shall be made and mailed within 30 days after receipt by the Borough Engineer of the aforesaid authorization from the Borough Council; said report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements, or any portion thereof shall not be approved or shall be rejected by the Borough Engineer, said report shall contain a statement of reasons for such nonapproval or rejection.
- B. The Borough Council shall notify the developer within 15 days of receipt of the Engineer's report, in writing, by certified or registered mail, of the action of the Borough Council with relation thereto.

- C. If the Borough Council or the Borough Engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved, and the developer shall be released from all liability, pursuant to its performance guaranty bond or other security agreement.
- D. If any portion of the said improvements shall not be approved or shall be rejected by the Borough Council, the developer shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.
- E. Nothing herein, however, shall be construed in limitation of the developer's right to contest or question, by legal proceedings or otherwise, any determination of the Borough Council or the Borough Engineer.
- F. Where herein reference is made to the Borough Engineer, he shall be as a consultant thereto.
- G. The Borough may prescribe that the applicant shall reimburse the Borough for the reasonable and necessary expense incurred in connection with the inspection of improvements. The applicant shall not be required to reimburse the Borough Council for any inspection which is duplicative of inspections conducted by other governmental agencies or public utilities. The burden of proving that any inspection is duplicative shall be upon the objecting applicant. Such reimbursement shall be based upon a schedule of fees adopted by resolution of the Borough Council and as from time to time amended. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the Borough's professional consultant for work performed for similar services in the community, but in no event shall the fees exceed the rate or cost charged by the professional consultant to the Borough for comparable services when fees are not reimbursed or otherwise imposed on applicants.
 - 1) The Borough Council shall submit to the applicant an itemized bill showing the work performed in connection with the inspection of improvements performed, identifying the person performing the services and the time and date spent for each task. In the event the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, no later than 100 days after the date of transmittal of a bill for inspection services, notify the Borough and the Borough's professional consultant that such inspection expenses are disputed as unreasonable or unnecessary and shall explain the basis of their objections to the fees charged, in which case the Borough shall not delay or disapprove a request for release of financial security, a subdivision or land development application or any approval or permit related to development due to the applicant's dispute of inspection expenses. Failure of the applicant to dispute a bill within 100 days shall be a waiver of the applicant's right to arbitration of that bill under this section.

- 2) Subsequent to the final release of financial security, for completion of improvements for a subdivision or land development or any phase thereof the professional consultant shall submit to the Borough Council a bill for inspection services, specifically, designated as a final bill, which the Borough Council shall submit to the applicant. The final bill shall include inspection fees incurred through the release of financial security.
- 3) If the professional consultant and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant shall have the right, within 100 days of the transmittal of the final bill or supplement to the final bill to the applicant, to request the appointment of another professional consultant to serve as an arbitrator. The applicant and professional consultant whose fees are being challenged shall, by mutual agreement, appoint another professional consultant to review any bills the applicant has disputed and which remain unresolved and make a determination as to the amount thereof which is reasonable and necessary. The arbitrator shall be of the same profession as the professional consultant whose fees are being challenged.
- 4) The arbitrator so appointed shall hear such evidence and review such documentation as the arbitrator in his or her sole opinion deems necessary and shall render a decision no later than 50 days after the date of appointment. Based on the decision of the arbitrator, the applicant or the professional consultant whose fees were challenged shall be required to pay any amounts necessary to implement the decision within 60 days. In the event the Borough has paid the professional consultant an amount in excess of the amount determined to be reasonable and necessary, the professional consultant shall within 60 days reimburse the excess payment.
- 5) In the event that the Borough's professional consultant and applicant cannot agree upon the arbitrator to be appointed within 20 days of the request for appointment of an arbitrator, then, upon application of either party, the President Judge of the Court of Common Pleas of the judicial district in which the Borough is located (or if at the time there be no President Judge, then the senior active Judge then sitting) shall appoint such arbitrator, who, in that case, shall be neither the Borough's professional consultant nor any professional consultant who has been retained by, or performed services for, the Borough or the applicant within the preceding five years.
- 6) The fee of the arbitrator shall be paid by the applicant if the disputed fee is upheld by the arbitrator. The fee of the arbitrator shall be paid by the charging party if the disputed fee is \$2,500 or greater than the payment decided by the arbitrator. The fee of the arbitrator shall be paid in an equal amount by the applicant and the charging party if the

disputed fee is less than \$2,500 of the payment decided by the arbitrator.

- 7) In the event that the disputed fees have been paid and the arbitrator finds that the disputed fees are unreasonable or excessive by more than \$10,000, the arbitrator shall:
 - (a) Award the amount of the fees found to be unreasonable or excessive to the party that paid the disputed fee; and
 - (b) Impose a surcharge of 4% of the amount found as unreasonable or excessive to be paid to the party that paid the disputed fee.
- 8) The Borough or the applicant shall have 100 days after paying a fee to dispute any, fee charged as being unreasonable or excessive.

SECTION 3. Section 22-701 shall be revised to read as follows:

§ 22-701. Review fees.

- A. Review fees may include reasonable and necessary charges by the Borough's professional consultants for review and report thereon to the Borough and shall be set by resolution. Such review fees shall be reasonable and in accordance with the ordinary and customary charges for similar service in the community, but in no event shall the fees exceed the rate or cost charged by the professional consultant for comparable services to the Borough for services which are not reimbursed or otherwise imposed on applicants. Fees charged to the Borough relating to any appeal of a decision on an application shall not be considered review fees and may not be charged to an applicant.
- B. The Borough Council shall submit to the applicant an itemized bill showing work performed, identifying the person performing the services and the time and date spent for each task. Nothing in this subsection shall prohibit interim itemized billing or municipal escrow or other security requirements. In the event the applicant disputes the amount of any such review fees, the applicant shall, no later than 100 days after the date of transmittal of the bill to the applicant, note the Borough and the Borough's professional consultant that such fees are disputed and shall explain the basis of their objections to the fees charged, in which case the Borough shall not delay or disapprove a subdivision or land development application due to the applicant's dispute over fees. Failure of the applicant to dispute a bill within 100 days shall be a waiver of the applicant's right to arbitration of that bill under Section 510(g) of the Municipalities Planning Code [53 P.S. § 10510(g)].
- C. In the event that the Borough's professional consultant and the applicant cannot agree on the amount of review fees which are reasonable and

necessary, then the applicant and the Borough shall follow the procedure for dispute resolution set forth in Section 510(g) of the Municipalities Planning Code [53 P.S. § 10510(g)], provided that the arbitrator resolving such dispute shall be of the same profession or discipline as the professional consultant whose fees are being disputed.

- D. Subsequent to a decision on an application, the Borough Council shall submit to the applicant an itemized bill for review fees, specifically designated as a final bill. The final bill shall include all review fees incurred at least through the date of the decision on the application. If for any reason additional review is required subsequent to the decision, including inspections and other work to satisfy the conditions of the approval, the review fees shall be charged to the applicant as a supplement to the final bill.

SECTION 4. Section 22-704 shall be revised to read as follows:

§ 22.704. Appeals.

In any case where the Borough Council disapproves a subdivision plan, any person aggrieved thereby may, within 30 days thereafter, appeal to the Court of Common Pleas of Erie County, Pennsylvania, in accordance with Article X-A, Appeals to Court, of the Pennsylvania Municipalities Planning Code.

SECTION 5. This Ordinance shall be effective immediately upon enactment hereof.


ENACTED INTO AN ORDINANCE THIS 6th DAY OF JULY 2020

BOROUGH OF NORTH EAST



David Hall, President of Borough Council

ATTEST:



Patrick J. Gehrlein, Borough Manager

APPROVED THIS 6th DAY OF JULY 2020



Steven L. Gregory, Mayor

1653045