

TOWNSHIP OF WALL

ORDINANCE NO. 10-2019

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WALL, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY AMENDING CHAPTER 140, LAND USE AND DEVELOPMENT REGULATIONS, PART 3, PROCEDURES, ARTICLE XV, IMPROVEMENT, PERFORMANCE AND MAINTENANCE GUARANTEES

WHEREAS, the Township Committee, through Chapter 140, of the Municipal Code regulates land use and development regulations; and

WHEREAS, Assembly Bill 1425/Senate Bill 3233 was signed into law on January 16, 2018, as P.L. 2017, c. 312, which implements major reforms to the requirements for the posting of performance and maintenance guarantees under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq; and

WHEREAS, Municipalities are now constrained from requiring performance and maintenance guarantees for private improvements in a development; and

WHEREAS, based on all of the foregoing, the Township Committee has determined that it is necessary to amend its ordinances in order to be in compliance with Municipal Land Use Law.

NOW, BE IT ORDAINED by the Township Committee of the Township of Wall, in the County of Monmouth, in the State of New Jersey, as follows:

Section 1. Chapter 140, land use and development regulations, Part 5, Article XV, is hereby amended as follows (new language is underlined and ~~deleted language is stricken through~~):

§ 140-91. Purpose of improvement guarantees.

Improvement guarantees shall be provided to ensure the municipality of the proper installation and maintenance of on-site and on-tract improvements.

§ 140-92. Performance guarantees.

A. Prior to the approval of a final site plan requiring public improvements to be owned by or dedicated to the Township, a developer shall be required to post a performance guarantee in conformance with this article.

B. Before the recording of final subdivision plats or as a condition of final site plan approval or as a condition to the issuance of a zoning permit pursuant to N.J.S.A. 40:55D-65, the board shall require and the Township shall accept in accordance with the standards set forth herein,

for the purpose of assuring the installation and maintenance of ~~required improvements on-tract~~ improvements, a performance guarantee in favor of the Township, as follows:

(1) The developer shall furnish a performance guarantee in favor of the Township shall be in an amount of 120% of the cost of installation, which cost shall be determined by the Township Engineer for only those improvements required by an approval or developer's agreement, ordinance or regulation to be dedicated to a public entity including improvements which the board may deem necessary or appropriate including, but not limited to, streets, curbs, grading, pavement, gutters, sidewalks, streetlighting, street trees, surveyor's monuments, as shown on the final plat and required by the Map Filing Law (N.J.S.A. 46:23-9.9 et seq.), water mains, culverts, storm sewers, sanitary sewers, community septic system, or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices, public improvements of open space and, any grading necessitated by the preceding improvements in the case of site plans only, other on-site improvements and landscaping. A Performance Guarantee shall also be furnished for privately owned perimeter buffer landscaping as required by local 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.

(2) The Township Engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, in the manner specified in N.J.S.A. 40:55D-53.4, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor.

(3) The performance guarantee shall consist of a developer's agreement, the terms of which shall concern the general development of the tract, plus 10% of the performance guarantee amount in cash and the remaining 90% by any of the following:

(a) Cash, by means of a bank or treasurer's check.

(b) A performance bond issued by a bonding or surety company approved by the Township Attorney as to form and content, which bond shall contain a provision that it shall not expire until released by the Township Committee.

(c) An irrevocable standby letter of credit, must be written in accordance with the standardized form adopted by regulation by the Department of Community Affairs pursuant to section 1 of P.L. 1999, c.68 (c.40:55D-53a) as complying with the provisions of section 41 of P.L. 1975, c. 291 (c.40:55D-53), and in a form prepared or approved by the Township Attorney or other security as may be approved by the Township Committee.

C. An irrevocable letter of credit shall only be accepted if it constitutes an unconditional payment obligation of the issuer running solely to the Township for an express initial period of time in the amount required; is issued by a banking or savings institution authorized to do so and doing business in the State of New Jersey; is for a period of time of at least one year; and

permits the Township to draw upon the letter of credit if the obligor fails to furnish another letter of credit which complies with the provisions of this section 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. All guarantees posted herein shall be in addition to and not in substitution for the developer's primary responsibility to install the improvements and complete the subdivision in accordance with all rules, regulations, standards, specifications, and ordinances of the Township.

D. All performance guarantee amounts shall be computed, by the Township Engineer based on the documented construction costs for public improvements prevailing in the general area of the Township.

E. The developer may appeal the Township Engineer's estimate to the Township Committee. The Township Committee shall decide the appeal within 45 days of the appeal in writing by the Township Clerk. After the developer posts a guarantee with the Township based on the cost of installation of improvements as determined by the Township Committee, he may institute legal action within one year of the posting in order to preserve the right to a judicial determination as to the fairness and reasonableness of the amount of the guarantee.

F. All guarantees shall provide for construction of the required bonded improvements within two years of the date of their posting. This time period may be extended by the governing body, in the form of a resolution granting such extension provided the municipal agency has, if necessary, extended the period of protection pursuant to N.J.S.A. 40:55D-52a. 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 as aforesaid.

G. 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.

H. Request for list of incomplete improvements; filing of monument certification.

(1) 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 Township Committee 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 this section, a list of all uncompleted or unsatisfactorily 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.

(2) At the time of the request, the obligor is to file with the Township Engineer, the surveyor's monument certification; signed and sealed as-built construction plans; and, if not previously provided, deed(s) of dedication for roads, detention basin lots, open space areas, easements or other land areas to be dedicated to the Township all of which shall be subject to review and approval by the Township Engineer and Township Attorney.

I. The Township Engineer shall inspect all bonded improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the Township Committee, and shall simultaneously send a copy thereof to the obligor not later than 45 days after the Engineer's receipt of the obligor's request.

J. The list prepared by the Township 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 bonded improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory. The report prepared by the Township Engineer shall identify each bonded improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory bonded improvement, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee.

K. 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 these bonded improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the bonded improvements accepted, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to this section. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Township Engineer. Upon adoption of the resolution by the Township Committee, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those approved bonded improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved, provided that 30% of the amount of the performance guarantee posted shall be retained to ensure completion and acceptability of all improvements.

L. In the event that the obligor has posted cash with the Township as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this section 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.

M. If any portion of the required bonded improvements is rejected, the Township Committee may require the obligor to complete or correct such bonded improvements and, upon completion or correction, the same procedure of notification, as set forth above shall be followed.

§ 140-93. Posting of maintenance guarantee.

A. Prior to the release of all or any portion of the performance guarantee, a maintenance guarantee shall be posted with the Township Committee for a period of two years after final acceptance of the improvement, in the amount of 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 out-flow 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) the cost of the improvement, which cost shall be determined by the Township Engineer according to this section and N.J.S.A. 40:55D-53.4. This guarantee shall be in the form of cash, a maintenance bond or a letter of credit subject to the same conditions as set forth in § 140-92C above. In the event that other government 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 for such utilities or improvements.

B. In the event that other government 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 for such utilities or improvements.

§ 140-94. Deposit by developer to cover inspection fees.

A. The developer shall reimburse the Township for all reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements; which fees shall not exceed the sum of the amounts set forth herein. provided that the Township shall require of the developer a deposit for to post the inspection fees in escrow in an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of improvements.:

(1) Not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to the performance guarantee under § 140-92(B);

(42) For those developments for which the reasonably anticipated fees are 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 reasonably anticipated inspection fees. When the balance on deposit drops to 10% of the reasonably anticipated inspection fees because the amount deposited by the developer has been reduced by the

amount paid to the Township Engineer for inspection, the developer shall deposit the remaining 50% of the ~~anticipated~~ inspection fees.

(23) For those developments for which the ~~reasonably anticipated~~ inspection fees are 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 ~~reasonably anticipated~~ inspection fees. When the balance on deposit drops to 10% of the ~~reasonably anticipated~~ inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Township Engineer for inspection, the developer shall make additional deposits of 25% of the ~~reasonably anticipated~~ inspection fees.

~~B. The Township Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit. If the Township determines that the amount in escrow for the payment of inspection fees is insufficient to cover the cost of additional required inspections, the Township may require the developer to deposit additional funds in escrow provided that the Township delivers to the developer a written inspection escrow deposit request, signed by the Township 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.~~

§ 140-95. Approval in stages.

In the event that final approval is by stages or sections of development, the provisions of this article shall be applied by stages or section.

§ 140-96. Approval of sureties and lending institutions.

All guarantees, sureties, and lending institutions are subject to the approval of the Township Attorney and the governing body.

§ 140-97. Temporary Certificate of Occupancy Bond Guarantee.

A. In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to herein as a "temporary certificate of occupancy guarantee," in favor of the Township 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 1and which are not covered by an existing performance guarantee.

B. Upon posting of a temporary certificate of occupancy guarantee, all sums remaining under a performance guarantee, required pursuant to Section 140-92, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is

sought, shall be released. At no time may a Township hold more than one guarantee or bond of any type with respect to the same line item.

C. The scope and amount of the temporary certificate of occupancy guarantee shall be determined by the Township Engineer.

D. The temporary certificate of occupancy guarantee shall be released by the Township Engineer or Zoning Officer 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.

§ 140-98. Safety and Stabilization Guarantee.

A. In addition to a performance guarantee required pursuant to Section 140-92, a developer shall furnish to the Township a guarantee, referred to herein as a "safety and stabilization guarantee," either as a separate guarantee or a line item of the performance guarantee, in favor of the Township, to 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, 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 Township to the developer of the Township's intent to claim payment under the guarantee.

B. The amount for the safety and stabilization guarantee shall be calculated to equal the following:

(1) For a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.

(2) 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:

(a) \$5,000 for the first \$100,000 of bonded improvement costs, plus two and a half (2.5%) percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one (1%) percent of bonded improvement costs in excess of \$1,000,000.

C. 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.

D. 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.

E. The Township shall release a "safety and stabilization guarantee" upon the municipal 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.

Section 2. All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in such conflict or inconsistent.

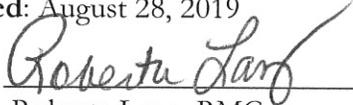
Section 3. This Ordinance may be renumbered for codification purposes.

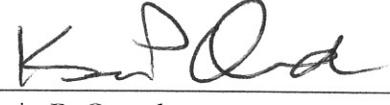
Section 4. In the event that any section, part or provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so held unenforceable or invalid.

Section 5. This Ordinance shall take effect upon final passage and publication as provided by law.

Introduced: July 24, 2019

Adopted: August 28, 2019

Attest: 
Roberta Lang, RMC
Township Clerk

Approve: 
Kevin P. Orender
Mayor

NOTICE AND SUMMARY OF ORDINANCE NO. 10-2019

**AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF
WALL, IN THE COUNTY OF MONMOUTH, STATE OF NEW JERSEY
AMENDING CHAPTER 140, LAND USE AND DEVELOPMENT REGULATIONS,
PART 3, PROCEDURES, ARTICLE XV, IMPROVEMENT, PERFORMANCE AND
MAINTENANCE GUARANTEES OF THE WALL TOWNSHIP MUNICIPAL
CODE**

The purpose of this Ordinance is to amend Chapter 140 to revise guarantees and bonds held by the Township according to the amendments that were signed into law on January 16, 2018, as P.L. 2017, c. 312, which implements major reforms to the requirements for the posting of performance and maintenance guarantees under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq.

Notice is hereby given that the foregoing Ordinance was introduced and passed on first reading by the Township Committee of the Township of Wall on July 24, 2019, and further be considered for final passage and adoption at the Wall Township Municipal Building, 2700 Allaire Road, Wall, New Jersey, on August 28, 2019 at 7:30 p.m., or as soon thereafter as the matter can be reached on the agenda, at which time and place all persons interested therein shall be given an opportunity to be heard, and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's Office in the Township of Wall, Town Hall, to members of the general public who shall request the same or on our website www.wallnj.com under Legal Notices.

ROBERTA LANG
MUNICIPAL CLERK