

TOWNSHIP OF SPRINGFIELD

ORDINANCE 2018-04

AN ORDINANCE AMENDING THE TOWNSHIP CODE REGARDING PERFORMANCE, MAINTENANCE AND RELATED GUARANTEES

WHEREAS, the State Legislature has recently amended provisions of the Municipal Land Use Law at N.J.S.A. 40:55D-53 governing performance, maintenance and related bonds; and

WHEREAS, the Township Council desires to amend and update its existing Code provisions to be in accord with State statute and serve the best interests of the Township and its residents; and

WHEREAS, after introduction, this Ordinance shall be referred to the Township of Springfield Planning Board for review and comment pursuant to N.J.S.A. 40:55D-26.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Springfield, County of Burlington and State of New Jersey that the Township Code be and hereby is amended as follows:

Section 1. Chapter 164-21(E) shall be amended to read as follows:

“E. Performance guarantee. The developer, as a condition of final site plan approval, shall be required to post a performance guarantee in the amount of 120% of the cost of improvements as estimated by the Board engineer. For all such performance and maintenance guarantees, the developer shall adhere to the requirements established at Chapter 185-8 of the Township Code.”

Section 2. Chapter 185-8 of the Township Code entitled “Guarantees” is repealed and replaced to read as follows:

“§ 185-8. Guarantees and Inspection Fees

A. Required Guarantees; surety.

For the purpose of assuring the installation and maintenance of bondable land development improvements, as a condition of all final site plan, subdivision, and/or zoning permit approvals, the Board and/ or Zoning Officer shall require, as appropriate, and the Township Council shall accept, in accordance with the standards adopted hereinafter:

(1) The furnishing of a performance guarantee in favor of the Township in an amount not to exceed 120% of the cost of the improvement, 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 any and all bondable items as permitted therein. The Township 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.

- (2) The furnishing of a maintenance guarantee in favor of the Township in an amount not to exceed 15% of the cost of the improvement, 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 any and all bondable items as permitted therein.
- (3) The furnishing of a Temporary Certificate of Occupancy Guarantee in the amount of 120 percent of the cost of installing the remaining improvements required to be completed before the issuance of a permanent certificate of occupancy. The scope and amount of such a guarantee will be determined by the Township Engineer.
- (4) The furnishing of a Safety and Stabilization Guarantee to return the property to a safe and stable condition or to otherwise implement measures to protect the public from access to an unsafe or unstable condition. The amount of such a guarantee shall be \$5,000 where the overall bonded improvements are \$100,000 or less. Where the overall bonded improvements are \$100,000 or more, then the Township Engineer shall calculate the bond amount in accord with the following: \$5,000 for the first \$100,000 of bonded improvement costs, plus 2.5 percent of bonded improvement costs in excess of \$100,000 up to \$1 million, plus 1 percent of bonded improvement costs in excess of \$1 million.

B. Other governmental agencies.

In the event that other governmental agencies or public utilities will automatically 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. Failure to perform; municipal completion.

If the required 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, N.J.S.A. 40A:11-1, et seq.

D. Conformance with municipal standards.

All improvements shall be in accordance with the design standards of the Township Code or as authorized by a design exception granted by the reviewing board and shall be subject to inspection and approval by the Township Engineer. The Township Engineer shall be notified 24 hours prior to the start of the various phases of the work, and if discontinued, shall again be notified when the work will be continued.

E. Release or reduction of performance guarantee.

- (1) Upon substantial completion of all required improvements, the obligor 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 this Chapter, a list of all uncompleted or unsatisfactorily completed 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 improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Thereupon the Township Engineer shall inspect all improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the Township Council, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.
- (2) The list prepared by the Township Engineer 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 Township 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 Township Engineer and appended to the performance guarantee pursuant to this Chapter.
- (3) The Township Council, by resolution, shall either accept the improvements determined to be complete and satisfactory by the Township 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 or release 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 this Chapter. 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 Council, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those accepted improvements, except for that portion sufficient to secure completion or correction of the improvements not yet accepted; provided that 30% of the amount of the performance guarantee posted may be retained to ensure completion and acceptability of all improvements. If any portion of the required improvements is rejected, the Township shall 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.

F. Inspection Fees.

The obligor shall reimburse the Township for all reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements; provided that the municipality may require of the developer a deposit for the inspection fees in accordance with § 185-8(I).

G. Phasing in sections.

In the event that final approval is by stages or sections of development pursuant to Subsection a of Section 29 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-38), the provisions of this section shall be applied by stage or section.

H. Dedication and acceptance.

To the extent that any of the improvements have been dedicated to the Township on the subdivision plat, site plan and/or zoning permit, the municipality shall be deemed, upon the release of any performance guarantee required hereunder, to accept dedication for public use any improvements made thereunder, provided that such improvements have been inspected and have received final approval by the Township Engineer.

I. Inspection Escrow

(1) The obligor shall reimburse the municipality for reasonable inspection fees paid to the Township Engineer for the inspections of improvements required under § 185-8(A); which fees shall not exceed the sum of the amounts set forth in subparagraphs (a) and (b) of this paragraph. The municipality may require the developer to post the inspection fees in escrow in an amount:

- a. 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 § 185-8(A)(1); and
 - b. not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under § 198-14(A)(1), which cost shall be determined pursuant to section 15 of P.L.1991, c.256 (C.40:55D-53.4).
- (2) 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 Township Engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees.
- (3) 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 Township Engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.
- (4) If the municipality determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to § 185-8(I) (1)(a-b), 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 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.

Section 3. Repealer, Severability, and Effective Date.

Repealer. § 185-8, together with any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.

Severability. In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, then the Township Council hereby declares it's intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that it allows the Township to meet the goals of the ordinance.

Effective Date. This Ordinance shall take effect upon proper passage and approval in accordance with the law.

SPRINGFIELD TOWNSHIP COUNCIL

I, PATRICIA A. CLAYTON, Clerk of the Township of Springfield, County of Burlington, and State of New Jersey, do hereby certify that the above Ordinance was adopted by the municipal governing body at an open public meeting which was duly advertised to the citizens of the municipality in accordance with the laws, pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-9. I also certify that this municipality has or will comply with all notice provisions required by Statute.

I certify that the above is a true and correct copy of an Ordinance adopted by the Springfield Township Council at a regular meeting of that body held on August 8, 2018.

PATRICIA A. CLAYTON, TOWNSHIP CLERK
SPRINGFIELD TOWNSHIP