

**TOWNSHIP OF UPPER DEERFIELD**

**ORDINANCE 861**

**DELETING SECTIONS 405-65 THROUGH SECTION 405-68 AND REPLACING IN ITS ENTIRETY WITH A NEW 405-65 AND 405-66 OF THE CODE OF THE TOWNSHIP OF UPPER DEERFIELD**

**WHEREAS**, the Code of the Township of Upper Deerfield in Section 405-65 through 405-68 provides for Guarantees and Inspection Fees and Escrows; and

**WHEREAS**, the Township Committee of the Township of Upper Deerfield desires to modify these sections of the code.

**NOW THEREFORE BE IT ORDAINED** by the Township Committee of the Township of Upper Deerfield that Section 405-65 through 405-68 of the Code of the Township of Upper Deerfield be deleted in their entirety and replaced with new Sections identified as 405-65 and 405-66 and reads as follows:

**ORDINANCE SECTIONS 405-65 THROUGH SECTION 405-67 ARE DELETED AND REPLACED IN THEIR ENTIRETY WITH THE FOLLOWING**

**Guarantees**

**§ 405-65. Guarantees required; surety; release.**

A. Before final subdivision plats or minor subdivisions are signed by municipal officials or released for filing or recording, or as a condition of final site plan approval, or as a condition to the issuance of a zoning permit pursuant to subsection d. of section 52 of P.L.1975, c.291 (C.40:55D-65), or as a condition for issuance of a building permit for any development requiring site plan approval, or as a condition of any Redevelopment Approval or Redevelopment Agreement, the developer shall furnish pursuant to the provisions of this section 405-65:

- 1) A Performance Guarantee;
- 2) A Perimeter Buffer Guarantee as either a line item in the Performance Guarantee or as a separate guarantee;
- 3) A Temporary Certificate of Occupancy Guarantee;
- 4) A Safety and Stabilization Guarantee;
- 5) A Maintenance Guarantee.

B. Performance Guarantee.

- 1) Dedicated Improvements. The developer shall furnish a Performance Guarantee in favor of the Township 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 a 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 section 15 of P.L.1991, c.256 (C.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.

- 2) Perimeter Buffer. The Performance Guarantee shall include the cost of installation of perimeter buffer landscaping, within a privately owned approved phase or section of a development 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.

C. Temporary Certificate of Occupancy Guarantee. 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 120% of the cost of installation of those incomplete site improvements required by the site plan, subdivision or redevelopment approvals or as a requirement of any zoning or building requirements or 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 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 B of this section 405-65, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, which have not been completed and which are included in the "Temporary Certificate of Occupancy Guarantee," shall be released. The scope and amount of the "Temporary Certificate of Occupancy Guarantee" shall be determined by the zoning officer, municipal engineer, or other municipal official designated by ordinance. At no time may a Township 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, municipal engineer, or other municipal official designated by the Township 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. Safety and Stabilization Guarantee. 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 Guarantee" 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, only in the circumstance that:

(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 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. A 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.

The amount of a "Safety and Stabilization Guarantee" for a development where the cost of required site improvements as determined by the municipal engineer or other municipal official designated by the Township is not more than \$100,000 shall be \$5,000.

The amount of a "Safety and Stabilization Guarantee" for a development where the cost of required site improvements as determined by the municipal engineer or other municipal official designated by the Township exceeds \$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 site improvement costs, plus two and a half percent of site improvement costs in excess of \$100,000 up to \$1,000,000, plus one percent of site 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 municipal engineer's or other municipal official designated by the Township 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.

E. Maintenance Guarantee. The developer shall post with the Township, prior to the release of any guarantee required pursuant to this section 405-65, a Maintenance Guarantee in a form acceptable to the Township and in an amount not to exceed 15% of the cost of the installation of the Dedicated Improvements. The Maintenance Guarantee shall also include 15% of the cost of the installation of private site improvements for stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system. The amount of the Maintenance Guarantee for the private improvements to be included shall be calculated by the municipal engineer or other municipal official designated by the Township. No Guarantees shall be released until a Maintenance Guarantee in a form acceptable to the Township is posted.

F. The term of the maintenance guarantee shall be for a period not to exceed two years from the date of final acceptance of the improvement(s) by resolution of the Township Committee,

after recommendation of acceptance by the Township Engineer and shall automatically expire at the end of the established term.

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, shall be required by the Township for such utilities or improvements.

- G. Calculation of Performance Guarantee. The municipal engineer or other municipal official designated by the Township, shall prepare an itemized cost estimate of the improvements covered by any Guarantee to be furnished to this section 405-65 in accordance with the provisions of NJSA 40:55d-53.4.
- H. Extension of Time for Completion of installation of Improvements. The time allowed for installation of the improvements subject to any Guarantee furnished 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 or other municipal official designated by the Township 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.
- I. Liability for Completion of Improvements. If any required improvements are not completed or corrected in accordance with any Guarantee furnished, 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.).
- J. Release of Guarantee/Partial Release. 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, or the completion of any other required improvement for which any Guarantee has been furnished pursuant to the provisions of 405-65, 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 applicable Guarantee, 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 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 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 applicable Guarantee relating to the completed and satisfactory improvement, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the Guarantee.

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 applicable Guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the Guarantee. 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 the applicable Guarantee, with respect to those approved 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 applicable Guarantee may be retained to ensure completion and acceptability of all improvements. If the sum of the approved improvements would exceed 70 percent of the total amount of the Guarantee, then the Township may retain 30 percent of the amount of the total Guarantee to ensure completion and acceptability of the required improvements. 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.

If any portion of the required bonded 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.

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 municipal engineer. The Township may require, in addition to the foregoing, formal dedication documents in recordable form, and the developer/obligor shall be responsible for the recording of those documents, including the costs of recording thereof.

**ORDINANCE SECTIONS 405-68 IS DELETED AND REPLACED IN ITS ENTIRETY WITH THE FOLLOWING**

**405-66 Inspection Fees and Escrows**

The obligor of any Guarantee furnished pursuant to section 405-65 shall reimburse the Township for reasonable inspection fees paid to the municipal engineer or other authorized municipal representative, for the

inspection of improvements to be completed for which any Guarantee has been furnished. The Township may require the developer to post the inspection fees in escrow. The fees are as follows:

(a) not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of improvements that are subject to any Guarantee; and

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

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.

If the Township determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to subparagraphs (a) and (b) of paragraph (1) of this subsection, 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 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.

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 (C.40:55D-38), the provisions of this section shall be applied by stage or section.

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James Crilley, Chairman

Adopted: March 21, 2024

Attested:

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Roy J. Spoltore, Township Clerk

First Reading: March 7, 2024

Publication: March 13, 2024

Publication of Final Adoption: March 28, 2024