

ARTICLE 6

CONTRACTS, FEES AND CONTRIBUTIONS

Section 601: Statement of Intent

- (A) Article 6 of this Ordinance provides the procedural requirements and general provisions for contracts, municipal improvement agreements, dedication of municipal improvements and maintenance guarantees, as well as all other contributions or fees that may be required as a result of a subdivision or land development application within Upper Bern Township.
- (B) The provisions established under Article 6 shall be subject to the interpretation of the Upper Bern Township Board of Supervisors, Planning Commission, Engineer, Planning Consultant, Zoning Officer and Solicitor. Should a dispute arise concerning the interpretation of these regulations, the person aggrieved by the interpretation may file an appeal with the Board of Supervisors. In all cases, the burden of proof and submission of technical evidence shall be the responsibility of the applicant or person appealing the interpretation of the Upper Bern Township Board of Supervisors, Planning Commission, Engineer, Planning Consultant, Zoning Officer and Solicitor.
- (C) Where the provisions of this Ordinance conflict with the specific provisions of the Pennsylvania Municipalities Planning Code, the specific provisions of the Pennsylvania Municipalities Planning Code shall be complied with unless otherwise directed by the Board of Supervisors.

Section 602: Improvement Guarantees and Contracts

- (A) No subdivision or land development plan shall be granted final approval unless the streets, curbs, gutters, sidewalks, walkways, streetlights, water mains, sanitary sewers, fire hydrants, storm sewers, stormwater management facilities, shade trees, buffer or screen plantings, recreational facilities, open space improvements and other infrastructure improvements required to satisfy this Ordinance, have been designed, permitted, completed, installed and inspected in accordance with this Ordinance.
- (B) In lieu of the completion of any improvements, which may be required as a condition for the final approval of the subdivision or land development plan, including improvements and fees required by this Ordinance, the applicant shall deposit with Upper Bern Township an amount as hereinafter calculated to cover the costs of such required improvements or common amenity including, but not limited to, streets, curbs, gutters, walkways, streetlights, water mains, sanitary sewers, fire hydrants, storm sewers, stormwater management facilities, shade trees, buffer or screen plantings, recreational facilities, open space improvements and other required improvements.
- (C) When requested by the applicant to facilitate financing, the Board of Supervisors shall furnish the applicant with a signed copy of a resolution indicating approval of the final plan contingent upon the applicant obtaining satisfactory financial security and executing a development agreement.
- (D) The final plan shall not be signed nor recorded until the financial security is tendered and a development agreement is executed. The resolution or letter of contingent approval shall expire and be deemed to be revoked if the financial security is not tendered and the development agreement is not executed within ninety (90) days of the date of the resolution or contingent approval. The Board of Supervisors may, at its discretion, grant a written extension, which shall be placed in writing at the request of the applicant.
- (E) In addition to cash deposits and escrow accounts, state or federal chartered lending institution irrevocable letters of credit extending for a term of one (1) year beyond completion of all improvements and restrictive or escrow accounts in such lending institution shall be deemed acceptable financial security for the purposes of securing the completion of the required improvements. Such financial security shall be posted with Upper Bern Township by a bonding company or state or federal chartered lending institution chosen by the applicant, provided such bonding company or lending institution is authorized to conduct business within the Commonwealth of Pennsylvania. 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 required improvements.

- (F) The amount of financial security to be posted for the completion of the required improvements shall be equal to one hundred ten (110) percent of the cost of completion estimated as of ninety (90) days following the date scheduled for completion by the applicant, and all administrative and engineering inspections, fees, costs and expenses.
- (G) Upper Bern Township may adjust the amount of the financial security on an annual basis, by comparing the actual cost of the improvements which have been completed and the estimated cost for completion of the remaining improvements as of the expiration of the ninetieth (90th) day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, Upper Bern Township shall require the applicant to post additional security in order to assure that the financial security equals the one hundred ten (110) percent and administrative and engineering costs as specified above. If required by Upper Bern Township, additional security shall be posted by the applicant.
- (H) The amount of required financial security shall be based upon the estimated cost of completion and inspection of the required improvements, submitted by the applicant or developer and prepared by a professional engineer licensed as such in the Commonwealth of Pennsylvania and certified by such engineer to be a fair and reasonable estimate of all such costs.
- (I) Upper Bern Township, upon the recommendation of Upper Bern Township Engineer and Planning Consultant, may refuse to accept such estimate for good cause shown. If the applicant and Upper Bern Township are not able to agree upon an estimate, then the estimate shall be recalculated and certified by another professional engineer licensed as such in the Commonwealth of Pennsylvania and chosen mutually by Upper Bern Township and the applicant. The estimate certified by the third engineer shall be presumed fair and reasonable.
- (J) If the applicant requires more than one (1) year from the date of posting the financial security to complete the required improvements, the amount of financial security shall be increased by an additional ten (10) percent for each one (1) year period or portion thereof beyond the first anniversary date from posting of financial security or to an amount not exceeding one hundred ten (110) percent of the cost of completion and inspection of the required improvements as reestablished on or about the expiration of the preceding one (1) year period by using the procedure described above.
- (K) In the case where development is projected over a period of years, Upper Bern Township may at its discretion authorize approval of final plans by section, stages, or phases of development with the understanding that no sale of lots and no work within the areas reserved from development may commence until the required contracts are signed and the financial security posted with respect to those areas reserved from development. Upper Bern Township shall also have the right to impose additional requirements and conditions in connection with the phases as they are approved so as to assure that each section or phase will not be dependent for access or other improvement or common amenity upon completion of improvements in the subsequent phase or stage.
- (L) As part of the municipal improvements agreement, the escrow shall contain a five (5) percent fee added to the total cost of the improvements and contingencies for administration, inspection and management of the escrow account.
- (M) As part of the municipal improvements agreement, the escrow shall contain a two (2) percent fee added to the total cost of the improvements and contingencies for the preparation and review of the required As-Built Plans.
- (N) As the work of installing the required improvements proceeds, the party posting the financial security may request the Board of Supervisors to release or authorize the release, from time to time, such portions of the financial security. Any such request shall be in writing addressed to Upper Bern Township and the Board of Supervisors shall have forty-five (45) days from receipt of such request within which Upper Bern Township Engineer and Planning Consultant shall certify, in writing, to Upper Bern Township whether such portion of the improvements has been completed in accordance with the approved plan and applicable specifications.
- (O) Upon certification of completion, Upper Bern Township shall authorize release by the bonding company or lending institution of an amount as estimated by Upper Bern Township Engineer and Planning Consultant fairly representing the value of the improvements completed or, if Upper Bern Township fails to act within said forty five (45) day period, Upper Bern Township shall be deemed to have approved the release of funds as requested.
- (P) Upper Bern Township shall, prior to release at the time of completion and certification by Upper Bern Township Engineer, require retention of fifteen (15) percent of the estimated cost of the required improvements.

Section 603: Acceptance of Streets and Other Improvements

- (A) The Board of Supervisors shall at its discretion accept a part or all of the required improvements if satisfied that the applicant has complied with the approved plan and all specifications and ordinances of Upper Bern Township.
- (B) The applicant shall furnish Upper Bern Township with legal descriptions for all roads and easements. In addition, the applicant shall provide two (2) complete sets of prints of the completed required improvements including streets, curbs, sidewalks, stormwater management facilities, sanitary sewage disposal facilities, water supply facilities, street signs, street lights, profiles, utilities and other municipal site improvements. In addition, the applicant shall pay all costs for the recordation of the final plan, as-built plans and deeds of dedication with the Berks County Recorder of Deeds, as required by the Board of Supervisors for its acceptance of the required improvements and any deed of dedication for the same.
- (C) Unless permitted by Upper Bern Township, no roads or other subsequent improvements will be accepted by Upper Bern Township during the months of November, December, January, February and March of each calendar year.

Section 604: Maintenance Guarantee

- (A) Where Upper Bern Township accepts dedication of all or some of the required improvements following completion, Upper Bern Township shall require the posting of financial security to secure structural integrity of said improvements as well as the functioning of said improvements in accordance with the design standards and specifications as shown on the Final Plan.
- (B) The maintenance period shall be eighteen (18) months from the date of acceptance of dedication. The financial security shall be of the same type as described previously in this Ordinance. The amount of financial security for maintenance shall be fifteen (15) percent of the actual cost of the installation of said improvements.

Section 605: Public Utilities and PADOT Improvements

- (A) If basic public utilities (electric, natural gas, cable television, and telephone) are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility and distinct from Upper Bern Township, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility providing service and shall not be included within the financial security as otherwise required by Upper Bern Township.
- (B) If transportation improvements are required by the Pennsylvania Department of Transportation (PADOT), a separate escrow with sufficient financial security shall be established between the applicant and the PADOT to provide assurances that the required transportation improvements are completed in accordance with the Highway Occupancy Permit for the project. If the PADOT does not require an escrow for the required improvements within the state right-of-way, Upper Bern Township may require that the cost of such improvements are included within the municipal improvements agreement between the applicant and Upper Bern Township.

Section 606: Final Release from the Improvement Bond and Agreement

- (A) When the applicant has completed all of the necessary and appropriate improvements, the applicant shall notify Upper Bern Township, in writing, by certified or registered mail, of the completion of the required improvements and shall send a copy thereof to Upper Bern Township Engineer and Planning Consultant. Pursuant to the provisions of Upper Bern Township and the Pennsylvania Municipalities Planning Code, the Upper Bern Township Engineer and Planning Consultant shall inspect all of the required improvements.
- (B) Upper Bern Township Engineer and Planning Consultant shall file a report in writing via certified mail or first class mail to Upper Bern Township and the applicant of the final review of the site improvements. The report shall be detailed and shall indicate approval or rejection of the improvements. If the improvements are not approved or shall be rejected by Upper Bern Township Engineer and Planning Consultant, the report shall contain a statement of reasons for such non-approval or rejection.

- (C) Upper Bern Township shall notify the applicant within fifteen (15) days of receipt of the report from the Upper Bern Township Engineer and Planning Consultant, in writing by certified and first class mail, of the action of Upper Bern Township has taken concerning the recommendations of the Upper Bern Township Engineer and Planning Consultant.
- (D) If Upper Bern Township or Upper Bern Township Engineer and Planning Consultant fail to comply with the time limitation provisions contained within this Ordinance, all improvements will be deemed to have been approved and the applicant shall be released from liability for installation, pursuant to its performance guarantee bond, or other security agreement, but shall be liable for and shall provide a maintenance guarantee as otherwise provided for herein.
- (E) If any portion of said improvements shall not be approved or shall be rejected by Upper Bern Township, the applicant shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined within this Ordinance, shall be followed.
- (F) The applicant shall reimburse Upper Bern Township for the reasonable and necessary expenses incurred for the inspection of improvements. Such fees shall be based on a normal fees approved by the Board of Supervisors for engineering, planning and administrative services.
- (G) In the event that any required improvements have not been installed as provided for in these regulations, or in accordance with the approved final plan, Upper Bern Township shall have the power to enforce any corporate bond, or other security, by appropriate legal and equitable remedies. If the proceeds of such bond, or other security, are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, Upper Bern Township may, at its option, install part of or all such improvements in the subdivision or land development and may institute appropriate legal action to recover the monies necessary to complete the remainder of the improvements.
- (H) In addition to the posting of security, the applicant shall be required to enter into a contract with Upper Bern Township, in a form acceptable to the Upper Bern Township Engineer, Planning Consultant and Solicitor, covering the completion of the required improvements. The contract shall also provide for engineering inspections, insurance, and reimbursement of expenses to Upper Bern Township, procedure upon default, and other subjects, deemed necessary by the Upper Bern Township Engineer, Planning Consultant and Solicitor to ensure proper and reasonable development of the land.

Section 607: Other Contributions and Fees

- (A) The Upper Bern Township Board of Supervisors have established by municipal resolution or ordinance, a fee schedule for the submission and processing of all applications pertaining to this Ordinance. The proposed application shall not be considered by Upper Bern Township until all pertinent fees are paid in full. All such fees shall be utilized to pay for all administrative costs as well as all review fees for any professional consultants designated by Upper Bern Township, as authorized by law.
- (B) The Board of Supervisors may be alter or change the schedule of the fees by resolution in accordance the appropriate provisions established within the Upper Bern Township Code and the Pennsylvania Municipalities Planning Code.
- (C) Where design and improvement waivers are to be considered, the applicant or developer may offer a contribution or a fee in lieu of the requirement. All such contributions or fees shall be negotiated between Upper Bern Township and the applicant or developer.
- (D) All other fees and contributions that may be required for transportation improvements, recreation facilities, community facilities and/or other infrastructure improvements shall be paid by the applicant prior to final approval of the subdivision or land development plan.