

**ARTICLE V
IMPROVEMENT CONSTRUCTION AND GUARANTEES
and
OPEN LAND OWNERSHIP AND MAINTENANCE**

501 General

No project shall be considered in compliance with this Ordinance until the streets, parking facilities, storm drainage facilities, water and sewer facilities, lot line markers and survey monuments and all other required or proposed improvements have been installed in accord with this Ordinance.

No final plan shall be signed by the Planning Commission for recording in the office of the Susquehanna County Recorder of Deeds until:

- A. All improvements required by this Ordinance are installed to the specifications contained in Article VI of this Ordinance and other Planning Commission requirements and such improvements are certified by the Planning Commission Engineer; or,
- B. An Improvements Construction Guarantee in accord with §503 and the Pennsylvania Municipalities Planning Code has been accepted by the Susquehanna County Commissioners as determined by the Planning Commission.

Any approval granted by the Susquehanna County Planning Commission for any improvement required by this Ordinance shall be for subdivision and/or land development approval purposes only and shall not constitute in any manner an approval for dedication of any improvements to the County or affected local municipality.

502 Sections/Stages

In cases where Final Plan approval is proposed in sections or stages, the Planning Commission shall require the construction or guarantee of any and all development improvements required for the service or protection of any section or stage of the development proposed for final approval.

503 Improvement Construction Guarantees

503.1 Acceptable Guarantees

The following are acceptable forms of improvement construction guarantees:

503.1.1 Surety Performance Bond - A security bond from a surety bonding company authorized to do business in the Commonwealth of Pennsylvania and approved by the Planning Commission. The bond shall be payable to the Susquehanna County Commissioners.

503.1.2 Escrow Account - A deposit of cash with the Susquehanna County Commissioners or in escrow with a financial institution. The use of a financial institution for establishing an escrow account shall be subject to approval by the Planning Commission.

503.1.3 Irrevocable Letter of Credit - An irrevocable letter of credit provided by the Developer from a financial institution or other reputable institution subject to the approval of the Planning Commission.

503.1.4 Additional Requirements - The following requirements shall apply to the financial guarantees set forth in this §503.1:

- A. The funds of any guarantee shall be held in trust until authorized by the Planning Commission for release and may not be used or pledged by the Developer as security in any other matter during that period.
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- B. In the case of a failure on the part of the Developer to complete said improvements, the institution shall immediately make the funds available to the Susquehanna County Commissioners for use in the completion of those improvements approved as part of the final plan and as may be required to service any lots or dwelling units as determined by the Planning Commission.
- C. The creditor shall guarantee funds in an amount equal to the established cost of completing all required improvements pursuant to §503.2.
- D. The guarantee shall not be withdrawn, or reduced in amount, until authorized for release by the Planning Commission.

503.2 Amount of Security

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 ninety (90) days following the date scheduled for completion by the developer. Annually, the Planning Commission 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 Planning Commission may require the developer to post additional security in order to assure that the financial security equals said one-hundred and ten (110) percent. Any additional security shall be posted by the developer in accord with this §503.

- A. The amount of guarantee required shall be based upon an estimate of the cost of completion of the required improvements, prepared by the developer's engineer licensed as such in Pennsylvania and certified in writing by such engineer to be a fair and reasonable estimate of such cost. The Planning Commission, upon the recommendation of the Planning Commission Engineer, may refuse to accept such estimate for good cause shown. If the applicant and the Planning Commission are unable to agree upon an estimate, then the estimate shall be recalculated and re-certified by another professional engineer licensed as such in Pennsylvania and chosen mutually by the Planning Commission and the 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 Susquehanna County Commissioners and the applicant or developer.
- B. If the Developer requires more than one (1) year from the date of posting the guarantee to complete the required improvements, the amount of the guarantee shall be increased by an additional ten (10) percent for each one (1) year period beyond the first anniversary date of posting the guarantee or to an amount not exceeding one hundred ten (110) percent of the cost of completing the improvements as established on or about the expiration of the preceding one (1) year period as estimated using the procedure established by this §503.2.

503.3 Terms of Guarantee

Construction guarantees shall be submitted in a form and with such surety as approved by the Planning Commission to assure that all improvements shall be completed within a fixed period of time but not to exceed five (5) years from the date of Preliminary Plan approval.

503.4 Release of Improvement Construction Guarantees

- 503.4.1 - Partial Release - The developer may request the release of such portions of the construction guarantee for completed improvements.
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- A. Request - All such requests shall be in writing to the Planning Commission and a copy to the Planning Commission Engineer and shall include a certification from the Developer's engineer that the subject improvements have been completed in accord with the approved plans and required standards.
- B. Inspection - Within forty-five (45) days of receipt of such request the Planning Commission shall direct the Planning Commission Engineer to inspect the subject improvements and certify in writing to the Planning Commission the completion in accord with the approved plans and Planning Commission standards; and the Planning Commission shall authorize release of such portion of the construction guarantee established by the Planning Commission Engineer to represent the value of the completed improvements. If the Planning Commission fails to act within said forty-five (45) day period, the Planning Commission shall be deemed to have approved the release of funds as requested. The Planning Commission may, prior to final release at the time of completion and certification by its engineer, require retention of ten (10) percent of the estimated cost of the aforesaid improvements.

503.4.2 Final Release - When the Developer has completed the construction of all required improvements the Developer shall so notify the Planning Commission.

- A. Notification - Such notification shall be in writing, by certified or registered mail, with a copy to the Planning Commission Engineer; and shall include a certification from the Developer's engineer that all required improvements have been completed in accord with the approved plans and Planning Commission standards.
 - B. Inspection - Within ten (10) days of receipt of said notice, the Planning Commission shall direct and authorize the Planning Commission Engineer to make a final inspection of the subject improvements.
 - C. Report - The Planning Commission Engineer shall within thirty (30) days of said authorization, file a detailed written report with the Planning Commission, with a copy mailed to the Developer by certified or registered mail, recommending 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, said report shall contain, by specific Ordinance reference, a statement of reasons for non-approval or rejection.
 - D. Action - Within fifteen (15) days of receipt of the Planning Commission Engineer's report, the Planning Commission shall act upon said report and shall notify the Developer in writing by certified or registered mail of their action. If the Planning Commission 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.
 - E. Rejected or Unapproved Improvements - If any portion of the subject improvements are not approved or are rejected by the Planning Commission, the Developer shall proceed to rectify and/or complete the same and, upon completion, the same procedure of notification, as outlined in this §503.4, shall be followed.
 - F. Enforcement Remedies - In the event that any improvements which may be required have not been installed as provided in this Ordinance or in accord with the approved plan, the Planning Commission may enforce any corporate bond, or other guarantee by appropriate legal and equitable remedies. If proceeds of the guarantee are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by the said security, the
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Planning Commission may, at its option, install part of such improvements in all or part of the subdivision and/or development and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the guarantee or from any legal or equitable action brought against the developer, or both, shall be used solely for the installation of the improvements covered by such security and not for any other municipal purposes.

504 Improvements Construction

This section shall apply to all construction of improvements whether the improvements are completed prior to final plan approval or guarantees are provided.

504.1 Construction Plans and Drawings

Prior to the initiation of construction of any improvements shown on an approved preliminary plan or in conjunction with the final plan application and guarantee proposal, the Developer shall submit to the Planning Commission for approval, final construction plans which have not previously been submitted and approved detailing the design and installation of all improvements and documenting compliance with this Ordinance.

504.2 Schedule

The Developer shall, prior to the initiation of construction of any required improvements, submit to the Planning Commission a schedule of construction for all required improvements, including the timing of the development of any proposed sections.

504.3 Inspections

Based upon the construction schedule and the nature of the required improvements and within thirty (30) days of receipt of the said construction schedule, the Planning Commission Engineer shall prepare a Planning Commission Inspection Schedule to assure the construction of the required improvements in accord with the approved plan and required standards. In addition to all final inspections required for all improvements, inspections shall be required at all phases of construction when a failure to inspect would result in a physical impossibility to verify compliance at the time of the final inspection (e.g., back filling of sewer or water line trenches). This may require a full-time inspector and may include but not be limited to such tests as pressure testing of conveyance lines or vacuum testing.

504.4 Notice

The Developer shall provide a minimum of two (2) working days notice prior to the time when construction will have proceeded to the time of an inspection required by the Planning Commission Inspection Schedule.

504.5 Cost

The cost of all inspections conducted by the Planning Commission shall be borne by the Developer.

505 Improvement Maintenance Guarantee**505.1 Guarantee**

Before final approval is granted, the Developer shall provide to the Susquehanna County Commissioners a maintenance guarantee in an amount determined by the Planning Commission but not less than fifteen (15%) percent of the cost of all required improvements as estimated by the applicant's engineer and approved by the Planning Commission Engineer.

- A. Such maintenance guarantee shall be in such form as prescribed in §503.1 and shall guarantee that the Developer shall maintain all improvements in good condition during the twelve (12) months after the completion of construction or installation and final approval of all improvements. If the
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Developer is negligent or fails to maintain all improvements in good condition during the twelve (12) month period, the Planning Commission may enforce the maintenance guarantee, bond or other surety by appropriate and equitable remedies. If proceeds of such bond or other surety are insufficient to pay the cost of maintaining the improvements during the said twelve (12) month period, the Planning Commission may institute appropriate legal or equitable action to recover the monies necessary for maintaining the improvements in good condition.

- B. After the expiration of the eighteen (18) months from the date of the final approval of the subject improvements and if all improvements are certified by the Planning Commission Engineer to be in good condition, the Planning Commission shall authorize release of said maintenance guarantee and surety to the Developer or party posting the said maintenance guarantee and surety.

505.2 Guarantee for Community Sewage, Community Water and Storm Water Management

This section shall only apply if guarantees are not required by any governing municipal authority.

- A. In lieu of the requirements of §505.1 above, the Planning Commission may require a guarantee from the Developer for the maintenance, operation and repair of any community sewage system, community water system or storm water management structure. Said guarantee shall be posted immediately after the system receives final approval and before it is put into operation.
- B. The amount of said maintenance guarantee shall be determined by the Planning Commission but shall generally not exceed twenty-five (25) percent of the estimated cost of the system as verified by the Planning Commission Engineer.
- C. In the event the system is not so maintained and operated, the Planning Commission, at any time during the term of the guarantee and upon thirty (30) calendar days notice, shall have the right to declare a forfeiture of a portion or all of the said maintenance guarantee, depending on the extent of the lack of maintenance and proper operation, and shall use the proceeds for such maintenance and corrective measures as shall be required. If proceeds of the guarantee are insufficient to pay the cost of maintaining the improvements the Planning Commission, at its option, may institute appropriate legal or equitable action to recover the monies necessary for maintaining the improvements in good condition.

506 Continued Ownership and Maintenance of Improvements

The Developer shall provide to the satisfaction of the Planning Commission and prior to Final Plan approval, evidence of the provision for the succession of ownership and responsibility for maintenance of development improvements.

506.1 Private Operation and Maintenance

506.1.1 Land Developments - In the case of land developments such provision shall be in the form of deed covenants and restrictions clearly placing the responsibility of maintenance of all development improvements with the owner of the land development.

506.1.2 Residential Developments - In the case of subdivisions, cluster developments, multi-family housing projects and other residential developments involving the transfer of property, the Developer shall provide, by deed covenants and restrictions, for the creation of a Property Owners Association (POA) to assume the ultimate ownership of all development improvements and responsibility for maintenance of such improvements. Membership in the POA shall be mandatory for all property owners in the development. The developer shall also be a member of the POA and shall remain responsible for payment of any per lot dues or fees assessed by the POA which are

associated with improvements serving said lots. The deed covenants and restrictions creating the POA shall be approved by the Planning Commission.

506.1.3 Any Improvements Which Will Remain Private - In the case where roads, drainage facilities, a community sewage treatment system or community water supply, or any other improvements are to remain private, the developer shall provide for the establishment of an escrow fund in accord with §503.1 to guarantee the operation and maintenance of the improvements. Said fund shall be established on a permanent basis with administrative provisions approved by the Planning Commission. The amount of said fund shall be established by the Planning Commission, but in no case shall be less than fifteen (15) percent nor more than twenty-five (25) percent of the construction cost of the system as verified by the Planning Commission Engineer. The maintenance and operation of the improvements and the administration of any required maintenance fund account, shall be clearly established as the joint responsibility of the owner(s) of each structure or dwelling unit served by such system. Such responsibility and the mechanism to accomplish same shall be established by deed covenants and restrictions which shall be approved by the Planning Commission.

506.2 Dedication of Improvements

The offer of dedication to the affected local municipality and the acceptance by the affected local municipality of any roads or associated drainage facilities shall be governed by the local Road Dedication Ordinance. The County shall not accept for public ownership any roads and associated drainage facilities, any stormwater control facilities used to manage stormwater within any subdivision or land development, sewage disposal systems, water supply systems, sidewalks, or other improvements. In the case where roads are being constructed and offered for dedication as part of a subdivision or land development regulated by this Subdivision and Land Development Ordinance, the Road Dedication Ordinance of any affected local municipality shall be applied concurrently with respect to procedures.

507 Open Land and Recreation Land -- Ownership and Maintenance

This §507 shall apply to any development which involves the ownership and maintenance of open land or recreation land (referred to as "common open space") as required by this Ordinance.

507.1 Purpose

The requirements of this §507 are intended to assure in perpetuity the ownership, use and maintenance of common open space. The general principle shall be to assign ownership and maintenance responsibility to that entity which is best suited for the same and which will allocate any associated costs to the individuals which directly benefit from the use of the common open space.

507.2 Plan and Legal Documents

The developer shall submit a plan and proposed legal documents for the purpose of dedicating, in perpetuity, the use, ownership and maintenance of the approved common open space. The Plan shall be approved by the Planning Commission with the recommendation of the Planning Commission Solicitor. The provisions of the approved Plan shall be incorporated into a development agreement with the Planning Commission, deed covenants and restrictions, or other legal document which will effect the Plan and which can be enforced by the Planning Commission.

507.3 Use Restriction

The use of any common open space shall be limited to those uses which are specifically permitted or required by the applicable sections of this Ordinance.

507.4 Development Plan Designations

The subdivision/land development plan which will be recorded following final approval of the development shall clearly show all common open space and specifically note the use, ownership and

maintenance responsibility of the same. Reference to the legal document(s) governing the use, ownership and maintenance of common open space shall be noted on the plan. The plan shall also contain the following statement: *Open land, recreation land, common facilities and development improvements shall not be sold separately or be further subdivided or developed, nor shall such land be used for density for any other development.*

507.5 Methods for Use Dedication and Common Open Space Ownership and Maintenance

The use of common open space and common open space ownership and maintenance shall be addressed by one or a combination of the methods that follow. In any case, the developer shall document to the satisfaction of the Planning Commission that the chosen method(s) will preserve the common open space use rights established in accord with this Article and provide for the perpetual ownership and maintenance of all open land, and recreation land.

All methods for use dedication and common open space ownership and maintenance, and any combination of methods, and any change in method which may be proposed by the ownership and maintenance entity, shall be subject to the approval of the Planning Commission. Operation and maintenance provisions shall include, but not be limited to, capital budgeting for repair and/or replacement of development improvements and common facilities, working capital, operating expenses, casualty and liability insurance, and contingencies.

507.5.1 Property Owners Association or Condominium Agreements - All common open space may be owned and maintained by a property owners association (POA) or condominium agreements (CA) including all lot owners in the development provided:

- A. The POA/CA is established by the developer as a non-profit corporation for the express purpose of ownership and maintenance of the common open space, or as otherwise may be required by state statute.
- B. Participation in the POA/CA is mandatory for all lot owners.
- C. Provision is made for the maintenance of common open space during the lot sale period and the orderly transition of responsibility from the developer to the POA.
- D. The POA/CA is empowered to assess POA/CA members to fund the administration of the POA/CA and other costs associated with the common open space responsibilities.

507.5.2 Transfer to a Private Conservation Organization - In the case of open land and recreation land, the landowner may transfer fee simple title to the said areas, or parts thereof, to a private, non-profit organization among whose purposes is the conservation of open land and/or natural resources; provided that:

- A. The deed contains the necessary covenants and restrictions in favor of the County to effect the use dedication and common open space ownership and maintenance standards of this Ordinance.
 - B. The organization proposed is a bona fide, operating and stable conservation organization with a perpetual existence, as approved by the Planning Commission.
 - C. The conveyance of title contains the necessary provisions for proper retransfer or reversion should the organization be unable to continue to execute the provisions of title.
 - D. A maintenance agreement between the developer, organization and County is executed to the satisfaction of the Planning Commission.
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507.5.3 Deed Restricted Private Ownership - Deed restrictions on privately held lands used for agriculture and forestry enterprises may be used to preserve open land provided such restrictions include a conservation easement in favor of Susquehanna County, with provisions for reversion to the POA or trustee holding the remainder of the common open space. Title to such restricted lands may be transferred to other parties for use as restricted by the deed.

507.5.4 Deed or Deeds of Trust - The landowner may provide, as approved by the Planning Commission, for the use, ownership and maintenance of common open space by establishing a trust for the same via a deed or deeds. The trustee shall be empowered to levy and collect assessments from the property owners for the operation and maintenance of the development.

507.5.5 Conservation Easements Held by the County - In the case of open lands and recreation lands, the County may, but shall not be required to, accept title to conservation easements on any such lands. In such cases, the land remains in the ownership of an individual, POA or condominium, while the development rights are held by the County. Title to the lands may be transferred to other parties for use as restricted by the conservation easement.

507.5.6 Fee Simple and/or Easement Dedication to the County - In the case of open lands or recreation lands, the County may, but shall not be required to, accept in fee, the title to any such lands, or any interests (such as development rights or conservation easements) therein, for public use and maintenance, provided:

- A. There is no consideration paid by the County.
- B. Such land is freely accessible to the public.
- C. The County agrees to and has access to maintain such lands.

507.6 Failure to Preserve Dedication of Use and Operation and Maintenance of Common Open Space Should the method established for the dedication of use and operation and maintenance of common open space fail to do so in reasonable order and condition in accord with the approved development plan, the County shall have the right and authority to take all necessary legal action to effect such use dedication, operation and maintenance. The action of the County shall be in accord with the following:

507.6.1 Notice - The County shall serve written notice on assigned entity or the property owners in the development setting forth the details of the failure of the entity with regard to use dedication and operation and maintenance of common open space.

507.6.2 Correction of Deficiencies - The notice shall include a demand that the deficiencies be corrected in a reasonable period of time which shall be stated in the notice.

507.6.3 Public Hearing - A public hearing shall be conducted subsequent to the notice and shall be advertised in accord with the definition of "public notice" contained in this Ordinance. At such hearing, the County may modify the terms of the original notice as to the deficiencies and may extend the time for correction of the deficiencies.

507.6.4 Failure to Correct - In the event the deficiencies in the notice, as may have been modified at the public hearing, are not corrected in accord with the established time period, the County may enter upon the common open space and maintain the same and/or correct the deficiencies. The County shall continue such action for such time as may be necessary to correct the deficiencies. Said action shall not constitute a taking or dedication of any common open space, nor vest in the public the right to use any common open space.

507.6.5 Reinstatement of Responsibility - The responsibility of operation and maintenance shall not be reinstated to the assigned entity until such time as the entity has demonstrated to the County that the proper steps have been effected to modify the terms of use dedication, operation and/or maintenance; and/or to reorganize or replace the responsible entity so that use dedication and operation and maintenance established by the approved development plan will be assured.

507.6.7 Appeal - Any party to the action of the County may appeal such action to court as provided for in the Pennsylvania Municipalities Planning Code, as amended.

507.6.8 Public Costs - The costs of the preservation of use dedication and the cost of maintenance and operation of any open land conducted by the County in accord with this Article, and including any administrative and legal costs, shall be assessed ratably against the properties in the subject development which have a right of enjoyment and/or use of the common open space. The assessment shall be made a lien on the properties, and the County shall, at the time of the notice in §507.6.1 above, file the required notice of lien against the properties.

508 Subdivision and/or Land Development Improvements Agreement

All applicants proposing any subdivision and/or land development requiring the installation of improvements as required by this Ordinance shall, prior to final plan approval by the Planning Commission, and if so directed by the Planning Commission, enter into a legally binding development agreement with the County whereby the developer guarantees the installation of the required improvements in accord with the approved plan and all Planning Commission requirements.

508.1 Contents

The development agreement shall be in a form suitable for execution by the County and shall provide for the following, where applicable:

- A. The construction of all facilities authorized by the approved plans (streets, drainage, etc.) in itemized format.
 - B. Installation of survey monuments and lot markers.
 - C. Installation of all public utility lines.
 - D. Prevention of erosion, sedimentation and water damage to the subject, adjacent and downstream properties.
 - E. Developer's responsibility for any damages to adjacent or neighboring properties.
 - F. A work schedule setting forth the beginning and ending dates, and such other details as the Planning Commission deems fit and appropriate, for improvements contained herein, including the timing of the development of any proposed sections.
 - G. The estimated cost of the improvements not yet completed, including the amount of performance guarantee to be submitted.
 - H. Security in the form of a construction guarantee approved by the Planning Commission to insure the installation of the required improvements.
 - I. Security in the form of a maintenance guarantee approved by the Planning Commission for the repair or reconstruction of improvements which are found by the Planning Commission Engineer to be defective within twenty-four (24) months from the date of formal acceptance of the said improvements, together with provisions for disbursement thereof.
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- J. A set of reproducible "AS BUILT" plans prepared by and certified to by a Registered Professional Engineer and/or a Registered Professional Surveyor of all roadways and streets, bridges, drainage systems, sewage collection and treatment systems and water distribution systems.
- K. Dedication of any improvements.
- L. Public liability insurance for the duration of improvements construction. A copy of the said policy or other evidence of coverage shall be submitted to the Planning Commission.
- M. A save harmless clause to protect the County and Planning Commission from any and all liability.
- N. The Developer's responsibility for all reasonable engineering and consulting costs and expenses for inspection, consultations and preparation of agreements, to the extent such costs and expenses exceed the monies paid by the Developer in accordance with the standard fee schedules.
- O. Provisions for changing the approved final plan, supporting plans, profiles, data, specifications and related documents.
- P. Provisions for violations of the development agreement.
- Q. Provisions for severability of any article.
- R. Provisions for any additional agreements deemed necessary.

508.2 Execution

The final plan shall not be approved by the Planning Commission prior to the execution of this agreement, if so required by the Planning Commission.
