

## § 152.384 WARRANTIES, SURETIES, AND IMPROVEMENTS GUARANTEES.

(A) *Improvements* . Prior to the approval of the final plat the following improvements shall be installed or arrangement made so as to insure their installation. Improvements guarantees will not be considered for subdivisions where the utilities, curb and gutter, and final base course of compacted gravel have not been installed.

(B) *General; monuments*. Monuments and markers shall be installed in accordance with the *Manual of Practice for Land Surveying*, published by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors.

(C) *Streets* .

(1) *Grading*. All streets shall be cleared and graded to their full right-of-way width so as to provide adequate shoulders and pedestrian walkways. Finished grades, cross sections, and profile shall be considered for approval by the Town's Public Works Director and/or consulting engineer.

(2) *Paving*. The sub-divider will be responsible for the installation of the road base and paving necessary to serve his needs and meet the requirements of this chapter. Paving and base shall be installed in accordance with NCDOT standards or town specifications, whichever is greater. The inspection of the road base and paving shall be considered for approval by the Town's Public Works Director and/or consulting engineer.

(D) *Curbs and gutters*.

(1) Concrete curbs and gutters will be installed by the sub-divider in accordance with NCDOT standards or town specifications, whichever is greater.

(2) The inspection of the curb and gutters shall be considered for approval by the town's Public Works Director and/or consulting engineer.

(3) Curbs and gutters shall be concrete combination curb and gutter.

(E) *Storm drainage*.

(1) Storm sewers, drains and structures shall be installed by the subdivider in accordance with NCDOT standards or town specifications, whichever is greater.

(2) The inspection of the storm drainage shall be considered for approval by the town's Public Works Director and/or consulting engineer.

(F) *Guarantees*.

(1) *General requirements*.

(a) No final plat shall be approved until the required improvements have been constructed in a satisfactory manner and approved by the Town Manager or his/her designee and a financial guarantee has been posted, or, in lieu of such prior construction, the town may accept a letter of credit, a certificate of deposit, cash or certified check, or bond in the required amount. Acceptable financial guarantee formats:

1. *Letter of credit*. Must be from a financial institution located and incorporated in the State of North Carolina; must contain the specified language detailed in division (F)(1)(c) of this section.

2. *Cash or check*. Must be in the form of a certified check or United States currency. Certified checks should reflect the name of the developer submitting them.

3. *Certificates of deposit*. Must be in the name of and payable to the Town of Swansboro. The developer's name must be referenced on the certificate of deposit. For example: Town of Swansboro for John Doe.

4. *Bond*. Must be in the name of and payable to the Town of Swansboro. The developer's name must be referenced on the bond. For example: Town of Swansboro for John Doe.

(b) All financial guarantees submitted shall be accompanied by an agreement signed by the developer, and the Town Manager or his/ her designee. The agreement shall include a completion date, which cannot exceed two years from the application date, unless special approval has been granted by the Board of Commissioners for a completion date, which exceeds two years.

(c) All financial guarantees, agreements, and/or accompanying documentation must at least contain the following language: " This instrument is for the purpose of insuring that developer's name] will complete all water facilities, sewer facilities, streets , sidewalks, storm drainage, and all other public improvements as shown on the preliminary plat for [subdivision name] as approved by the Swansboro Board of Commissioners and guarantee these public improvements for a 12-month warranty after the public improvements have been approved by the town. The issuer of this instrument of financial guarantee agrees that, upon receipt of a written certification from the Town Manger that any portion of the required improvements has not been installed or properly maintained through the warranty period, to issue payment from this guarantee to the Town in the amount required to effect the necessary improvements ". Each project may vary as to the improvements required; however, all financial guarantees must include the specified phrase.

(d) All financial guarantees must either be issued from a financial institution incorporated in the State of North Carolina or be redeemable at a financial institution incorporated in the State of North Carolina.

(e) All forms of guarantees must be approved by the Finance Director or their designee and the Town Manager or his/her designee before acceptance.

(f) Except for those guarantees that may be associated with improvements that will or have been under the purview of the Onslow Water and Sewer Authority (ONWASA), those guarantees will meet the standards, requirements, amounts and/or processes set forth by ONWASA.

(2) *Review of cost estimates.*

(a) The Planning Department shall submit the plans and developer's cost estimates to the Town's consulting engineer for review and agreement on cost estimates. The cost of Town Engineer services rendered to review cost estimates are the burden of the developer.

(b) The town's consulting engineer shall submit detailed cost estimates changes, if any, to the Planning Department.

(c) The Planning Department shall then notify the applicant (developer) of the amount needed for the financial guarantee.

(d) Financial guarantee estimates will be considered valid for two years and must be reviewed every two years and adjusted accordingly to reflect market values. Estimates will be determined by using the current year construction cost index or other acceptable methods as approved by town consulting engineer and Town Manager or his/her designee.

(3) *Determination of amount of financial guarantee.*

(a) The estimated cost of total improvements (for the purpose of the warranty) and of the incomplete improvements shall be determined by the town's consulting engineer, including any appropriate contingency amounts. The engineer may, at his discretion, take into consideration any cost information submitted by the developer.

(b) The amount of the financial guarantee required shall be the total cost of all incomplete improvements as determined by the town staff and the town's consulting engineer plus 25%.

(c) The warranty period begins after the following are complete:

1. The developer's engineer provides a letter certifying that all improvements have been completed in accordance with the approved subdivision plans;

2. The Town Manager or his/her designee has issued a letter of approval for the improvements ; and

3. The warranty period financial guarantee has been submitted and accepted.

(4) *Maintenance of financial guarantees.*

(a) *Receipt and approval.* Upon receipt of financial guarantees, the Planning Department shall submit the financial guarantee to the Finance Department. The Finance Department will review, approve, record, and maintain the financial guarantee until the improvements have been installed and accepted by the Board of Commissioners following the approval by the Town Manager or his/her designee that the improvements are acceptable for maintenance. All original financial guarantees shall be kept in the town vault, except cash or certified checks, which shall be deposited in an account specified by the Town Finance Department.

(b) *Extensions and condemnations.* The town may condemn the financial guarantee if the improvements are not completed within the time specified in the agreement, which was submitted with the financial guarantee. The developer may, however, submit a request to the town for the date of completion to be changed. The Town Manager or his/her designee will review the request and recommend to the Board of Commissioners up to a 12 month extension.

(c) *Expiration and renewal.* Approximately 45 days prior to the expiration date of the financial guarantee, the Town Finance Director shall notify the developer and financial guarantee company by certified mail that the town will condemn their financial guarantee if a renewed financial guarantee is not submitted prior to the expiration date. The town will send only one notification.

(5) *Draw downs permitted.*

(a) *Draw down requests.* The developer may request that a draw down be made on the financial guarantee by submitting a written request to the Town. The request shall include a listing of those improvements which have been completed as of the date of request. The request shall be certified by a Professional Land Surveyor or Professional Engineer, reviewed by appropriate department heads and town consulting engineer. The cost of Town engineer services rendered to review the cost of the draw down estimates are the burden of the developer .

(b) *Guarantee release.* Once the town confirms the dollar amount of work that has been completed, the town shall notify the developer of the permitted draw down, if any. No financial guarantee may be reduced below 10% of the total cost of improvements plus the cost of uncompleted sidewalks, until the warranty period has elapsed.

(6) *Warranty period.*

(a) The developer shall submit, in writing, a request to the Planning Department for a final inspection once all work is complete.

(b) Once the town has determined that all improvements are complete, except for sidewalks, and meet approved

standards, the financial guarantee may be reduced to 10% of the total cost of improvements plus the amount needed for uncompleted sidewalks. A new estimate of the cost of the uncompleted sidewalks, plus 25% will be made at this time to insure an adequate financial guarantee and would be valid for a two-year period.

(c) The Planning Department shall prepare a Board of Commissioners agenda item for improvements to be accepted within 60 days of the reduction. Once the improvements are accepted, the 12-month warranty period shall begin.

(d) After the improvements have been accepted by the Board of Commissioners, the town shall hold a financial guarantee of no less than 10% of the total cost of improvements plus 125% of the cost of any incomplete sidewalks for a 12-month warranty period.

(e) During the ninth month of the warranty period, the town shall inspect the project for any deficiencies. If deficiencies are found, the town shall notify the developer. If the developer does not correct the deficiencies, the Town Manager or his/her designee may condemn the guarantee and correct the deficiency or contract to have it corrected. If the Town Manager or his/her designee decides to condemn a guarantee an appeal may be made to the Board of Commissioners for this consideration.

(f) Once the Finance Director has been notified by the Planning Department that the project is complete and meets town standards, the Finance Director shall return the financial guarantee.

(7) *ETJ subdivisions and subdivisions with private streets.*

(a) Inspections are required once improvements are complete, the developer shall submit, in writing, a request to the town for a final inspection. The town shall inspect the subdivision. If deficiencies are found, the town shall notify the developer by in writing. Once the corrections have been completed, the developer must request an inspection by the town for verification of the satisfactory completion of the corrections. The town will notify the developer in writing of its findings and reduce the financial guarantee as appropriate.

(8) *Specific warranty situations.* Because the town may not accept improvements outside the town limits, and because some subdivisions designate their streets as private, the following shall govern the warranty period:

(a) *Warranty for private streets.* A financial guarantee in the amount of 10% of the total cost of improvements is required for a 12-month period unless a homeowner's association has been organized and documentation recorded which addresses the upkeep and maintenance of streets.

(b) *Warranty for NCDOT streets.* If a Homeowner's Association has been organized and the documentation recorded which addresses the upkeep and maintenance of streets and addresses the petition process for NCDOT acceptance, no warranty period for streets will be required. Additionally, if the developer can provide documentation that the streets have been included on the state system; no warranty guarantee for streets will be required.

(9) *Extensions for warranties.* A developer may request only one 12 month extension for an expired warranty period to repair damaged infrastructures. There will be no warranty period for water and sewer utilities that would be warranted in another governmental jurisdiction or operated by a private entity.

(10) Warranties that may be associated with improvements that will or have been under the purview of the Onslow Water and Sewer Authority (ONWASA) will meet the standards, requirements, terms and/or processes set forth by ONWASA.

(G) *Streetlights.* Streetlights shall be installed in accordance with the Town of Swansboro's Street Lighting Policy as well as the local power company's standards and specifications. All street lighting shall be installed prior to receiving a certificate of occupancy for any structure in the section. The developer will be responsible for the cost of installation and upkeep of all streetlights until the acceptance of public improvements by the Board of Commissioners. The maintenance and all future related cost of streetlights in the area accepted may then be transferred by the developer to the town.

(H) *Exception to sidewalk construction and guarantee.*

(1) Construction of sidewalks in subdivisions may be delayed by the developer for a period not to exceed 12 months from the date of acceptance of public improvements provided that the town holds a financial guarantee in an amount equal to the value of the uncompleted sidewalks plus 25%; however, no final inspection or certificate of occupancy for any building may be issued until the construction of sidewalks have been completed upon the land for which such final inspection or certificate of occupancy is required and the construction approved by the Town Planning Department. If the developer cannot complete sidewalks within 12 months of acceptance of public improvements, a request may be made to the town for additional time. The Town Manager or his/her designee shall have the authority to approve up to two, 12-month extensions completion periods for the sidewalk installation. If the Town Manager or his/her designee does not grant extensions for uncompleted sidewalks, the financial guarantee will be condemned and used to rectify the deficiency. If the Town Manager or his/her designee decides to condemn a guarantee an appeal may be made to the Board of Commissioners for their consideration.

(2) A financial guarantee payable to the town in an amount equal to the estimated cost of the construction of the sidewalk, plus 25%, for that subdivision improvement shall be submitted to the town by the developer. In the event of a default by the developer in the requirements of this ordinance, and after 45 days written notice of such default by the town to the developer, the financial guarantee shall be forfeited to the town and the town may construct the sidewalks in question and apply the amount of said financial guarantee to the construction cost.

(3) In no case shall any town official accept the improvements in a subdivision for town maintenance responsibility without the installation of sidewalks being completed or a financial guarantee payable to the town being posted to guarantee such construction.

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