

THE MAYOR AND COUNCIL OF ODESSA, DELAWARE

ORDINANCE 2008-06

AN ORDINANCE DEFINING LAND DEVELOPMENT REQUIREMENTS FOR PLANNED NEIGHBORHOOD DEVELOPMENTS, PLANNED COMMERCIAL DEVELOPMENTS, AND MAJOR AND MINOR SUBDIVISIONS.

Section 1000 Inspection fee escrow.

- A. Prior to the construction of any improvements approved by the Town and prior to final approval of major subdivision or site plan or approval of minor subdivision or minor site plan, the applicant shall deposit and maintain with the Town a fund of not less than five percent (5%) of the estimated cost of the required on- and off-site improvements, as determined by the Town Engineer, to cover costs of inspection of improvements. The minimum escrow deposit required at any one (1) time shall be two hundred dollars (\$200).
- B. If at any time during the inspection of the construction of said improvements it becomes evident that the escrow deposit is or will be insufficient to cover the costs thereof, the applicant shall make such additional deposits in amounts to be determined by the Town Engineer based upon the estimated costs required to properly review and inspect the on- and off-site improvements.
- C. Professional fees. The engineering, legal and planning escrows as set forth in the aforesaid provisions are minimum amounts representing an estimate of the anticipated costs for such services based on the hourly rates of the respective professional. The hourly rates to be charged each applicant for the services of such professionals shall be the same as those set forth in the contracts between the Town and said professionals. All legal, engineering and planning review fees set forth under the applications for use and bulk variances, appeals, interpretations and miscellaneous applications are nonrefundable minimums. In all other cases, if the actual cost is less than the minimum, the applicant shall receive a refund of the difference for all development applications; if actual costs for such proposed services exceed the minimum deposits, the applicant shall be responsible to pay to the town the difference between the actual amount and the amount deposited.

Section 1001 Performance guaranty

- A. General Requirements
 - (1) No final application for development (whether for an entire tract or a section thereof) shall be approved by the Board until the satisfactory completion and performance of all required improvements have been certified by the Town Engineer. As a condition of final approval for any application for development, all applicants shall submit a performance guaranty, and upon completion and approval of the improvements, a two-year

maintenance guaranty for all required on-site and off-site improvements. The form and amount of the aforementioned guaranties must meet the satisfaction of the Town Solicitor and Engineer.

- (2) A performance guaranty estimate shall be prepared by the applicant's engineer and submitted to the Town Engineer for review and approval, setting forth all requirements for improvements and their estimated cost. The performance and maintenance guaranties shall conform to such approved estimate in the manner calculated below.

B. Calculation of Guaranty.

- (1) The owner shall present the performance guaranty, in an amount equal to one hundred twenty percent (120%) of the approved performance guaranty estimate required above. The guaranty must then receive the approval as to form, amount and execution by the Town Engineer as a condition to approval of the application. No plans will be signed or approval given by the Town until the required performance guaranty has been approved.

C. Bonding and cash requirements.

- (1) The performance guaranty shall be made payable and deposited to the Town of Odessa and shall be in the form of cash, irrevocable letter of credit or certified check or a performance bond in which the owner shall be principal. The bond or letter of credit to be provided must be issued by an acceptable surety or banking company licensed to do business in the State of Delaware. The Town shall issue its receipt for such deposits and shall cause the same to be deposited in the name of the Town to be retained as security for completion of all requirements and to be returned to the owner on completion of all required work or, in the event of default on the part of the owner, to be used by the Town to pay the cost and expense of obtaining completion of all requirements.

D. Inspection and tests.

- (1) All site improvements and utility installations for both site plans and subdivisions shall be inspected during the time of their installation under the supervision of the Town Engineer to ensure satisfactory completion. The obligor shall reimburse the municipality for all reasonable inspection fees paid to the Town Engineer for the foregoing inspection of improvements, provided that the municipality may require of the developer a deposit for all or a portion of the reasonably anticipated fees to be paid to the Town Engineer for such inspection. The Town Engineer shall not

perform any inspection if sufficient funds to pay for those inspections are not on deposit. The project may be immediately shut down by the Town Engineer if sufficient fees for inspections have not been deposited in accordance with this section.

- (2) In no case shall any paving work be done without permission from the Town Engineer. At least two (2) working day's notice shall be given to that Town Engineer prior to any construction so that the Engineer or a qualified representative may be present at the time the work is to be done.
- (3) Streets should not be paved with a wearing course until all heavy construction is completed. Shade trees shall not be planted until all grading and earthmoving is completed. The seeding of grass and the placing of surveyor's monuments shall be among the last operations.
- (4) The Town Engineer's office shall be notified prior to each of the following phases of work so that they or a qualified representative may inspect the work:
 - (a) Road subgrade.
 - (b) Curb and gutter forms.
 - (c) Curbs and gutters.
 - (d) Road paving.
 - (e) Sidewalk forms.
 - (f) Sidewalks.
 - (g) Utilities/Drainage pipes and other drainage construction.
 - (h) Street name signs.
 - (i) Monuments.
 - (j) Stormwater basins.
 - (k) Topsoil, seeding and planting.
- (5) Any improvement installed contrary to the plan or plat approval by the Town shall constitute just cause to void the municipal approval.
- (6) Any improvement installed without notice for inspection shall constitute just cause for:

- (a) Removal of the uninspected improvement;
 - (b) The payment by the developer of any costs for material testing;
 - (c) The restoration by the developer of any improvements disturbed during any material testing; and/or
 - (d) The issuance of a stop-work order by the Town Engineer pending the resolution of any dispute.
- (7) Inspection by the Town of the installation of improvements and utilities shall not operate to subject the Town of Odessa to liability for claims, suits or liability of any kind that may arise because of defects or negligence during construction or at any time thereafter, it being recognized that the responsibility to maintain safe conditions at all times during construction and to provide proper utilities and improvements is upon the owner and his contractor, if any.
- E. Conditions and acceptance of improvements. The approval of any application for development and release of guaranty by the Town shall in no way be construed as acceptance of any street or drainage system or any other improvement, nor shall such approval obligate the Town in any way to exercise jurisdiction over such street or drainage system or other improvement. No improvement shall be accepted by the governing body unless and until all of the following conditions have been met:
- (1) The Town Engineer shall have certified, in writing, that the improvements are completed and that they comply with the requirements of this chapter.
 - (2) The final application for development shall have been approved by the Town.
 - (3) The owner shall have filed with the Town a maintenance guaranty in an amount equal to and not more than fifteen percent (15%) of the cost of installing the improvements. The maintenance guaranty shall run for a period of two (2) years from final acceptance of the improvement. The procedures and requirements for acceptance and release governing such maintenance guaranty shall be identical to the procedures and requirements for a performance guaranty set forth in this chapter.

An as-built plan and profiles of all utilities and roads [three (3) black-and-white prints plus a Mylar copy to be sent to the Town Engineer], with certification signed and sealed by a Delaware licensed professional engineer as to the actual construction as approved by the Town Engineer, shall be provided.

This ordinance shall take effect immediately upon its enactment by the Mayor and Council of Odessa.

First reading on August 4, 2008

By Council Member _____

Final passage on _____

Vote : _____

Kathleen H. Harvey, Mayor

Attest:

Jessica Norton, Secretary