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CHAPTER 5

ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

5.01 Improvements and Subdivision Improvement Agreement.

A. **Completion of Improvements.** Before the final subdivision plat is signed by the President of the Plan Commission, all applicants shall be required to complete all improvements in accordance with the Plan Commission's decision and to the satisfaction of the Local Government Engineer. These improvements shall include the following items:

1. streets, alleys, roadways;
2. sidewalks internal and/or external to the subdivision
(Note: per Hanna Street Extended and adjacent sidewalk(s);
3. gutters and other drainage facilities;
4. off-site facilities external to the subdivision boundaries which are necessary for the viability of the subdivision, with the cost of such off-site facilities to be borne by the developer;
5. improvements of a public nature on individual lots and property designated as public accommodation as required in these regulations, and specified in the final subdivision plat and approved by the Plan Commission, shall be dedicated to the Local Government, free and clear of all liens, and encumbrances on the dedicated property and the public improvements.

B. **Subdivision Improvement Agreement and Guarantee.**

1. **Agreement.** The Planning Commission in its sole discretion may waive the requirement that the applicant complete and dedicate all public improvements prior to approval of the final subdivision plat and, as an alternative, permit the applicant to enter into a subdivision improvement agreement by which the subdivider covenants to complete all required public improvements no later than two (2) years following the date on which the Plan Commission signs the final subdivision plat. The applicant shall covenant to maintain each required public improvement for a period of one (1) year following the acceptance by the governing body of the dedication of that completed public improvements also shall warrant that all required public improvements will be free from defect for a period of two (2) years following the acceptance by the governing body of the dedication of the last completed public improvement. The subdivision improvement agreement shall contain such other terms and conditions agreed to by the applicant and the Planning Commission.

2. **Covenants to Run.** The subdivision improvement agreement shall provide that the covenants contained in the agreement shall run with the land and bind all successors, heirs, and assignees of the subdivider. The subdivision improvement agreement will be adopted by the Planning Commission, and when necessary, the governing body, pursuant to applicable state and local laws and shall be recorded in the Clerk and Recorder's Office of Whitley County.

3. **Security.** Whenever the Planning Commission permits an applicant to enter into a subdivision improvement agreement, it shall require the applicant to provide a letter of credit or cash in escrow as security for the promises contained in the subdivision improvement agreement. Either security shall be in an amount equal to one hundred twenty percent (120%) of the estimated cost of completion of the required public improvements, including lot improvements. The issuer of the letter of credit or the escrow agent, as applicable, shall be acceptable to the Planning Commission.

- a. **Letter of Credit.** If the applicant posts a letter of credit as security for its promises contained in the subdivision improvement agreement, the credit shall (1) be irrevocable; (2) be for a term sufficient to cover the completion, maintenance and warranty periods in Section 5.01 (B) (1); and (3), require only that the government present the credit with a sight draft and an affidavit signed by the Local Government Attorney attesting to the municipality's right to draw funds under the credit.

- b. **Cash Escrow.** If the applicant posts a cash escrow as security for its promises contained in the subdivision improvement agreement, the escrow instructions shall provide: (1) that the subdivider will have no right to a return of any of the funds except as provided in Subsequent Section 5.02 (B) (2); and (2), that the escrow agent shall have a legal duty to deliver the funds to the municipality whenever the Local Government Attorney presents an affidavit to the agent attesting to the municipality's right to receive funds whether or not the subdivider protests that right. If and when the municipality accepts the offer of dedication for the last completed requirement public improvement, the municipality shall execute a waiver of its right to receive all but twenty-five percent (25%) of the funds represented by the letter of credit or cash escrow if the subdivider is not in breach of the subdivision improvement agreement. The residual funds shall be security for the subdivider's covenant to maintain the required public improvements and its warranty that the improvements are free from defect

- C. **Temporary Improvement.** The applicant shall build and pay for all costs of temporary improvements required by the Planning Commission and shall maintain those temporary improvements for the period specified by the Planning Commission. Prior to construction of any temporary facility or improvement, the developer shall file with the local government a separate subdivision improvement agreement and a letter of credit or cash escrow in an appropriate amount for temporary facilities, which agreement and

escrow shall ensure that the temporary facilities will be properly constructed, maintained, and removed.

- D. Costs of Improvements.** All required improvements shall be made by the developer, at its expense, without reimbursement by the local government or any improvement district except that, as may be allowed under state law, the developer may form or cause to be formed a special district or districts to construct and finance the construction of required public improvements excluding lot improvements on individual lots. If the subdivider does form or cause to be formed a special district for the purposes identified in this section, the government shall not release the subdivider from its obligations under any subdivision improvement agreement nor shall the government release any security, in whole or in part, until the special district has sold bonds or otherwise certifies to the municipality that it has an absolute right to raise revenues sufficient to construct, maintain, and warrant the quality of the required public improvements.
- E. Governmental Units.** Governmental units to which these contract and security provisions apply may file, in lieu of the contract and security, a certified resolution or ordinance from officers or agencies authorized to act on their behalf, agreeing to comply with the provisions of this Chapter.
- F. Failure to Complete Improvement.** For subdivisions for which no subdivision improvement agreement has been executed and no security has been posted, if the improvements are not completed within the period specified by the Planning Commission in the resolution approving the plat, the advisory plat or preliminary plat approval shall be deemed to have expired. In those cases where a subdivision improvement agreement has been executed and security has been posted required public improvements have not been installed within the terms of the agreement, the local government may then: (1) declare the agreement to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the agreement is declared to be in default; (2) suspend final subdivision plat approval until the improvements are completed and record a document to that effect for the purpose of public notice; (3) obtain funds under the security and complete improvements itself or through a third party; (4) assign its right to receive funds under the security to any third party, including

a subsequent owner of the subdivision for which improvements were not constructed, in whole or in part, in exchange for that subsequent owner's promise to complete improvements in the subdivision; (5) exercise any other rights available under the law.

- G. Acceptance of Dedication Offers.** Acceptance of formal offers of dedication of streets, public areas, easements, and parks shall be by ordinance of the governing body. The approval of a subdivision plat by the Planning Commission, whether advisory, preliminary, or final, shall not be deemed to constitute or imply the acceptance by the municipality of any street, easement, or park shown on plat. The Planning Commission may require the plat to be endorsed with appropriate notes to this effect.

5.02 Inspection of Improvements.

- A. General Procedure and Fees.** The Planning Commission shall provide for inspection of required improvements during construction and ensure their satisfactory completion. The applicant shall pay to the municipality an inspection fee based on the estimated cost of inspection, and where the improvements are completed prior to final plat approval, the subdivision plat shall not be signed by the President of the Planning Commission unless the inspection fee has been paid at the time of application. These fees shall be due and payable upon demand of the municipality and no building permits or certificates of occupancy shall be issued until all fees are paid. If the Local Government Engineer finds upon inspection that any one or more of the required improvements have not been constructed in accordance with the municipality's construction standards and specifications, the applicant shall be responsible for properly completing the improvements.

B. Release of Reduction of Security.

- 1. Certificate or Satisfactory Completion.** The governing body will not accept dedication of required improvements, nor release nor reduce the amount of any security posted by the subdivider until the Local Government Engineer has submitted a certificate stating that all required improvements have been satisfactorily completed and until (1) the applicant's engineer or surveyor has certified to the Local Government Engineer, through submission of a detailed "as

built" survey plat of the subdivision, indicating location, dimensions, materials, and other information required by the Planning Commission or Local Government Engineer, that the layout of the line and grade of all public improvements is in accordance with construction plans for the subdivision, and (2), a title insurance policy has been furnished to and approved by the Local Government Attorney indicating that the improvements have been completed, are ready for dedication to the local government, and are free and clear of any and all liens and encumbrances. Upon such approval and recommendation by the Planning Commission, Local Government Engineer, and Local Government Attorney, the governing body shall thereafter accept the improvements for dedication in accordance with the established procedure.

2. **Reduction of Escrowed Funds and Security.** If the security posted by the subdivider was a cash escrow, the amount of that escrow shall be reduced upon actual acceptance of the dedication of public improvements and then only to the ratio that the cost of the public improvement for which dedication was accepted bears to the total cost of public improvements for the subdivision. In no event shall a cash escrow be reduced below twenty-five percent (25%) of the principal amount. Funds held in the escrow account shall not be released to the subdivider, in whole or in part, except upon express written instructions of the Local Government Attorney. At the end of the maintenance and warranty periods, all escrowed funds, if any, shall be released to the subdivider. If the security provided by the subdivider was a letter of credit, the Local Government Attorney shall execute waivers of the municipality's right to draw funds under the credit upon actual acceptance of the dedication of public improvements and then only to the ratio that the cost of the public improvement for which dedication was accepted bears to the total cost of public improvements for the subdivision. In no event shall waivers be executed that would reduce the security below twenty-five percent (25%) of its original amount.

5.03 **Escrow Deposits for Lot Improvements.**

- A. **Acceptance of Escrow Funds.** Whenever, by reason of the season

of the year, any lot improvements required by the subdivision regulations cannot be performed, the Building and Zoning Inspector may issue a certificate of occupancy, provided there is no danger to health, safety, or general welfare upon accepting a cash escrow deposit in an amount to be determined by the Local Government Engineer for the cost of the lot improvements. The subdivision improvement agreement and security covering the lot improvements shall remain in full force and effect.

B. Procedures on Escrow Fund. All required improvements for which escrow monies have been accepted by the Building and Zoning Inspector at the time of issuance of a certificate of occupancy shall be installed by the subdivider within a period of nine (9) months from the date of deposit and issuance of the certificate of occupancy. If the improvements have not been properly installed at the end of the time period, the Building and Zoning Inspector shall give two (2) weeks written notice to the developer requiring it to install the improvements, and if they are not then installed properly, the Building and Zoning Inspector may request the governing body to proceed to contract out the work for the installation of the necessary improvements in a sum not to exceed the amount of the escrow deposit. At the time of the issuance of the certificate of occupancy for which escrow monies are being deposited with the Building and Zoning Inspector, and prior to obtaining the certificate of occupancy, a notarized statement from the purchaser or purchasers of the premises authorizing the Building and Zoning Inspector to install the improvements at the end of the nine (9) month period if the improvements have not been duly installed by the subdivider.

5.04 Maintenance of Improvements.

The developer shall be required to maintain all required public improvements on the individual subdivided lots and provide for snow removal on streets and sidewalks, if required by the Planning Commission, until acceptance of the improvements by the governing body. If there are any certificates of occupancy on a street not dedicated to the local government, the local government may, on twelve (12) hours notice, plow the street or effect emergency repairs and charge those costs to the developer. Following the acceptance of the dedication of any public improvement by the local government, the government may, in its sole

discretion, require the subdivider to maintain the improvement for a period of one (1) year from the date of acceptance.

5.05 Deferral or Waiver of Required Improvements.

- A. The Planning Commission may defer or waive at the time of final approval, subject to appropriate conditions, the provision of any or all public improvements as, in its judgment, are not requisite in the interests of the public health, safety, and general welfare, or which are inappropriate because of the inadequacy or inexistence of connecting facilities. Any determination to defer or waive the provision of any public improvement must be made on the record and the reasons for the deferral or waiver also shall be expressly made on the record.

- B. Whenever it is deemed necessary by the Planning Commission to defer the construction of any improvement required under these regulations because of incompatible grades, future planning, inadequate or nonexistent connecting facilities, or for other reasons, the subdivider shall pay his share of the costs of the future improvements to the local government prior to signing of the final subdivision plat by the President of the Planning Commission, or the developer may execute a separate subdivision improvement agreement secured by a letter of credit guaranteeing completion of the deferred improvements upon demand of the local government.

5.06 Issuance of Building Permits and Certificates of Occupancy.

- A. When a subdivision improvement agreement and security have been required for a subdivision, no certificate of occupancy for any building in the subdivision shall be issued prior to the completion of the required public improvements and the acceptance of the dedication of those improvements by the local government, as required in the Planning Commission's approval of the final subdivision plat.

- B. The extent of street improvement shall be adequate for vehicular access by the prospective occupant(s) and by police and fire equipment prior to the issuance of an occupancy permit. The developer shall, at the time of the offer of dedication, submit monies in escrow to the local government in a sum determined by the Local Government Engineer for the necessary final improvement of the

street.

- C. No building permit shall be issued for the final ten percent (10%) of lots in a subdivision, or if ten percent (10%) be less than two (2), for the final two (2) lots of a subdivision, until all public improvements required by the Planning Commission for the subdivision have been fully completed and the local government has accepted the developer's offer's to dedicate the improvements.

5.07 Consumer Protection Legislation and Conflicts of Interest Statutes.

- A. No building permit or certificate of occupancy shall be granted or issued if a developer or its authorized agent has violated any federal, state, or local law pertaining to (1) consumer protection; or (2) real estate land sales, promotion, or practices; or (3) any applicable conflicts-of-interest legislation with respect to the lot or parcel of land which is the subject of the permit or certificate until a court of competent jurisdiction so orders.
- B. With respect to any lot or parcel of land described in the immediately preceding section, if a building permit or certificate of occupancy has been granted or issued, it may be revoked by the municipality until a court of competent jurisdiction orders otherwise, provided that in no event shall the rights of intervening innocent third parties in possession of a certificate of occupancy be prejudiced by any such revocation.
- C. Any violation of a federal, state, or local consumer protection law, including, but not limited to: Postal Reorganization Act of 1970; the Federal Trade Commission Act of 1970; Interstate Land Sales Full Disclosure Act; the Truth in Lending Act; the Uniform Commercial Credit Code; state "Blue Sky" laws; state subdivision disclosure acts, or any conflicts of interest statute, law, or ordinance shall be deemed a violation of these regulations and subject to all of the penalties and proceedings as set forth in Section 1.14, Enforcement, Violations, and Penalties (Page 7).

Page 9 concludes Chapter 5