

ORDINANCE 06-2018

**WASHINGTON TOWNSHIP
GLOUCESTER COUNTY**

**ORDINANCE AMENDING THE WASHINGTON TOWNSHIP CODE
PURSUANT TO N.J.S.A. 40:55D-53 TO ESTIMATE AND MANAGE
PERFORMANCE AND MAINTENANCE GUARANTEES**

WHEREAS, the New Jersey legislature has recently amended N.J.S.A. 40:55D-53 so as to modify performance guarantees, maintenance guarantees and municipal inspection protocols under the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and to introduce the availability of guaranties for safety and stabilization and temporary certificates of occupancy; and

WHEREAS, the Mayor and Township Council have reviewed the existing provisions pertaining to performance guarantees, maintenance guarantees, and inspection regulations in the Washington Township Code, determining it in the best interests of the residents of the Township of Washington to amend the Township of Washington Code in accordance with N.J.S.A. 40:55D-53; and

WHEREAS, pursuant to N.J.S.A. 40:48-2, the Mayor and Township Council are authorized to enact and amend ordinances as deemed necessary for the preservation of the public health, safety and welfare and as may be necessary to carry into effect the powers and duties conferred and imposed upon the Township of Washington by law; and

WHEREAS, pursuant to N.J.S.A. 40:55D-62, the Mayor and Township Council may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon.

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Washington, County of Gloucester, State of New Jersey that the Code of the Township of Washington is hereby amended, revised and/or supplemented as follows:

SECTION 1: Chapter 199-10 of the Code of the Township of Washington entitled, "Fees," is hereby modified, amended and/or supplemented by adding the following:

"H. A developer shall reimburse the municipality for reasonable inspection fees paid to the municipal engineer for the foregoing inspection of improvements; which fees shall not exceed the sum of the amounts set forth in subparagraphs (a) and (b) of this

paragraph. The municipality shall require the developer to post the inspection fees in escrow in an amount:

(a) not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee; and

(b) not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee, which cost shall be determined pursuant to section 15 of P.L.1991, c.256 (C.40:55D-53.4). If the Township of Washington determines that the amount in escrow for the payment of inspection fees is insufficient to cover the cost of additional required inspections, the Township may require the developer to deposit additional funds in escrow provided that the Township delivers to the developer a written inspection escrow deposit request, signed by the Township engineer, which shall include the need for additional inspections, details of the items or undertakings that require inspection, an estimated time required for those inspections, and cost estimates of performing those inspections.”

SECTION 2: Chapter 199-11.A of the Code of the Township of Washington entitled, “Bonds,” shall be replaced by the following:

“A. Performance Bonds. In approving a site plan, the reviewing board shall require, at its discretion and depending on the complexity of the project, that the applicant first furnish a performance bond for the purposes of guaranteeing the completion of such items as are set forth in the site plan which will be dedicated to a public entity. Estimated quantities shall be prepared by the applicant for review by the Township Engineer. Unit pricing shall follow a schedule to be established by the Township Engineer. These estimates shall be established in order to determine the amount of the performance guarantee. The performance guarantee shall be reviewed and have the approval of the Township Solicitor as to both form and amount prior to the issuance of any permits.”

SECTION 3: Chapter 199-11.B.2 of the Code of the Township of Washington entitled, “Maintenance bonds,” is hereby replaced with the following:

“B. Maintenance Bonds.

(1) A maintenance bond for the site plan improvements shall be required at the time of release of the performance bond. The maintenance bond shall be in the form

and amount and under the procedures as required by the statutes of the State of New Jersey and other developmental ordinances of the Township of Washington concerning maintenance bonds.

(2) A developer shall post with the Township, prior to the release of a performance guarantee, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the improvements which are being released.

(3) A developer shall post with the Township, upon the inspection and issuance of final approval of the following private site improvements by the Township engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system, if any, which cost shall be determined according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4). The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.”

SECTION 4: Chapter 199-11 of the Code of the Township of Washington entitled, “Bonds,” is hereby modified, amended and/or supplemented by adding the following:

“C. In addition to a performance guarantee required pursuant to Section 220-67, a developer shall furnish to the Township of Washington a separate guarantee, referred to herein as a “safety and stabilization guarantee”. The amount of a safety and stabilization guarantee for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000. The amount of a safety and stabilization guarantee for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of the bonded improvement costs of the development or phase of development as follows: \$5,000 for the first \$100,000 of bonded improvement costs, plus two and a half percent (2½%) of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one percent (1%) of bonded improvement costs in excess of \$1,000,000. The safety and stabilization guarantee shall be available to the Township solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition, only in the circumstance that: (i) site disturbance has commenced and,

hereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure, and (ii) work has not recommenced within 30 days following the provision of written notice by the Township to the developer of the Township's intent to claim payment under the guarantee. The Township shall not provide notice of its intent to claim payment until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. The Township shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt. In the event that the developer has made a cash deposit with the Township as part of the performance guarantee, then any partial reduction granted in the performance guarantee shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee, provided that if the safety and stabilization guarantee is included as a line item of the performance guarantee, the municipality may retain cash equal to the amount of the remaining safety and stabilization guarantee."

SECTION 5: Chapter 220-33 of the Code of the Township of Washington entitled, "Performance and maintenance guaranty," is hereby modified, amended and/or supplemented by replacing subsections A and B with the following:

"A. The Planner may require, as a condition of permit approval, a performance and maintenance guaranty from the property owner to ensure that landscaping is provided and maintained for two years from the time of planting. The following forms of security are acceptable:

- (1) A cash value equal to 120% of the total landscaping cost;
- (2) An irrevocable performance bond in the amount of 120% of the landscaping cost.

In the case where an approved phase or section of a development is privately-owned, the perimeter buffer landscaping guarantee shall be required by the Planner as a condition of permit approval. At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping. The following forms shall be acceptable:

- (1) A cash value equal to 120% of the total perimeter buffer landscaping cost;

(2) An irrevocable performance bond in the amount of 120% of the perimeter buffer landscaping cost.

B. The projected cost of the landscaping improvements and the perimeter buffer landscaping shall be provided by the applicant and based on an approved landscape plan and plantings within the required landscape buffer.”

SECTION 6: Chapter 220-64 of the Code of the Township of Washington entitled, “Required improvements,” is hereby modified, amended and/or supplemented by replacing subsection B with the following:

“B. The following improvements as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor’s monuments, as shown on the final map and required by “the Map Filing Law,” P.L.1960, c.141 (C.46:23-9.9 et seq.; repealed by section 2 of P.L.2011, c.217) or N.J.S.46:26B-1 through N.J.S.46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements.”

SECTION 7: Chapter 220-66 of the Code of the Township of Washington entitled, “Performance guarantee,” is hereby modified, amended and/or supplemented by replacing subsection A with the following:

“A. If all required improvements have not been certified to the Planning Board and/or Zoning Board of Adjustment by the Township Engineer and/or the required drawings have not been supplied, the developer shall furnish a performance guarantee in favor of the Township of Washington in an amount not to exceed 120% of the cost of installation of only those improvements required by an approval or developer’s agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed; which cost shall be determined by the Township engineer, according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4). The performance guarantee shall be issued by a bonding or surety company approved by the Township Council; a certified check, returnable to the sub-divider after full compliance; or any other type of surety approved by the Township Solicitor. The performance guarantee shall be approved by the Township Solicitor as to form, sufficiency and execution.”

SECTION 8: Chapter 285-16 of the Code of the Township of Washington entitled, "Certificates of occupancy," is hereby modified, amended and/or supplemented by adding the following subsections:

"E. Upon the request of a holder of a permit, the construction official may issue a temporary certificate of occupancy for a building or structure or part thereof before the entire work covered by the permit shall have been complete, provided such portion or portions may be occupied safely prior to full completion of the building or structure with respect to public safety and welfare. Further, no temporary or final certificate of occupancy shall be granted until all required utilities, including but not limited to water, sewer, electric and gas are installed and in service.

F. Temporary certificate of occupancy guarantee. In the event that a developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to herein as a temporary certificate of occupancy guarantee, in an amount equal to 120% of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy for the development, unit, lot, building or phase of development and which are not covered by an existing performance guarantee. Upon posting of a temporary certificate of occupancy guarantee, all sums remaining under a performance guarantee, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. The scope and amount of the temporary certificate of occupancy guarantee shall be determined by the Township engineer. At no time may the Township hold more than one guarantee or bond of this type. The temporary certificate of occupancy guarantee shall be released by the Township engineer upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building, or phase as to which the temporary certificate of occupancy relates. The projected cost of the temporary certificate of occupancy guarantee shall be provided by the applicant. It shall include items such as, but not limited to, sidewalks, landscaping and street trees at the subject property, roadways

(including surface course) from the property to the fully improved roadway; water and sewer infrastructure from the property to the main, stormwater conveyance to serve the property, stormwater management structures/basins for the current project phase. When uncompleted community facilities, such as recreation, are to be included in the temporary certificate of occupancy guarantee, it shall be required to the point of 50% occupancy. Each of these items shall apply for residential and non-residential projects requiring a temporary certificate of occupancy. The temporary certificate of occupancy guarantee shall be released by the zoning officer, municipal engineer, or other municipal official designated upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building, or phase as to which the temporary certificate of occupancy relates.”

SECTION 9: Except as set forth in Sections 1 to 10, the balance of the Code of the Township of Washington shall not be affected by this Ordinance.

SECTION 10: All Ordinances, or parts thereof, inconsistent with the provisions of this Ordinance, shall be and the same are hereby repealed to the extent of such inconsistency.

SECTION 11: Should any section, paragraph, clause or any other portion of this Ordinance be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not affect or impair the remainder of this Ordinance.

SECTION 12: This Ordinance shall be referred to the Township Planning Board for review, which shall be based on whether the proposal is substantially consistent with the Master Plan. The Planning Board has a period of thirty-five (35) days after referral to report on the proposed Ordinance.

SECTION 13: Upon adoption of this Ordinance after public hearing thereon, the Township Clerk is further directed to publish notice of the passage thereof and to file a copy of this Ordinance with the County Planning Board and other agencies as required by law.

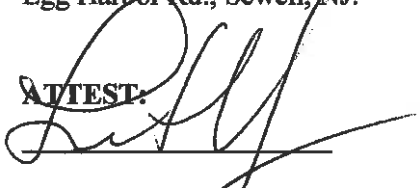
SECTION 14: This Ordinance shall take effect thirty (30) days after final passage by Council or twenty (20) days after approval by the Mayor, whichever comes first.

	Motion	Second	Ayes	Nays	Abstain	Absent	Recuse
Donato			X				
Fazio		X	X				
Longfellow	X		X				
Pasqualone						X	
Perry			X				

TOWNSHIP OF WASHINGTON

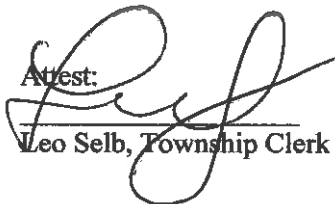
BY: 
 Joseph Perry, Council President

I do hereby attest the above Ordinance 06-2018 was introduced at the Township of Washington Meeting on February 28, 2018. A public hearing will occur on May 9, 2018 at 7:00pm, at 523 Egg Harbor Rd., Sewell, NJ.

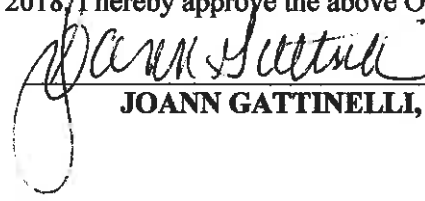
ATTEST:

 Leo Selb, Township Clerk

	Motion	Second	Ayes	Nays	Abstain	Absent	Recuse
Donato			X				
Fazio			X				
Longfellow	X		X				
Pasqualone			X				
Perry		X	X				

I do hereby attest the above Ordinance 06-2018 was Introduced at the Township of Washington Meeting on April 11, 2018 by Township Council. A public hearing was conducted on May 9, 2018 and adopted by Township Council.

Attest:

 Leo Selb, Township Clerk

On this 18th day of May, 2018, I hereby approve the above Ordinance.


JOANN GATTINELLI, MAYOR

ADOPTED: _____