

RESOLUTION NO. R064 - 98

A RESOLUTION ESTABLISHING A POLICY FOR THE  
MANAGEMENT OF DEVELOPER'S FINANCIAL SECURITY

WHEREAS, Section 509(a) of the Pennsylvania Municipalities Planning Code (Planning Code), 53 P.S. §10509(a), requires that municipal subdivision and land development ordinances provide for the deposit with the municipality of financial security in an amount sufficient to cover the costs of improvements or common amenities [in subdivisions and land developments] including, but not limited to, roads, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, or buffer or screen plantings which may be required; and

WHEREAS, Section 509(f) of the Planning Code provides that 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 90 days following the date scheduled for completion by the developer; and

WHEREAS, Section 509(g) of the Planning Code provides in part as follows: The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or developer and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The municipality, upon the recommendation of the municipal engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and the municipality are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the municipality and the applicant or developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate; and

WHEREAS, Section 509(j) of the Planning Code provides in part as follows: As the work of installing the required improvements proceeds, the party posting the financial security may request the governing body to release or authorize the release, from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the governing body, and the governing body shall have 45 days from receipt of such request within which to allow the municipal engineer to certify, in writing, to the governing body that such portion of the work upon the improvements has been completed in accordance with the approved plat. Upon such certification the governing body shall authorize release by the bonding company or lending institution of an amount as estimated by the municipal engineer fairly representing the value of the improvements completed or, if the governing body fails to act within said 45 day period, the governing body shall be deemed to have approved the release of funds as requested. The governing body may, prior to final release at the time of completion and certification by its engineer, require retention of 10% of the estimated cost of the aforesaid improvements; and

WHEREAS, Article VIII, Improvements Guarantees, of the Bethlehem Township Subdivision and Land Development Ordinance implements the aforesaid statutory requirements; and

WHEREAS, the Board of Commissioners desires to set forth certain standards with respect to the creation, reduction and release of financial security provided pursuant to the Section 509 of the Planning Code and Article VIII, Improvements Guarantees, of the Bethlehem Township Subdivision and Land Development Ordinance.

NOW THEREFORE BE IT AND IT IS HEREBY RESOLVED BY the Board of Commissioners of the Township of Bethlehem, County of Northampton and Commonwealth of Pennsylvania:

Section I:

Each estimate of the cost of completion of required improvements submitted by a developer shall contain individual line items for each required improvement, and fairly estimate the hard cost to the developer of constructing such improvement. The estimated hard cost amount of each line item shall include an adjustment for inflation such that the cost is estimated as of 90 days after the date scheduled for completion by the developer. The line items shall be organized by not less than the following general categories: Erosion and Sediment Control Measures; Storm Water Management; Sanitary Sewer; Water System; Street Lights; Streets and Other Pavements; Landscaping; and Miscellaneous. The amounts estimated for all line items within each category shall be added together to establish a total for each category, and the amounts estimated for all categories shall be added together to establish a total for all categories. The developer shall add to this total of all categories an amount equal to 10% thereof, representing an allowance for construction contingencies such as unanticipated conditions (e.g. rock, sinkholes) arising during the course of construction. The Township Administrative Staff, Engineer, and Solicitor have informed the Board of Commissioners that a percentage of 10% of hard construction costs is a reasonable estimate of contingency costs. This total shall be considered the Estimate of Hard Construction Costs. This estimate shall be submitted by the developer to the Township Engineer for its review.

Section II:

The Board of Commissioners finds that the Estimate of Hard Construction Costs is insufficient in amount to fairly represent the total cost to a developer of constructing required improvements, as such costs do not include soft costs associated with such construction such as legal, administration, and engineering costs. The Board of Commissioners further finds that failure to include such costs in the amount of required financial security subjects the Township of Bethlehem to a substantial risk that said financial security will be insufficient for the Township of Bethlehem to complete all of said improvements in the event of a default by a developer. The Township Administrative Staff, Engineer, and Solicitor have informed the Board of Commissioners that: (a) a percentage of 6% of hard construction costs is a reasonable estimate of legal and administration costs associated with most development projects; and (b) a percentage of 10% of hard construction costs is a reasonable estimate of engineering costs associated with most development projects. Accordingly, upon receipt of the developers Estimate of Hard Construction Costs, the Township Engineer shall apply the aforesaid percentages to the Estimate of Hard Construction Costs for the purpose of deriving an Estimate of Soft Construction Costs. The Township Engineer shall then add the amount of the

Estimate of Hard Construction Costs and the amount of the Estimate of Soft Construction Costs for the purpose of deriving a final, total cost of completion of required improvements. In accordance with Section 509(f) of the Planning Code, and Section 804.B.1. of the Bethlehem Township Subdivision and Land Development Ordinance, the amount of financial security to be posted with the Township shall be equal to 110% of such final, total cost of completion of required improvements. The Township Engineer shall set forth the substance of all of the foregoing in a written Opinion of Probable Costs, which it shall submit to the Township and to the developer. If the developer does not agree to provide financial security in the amount set forth on the Township Engineers Opinion of Probable Costs, the disagreement shall be resolved in accordance with the procedures set forth in Section 509(g) of the Planning Code.

#### Section III:

Pursuant to Section 509(j) of the Planning Code, portions of the financial security necessary for payment to contractors performing the work of installing the required improvements shall be released by the Township upon: (a) the written request of the party posting said security; and (b) the written certification of the Township Engineer that such work upon the improvements has been completed in accordance with the approved plan. The amount released shall include the hard cost amount estimated in the line item for such completed improvement, together with the applicable percentages applied to the hard cost amount of such completed improvement for legal, administrative, and engineering soft costs, but only to the extent they have been included in the amount of the financial security. In addition, the amount released shall ordinarily include an amount equal to 10% of the hard cost amount estimated in the line item for such completed improvement, representing the allowance for construction contingencies such as unanticipated conditions (e.g. rock, sinkholes) arising during the course of construction; provided, nevertheless, that if in the judgment of the Township Engineer there are special conditions warranting the retention of all or a portion of the amount for contingencies, such amount shall not be released. In addition, pursuant to Section 509(j) of the Planning Code, 10% of the final, total cost of completion of required improvements shall be retained until final release at the time of completion and certification of completion by the Township Engineer. Moreover, to the extent it is possible to do so under the terms and conditions of any applicable financial security, such financial security shall not be released to an amount less than the amount required by the maintenance agreement until and unless financial security required by such maintenance agreement has been posted with the Township.

#### Section IV:

The Board of Commissioners hereby delegates to the Township Manager the authority to administer this policy, and the powers and duties of the Board with respect to the reduction and/or release of financial security as provided in Section 509(j) of the Planning Code and Section 805 of the Bethlehem Township Subdivision and Land Development Ordinance. Any person aggrieved by any decision of the Township Manager hereunder shall have the right to appeal such decision to the Board of Commissioners by

written request delivered to the Township within thirty (30) days of receipt of written notification of such decision.

ADOPTED AND APPROVED this 18<sup>th</sup> day of May 1998 at a regular public meeting.

BOARD OF COMMISSIONERS

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Timothy J. Brady  
President

ATTEST:

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Thomas J. Hall  
Township Manager/Secretary