

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 649 Session of
1989

INTRODUCED BY FOSTER, MELIO, HECKLER, CORRIGAN, WILSON, REINARD,
BATTISTO, CLYMER, BURNS, SAURMAN, FLICK, MORRIS, PITTS,
HERSHEY, J. L. WRIGHT AND LASHINGER, MARCH 6, 1989

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, MARCH 6, 1989

AN ACT

1 Amending the act of July 31, 1968 (P.L.805, No.247), entitled,
2 as reenacted and amended, "An act to empower cities of the
3 second class A, and third class, boroughs, incorporated
4 towns, townships of the first and second classes including
5 those within a county of the second class and counties of the
6 second class A through eighth classes, individually or
7 jointly, to plan their development and to govern the same by
8 zoning, subdivision and land development ordinances, planned
9 residential development and other ordinances, by official
10 maps, by the reservation of certain land for future public
11 purpose and by the acquisition of such land; to promote the
12 conservation of energy through the use of planning practices
13 and to promote the effective utilization of renewable energy
14 sources; providing for the establishment of planning
15 commissions, planning departments, planning committees and
16 zoning hearing boards, authorizing them to charge fees, make
17 inspections and hold public hearings; providing for
18 mediation; providing for transferable development rights;
19 providing for appropriations, appeals to courts and penalties
20 for violations; and repealing acts and parts of acts,"
21 further providing for subdivision or land development
22 approval.

23 The General Assembly of the Commonwealth of Pennsylvania
24 hereby enacts as follows:

25 Section 1. Section 509 of the act of July 31, 1968 (P.L.805,
26 No.247), known as the Pennsylvania Municipalities Planning Code,
27 reenacted and amended December 21, 1988 (P.L.1329, No.170), is

1 amended to read:

2 Section 509. Completion of Improvements or Guarantee Thereof
3 Prerequisite to Final Plat Approval.--(a) No plat shall be
4 finally approved unless the streets shown on such plat have been
5 improved to a mud-free or otherwise permanently passable
6 condition, or improved as may be required by the subdivision and
7 land development ordinance and any walkways, curbs, gutters,
8 street lights, fire hydrants, shade trees, water mains, sanitary
9 sewers, storm sewers and other improvements as may be required
10 by the subdivision and land development ordinance have been
11 installed in accordance with such ordinance. In lieu of the
12 completion of any improvements required as a condition for the
13 final approval of a plat, including improvements or fees
14 required pursuant to section 509(i), the subdivision and land
15 development ordinance shall provide for the deposit with the
16 municipality of financial security in an amount sufficient to
17 cover the costs of such improvements or common amenities
18 including, but not limited to, roads, storm water detention
19 and/or retention basins and other related drainage facilities,
20 recreational facilities, open space improvements, or buffer or
21 screen plantings which may be required.

22 (b) When requested by the developer, in order to facilitate
23 financing, the governing body or the planning agency, if
24 designated, shall furnish the developer with a signed copy of a
25 resolution indicating approval of the final plat contingent upon
26 the developer obtaining a satisfactory financial security. The
27 final plat or record plan shall not be signed nor recorded until
28 the financial improvements agreement is executed. The resolution
29 or letter of contingent approval shall expire and be deemed to
30 be revoked if the financial security agreement is not executed

1 within 90 days unless a written extension is granted by the
2 governing body; such extension shall not be unreasonably
3 withheld and shall be placed in writing at the request of the
4 developer.

5 (c) Without limitation as to other types of financial
6 security which the municipality may approve, which approval
7 shall not be unreasonably withheld, Federal or Commonwealth
8 chartered lending institution irrevocable letters of credit and
9 restrictive or escrow accounts in such lending institutions
10 shall be deemed acceptable financial security for the purposes
11 of this section.

12 (d) Such financial security shall be posted with a bonding
13 company or Federal or Commonwealth chartered lending institution
14 chosen by the party posting the financial security, provided
15 said bonding company or lending institution is authorized to
16 conduct such business within the Commonwealth.

17 (e) Such bond, or other security shall provide for, and
18 secure to the public, the completion of any improvements which
19 may be required on or before the date fixed in the formal action
20 of approval or accompanying agreement for completion of the
21 improvements.

22 (f) The amount of financial security to be posted for the
23 completion of the required improvements shall be equal to 110%
24 of the cost of completion estimated as of 90 days following the
25 date scheduled for completion by the developer. Annually the
26 municipality may adjust the amount of the financial security by
27 comparing the actual cost of the improvements which have been
28 completed and the estimated cost for the completion of the
29 remaining improvements as of the expiration of the 90th day
30 after either the original date scheduled for completion or a

1 rescheduled date of completion. Subsequent to said adjustment,
2 the municipality may require the developer to post additional
3 security in order to assure that the financial security equals
4 said 110%. Any additional security shall be posted by the
5 developer in accordance with this subsection.

6 (g) The amount of financial security required shall be based
7 upon an estimate of the cost of completion of the required
8 improvements, submitted by an applicant or developer and
9 prepared by a professional engineer licensed as such in this
10 Commonwealth and certified by such engineer to be a fair and
11 reasonable estimate of such cost. The municipality, upon the
12 recommendation of the municipal engineer, may refuse to accept
13 such estimate for good cause shown. If the applicant or
14 developer and the municipality are unable to agree upon an
15 estimate, then the estimate shall be recalculated and
16 recertified by another professional engineer licensed as such in
17 this Commonwealth and chosen mutually by the municipality and
18 the applicant or developer. The estimate certified by the third
19 engineer shall be presumed fair and reasonable, and shall be the
20 final estimate. In the event that a third engineer is so chosen,
21 fees for the services of said engineer shall be paid equally by
22 the municipality and the applicant or developer.

23 (h) If the party posting the financial security requires
24 more than one year from the date of posting of the financial
25 security to complete the required improvements, the amount of
26 financial security may be increased by an additional 10% for
27 each one-year period beyond the first anniversary date from
28 posting of financial security or to an amount not exceeding 110%
29 of the cost of completing the required improvements as
30 reestablished on or about the expiration of the preceding one-

1 year period by using the above bidding procedure.

2 (i) The governing body may require a developer, as a
3 condition for approval of a subdivision or land development, to
4 pay the cost of providing only reasonable and necessary
5 transportation improvements, water, sewage, storm water and
6 drainage facilities necessary to satisfy the requirements of the
7 act of October 4, 1978 (P.L.864, No.167), known as the Storm
8 Water Management Act, and the rights-of-way and easements
9 therefore, located outside the property limits of the
10 subdivision or land development but necessitated or created and
11 required thereby. Any municipality which levies, or
12 municipalities which jointly levy, facility benefit assessment
13 fees, as provided for above, shall first adopt a facility
14 benefit assessment fee ordinance which shall establish a
15 facility benefit assessment fee schedule; the basis for the
16 calculation of said fees; the method for paying the fees; the
17 time at which the fees are to be paid; and the criteria for
18 credits or refunds of the fees. In addition, the facility
19 benefit assessment fee ordinance shall:

20 (1) assure that the fee charged does not exceed the
21 proportional share of the reasonably anticipated costs for
22 the public improvements necessitated to support the new land
23 development activity;

24 (2) assure that the fees are based on actual costs;

25 (3) provide that any fee schedule developed be based
26 upon empirical data derived from municipal and/or county
27 studies, in addition to national or Commonwealth statistics
28 or data relative to daily or peak hour trip generation or
29 other similar standards;

30 (4) provide that fees must be used to implement a

1 municipal capital improvement plan, or elements of an adopted
2 comprehensive plan or other plan which is to be implemented
3 with facility benefit assessment fees, which plan or plans
4 shall be updated at least once every three years;

5 (5) provide that all fees collected shall be deposited
6 into a separate municipal escrow or trust fund account and
7 accounted for separately;

8 (6) provide that all fees spent to implement a capital
9 improvement plan or other municipal plan shall be expended
10 within a reasonable time not to exceed five years from
11 receipt of said fees at which time any unexpended fees shall
12 be refunded to the developer or developers that contribute
13 them;

14 (7) provide that the developer paying such fees shall
15 receive credit against fees due, for the value of any land
16 dedicated to the municipality or for the value of any such
17 improvements constructed or installed by the developer; and

18 (8) provide that fees shall be used to construct or
19 provide municipal facilities at a location which directly or
20 indirectly benefits the development against which the
21 facility benefit assessment fees were levied. If the
22 governing body requires a developer to pay costs pursuant to
23 this provision, the governing body shall establish a
24 procedure whereby within five years of completion of the
25 improvements, any other developer who applies for subdivision
26 or land development approval for other lots, tracts or
27 parcels of land benefited by such improvements shall
28 reimburse the original developer for a proportion of such
29 costs as a condition for approval of a subdivision on land
30 development application. The amount of such reimbursement

1 shall be in accordance with the extent to which the
2 subsequently approved lot, tract or parcel of land is
3 benefited in accordance with the extent of the development
4 thereof.

5 ~~[(i)]~~ (j) In the case where development is projected over a
6 period of years, the governing body or the planning agency may
7 authorize submission of final plats by section or stages of
8 development subject to such requirements or guarantees as to
9 improvements in future sections or stages of development as it
10 finds essential for the protection of any finally approved
11 section of the development.

12 ~~[(j)]~~ (k) As the work of installing the required
13 improvements proceeds, the party posting the financial security
14 may request the governing body to release or authorize the
15 release, from time to time, such portions of the financial
16 security necessary for payment to the contractor or contractors
17 performing the work. Any such requests shall be in writing
18 addressed to the governing body, and the governing body shall
19 have 45 days from receipt of such request within which to allow
20 the municipal engineer to certify, in writing, to the governing
21 body that such portion of the work upon the improvements has
22 been completed in accordance with the approved plat. Upon such
23 certification the governing body shall authorize release by the
24 bonding company or lending institution of an amount as estimated
25 by the municipal engineer fairly representing the value of the
26 improvements completed or, if the governing body fails to act
27 within said 45-day period, the governing body shall be deemed to
28 have approved the release of funds as requested. The governing
29 body may, prior to final release at the time of completion and
30 certification by its engineer, require retention of 10% of the

1 estimated cost of the aforesaid improvements.

2 [(k)] (l) Where the governing body accepts dedication of all
3 or some of the required improvements following completion, the
4 governing body may require the posting of financial security to
5 secure structural integrity of said improvements as well as the
6 functioning of said improvements in accordance with the design
7 and specifications as depicted on the final plat for a term not
8 to exceed 18 months from the date of acceptance of dedication.
9 Said financial security shall be of the same type as otherwise
10 required in this section with regard to installation of such
11 improvements, and the amount of the financial security shall not
12 exceed 15% of the actual cost of installation of said
13 improvements.

14 [(l)] (m) If water mains or sanitary sewer lines, or both,
15 along with apparatus or facilities related thereto, are to be
16 installed under the jurisdiction and pursuant to the rules and
17 regulations of a public utility or municipal authority separate
18 and distinct from the municipality, financial security to assure
19 proper completion and maintenance thereof shall be posted in
20 accordance with the regulations of the controlling public
21 utility or municipal authority and shall not be included within
22 the financial security as otherwise required by this section.

23 [(m)] (n) If financial security has been provided in lieu of
24 the completion of improvements required as a condition for the
25 final approval of a plat as set forth in this section, the
26 municipality shall not condition the issuance of building,
27 grading or other permits relating to the erection or placement
28 of improvements, including buildings, upon the lots or land as
29 depicted upon the final plat upon actual completion of the
30 improvements depicted upon the approved final plat. Moreover, if

1 said financial security has been provided, occupancy permits for
2 any building or buildings to be erected shall not be withheld
3 following: the improvement of the streets providing access to
4 and from existing public roads to such building or buildings to
5 a mud-free or otherwise permanently passable condition, as well
6 as the completion of all other improvements as depicted upon the
7 approved plat, either upon the lot or lots or beyond the lot or
8 lots in question if such improvements are necessary for the
9 reasonable use of or occupancy of the building or buildings. Any
10 ordinance or statute inconsistent herewith is hereby expressly
11 repealed.

12 Section 2. This act shall take effect in 60 days.