

ARTICLE 5**FEES, DEPOSITS, GUARANTEES
AND OTHER PAYMENTS****§ 5.01. FILING FEES FOR DEVELOPMENT APPLICATIONS.**

All filing fees for development applications as hereinafter required shall be payable to the Board Secretary at the time of filing of the application. All permits, determinations, resolutions or certificates of approval are subject to the payment of all fees provided for in this section, and no approvals shall be given by the Board until proof has been submitted to it that the requisite fees have, in fact, been paid to the Board Secretary. Notwithstanding the above, projects of the Town of Westfield and the Town of Westfield Board of Education shall be exempt from the payment of the filing fees required by this article.

§ 5.02. SCHEDULE OF FEES. [Amended 12/16/08 by Ord. No. 1930]

There is hereby established in connection with the various applications for development and other matters which are the subject of this ordinance the following schedule of fees. Every applicant for development shall file with his application a filing fee as indicated in the following schedule. Requests for more than one (1) of the items listed below shall require the payment of separate fees for each item, the sum of which shall be the total fees to be paid. The fee for preliminary and final major subdivisions or site plan approval shall be considered cumulative and both shall be paid at the time of the application for preliminary approval.

- A. **All "C" variances and exceptions, taken together as a group regardless of number, § 7.01C (Planning Board or Board of Adjustment, as applicable):** The greater of one hundred fifty dollars (\$150) or ninety-five dollars (\$95.00) each for each variance requested.
- B. **Each "D" variance, § 7.01D (Board of Adjustment):**
1. Residential - four hundred dollars (\$400) for each variance.
 2. Nonresidential - seven hundred and fifty dollars (\$750.00) for each variance.
- C. **Request for the issuance of permits for structures in areas reserved on the Official Map or for lots not fronting upon a street, § 7.01E or § 7.01F (Planning Board or Board of Adjustment, as applicable):** one hundred dollars (\$100.00).

- D. **Appeal alleging erroneous decision of the Zoning Officer regarding the zoning regulations, § 7.02B (Board of Adjustment):** one hundred dollars (\$100.00).
- E. **Interpretation of the zoning regulations, Zoning Map or Official Map, § 7.02C (Board of Adjustment):** one hundred dollars (\$100.00).
- F. **Conditional use review, Article 18 (Planning Board):**
1. If no new building is involved: two hundred and fifty dollars (\$250.00).
 2. For a new building or alteration costing up to five thousand dollars (\$5,000.00): two hundred and fifty dollars (\$250.00).
 3. For a new building or alteration costing more than five thousand dollars (\$5,000.00) but no more than twenty-five thousand dollars (\$25,000.00): three hundred and fifty dollars (\$350.00).
 4. For each additional twenty-five thousand dollars (\$25,000.00) or part thereof over the first twenty-five thousand dollars of the new building or alteration cost: an additional fifty dollars (\$50.00), but in no case shall the fee be more than seven hundred and fifty dollars (\$750.00).
 5. The application fee for conditional use review as aforesaid shall be deemed to include the required site plan review fee.
- G. **Informal review of concept plan, § 8.07 (Planning Board):** one hundred and fifty dollars (\$150.00).
- H. **Minor site plan, § 8.08 (Planning Board or Board of Adjustment, as applicable):** two hundred and fifty dollars (\$250.00).
- I. **Minor subdivision, § 8.09 (Planning Board or Board of Adjustment, as applicable):** three hundred dollars (\$300.00), plus fifty dollars (\$50.00) for each lot in the proposed subdivision.
- J. **Preliminary major site plan, § 8.10 (Planning Board or Board of Adjustment, as applicable):** three hundred and fifty (\$350.00) for the first twenty thousand (20,000) square feet of lot area or fraction thereof, plus fifty dollars (\$50.00) for each one thousand (1,000) square feet or fraction thereof of lot area over twenty thousand (20,000) square feet, plus one hundred dollars (\$100.00) for the first one thousand (1,000) square feet of floor area of any new building or alteration of or addition to an existing building on the subject property, plus fifty dollars (\$50.00) for each one thousand (1,000) square feet or fraction

- thereof of new or altered or added floor area over one thousand (1,000) square feet; provided that in no case shall the fee for preliminary major site plan approval be less than three hundred and fifty dollars (\$350.00) nor more than seven hundred and fifty dollars (\$750.00).
- K. **Preliminary major subdivision, § 8.10 (Planning Board or Board of Adjustment, as applicable):** five hundred dollars (\$500.00), plus one hundred dollars (\$100.00) for each lot in the proposed subdivision.
- L. **Final major site plan, § 8.11 (Planning Board or Board of Adjustment, as applicable):** fifty percent (50%) of the fee required for the preliminary site plan for the same development. Fees for final major site plan approval shall be collected at the time of filing a preliminary major site plan application.
- M. **Final major subdivision, § 8.11 (Planning Board or Board of Adjustment, as applicable):** two hundred and fifty dollars, (\$250.00) for each lot in the proposed subdivision.
- N. **List of property owners within two hundred (200) feet of applicant's property from current tax duplicates, § 4.04C:** one dollar (\$1.00) per name or twenty-five dollars (\$25.00), whichever is greater.
- O. **Transcripts of Planning Board or Board of Adjustment hearings:** must be obtained from the court reporter.
- P. **Building permits:** as specified by the Uniform Construction Code; to be paid to Town Construction Official.
- Q. **Certificates of occupancy:** as specified by the Uniform Construction Code; to be paid to Town Construction Official.
- R. **Temporary sign permit for real estate sale or rental signs, § 16.02:** as specified by the Uniform Construction Code; to be paid to Town Construction Official.
- S. **Duplicate copies of any permit or certificate:** ten dollars (\$10.00).
- T. **Engineering inspection of site plans or subdivision plats submitted for approval:** Two hundred percent (200%) of the hourly rate of the professional times the number of hours spent.
- U. **Special Meeting of the Planning Board or Zoning Board of Adjustment:** One thousand dollars (\$1,000.00) shall be paid to the Town of Westfield prior to setting the special meeting date.
- V. **Extension requests.** One hundred dollars (\$100.00) shall be paid for any request to extend the expiration date of a development or

variance approval to be heard by the Planning Board or Zoning Board of Adjustment.

§ 5.03. PAYMENT FOR PROFESSIONAL SERVICES AND OTHER EXPERT SERVICES.

The chief financial officer of the Town shall make all of the payments to professionals for services rendered to the Town or the Board for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of the Municipal Land Use Law and this ordinance. At the time of filing of an application for development, appeal, or other matter pursuant to this ordinance, the applicant shall pay to the Board Secretary a deposit, in accordance with the schedule in Subsection A. below to be used to reimburse the Town for said professional services. Deposits shall be paid by cashier's check, certified check, bank money order or cash, and shall be placed by the Town in an escrow account if required pursuant to § 5.06B. In the case of proposals requiring a combination of approvals, such as subdivision, site plan and/or variance(s), the applicant shall deposit an amount equal to the sum of the deposits required for each application. **[Amended 12/16/08 by Ord. No. 1930]**

A. **Schedule of deposits. [Amended 12/16/08 by Ord. No. 1930]** The initial deposit for payment of professional services shall be as set forth on the following schedule, provided that if the Board Secretary determines that an initial deposit greater than indicated on the following schedule is necessary to reimburse the anticipated cost of professional services as relates to a particular application, such as, but not limited to circulation-intensive sites requiring the services of a traffic engineering consultant, the applicant shall be required to deposit said greater amount.

1. Appeal for "C" variance, § 7.01C (Planning Board or Board of Adjustment, as applicable):
 - a. if part of site plan or subdivision: none.
 - b. if not part of site plan or subdivision, or if bifurcated: two hundred and fifty dollars (\$250.00) for each, five hundred dollars (\$500.00) maximum.
2. Appeal for "D" variance, § 7.01D (Board of Adjustment): five hundred dollars (\$500.00) for each variance.
3. Request for the issuance of permits for structures in areas reserved on the Official Map or for lots not fronting upon a street, § 7.01E or § 7.01F (Planning Board or Board of Adjustment, as applicable):
 - a. if part of site plan or subdivision: none.

- b. if not part of site plan or subdivision, or if bifurcated: one hundred dollars (\$100.00) for each, five hundred dollars (\$500.00) maximum.
4. Appeal alleging erroneous decision of the Zoning Officer regarding a zoning regulation, § 7.02B (Board of Adjustment): three hundred dollars (\$300.00).
5. Interpretation of the zoning regulations, Zoning Map or Official Map, § 7.02C (Board of Adjustment): three hundred dollars (\$300.00).
6. Conditional use review, Article 18 (Planning Board): same as for site plan applications.
7. Informal review of concept plan, § 8.07 (Planning Board): four hundred (\$400.00).
8. Minor site plan, § 8.08 (Planning Board or Board of Adjustment, as applicable): five hundred dollars (\$500.00).
9. Minor subdivision, § 8.09 (Planning Board or Board of Adjustment, as applicable): seven hundred and fifty dollars (\$750.00) per lot.
10. Preliminary major site plan, § 8.10 (Planning Board or Board of Adjustment, as applicable):
 - a. seven hundred and fifty dollars (\$750.00) for the first twenty thousand (20,000) square feet of site area; plus
 - b. two hundred and seventy-five dollars (\$275.00) for each additional twenty thousand (20,000) square feet of site area; plus
 - c. five hundred dollars (\$500.00) for the first ten thousand (10,000) square feet of existing and proposed building gross floor area; plus
 - d. two hundred and fifty dollars (\$250.00) for each additional ten thousand (10,000) square feet of existing and proposed building gross floor area, up to a maximum of five hundred dollars (\$500.00) for additional gross floor area above ten thousand (10,000) square feet.
11. Preliminary major subdivision, § 8.10 (Planning Board or Board of Adjustment, as applicable): two hundred and fifty dollars (\$250.00) per lot.

12. Final major site plans, § 8.11 (Planning Board or Board of Adjustment, as applicable):
 - a. *(if reviewed at same time as preliminary major site plan):* none.
 - b. *(if reviewed subsequent to preliminary major site plan):* One half preliminary Major Site Plan escrow fee.
13. Final major subdivisions, § 8.11 (Planning Board or Board of Adjustment, as applicable): one half preliminary Major Subdivision escrow fee.

B. **Depletion of deposits.** If an escrow account or deposit contains insufficient funds to enable the Town or the Board to perform required application reviews or inspections of improvements, the chief financial officer of the Town shall provide the applicant with a notice of the insufficient escrow or deposit balance. In order for work to continue on the development or the application, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the Town or the Board and the applicant. In the interim, any required health and safety inspections shall be made and charged back against the replenishment of funds.

C. **Failure to provide or maintain adequate deposit.** No application shall be deemed complete and no formal action shall be taken by the Board until the initial deposit required by subsection A. above has been submitted. If the funds required by subsection B. above for professional services are not deposited in a timely manner, the Board Secretary shall notify the Board. No further action shall be taken on the application unless the deposits have been made by the applicant as required above. In the event that a delay in the payment or maintenance of the required deposits results in a substantial reduction in the available time for action by the Board, or any extension thereof as provided by this ordinance, the Board may, at its discretion, dismiss the application.

D. **Eligible charges against deposit.** All professional charges for review of an application for development, review and preparation of documents, or inspection of improvements shall be reasonable and necessary, given the status and progress of the application or construction. The following provisions shall apply:

1. Professional charges may include the services of a duly licensed engineer, surveyor, planner, architect, landscape architect, court reporter, traffic expert (can be unlicensed), attorney, realtor, appraiser or other expert providing professional services (whether as an employee of the Town or otherwise engaged by the Town) to ensure that

an application complies with the standards set forth in this ordinance and other experts whose testimony is in an area or in areas where the Board requires further information; provided that such charges shall not include time expended by the Zoning Official. **[Amended 12/16/08 by Ord. No. 1930]**

2. Application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the Town. The charges shall be for the following services:
 - a. Reviews by professional personnel of applications and accompanying documents;
 - b. Issuance of reports by professional personnel to the Board setting forth recommendations resulting from the review of any documents submitted by the applicant;
 - c. Charges for any telephone conferences or meetings requested or initiated by the applicant, his attorney or any of his experts or by the Board or any of its professionals;
 - d. Review of documents submitted by the applicant not required by ordinance and issuance of reports relating thereto;
 - e. Review or preparation of easement documents, developers agreements, deeds or the like;
 - f. Preparation for and attendance at special meetings by professional personnel **[Amended 12/16/08 by Ord. No. 1930]**; and
 - g. The preparation of resolutions, including without limitation, resolutions pertaining to an application concerning which the resolution must contain a summary of two (2) or more witnesses, including experts, testifying on behalf of the applicant in order for the resolution to contain adequate findings of fact and conclusions based thereon pursuant to § 4.10.
3. Professional charges may also include the costs of expert advice and/or testimony obtained by the Board for the purpose of corroborating testimony of the applicant's experts, or providing a separate review which the Board

deems necessary to make an informed decision, provided that:

- a. This provision shall not entitle the Town to reimbursement for the cost of expert advice and/or testimony at a regularly scheduled meeting of the Board, when such advice and/or testimony is provided in the expert's capacity as a full time or part time Town employee; and
- b. The Board shall give prior notice to the applicant of its intention to obtain such additional expert advice or testimony and afford the applicant an opportunity to be heard as to the necessity for such additional advice or testimony and as to the definition of the limitations on the nature and extent thereof.

E. **Exceptions and limitations.** The following exceptions and limitations shall apply the charges for professional services pursuant to this article:

- 1. Exceptions. No applicant shall be responsible to reimburse the Town for any of the following:
 - a. Except as otherwise set forth in § 5.03D above, attendance by the Town's professional personnel employees at any regularly scheduled meeting of the Board; provided, however, that the Town shall be entitled to be reimbursed for attendance of its professional employees, including court reporters, secretaries, attorneys, etc., at special meetings of the Board which are called at the applicant's request. Nothing contained herein shall be construed as requiring the Board to grant an applicant's request to hold a special meeting.
 - b. The time spent by the Zoning Officer with respect to the review and processing of an application.
 - c. Except as otherwise set forth in § 5.03D above, the preparation of a resolution of memorialization setting forth the findings of fact and conclusions of the Board with respect to an application.
- 2. Limitations. The following limitations shall apply to the charges for professional services:
 - a. Review fees shall be charged only in connection with an application for development presently pending before the Board, or review of compliance with conditions of approval, or review of requests for modification or amendment made by the applicant. A

professional shall not review items which are subject to approval by any State governmental agency and not under Town jurisdiction, except to the extent consultation with a State agency is necessary due to the effect of State approvals upon the subdivision or site plan.

- b. Inspection fees shall be charged only for actual work shown on a subdivision or site plan or required by an approving resolution. Professionals inspecting improvements under construction shall charge only for inspections that are reasonably necessary to check the progress and quality of the work and such inspections shall be reasonably based on the approved development plans and documents.
 - c. The only costs that shall be added to any such charges shall be actual out-of-pocket expenses of any such professionals or consultants including normal and typical expenses incurred in processing applications and inspecting improvements.
 - d. The Town or Board shall not bill the applicant, or charge any escrow account or deposit authorized herein for any Town clerical or administrative functions, overhead expenses, meeting room charges, or any other Town costs and expenses except as provided for in this section, nor shall a Town professional add any such charges to his bill.
 - e. If the Town retains a different professional or consultant in the place of the professional originally responsible for development application review, or inspection of improvements, the Town or Board shall be responsible for all time and expenses of the new professional to become familiar with the application or the project, and the Town or approving authority shall not bill the applicant or charge the deposit or the escrow account for any such services.
- F. **Rates of payment for professional services.** If the salary, staff support and overhead for a professional are provided by the Town, the hourly rate charged to the deposit from said professional shall be at two hundred percent (200%) of the sum of the products resulting from multiplying: 1) the hourly base salary, of each of the professionals by 2) the number of hours spent by the respective professional upon review of the application for the development or inspection of the developer's improvements, as the case may be. The hourly base salary shall be determined based upon each professional's annual salary as set forth annually by ordinance and divided by such professional's annual hours based on a 35 hour work week. For other professionals, the charge shall

be at the same rate as all other work of the same nature by the professional for the Town when fees are not reimbursed or otherwise imposed on applicants or developers. Rates for professional services shall be in accordance with a schedule of professional fees filed annually with the Board Secretary and maintained in the office of the Town Clerk for public inspection.

[Amended 12/16/08 by Ord. No. 1930]

G. **Vouchers for payment of professional services.** Each payment charged to a deposit for the review of applications, review and preparation of documents and inspection of improvements shall be pursuant to a voucher from the professional. The processing of vouchers shall be in accordance with the following:

1. The voucher shall identify the personnel performing the service, and for each date the services are performed, the hours spent to one-quarter (1) hour increments, the hourly rate and the expenses incurred.
2. All professionals shall submit vouchers to the chief financial officer of the Town on a monthly basis in accordance with the schedules and procedures established by the chief financial officer of the Town.
3. If the services are provided by a Town employee, the Town employee shall prepare and submit to the chief financial officer of the Town a statement containing the same information as required on a voucher, on a monthly basis.
4. The professional shall send an informational copy of all vouchers or statements submitted to the chief financial officer of the Town simultaneously to the applicant.
5. The chief financial officer of the Town shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements, and the cumulative balance of the escrow account. This information shall be provided on a quarterly basis, if monthly charges are one thousand dollars (\$1,000) or less, or on a monthly basis if monthly charges exceed one thousand dollars (\$1,000).

H. **Appeals of charges.** An applicant shall notify in writing the Town Council, with copies to the chief financial officer of the Town, the Board and the professional, whenever the applicant disputes the charges made by a professional for service rendered to the Town in reviewing applications for development, review and preparation of documents, inspection of improvements, or other charges made pursuant to the Municipal Land Use Law. The following shall apply:

1. An applicant shall file an appeal within forty-five (45) days from receipt of the informational copy of the professional's voucher required by § 5.03G, except that if the professional has not supplied the applicant with an informational copy of the voucher, then the applicant shall file his appeal within sixty (60) days from receipt of the Town statement of activity against the deposit or escrow account required by § 5.03G.5.
2. The Town Council, or its designee, shall within a reasonable time period attempt to remediate any disputed charges.
3. If the matter is not resolved to the satisfaction of the applicant, the applicant may appeal to the county construction board of appeals established under section 9 of P.L. 1975, c.217 (C.52:27D-127) any charge to an escrow account or a deposit by any Town professional or consultant. An applicant or his authorized agent shall submit the appeal in writing to the county construction board of appeals. The applicant or his authorized agent shall simultaneously send a copy of the appeal to the Town, Board, and any professional whose charge is the subject of the appeal. The procedures followed by the county construction board of appeals shall be as set forth in N.J.S.A. 40:55D-53.2b and c.
4. An applicant may file an appeal for an ongoing series of charges by a professional during a period not exceeding six (6) months to demonstrate that they represent a pattern of excessive or inaccurate charges. An applicant making use of this provision need not appeal each charge individually.
5. During the pendency of any appeal, the Town or approving authority shall continue to process, hear, and decide the application for development, and to inspect the development in the normal course, and shall not withhold, delay, or deny reviews, inspections, signing of subdivision plats or site plans, the reduction or the release of performance and maintenance guarantees, the issuance of construction permits or certificates of occupancy, or any other approval or permit because an appeal has been filed or is pending under this subsection. The chief financial officer of the Town may pay charges out of the appropriate escrow account or deposit for which an appeal has been filed.
6. If a charge is disallowed after payment, the chief financial officer of the Town shall reimburse the deposit or escrow account in the amount of any such disallowed charge or refund the amount to the applicant. If a charge is disallowed after payment to a professional or consultant who is not an employee of the Town, the professional or

consultant shall reimburse the Town in the amount of any such disallowed charge.

§ 5.04. INSPECTION FEES; REQUIRED DEPOSIT.

The developer shall reimburse the Town for all reasonable inspection fees paid to the Town Engineer for the inspection of improvements required pursuant to this ordinance. Prior to the initiation of any construction approved pursuant to this ordinance, the developer shall deposit with the Board Secretary sufficient funds to reimburse the Town for inspection fees paid to the Town Engineer. Deposits shall be paid by cashier's check, certified check, bank money order or cash. The Town Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit. Deposits shall be as follows:

- A. The developer shall deposit for the inspection fees an amount with the Town not to exceed, except for extraordinary circumstances, the greater of five hundred dollars (\$500.00) or five percent (5%) of the cost of improvements, which cost shall be determined pursuant to this article.
- B. For those developments for which the reasonably anticipated inspection fees are less than ten thousand dollars (\$10,000.00), inspection fee deposits may, at the option of the developer, be paid in two (2) installments. The initial amount deposited by a developer shall be fifty percent (50%) of the reasonably anticipated inspection fees. When the balance on deposit drops to ten percent (10%) of the reasonably anticipated inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Town Engineer for inspection, the developer shall deposit the remaining fifty percent (50%) of the anticipated inspection fees.
- C. For those developments for which the reasonably anticipated inspection fees are ten thousand dollars (\$10,000.00) or greater, inspection fee deposits may, at the option of the developer, be paid in four (4) installments. The initial amount deposited by a developer shall be twenty-five percent (25%) of the reasonably anticipated fees. When the balance on deposit drops to ten percent (10%) of the reasonably anticipated fees because the amount deposited by the developer has been reduced by the amount paid to the Town Engineer for inspection, the developer shall make additional deposits of twenty-five percent (25%) of the reasonably anticipated fees.
- D. Appeals of the amount required to be deposited for the payment of inspection fees or the amount charged for the inspection of improvements shall follow the procedures in § 5.03H.

§ 5.05. PERFORMANCE AND MAINTENANCE GUARANTEES.

Before recording of final subdivision plats or as a condition of final site plan approval or as a condition to the issuance of a zoning approval pursuant to § 6.02, the Town agency may require and shall accept performance and maintenance guarantees for the purpose of assuring the installation and maintenance of on-tract improvements. Such performance and maintenance guarantees shall be in accordance with the following standards:

A. **Performance guarantees.** The following standards shall apply to the administration of performance guarantees:

1. Amount of performance guarantee. The performance guarantee for the installation of those improvements required shall be in favor of the Town of Westfield in an amount equal to one hundred and twenty percent (120%) of the cost of such improvements. The cost of said improvements shall be determined by the Town Engineer based on documented construction costs for public improvements prevailing in the general area of the Town. The Town Engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which estimate shall be appended to each performance guarantee posted by the obligor.
2. Appeal of disputed performance guarantee amounts. The developer may appeal the Town Engineer's estimate of the cost of improvements for purposes of furnishing a performance guarantee. Such appeal shall be made in accordance with the procedures set forth in § 5.03H.
3. Form of guarantee. At least ten percent (10%) of the of the performance guarantee shall be in the form of cash or a certified check made payable to the Town of Westfield. The balance of the performance guarantee shall be in the form of any security issued by an institution authorized to issue such securities in the State of New Jersey and which may be accepted by the Town and approved by the Town Attorney, including but not limited to surety bonds, cash and letters of credit; provided that the Town shall only accept an irrevocable letter of credit if it:
 - a. Constitutes an unconditional payment obligation of the issuer running solely to the Town for an express initial period of time of at least one (1) year but no more than two (2) years from the date of final approval;
 - b. Is in the amount determined by the Town Engineer or Town Council, as applicable, as provided herein, less the amount of any other forms of guarantee furnished;

- c. Is issued by a banking or savings institution authorized to do and doing business in the State of New Jersey; and
 - d. Permits the Town to draw upon the letter of credit if the obligor fails to furnish another letter of credit which complies with the provisions of this section thirty (30) days or more in advance of the expiration date of the letter of credit or such longer period in advance thereof as is stated in the letter of credit.
4. Time allowed for completion of improvements. The performance guarantee shall state the time period within which all improvements are to be installed by the developer. No performance guarantee shall run for a term longer than two (2) years, except as provided otherwise by this article.
 5. Extension of time allowed for completion of improvements. The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the Town Council by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed one hundred and twenty percent (120%) of the cost of the installation at the time of the resolution. The cost of installation shall be determined by the Town Engineer as provided herein for the initial cost determination.
 6. Failure to complete improvements within time specified. If the required improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Town for the reasonable cost of the improvement not completed or corrected. The Town may, either prior to or after receipt of the proceeds thereof, complete such improvements or use said funds to restore the property to a safe condition so that the subject property in its unfinished development state does not adversely affect the public safety or adversely impact the environment. Such completion or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law.
 7. Release of performance guarantee. Release of performance guarantees shall be in accordance with the following procedure:
 - a. Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the obligor may request

of the Town Council that the Town Engineer prepare a list of all uncompleted or unsatisfactory completed improvements. The request to the Town Council shall be made in writing by certified mail addressed to the Town Clerk, with a copy of the request to be sent to the Town Engineer. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgment of the obligor.

- b. Upon receiving the obligor's request, the Town Engineer shall inspect all improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the Town Council, and shall simultaneously send a copy thereof to the obligor not later than forty-five (45) days after receipt of the obligor's request.
- c. The detailed list prepared by the Town Engineer shall be in accordance with the itemized cost estimate prepared by the Town Engineer, which estimate shall have been appended to the performance guarantee as required herein. The list prepared by the Town Engineer shall state, in detail, with respect to each improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed improvement determined to be unsatisfactory.
- d. The report prepared by the Town Engineer shall identify each improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory improvement. The recommended reduction shall be in accordance with the itemized cost estimate prepared by the Town Engineer, which cost estimate shall have been appended to the performance guarantee as required herein.
- e. The Town Council, by resolution, shall either approve the improvement determined to be complete and satisfactory by the Town Engineer, or reject any or all of these improvements. The cause for any rejection shall be stated in the Council's resolution. If any portion of the required improvements is rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion or correction, the same procedure of notification as required herein, shall be followed.

- f. For accepted improvements, the Town Council shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted. Any authorized reduction shall be in accordance with itemized cost estimate prepared by the Town Engineer, which cost estimate shall have been appended to the performance guarantee as required herein. The resolution shall be adopted not later than forty-five (45) days after receipt of the list and report prepared by the Town Engineer.
 - g. Any partial reduction granted in the performance guarantee as provided herein 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.
 - h. Upon adoption of the resolution by the Town Council, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those approved improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that thirty percent (30%) of the amount of the performance guarantee posted may be retained to ensure completion and acceptability of all improvements.
8. Failure of Town Engineer or Town Council to act. If the Town Engineer or Town Council fails to act on the request for release of a performance guarantee within the time required herein, the obligor may apply to the court in the manner provided below; provided that nothing herein shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Town Council or the Town Engineer.
- a. If the Town Engineer fails to send or provide the list and report as requested by the obligor as required herein within forty-five (45) days from receipt of the request, the obligor may apply to the court in a summary manner for an order compelling the Town Engineer to provide the list and report within a stated time. The cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
 - b. If the Town Council fails to approve or reject the improvements determined by the Town Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory

improvements within forty-five (45) days from the receipt of the Town Engineer's report, the obligor may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the Town Engineer, which cost estimate shall have been appended to the performance guarantee as required herein. The cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

- B. **Maintenance guarantees.** After final acceptance of required improvements, a maintenance guarantee shall be required to be posted with the Town. Except as specifically provided otherwise below, maintenance guarantees shall be administered in the same manner as performance guarantees as provided by this article.
1. Amount of maintenance guarantee. The maintenance guarantee shall be in favor of the Town of Westfield in an amount equal to fifteen percent (15%) of the cost of such improvements. The cost of said improvements shall be determined by the Town Engineer in the same manner as provided herein for performance guarantees.
 2. Form of guarantee. The maintenance guarantee shall be in the form of any security which may be accepted by the Town and approved by the Town Attorney, including but not limited to surety bonds, cash and letter of credit; provided that acceptance of irrevocable letters of credit shall be subject to the same conditions as provided herein for performance guarantees.
 3. Time required for maintenance guarantee. The maintenance guarantee shall be required to run for a period of two (2) years, which shall be stated in the guarantee.
- C. **Exception for improvements related to other jurisdictions.** In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Town for such utilities or improvements.
- D. **Final approval by stages or sections of development.** In the event that final approval is by stages or sections of development as provided by this article, the provisions of this section shall be applied by stage or section of development.

§ 5.06. ADMINISTRATION OF DEPOSITS AND ESCROWS.

Deposits received for professional services employed by the Town to review applications for development, for Town inspection fees in accordance with this article, or to satisfy the guarantee requirements of this article shall be administered in accordance with the following provisions:

- A. **Collection, processing and maintenance of deposits.** All funds shall be collected by the Board Secretary. The Secretary of the Board shall maintain account records, process invoices, etc. for the Board. The actual escrow deposits shall be maintained by the Town Treasurer.
- B. **Deposits to be held in escrow.** Whenever an amount of money shall be deposited by an applicant with the Town, the money, until repaid or applied to the purposes for which it is deposited, including the applicant's portion of the interest earned thereon, except as otherwise provided in this article, shall continue to be the property of the applicant and shall be held in trust by the Town. Deposits received pursuant to this article shall be held in escrow and deposited in a banking institution or savings and loan association in New Jersey insured by an agency of the federal government, or any other fund or depository approved for such deposits by the State of New Jersey. Such deposits shall be placed in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The Town shall notify the applicant in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit.
- C. **Refund of deposits; interest.** Any of the funds remaining in the deposit, excluding interest, upon completion of the purpose for which the deposit was made shall be returned to the applicant and the account shall be terminated. For deposits over five thousand dollars (\$5,000.00) placed in an interest bearing account pursuant to this article, refunds of interest shall be made as follows:
 1. The Town shall not be required to refund an amount of interest paid on a deposit which does not exceed one hundred dollars (\$100.00) for the year.
 2. If the amount of interest exceeds one hundred dollars (\$100.00) for the year, that entire amount shall belong to the applicant and shall be refunded to him by the Town annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that the Town may retain for administrative expenses a sum equivalent to no more than one third (1/3) of that entire amount, which shall be in lieu of all other administrative and custodial expenses.

§ 5.07. PAYMENT OF FEES REQUIRED PRIOR TO APPROVAL.

No subdivision plat or deed or site plan shall be signed, nor shall any zoning approval, building permit, certificate of occupancy or any other type of permit be issued with respect to any approved application for development until:

- A. All applicable fees have been paid;
- B. All bills for reimbursable services have been received by the Town from professional personnel rendering services in connection with such application, and the payment of such bills has been approved by the Town;
- C. The applicant has reimbursed the Town for the excess of all bills for professional services over the escrow amount otherwise herein provided for.