

LOWER MOUNT BETHEL TOWNSHIP
FINANCIAL SECURITY POLICY

1. Preferred Form of Financial Security. Lower Mount Bethel Township strongly prefers letters of credit or cash escrows over performance bonds as financial security (both improvements and maintenance security). The Pennsylvania Municipalities Planning Code, Act 247 of July 31, 1968, as subsequently reenacted and amended from time to time ("MPC"), provides the Township with discretion in determining the appropriateness of proposed forms of improvements and maintenance security. The MPC specifically indicates that municipalities must accept letters of credit or cash escrows, and leaves within the municipality's discretion whether other forms of security will be appropriate. Pennsylvania courts have, in at least one decision, suggested that there may not be a blanket preclusion of bonds as subdivision and maintenance security. However, the courts permit a municipality to determine under what circumstances performance bonds are appropriate.

2. Advantages of Cash and Letters of Credit. The advantage of cash escrows and letters of credit is that each can be converted to immediate cash to correct a problem if one arises during either a construction period or a maintenance period. A bond, on the other hand, requires a municipality to apply to a bonding company for payment, and the bonding company then has discretion as to whether or not to honor that request. In our experience, bonding companies often force municipalities to litigate to obtain releases of funds, the net result of which is that funds are not necessarily available immediately to correct imminent concerns.

3. Guidelines for Financial Security. The Township has established this policy to attempt to accommodate a developer's desire to utilize a bond for improvements and/or maintenance security, while addressing the Township's need for access to immediate cash to address any exigent problem faced by the Township, including but not limited to sinkholes.

(a) If a performance bond is approved by the Board for any given project, the first \$100,000 of any project security must be in the form of a cash escrow, letter of credit, or other instrument immediately convertible to cash, so that ready cash is available in the event of a sinkhole or other major exigency which requires remediation.

(b) If a letter of credit is the security of choice, the credit provider must have a presentment location no further than sixty (60) miles from the Township's office, to assure that the letter of credit can be reduced to cash when drawn upon without relinquishing physical possession of it.

(c) If the project involves the opening of a collector or arterial road, or if unusual construction costs are anticipated, the “cash equivalent” portion of the security required by Paragraph 3(a) above will be higher. The amount will be dependent upon the nature of likely potential issues, and the determination is made on a case-by-case basis upon consultation with the Township Engineer.

(d) In all cases, the amount of security retained will be reduced from the “cash equivalent” only after all other security amounts (the bond) have been depleted, though the Township may draw upon the “cash equivalent” if necessary to enforce its rights to obtain payment from the bonding company. The developer is responsible to replenish the “cash equivalent” portion of the security within thirty (30) days after it is drawn by the Township.

(e) If a bonding company is utilized for any portion of the security, it must have an A- or better rating with A.M. Best Company. The bonding company must be admitted in Pennsylvania through the Commonwealth Insurance Commission. Also, the company must be approved for use in federal and state projects involving performance bonds. The burden is on the developer to show that each of these criteria has been met.

(f) No bond will be approved until the Township Engineer shall have evaluated the project for the potential for unusual construction costs, and only then will the bond request be presented to the Board of Supervisors for its approval. To initiate a request to use a bond as a portion of the required security, an applicant’s engineer shall present the request to the Township Secretary, with a copy to the Township Engineer and Township Solicitor. The request shall include a narrative indicating why a bond will be adequate security under the circumstances. The Township Engineer and Township Solicitor will review the request and report comments and recommendations to the Board of Supervisors for consideration.