

Chapter 200

PUBLIC IMPROVEMENTS

[HISTORY: Adopted by the Town Board of the Town of Pendleton 3-3-1998; amended in its entirety 1-30-2001. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Sewers and water — See Ch. 209.

Streets and sidewalks — See Ch. 217.

ARTICLE I

Public Improvement Permit (PIP) Ordinance and Regulations

§ 200-1. Purpose.

The purpose of this article is to establish a mechanism to ensure that any improvement that is to be constructed by a private individual, corporation or any other entity with the intent that following completion of the improvement the ownership of such improvement is to be conveyed to the Town of Pendleton with the Town of Pendleton to assume responsibility for maintaining and operating such improvement be constructed in accordance with Town of Pendleton specifications. The Town of Pendleton will be provided with mapping of the layout of all improvements, including location of all lines, valves, hydrants and appurtenances.

§ 200-2. Public improvement permits required.

- A. All improvements that are completed by an individual, corporation or other entity that are to be dedicated to or maintained by the Town of Pendleton are considered public improvements and are required to be installed under public improvement permits.
- B. Public improvement permits are required for:
 - (1) Sanitary sewers.
 - (2) Water lines.
 - (3) Roadways.
 - (4) Public drainage and storm sewers.
 - (5) Curbs or sidewalks.
- C. These improvements are to be constructed to Town of Pendleton standards as well as Niagara County and New York State requirements upon real property in the town for the use of the general public.

§ 200-3. Permit required; application; maps and surveys.

- A. No person, firm, association or corporation shall install, construct or perform any work incident to the installation and/or construction of any public improvement upon real property in the town without first having obtained a permit.
- B. Applications for public improvement permits must be received by the Town Clerk at least one week prior to a scheduled Town Board meeting for consideration at that meeting.
- C. These permits are to be issued by the Town Clerk, with the approval of the Town Board, after certification by the designated town officer that the plans and specifications, as submitted by the applicant, comply with the specifications and requirements of the town and by the Town Attorney that the bonds and other legal requirements are met.
- D. The applications for such permits shall be made on forms furnished by the town. They shall contain such information as the designated town officer and the Engineer of the Town shall require to determine that the proposed improvement will conform to the specifications and requirements of the town for such proposed improvement.
- E. All applications shall be accompanied by five complete sets of drawings (prints), previously approved, together with specifications of the proposed public improvement, prepared by a professional engineer duly licensed by the State of New York or a licensed land surveyor, under the provisions of § 7208 of the New York Education Law.
- F. Applications for public improvement permits shall be accompanied by a stormwater pollution prevention plan (SWPPP) if required for the proposed public improvement under Article XIV of Chapter 247, Zoning, of the Town Code, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-88B of the Town Code. If a SWPPP is submitted pursuant to this section, such SWPPP and application for a public improvement permit shall comply with the requirements of Article XIV of Chapter 247, Zoning, of the Town Code. [Added 10-2-2007 by L.L. No. 2-2007]

§ 200-4. Deposit and payment of fees.

- A. The fee for the public improvement permit is \$35, paid by the developer to the Town of Pendleton.
- B. Simultaneously with the filing of an application for a public improvement permit and development and prior to the commencement of any construction of any buildings, highways, drainage facilities, utilities or parks therein, the applicant or developer, as the case may be, shall deposit with the Town Clerk a sum of money, the actual costs to be determined by the Town based on studies over several years, previous town experience with public improvements, various surveys of other towns and general knowledge in the engineering and legal professions. The deposit shall be an amount necessary to pay the legal, inspection and engineering costs of

the project. Under no circumstances will the cost to the applicant or developer be more than the Town-Board-approved vouchered costs.

- C. Upon receipt and approval by the Town Board of an itemized voucher from an engineer and/or attorney rendered on behalf of the town pertaining to the development, the Town Clerk shall cause such vouchers to be paid out of the monies so deposited and shall furnish copies of such vouchers to the applicant or developer at the same time such vouchers are submitted to the Town Board.

§ 200-5. Administrative, legal, engineering and inspection costs; completion of improvement.

- A. All vouchers and charges to the developer or applicant must be reviewed and approved by the Town Board before the engineers are paid for the services rendered to the town from the deposit provided by the developers under this public improvement chapter. All disputes between the developer, engineers, legal professionals, and other related matters, will be subject to the fair hearing process, as provided in this chapter.
- B. The applicant shall be responsible for the actual cost of the project, which includes administration, legal, engineering and the costs of full-time inspection. No work will be permitted without a Town Inspector on a site.
- C. The Town Board of the Town of Pendleton hereby adopts a cost schedule, which shall be set by resolution of the Town Board. This schedule shall be subject to further review and modification from time to time. The Town Engineer shall approve estimated construction costs.
- D. The developer is responsible for submitting to the town an estimate of the number of days that will be required to complete the project. A normal workday will be considered to be eight hours. The developer will be required to deposit a sum of money equal to the total of the days times eight hours necessary to complete the project multiplied by the inspection rate per hour set by the town and agreed to by developer and town. Administration costs will be agreed to prior to the start of work. Town expenses will be reimbursed to the town and are the responsibility of the developer.
- E. A work time schedule will be agreed upon by the applicant and the Town Engineer. Contractors shall give at least 24 hours' notice to the Town Engineer before starting work, continuing work previously started but delayed for any reason or stoppage of work.
- F. The developer is responsible for depositing with the town any additional funds required to complete the project if the project has not been completed within the time specified.
- G. Any deposit surplus shall be returned to the applicant; or, if there is a deficit, the applicant shall pay to the town sufficient additional amounts to pay the actual total cost of inspections, engineering, administrative and legal costs incurred by the town for the project.

- H. Before any more moneys are so placed in escrow, the person depositing the same shall acknowledge the terms of this chapter upon a form prescribed by the Town Board.
- I. The applicant shall provide any required easements or rights-of-way to the town in a form acceptable to the Town Attorney for filing in the Niagara County Clerk's office.
- J. The applicant shall furnish certification of completion and waiver of all liens stating that all construction costs, including inspection costs, legal, administrative and engineering costs, have been paid.
- K. The fees charged by the engineers for inspections will be at the same rate the Town Engineers charge the town for inspections and other related matters. There will be no variations in charges from the set approved rates charged to the town for other engineering required by the town.
- L. After five workdays, if the additional money needed to complete the project is not deposited, the town may or will stop work on the project until the money is deposited.
- M. Upon completion of any public improvement, the applicant shall submit a record set of plans to the Town Engineer signed by the licensed project engineer. Upon receipt of such certification, the Town Engineer shall recommend approval or disapproval for acceptance for maintenance of the improvements by the town.

§ 200-6. Performance; surety bond.

- A. No permit shall be issued until the applicant has provided to the Town of Pendleton a surety bond executed by a solvent corporation authorized to do business in New York State in a sum equal to the cost of the work to be performed. Such bonds shall be approved by the Town Board. Such bonds shall remain in full force and effect until the certificate of completion and dedication, as well as complete compliance with all regulations approved by the Town Engineer, Town Attorney and department heads and the project is accepted by the Town Board.
- B. Work under this permit shall be started within 60 days of the Town Board approval. Work shall be completed within one year. Requests for extension of time shall be addressed to the Town Board.
- C. Work under this permit will be performed in accordance with all laws, rules, regulations, ordinances and specifications in existence of the Town of Pendleton and the State of New York, and any federal regulations.

§ 200-7. Insurance requirements.

All applications for public improvement permits shall be accompanied by insurance documentation which specifically lists the Town of Pendleton as an additional insured on policies of general liability, auto liability and excess liability in the face amount no less than that which the town carries for its own coverage.

§ 200-8. Maintenance bond.

- A. A maintenance bond shall be filed by all applicants for public improvement permits. The bond will protect against any and all defects in material and/or workmanship and provide for the cost of repair or replacement of such improvement.
- B. The maintenance bond shall be executed by a solvent surety corporation as surety authorized to do business in New York State. The bond will be in a sum equal to 50% of the cost of such improvements. Such bonds shall remain in force and effect for a period of two years from the acceptance date of such public improvement by the Town Board of Pendleton.

§ 200-9. Failure to comply; forfeiture.

In the event that the holder of the public improvement permit shall fail or refuse to comply with provisions of this article, the above bond shall be forfeited to the Town of Pendleton.

§ 200-10. Supervision of work; inspections.

- A. No work shall be performed except under the supervision and inspection of the Town Engineer or his designee.
- B. The applicant shall provide written notice to the Town Engineer of intent to proceed on the public improvement. The Town Engineer shall authorize the applicant to proceed only upon the Town Engineer's receipt of written verification that all permit requirements remain in effect and after a preconstruction meeting has been held.
- C. Upon completion of the work authorized by the public improvement permit application, the Town Engineer will provide the town with:
 - (1) A certificate of construction compliance at completion of each permit.
 - (2) Sanitary sewer and water main test reports.
 - (3) Niagara County Health Department acceptance of installed facilities.
 - (4) Photocopies of inspectors' reports during construction.
 - (5) Two paper prints and one Mylar of the as-built condition of installed facilities, elevations, locations, etc., as provided by the developers' engineers.
- D. Upon receipt of the certificate of construction and as-built prints, a walk-through inspection will be conducted a minimum of one week prior to a regularly scheduled Board meeting.
- E. At the next scheduled Town Board meeting, the town will accept the installed facilities upon:
 - (1) Town Engineer approval.

- (2) Town departments' approval.
 - (3) Receipt of a two-year maintenance bond from the contractor covering installed facilities.
 - (4) Receipt of payment of all PIP fees.
- F. The Town Board will then authorize payment of any moneys remaining for inspection fees to the owner.
- G. Work under this permit shall be completed within one year from the date of permit issuance.

§ 200-11. Conditions of acceptance.

- A. Upon completion of any public improvement, the applicant shall submit a record set of plans to the Town Engineer; two paper prints and one Mylar of the as-built condition of installed facilities, elevations, locations, etc., to the Town of Pendleton.
- B. The applicant shall provide any required easements or rights-of-way to the town in a form acceptable to the Town Attorney for filing in the Niagara County Clerk's office by the applicant.
- C. Compliance with the provisions of this section shall be a condition precedent to the acceptance of any public improvement by the town.

§ 200-12. Stop-work orders.

- A. The Code Enforcement Officer, in consultation with the Town Engineer, shall issue or cause to be issued a stop-work order for any public improvement found ongoing without a public improvement permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 200-14 of this article.
- B. The Town Engineer shall issue or cause to be issued a stop-work order for any public improvement found noncompliant with the provision of this chapter and/or the conditions of the public improvement permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 200-14 of this article.

§ 200-13. Conflict with other laws.

Whenever any provision of this article is at variance or in conflict with any other provision hereof or any other statute, local ordinance or regulation covering any of the same subject matter, the most restrictive provision, or the one imposing the higher standard, shall govern.

§ 200-14. Penalties for offenses.

- A. A violation of this article is hereby declared to be an offense, punishable by a fine not to exceed \$250 per day, imprisonment for a period not to exceed 15 days, or both.

- B. Upon notice by the Code Enforcement Officer, any applicant deemed to be in violation of this article will have 10 days to comply with said notice. Each day's continued violation shall constitute a separate additional violation and shall be punishable as herein provided.
- C. In addition to the foregoing remedies, the town may institute any appropriate action or proceeding to prevent, correct or restrain any violation of this article.

ARTICLE II
Fair Hearing Process

§ 200-15. Purpose.

The purpose of this process is to provide an informal, expedited process for the review and/or hearing of disputes between contractors and the Town of Pendleton (the "town") regarding the administration of the town's public improvement application procedure ("PIP").

§ 200-16. Request for review of hearing.

Under this process, a contractor may request a review or hearing on, in general, any disagreement or dispute regarding the administration of the PIP ordinance; specifically, a contractor may request a review and/or hearing regarding the timing, cost or results of any actions required of town officials or town representatives in the course of the town's administration of the PIP ordinance (for example, inspection of a contractor's work, or opinions issued by town representatives or town employees regarding work in progress or completed work of a contract).

§ 200-17. Procedure.

A contractor who believes that a dispute or disagreement exists with the town, shall conform to the following:

- A. **Written notice.** The contractor shall sign and file two copies of the review/hearing dispute form setting forth the specific nature of the dispute (including a full description of the dispute and the identities of town personnel or representatives involved); the manner in which the contractor proposes to settle or rectify the disputes; and whether the contractor elects hearing officer review without a hearing or review with a hearing.
- B. **Hearing officer and hearing.** If the contractor requests informal review by a hearing officer without a hearing, the hearing officer shall review the contractor's dispute form and review any and all submissions made by the town employees or representatives in response to the dispute form and issue a finding and decision within 10 business days of the date of the filing of the dispute. If a hearing is requested by the contractor, the hearing officer shall set a hearing date and time, which hearing shall be held no later than 10 business days after the filing of the dispute form. The contractor shall be provided with copies of all writings and documents submitted to the hearing officer by the town five business days in

advance of the hearing date. The contractor shall have the right to submit additional documents, data and other information to the hearing officer three business days before the hearing date.

- C. Conduct of hearing. If a hearing is requested, the contractor shall have the right to appear in person, either with an attorney or without an attorney, and shall have the right to examine and question any town officers, employees or representatives in attendance at the hearing. It shall be the responsibility of the hearing officer to assure the attendance at the hearing of all town personnel/representatives noted in the town dispute form. The purpose of this process is to establish an informal process by which disputes are heard and determined. Accordingly, the hearing officer shall have full discretion as to the procedure to be followed at the hearing, the calling of a recess or adjournments and the relevancy of evidence submitted. Further, the hearing will be conducted in an informal manner, and the hearing officers shall not be required to follow the formal rules of evidence. Additionally, the contractor shall have the right to produce at the hearing any witnesses the contractor deems necessary to support his/her/its case. Upon hearing the statements and answers of the parties and, if any, the witnesses, the hearing officer shall make a written finding and decision within 10 business days of the date of the hearing. Consistent with the informal nature of the hearing process, the hearing officer may request additional information after the hearing is closed, but is not required to do so. Only one hearing may be held on any dispute.
- D. For purposes of an informal hearing, the Town Superintendent of Highways shall act as the hearing officer.

§ 200-18. Applicability.

This process shall be effective as to all PIP applications filed on or after the date this process is duly adopted by the Town Board.

§ 200-19. No waiver.

By entering into the informal procedure provided under this process, the contractor shall not be deemed to waive any rights to proceed in any other administrative forum or in a court of law concerning any dispute reviewed under this process.