# Chapter 13. Subdivision Procedures

**40:13-1. Title**
This Chapter shall be known and cited as the "Subdivision Procedures" of the City of Newark.

**40:13-2. Purpose**
The purpose of this Title shall be to provide rules, regulations and standards to guide land subdivision in the City in order to promote the public health, safety, convenience and general welfare of the City. It shall be administered to insure the orderly growth and development, the conservation, protection and proper use of land and adequate provision for pedestrian, bicycle, and vehicular circulation, utilities, and services.

**40:13-3. Compliance with Applicable Requirements**
The procedures for processing subdivisions shall comply with the requirements of the Newark Zoning & Land Use Regulations.

**40:13:4. Applicability**

**40: 13-4-1.** Subdivision approval shall be required from the Central Planning Board for lots where the official lot line has to be altered for the purpose of dedication, sale of land/lot or creation of a new lot. Approval of the subdivision shall be obtained prior to such action as stated above.

**40: 13-4-2.** Approval of the subdivision is prerequisite before any official lot line is altered, the subdivision approval must be obtained from the Central Planning Board or the Zoning Board of Adjustment. The Zoning Board of Adjustment has mandatory jurisdiction of subdivision review in those limited situations as stated in Section 40: 13-4-3.

**40: 13-4-3.** The Zoning Board of Adjustment shall have the power to review subdivisions and to grant, to the same extent and subject to the same restrictions as the Central Planning Board, subdivision approval. Whenever the Zoning Board of Adjustment is simultaneously reviewing an application for approval of a "d" or use variance which permits a structure or use in a district restricted against such structures or use as defined by NJSA 40:55D-70(d).

**40: 13-4-3.** A Minor Subdivision is the creation or reconfiguration of two or fewer lots and does not include the creation of a street, road, or public right-of-way. All other subdivisions shall be classified as Major Subdivisions.

**40:13-5. Waiver**
The Central Planning Board when acting upon application for preliminary or minor subdivision approval shall have the power to grant such exceptions from the requirements for subdivision approval as may be reasonable and within the general purpose and intent of the provisions for subdivision review and approval of this Title, if the literal enforcement of one (1) or more provisions of the Title is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

**40:13-6. Minor Subdivision Procedure Submission Requirements**

**40:13-6-1.** Application for a minor subdivision shall include the following requirements as part of a complete submission. Failure to provide any of the required information and payment of a fee shall constitute an incomplete submission and the application shall not be acted upon by the Board.

1. City of Newark Central Planning Board/Zoning Board of Adjustment application.

2. Six (6) sets of "Before Subdivision" and "After Subdivision" plats. Within this plat, include the area in square feet and acres both before and after. Both the before and after plats shall include lot numbers.

3. Six (6) sets of the block diagram showing all properties within a radius of two hundred (200) feet from all corners of the property in question.

4. Six (6) sets of the metes and bounds description of all existing and proposed lots. This should include one (1) before description and one (1) after description for all lots for which the lot line(s) is being altered. Metes and bounds shall be included on all plans.

5. Two (2) copies of any protective covenants or deed restrictions applying to the land being subdivided.

6. The following must be submitted at least two (2) days prior to the hearing:

a. Certified Mail Receipts
(1) Mounted on 8.5 x 11 inch bound paper
(2) Six to a page
(3) Arranged in the same order as indicated on the certified list of property owners (a property certified U.S. Postal Form 3877 will be accepted in lieu of the mounted receipts, provided that the addresses are arranged in the same order as indicated on the certified list)
b. Affadavit of Proof of Service
c. Affadavit of Publication

7. Digital Submission Requirement: All required documents shall also be submitted digitally on a CD (compact disk) or USB drive, which shall be submitted with the rest of the required documentation. The digital files shall be combined into a single Adobe Portable Document File (PDF file format).

**40: 13-6-2. Board Action**
Minor subdivision approvals shall be granted or denied within forty-five (45) days of the date of submission of a complete application to the Central Planning Board or within such further time as may be consented to by the applicant. Failure of the Board to act within the period prescribed shall constitute minor subdivision approval and a certificate of the Secretary of the Board as to failure of the Central Planning Board to act shall be issued on request of the applicant.

**40: 13-6-3. Effect of Approval**
Approval of a minor subdivision shall be deemed final approval provided that the Board may condition such approval on the provision of improvements as may be required. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision or site plan approval was granted, shall not be changed for a period of two (2) years after the date on which the resolution of approval is adopted provided that the approved minor subdivision shall have been duly recorded.

**40: 13-6-4. Expiration**
Approval of a minor subdivision shall expire one hundred ninety (190) days from the date on which the resolution of approval is adopted unless within such period a plat in conformity with such approval and the provisions of the Map Filing Law (N.J.SA. 46:23-9.9 et seq.) or a deed clearly describing the approved minor subdivision, is filed by the developer with the County Recording Officer, the City Engineer and the City Tax Assessor. Any such plat or deed must be signed by the Chairperson and the Secretary of the Central Planning Board before it will be accepted for filing by the County Recording Officer.

**40: 13-6-5. Extensions**
1. The Central Planning Board may extend the one hundred and ninety (190) day period for filing a minor subdivision plat or deed pursuant to this Chapter if the developer proves to the reasonable satisfaction of the Board:

a. That the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities; and

b.That the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the approvals, as determined by the Board. The developer may apply for the extension either before or after what would otherwise be the extension date.

c. The Board shall grant an extension of minor subdivision approval for a period determined by the Board, but not exceeding one (1) year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the Board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental agencies and that the developer applied promptly for and diligently pursued the required approvals. The developer shall apply for an extension before: (a) what would be the expiration date of minor

subdivision approval; or (b) the ninety-first (91) day after the developer receives the first legally required approval from other governmental entities, whichever occurs later.

**40:13-7. Preliminary Major Subdivision Procedure**

**40: 13-7-1. Submission Requirements**
Application for a Major Subdivision shall include the following requirements as part of a complete submission. Failure to provide any of the required information and payment of fee shall constitute an incomplete submission and the application shall not be acted upon by the Board.

1. City of Newark Central Planning Board/Zoning Board of Adjustment application.

2. Six (6) sets of "Before Subdivision" and "After Subdivision" plats. Within this plat, include the area in square feet and acres both before and after. Both the before and after plats shall include lot numbers.

3. Six (6) sets of the block diagram showing all properties within a radius of two hundred (200) feet from all corners of the property in question.

4. Six (6) sets of the metes and bounds description of all existing and proposed lots. This should include one (1) before description and one (1) after description for all lots for which the lot line(s) is being altered. Metes and bounds shall be included on all plans.

5. Two (2) copies of any protective covenants or deed restrictions applying to the land being subdivided.

6. Digital Submission Requirement: All required documents shall also be submitted digitally on a CD (compact disk) or USB drive, which shall be submitted with the rest of the required documentation. The digital files shall be combined into a single Adobe Portable Document File (PDF file format).

**40:13-7-2. Board Action**
Except for applications governed by the time limits, the Board shall approve, conditionally approve or deny a preliminary major subdivision application of ten (10) or fewer lots within forty-five (45) days after the submission of a complete application, unless the applicant shall extend the period of time in which the Board may act.

The Board shall approve, conditionally approve or deny a preliminary major subdivision application of more than ten (10) lots within ninety-five (95) days after the submission of a complete application, unless the applicant shall extend the period of time in which the Board may act.

Failure of the Board to act within the time prescribed shall constitute preliminary major subdivision approval and a certificate of the Secretary of the Central Planning Board or the Zoning Board of Adjustments as to the failure of the Board to act shall be issued on request of the applicant.

If the Board required any substantial amendment in the layout of improvements proposed by the developer, that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development. The Central Planning Board shall, if the proposed development complies with the Municipal Land Use Law, grant preliminary approval.

**40: 13-7-3. Substantial Modification**
1. If any substantial modification is proposed or required after preliminary approval has been granted, an application for such modification shall be submitted and proceeded upon as in the case of the original application for development. The applicant may apply for modification approval either independently of or concurrently with application for final approval. In either case, notice pursuant to NJSA 40:55D-1 et seq. shall be required and shall state the nature of the proposed modification. A substantial modification shall mean one which: (a) increases the density of development; (b) increases the square footage of buildings; (c) proposes a different use; (d) would result in increased adverse impact upon properties in the immediate area with respect to factors such as, but not limited to, noise, glare and increased drainage runoff; or (e) materially changes a required element of the development plan.

2. If the Central Planning Board or the Zoning Board of Adjustments required any substantial amendment in the layout of improvements proposed by the developer, that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development. The Central Planning

Board shall, if the proposed development complies with the ordinance and the Municipal Land Use Law, grant preliminary approval.

**40: 13-7-4. Effect of Preliminary Approval**

1. Preliminary approval of a major subdivision, except as provided in this Section, shall confer upon the applicant the following rights for a three (3) year period from the date on which the resolution granting preliminary approval is adopted.

1. That the general terms and conditions on which preliminary approval was granted shall not be changed, including, but not limited to: use requirements; layout and design standards for streets, curbs and sidewalks; lot sizes; yard dimensions and off-tract improvements; and in the case of a site plan, any requirements particular to the site plan approval pursuant to NJSA 40:55D-41, except that nothing herein shall be construed to prevent the City from modifying by ordinance such general terms and conditions of preliminary approval as related to the public health and safety.

2. That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary subdivision plat.

3. That the applicant may apply for and the Board may grant extension on such preliminary approval of at least one (1) year, but not to exceed a total extension of two (2) years, provided that if the design standards have been revised by ordinance, such revised standards may govern.

4. Whenever the Board grants an extension of preliminary approval pursuant to the previous paragraphs above and preliminary approval has expired before the date on which the extension was granted, the extension shall begin on what would otherwise be the expiration date. The developer may apply for an extension either before or after what would otherwise be the expiration date.

5. The Board shall grant an extension of preliminary approval for a period determined by the Board, but not exceeding one (1) year from what would otherwise be the expiration date if the developer proves to the reasonable satisfaction of the Board that the developer was barred or prevented directly or indirectly from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the required approvals. The developer shall apply for the extension before: (a) what would otherwise be the expiration date of the preliminary approval; or (b) the ninety-first (91) day after the developer received the last legally required approval from other governmental entities, whichever is later. An extension granted pursuant to this Section shall not preclude the Board from granting an extension pursuant to the previous paragraphs above.

**40:13-8. Final Major Subdivision Procedure**

**40: 13-8-1. Submission Requirements**

1. Four (4) copies of the "Before Subdivision" and "After Subdivision" plats containing all of the information and required changes requested during preliminary review of the sketch plat.

2. Applications for approval of a final plat shall be submitted to the Central Planning Board by the developer within three (3) years following the date of preliminary approval. The final subdivision plat submission requirements shall be the same as required for the preliminary subdivision plat requirements under this Chapter.

3. The final plat shall conform to the preliminary plat as given tentative approval, except that it may consist of one (1) section of the whole.

4. The final plat shall be accompanied by a written statement by the Director of the Department of Engineering that he or she has received a map showing all improvements, both proposed and existing, in exact location and elevation, identifying those portions already installed and those to be installed and that the subdivider has complied with either or both of the following requirements:

a. Installed all improvements in accordance with the requirements of this Chapter.

b. Posted a monument bond with the Central Planning Board, in an amount determined by the City Surveyor to assure the completion of all required improvements.

5. Digital Submission Requirement: All required documents shall also be submitted digitally on a CD (compact disk) or USB drive, which shall be submitted with other required documentation. The digital files shall be combined into a single Adobe Portable Document File (PDF file format).

6. If the Central Planning Board or the Zoning Board of Adjustments approves the final plat, a statement to that effect shall be made on the plat and it shall be signed by the Chairperson and the Secretary to the Board.

**40: 13-8-2. Board Action**

1. The Board shall grant final approval if the detailed drawings, specifications and estimates of the application for final approval conform to the standards established by ordinance for final approval, the conditions for preliminary approval, and the standards prescribed in the Map Filing Law, P.L. 1960, c. 141.

2. Final approval shall be granted or denied within forty-five (45) days after submission of a complete application or within such further time as may be consented to by the applicant. Failure of the Board to act within the period prescribed shall constitute final approval and a certificate of the Secretary of the Central Planning Board as to the failure of the Board to act shall be issued on request of the applicant.

3. Whenever review or approval of the application by the County Planning Board is required by NJSA 40:27-6.1 or 40:27-6.6, the Board shall condition its approval on timely receipt of a favorable report on the application by the County Planning Board or approval by the County Planning Board by its failure to report thereon within the required time period.

**40: 13-8-3. Effect of Final Approval**

1. The zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer, whether conditionally or otherwise, shall not be changed for a period of two (2) years after the date on which the resolution of final approval is adopted; provided that in the case of a major subdivision the rights conferred by this Section shall expire if the plat has not been duly recorded within the time period provided below. If the developer has followed the standards prescribed for final approval and, in the case of subdivision, has duly recorded the plat with the County Recording Officer in accordance with below, the Board may extend such period of protection for extensions of one (1) year but not to exceed three (3) extensions. Notwithstanding any other provisions of this Chapter, the granting of final approval terminates the time period of preliminary approval, for any Section of the development which is granted final approval.

2. Whenever the Board grants any extension of final approval pursuant to the preceding paragraph, and final approval has expired before the date on which the extension is granted, the extension shall begin on what would otherwise be the expiration date. The developer may apply for the extension either before or after what would otherwise be the expiration date.

3. The Board shall grant an extension of final approval for a period determined by the Board but not exceeding one (1) year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the Board that the developer was barred or prevented, directly or indirectly, from proceeding with because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued these approvals. A developer shall apply for an extension before: (a) what would otherwise be the expiration date of final required approval; or (b) the ninety-first (91) day after the developer receives the last legally required approval from other governmental entities, whichever occurs later. An extension granted pursuant to this Section shall not preclude the Board from granting an extension pursuant to the preceding paragraphs.

**40: 13-8-4. Conditions of Approval.**

1. All conditions of preliminary and final approval shall be binding upon the applicant, all present and future owners, tenants, users and occupants of the property and their respective successors and assigns.

2. The applicant and any successor in interest shall be responsible for installing and maintaining in good order and condition all required improvements and landscaping, unless such improvements and landscaping are to be installed by, and/or dedicated and maintained by the City, County or another party under the terms of approval granted by the Board. Such required improvements shall include, but not

limited to, parking improvements, buffer zones, drainage facilities, exterior lighting, and landscaping. Failure of any responsible party to install and/or maintain the required improvements or landscaping shall constitute a violation of this Chapter and shall be subject to the enforcement procedures set forth herein.

**40: 13-8-5. Certificate as to Approval**

1. The prospective purchaser, prospective mortgages, or any other person interested in any land which forms part of a subdivision, or which formed part of a subdivision three (3) years preceding the effective date of NJSA 40:55D-1 et seq., may apply in writing to the Secretary to the Central Planning Board for the issuance of a certificate attesting whether or not such subdivision has been approved. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name of the owner thereof.

2. The Secretary to the Central Planning Board shall make and issue such certificate within fifteen (15) days after receipt of such written application and the fee of three ($3.00) dollars. The Secretary to the Central Planning Board shall keep a duplicate copy of each certificate consecutively numbered, including a statement of the fee charged, in a binder as a permanent record in his/her office.

3. Each certificate shall be designated a "Certificate as to Approval of Subdivision of Land" and shall certify:

a. Whether there exists in the municipality a duly established Planning Board and whether there is an ordinance controlling subdivision of land adopted under the authority of NJSA 40:55D-37.

b. Whether the subdivision, as it relates to the land shown in the application, has been approved by the Central Planning Board and, if so, the data of such approval and any extensions and terms thereof, showing the subdivision of which the lands are a part is a validly existing subdivision.

c.Whether such subdivision, if the same has not been approved, is statutorily exempt from the requirement of approval as provided in this act.

4. The fees collected by the Secretary to the Central Planning Board shall be paid by the applicant to the City of Newark.

**40: 13-8-6. Right of Owner of Land Covered by Certificate**

1. Any person who shall acquire for a valuable consideration an interest in the land covered by any such certificate of approval of a subdivision in reliance upon the information therein contained shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the municipality pursuant to the provisions of NJSA 40:55D-55.

2. If the Secretary to the Central Planning Board fails to issue such certificate within fifteen (15) days after receipt of an application and the proper fee, any person acquiring an interest in the land described in such application shall hold any interest free of any right, remedy or action which could be prosecuted or maintained by the municipality pursuant to NJSA 40:55D-55.

3. Any such application addressed to the Secretary to the Central Planning Board shall be deemed to be addressed to the proper designated officer and the municipality shall be found thereby to the same extent as though the same was addressed to the designated official.

**40: 13-8-7. Expiration of Final Major Subdivision Approval**

1. Final approval of a major subdivision shall expire ninety-five (95) days from the date of signing of the plat unless within such period the plat shall have been duly filed by the applicant with the County. The Board may for good cause shown extend the period for recording for an additional period not to exceed one hundred and ninety (190) days from the date of signing of the plat. The Board may extend the ninety-five (95) or one hundred and ninety (190) period if the applicant proves to the reasonable satisfaction of the Board: (a) that the applicant was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental entities; and (b) that the applicant applied promptly for and diligently pursued required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals as determined by the Board. The developer may apply for an extension either before or after the original expiration date.

2. No subdivision plat shall be accepted for filing by the County until it has been approved by the Board as indicated on the instrument by the signature of the chairperson and secretary of the Board. The signatures of the Board Chairperson and Secretary shall not be affixed until the developer has satisfied all applicable conditions of final approval. If the County records any plat without such approval, such recording shall be deemed null and void, and upon request of the City, the plan shall be expunged from the official records.

**40:13-9. Subdivision Plat Details Requirements**

**40: 13-9-1. General**

1. The subdivision plat shall be clearly and legibly drawn and certified by a Land Surveyor licensed to practice in the State of New Jersey.

2. Subdivision plat shall be prepared pursuant to the "Map Filing Law" (NJSA 46:23-99 et seq.) and the title block shall conform to NJAC 13:40-1 and NJAC 13:40-3. The subdivision plat shall conform to the provisions of the following:

a. Newly revised Newark Zoning and Land Use Regulations.
b. Design standards listed under Chapter 14 of the Newark Zoning and Land Use Regulations.
c. Master Plan and Official Map of the City of Newark.

4. The maps shall be sealed and signed by the Land Surveyor.

**40:13-9-2. Minor Subdivision Plat Details**

1. The plat shall be clearly and legibly drawn and certified by a land surveyor licensed to practice in the State of New Jersey.

2. The plat shall be drawn on sheets of 15"x 21" or larger, as measured from the cutting edge and shall show elements of this Article on a "Before Subdivision" and "After Subdivision" plan on a single sheet and so designated. If one (1) sheet is not of sufficient size to contain the entire territory, the plat may be divided into sections to be shown on separate sheets of equal size with reference on each sheet to the adjoining sheets.

3. Graphic and written scale shall not be smaller than 1"-100', North arrow and geographic reference meridian, and drawing and the date of the survey.

4. Street address, block and lot numbers, tax assessment volume and sheet number, and the name(s) and address(es) of the record owner(s) and owner's agent, if any.

5. Key Map showing the subdivision tract boundary lines and the surrounding area within two hundred (200) feet of the extreme boundaries of the subdivision.

6. The right-of-way lines of streets, street names and width easements and other right-of-way lines along with their purpose, all lot lines, other site lines and areas dedicated for public use with accurate dimensions, bearings and radii, lengths and central angles for all curves sufficient to enable the definite location of all lines and boundaries shown thereon.

7. Proposed use of the area and all existing structures standing upon or below the surface within the area to be subdivided and within one hundred (100) feet of the area with the detailed use of each of the structures and whether the structures are to remain or be removed.

8. All existing lots and blocks within two hundred (200) feet of the subdivision.

9. Acreage and square footage of all lots, as well as the total acreage and square footage of all lots with lines to be altered. Calculations shall be made to the nearest tenth of an acre and nearest square foot. Show all trees and limits of clearing.

10. There shall be submitted on the application the names, addresses and telephone numbers of all owners to title of the land subdivided by said plat, with their signature indicating their consent to the approval of said subdivision.

11. Existing mounument locations

12. Contours at two (2) feet intervals for slopes averaging ten (10%) percent or less and at five (5) foot intervals for greater slopes. All contour lines shall be referenced to the United States Geological Survey Datum.

13. Typical cross-section which clearly indicates the type and width or pavement and locations of curb, sidewalks and planting strips (proposed cross-section). Existing and proposed profiles shall be shown.

14. Plans and profiles of proposed utility layout (storm sewers, sanitary sewers, water and gas mains, and electrical facilities) showing feasible connections to existing or proposed utility systems.

15. Conform to all other technical design controls required by the provisions of all other municipal ordinances.

**40: 13-9-3. Major Subdivision Plat Details**

1. Preliminary Subdivision
   a. Include all the details outlined above.
   b. All documentation bound and required by this Title.
   c. There shall be endorsed thereon the following certificates:
      i. Licensed Land Surveyor

         I hereby certify that this map and survey has been made under my supervision and complies with the provisions of "The Map Filing Law." (Include the following if applicable) I do further certify that the monuments as designated and shown hereon have been set.

         _____
         Licensed Land Surveyor and No.
         (Affixed Seal)

      ii. City Clerk
         If monuments are to be set at a later date, the following endorsement shall be shown on the map.

         I hereby certify that a bond has been given to the municipality, guaranteeing the future setting of the monuments shown on this map and so designated.

         _____
         City Clerk

      iii. City Engineer
         I have carefully examined this map and find it conforms with the provisions of "The Map Filing Law" and the municipal ordinances and requirements applicable thereto.

         _____
         City Engineer
         (Affixed Seal)

      iv. Central Planning Board
         We hereby certify that this map has been approved by the Central Planning Board of the City of Newark on 20 and the map complies with the provisions of "The Map Filing Law" (NJSA 46:23-9.9 et seq.). This certification shall expire if this map is not filed in the Office of the Register of Essex County on or before the day of , 20.

         _____
         Secretary, Central Planning Board

      v. Owner
         I (we), the undersigned, having an interest in the title of the property covered by this subdivision map, do hereby consent to the filing of this map in the Office of the Register of Essex County.

         _____
         Name

2. Final Subdivision
The following items shall also be included in addition to the requirements of the preliminary subdivision for the final subdivision plat details submission.

   a. Show entire subdivision and the surrounding area within two hundred (200) feet of the extreme boundaries of the subdivision.

   b. Contours at two (2) feet intervals for slopes averaging ten (10%) percent or less and at five (5) foot intervals for greater slopes. All contour lines shall be referenced to the United States Geological Survey Datum.

   c. Existing zone and zoning information requirements along with plans.

   d. Typical cross-section which clearly indicates the type and width or pavement and locations of curb, sidewalks and planting strips (proposed cross-section). Existing and proposed profiles shall be shown.

   e. Plans and profiles of proposed utility layout (storm sewers, sanitary sewers, water and gas mains, and electrical facilities) showing feasible connections to existing or proposed utility systems.

   f. Existing monument locations

**40:13-10. Amended Subdivision Review**
Applications for amended subdivision review shall be governed by the same requirements as all other applications for subdivision review.

**40:13-11. Conditional Use Approval**

**40: 13-11-1.** Submission requirements for conditional use applications shall be the same as for a major site plan, except as set forth below.

1. The Board shall grant or deny an application for conditional use approval within ninety-five (95) days of submission of a complete application or within such further time as may be consented to by the applicant. If relief is requested pursuant to NJSA 40:55D-70d, the Board shall grant or deny within one hundred twenty (120) days of submission of a complete application or within such further time as consented by the applicant.

2. The Board shall approve or deny a conditional use application simultaneously with any accompanying subdivision application. The longest time for action by the Board, whether it be for conditional use or subdivision approval, shall apply. Whenever approval of a conditional use is requested by the applicant, notice of the hearing on the application shall include reference to the request for conditional use approval.

3. In approving a conditional use, a time limit of one (1) year from the date of the approval shall be set within which the owner shall secure a construction permit; otherwise the approval shall be null and void. The Board may, for good cause shown, extend the period for securing a construction permit for an additional period not exceeding six (6) months.

4.The conditions for approval shall be those specifically set forth in this Chapter as well as the applicable area and yard requirements listed in each zoning district, the parking and buffer requirements set forth in this Chapter.

**40:13-12. Performance Guarantees & Improvement Costs**

**40: 13-12-1. Requirements**
1. No final plats shall receive final approval unless the developer shall have installed the required improvements or shall have furnished the Central Planning Board with a performance guarantee bond of sufficient amount as established by the Director for the purpose of assuring installation and maintenance of on-tract improvements:

a. The furnishing of a performance guarantee in favor of the City of Newark in an amount not to exceed one hundred twenty (120%) percent of the cost of installation for improvements, which cost shall be determined by the Director of the Department of Engineering according to the method set forth in NJSA 40:55D-53.4, which may be deemed necessary or appropriate including: streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, landscaping, survey monuments as shown on the final plat and required by the "Map Filing Law," NJSA 46:23-9.9 et seq., water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices , and public improvements of open space. The Director of the Department of Engineering shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which itemized cost list shall be appended to each performance guarantee posted by the obligor.

b. Provisions for a maintenance guarantee to be posted with the Municipal Council, City of Newark for a period not to exceed two (2) years after final acceptance of the improvements, in an amount not to exceed fifteen (15%) percent of the cost of the improvements. 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 City of Newark for such utilities or improvements.

c. All improvements required by the Central Planning Board shall be subject to inspection and approval by the Director of the Department of Engineering who shall be notified by the developer at least twenty-four (24) hours prior to the start of construction of the same. No underground installation shall be covered until inspected and improved.

2. The time allowed for installation of improvements for which the performance guarantee has been provided may be extended by the Municipal Council

by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced to an amount not to exceed one-hundred and twenty (120%) percent of the cost of the installation, which cost shall be determined by the Director of the Department of Engineering according to the method of calculation set forth in NJSA 40:55D-53.4 as of the time of the passage of the resolution.

3. 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 City of Newark for the reasonable cost of the improvements not completed or corrected and the City of Newark may either prior to or after the receipt of the proceeds thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the "Local Public Contracts Law" NJSA 40A:11-1 et seq.

4. 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 Municipal Council in writing, by certified mail addressed in care of the City Clerk, that the Director of the Department of Engineering prepare, in accordance with the itemized cost estimate prepared by the Director of the Department of Engineering and appended to the performance guarantee pursuant to above, a list of all uncompleted or unsatisfactory completed improvements. If such a request is made, the obligor shall send a copy of the request to the Director of the Department of Engineering. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Thereupon the Director of the Department of Engineering shall inspect all improvements covered by obligor's request and file a detailed list and report, in writing, with the Municipal 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.

a. The list prepared by the Director of the Department of Engineering, shall state, 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. The report prepared by the Director of the Department of Engineering shall identify each improvement determined to be completed and satisfactory together with a recommendation as to the amount of the reduction to be made in the performance guarantee relating to the completed and satisfactory improvement, in accordance with the itemized cost estimate prepared by the Director of the Department of Engineering and appended to the performance guarantee.

5. The Municipal Council, by resolution, shall either approve the improvements determined to be complete and satisfactory by the Director of the Department of Engineering, or reject any of all of these improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the Director of the Department of Engineering and appended to the performance guarantee in accordance with this Section. This resolution shall be adopted not later than forty-five (45) days after receipt of the list and report prepared by the Director of the Department of Engineering. Upon adoption of the resolution by the Municipal 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 (30%) percent of the amount of the total performance guarantee posted may be retained to ensure completion and acceptability of all improvements.

a. For the purpose of releasing the obligor from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the Director of the Department of Engineering, including any contingency factor applied to the cost of installation. If the sum of the approved improvements would exceed seventy (70%) percent of the total amount of the performance guarantee, then the municipality may retain thirty (30%) percent of the amount of the total performance guarantee

to ensure completion and acceptability of all improvements, as provided above.

b. If the Director of the Department of Engineering fails to send or provide the list and report as requested by the obligor pursuant this Section 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 Director of the Department of Engineering to provide the list and report within a stated period of time and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

c. If the Municipal Council fails to approve or reject the improvements determined by the Director of the Department of Engineering to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements 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, within a stated time, the 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 Director of the Department of Engineering; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

d. In the event that the obligor has made a cash deposit with the municipality or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this Subsection, 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.

e. If any portion of the required improvements are rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion or correction, the same procedure for notification, as set forth in this Section, shall be followed.

6. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Municipal Council or the Director of the Department of Engineering.

7. The obligor shall reimburse the City of Newark for all reasonable inspection fees paid to the Director of the Department of Engineering for the foregoing inspection of improvements; provided that the City of Newark may require of the developer a deposit for the inspection fees in the amount not to exceed, except for extraordinary circumstances, the greater of five hundred ($500) dollars or five (5%) percent of the cost of the improvements, which cost shall be determined pursuant to NJSA 40:55D-53.4.

a. For those developments for which the inspection fees are less than ten thousand ($10,000) dollars, fees may, at the option of the developer, be paid in two (2) installments. The initial amount deposited by the developer shall be fifty (50%) percent of the inspection fees. When the balance on deposit drops to ten (10%) percent of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Director of the Department of Engineering for inspection, the developer shall deposit the remaining fifty (50%) percent of the inspection fees.

b. For those developments for which the inspection fees are ten thousand ($10,000) dollars or greater, fees may, at the option of the developer, be paid in four (4) installments. The initial amount deposited by the developer shall be twenty-five (25%) percent of the inspection fees. When the balance on the deposit drops to ten (10%) percent of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Director of the Department of Engineering for inspection, the developer shall make additional deposits of twenty-five (25%) percent of the inspection fees.

c. The Director of the Department of Engineering shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit.

8. In the event that final approval is by stages or sections of development pursuant to Subsection A of NJSA 40:55D-38, the provisions of this Section shall be applied by stage or section.

9. To the extent that any of the improvements have been dedicated to the City of Newark on the subdivision plat, the Municipal Council shall

be deemed, upon the release of any performance guarantee required pursuant to this Section, to accept dedication for public use of streets or roads and any other improvements made thereon according to subdivision plats approved by the approving authority, provided that such improvements have been inspected and have received final approval by the Director of the Department of Engineering.

**40: 13-12-2. Waiver of Improvements**
The Central Planning Board may waive the requirement to install any of the above specified improvements by resolution, setting forth the reasons for waiver and noting them in the minutes; provided that such waiver does not endanger public health, safety and welfare.

**40:13-13. Penalties, Civil Remedies and Liens**

**40: 13-13-1. Penalty**
If, before final subdivision approval has been granted, any person who transfers or sells or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision for which municipal approval is required by ordinance, such person shall be subject to a penalty not to exceed one thousand ($1,000.00) dollars or each lot disposition so made shall be deemed a separate violation.

**40: 13-13-2. Civil Remedies**
In addition to the foregoing, the City may institute and maintain a civil action:

1. For injunctive relief
2. To set aside and invalidate any conveyance made pursuant to such a contract or sale if a certificate of compliance has not been issued in accordance with NJSA 40:55D-56.

**40: 13-13-3. Lien**
In any such action described in this Chapter, the transferee, purchaser or grantee shall be entitled to a lien upon the portion of the land, from which the subdivision was made that remains in the possession of the developer or his or her assign or successors, to secure the return of any deposits made or purchase price paid, and also a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within two (2) years after the date of the recording of the instrument of transfer, sale or conveyance of the land or within six (6) years, if unrecorded.