

- 11.9.1 At the time of the approval of the application, the applicant shall tender either a ~~certified check payable to the Town or a performance bond payable to the Town~~ issued by a surety company in the amount of ~~100-150~~ percent of the cost of street construction, which includes furnishing installing, connecting and completing all grading, paving, storm drainage and utilities specified in the application. The bond shall be for a period of one year or such other period as the Planning Board may determine to be appropriate.
- 11.9.2 The Planning Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision road which is covered by performance quarantines. When development is phased, road construction shall commence from the public way. Final approval of house lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to the first phase of development.
- 11.9.3 Prior to the release of such check or bond, the Planning Board shall determine to its satisfaction, in part by the written certification required pursuant to Section 11.8.2, that the proposed street meets the design and construction requirements set forth herein.

ARTICLE #31

**ARTICLE 12 - Release of Guaranty Check or Bond Performance Guarantees**

**12.01 Type of Guarantees**

Upon approval of the Final Plan and prior to any construction, the applicant shall provide to the CEO one of the following performance guarantees for an amount adequate to cover the total construction costs of all required improvements, taking into account the time span of the construction schedule and the inflation rate for construction costs:

- A. Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account.
- B. A performance bond payable to the municipality issued by a surety company, approved by the municipal officers.
- C. An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision from which the municipality may draw if construction is inadequate, approved by the municipal officers.
- D. The Planning Board may choose not to require a performance guarantee for a minor subdivision.
- E. The conditions and the amount of the performance guarantee shall be determined by the Board with advice of the municipal officers and the CEO.

**12.02 Contents of Guarantee**

The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction,



provisions for the release of part or all of the performance guarantee to the developer, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction.

#### **12.03 Escrow Account**

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account or the purchase of a certificate of deposit into an FDIC insured institution. For any account opened by the applicant, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the applicant unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the applicant and the amount withdrawn to complete the required improvements.

#### **12.04 Performance Bond**

A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought.

#### **12.05 Letter of Credit**

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan.

#### **12.06 Phasing of Development**

The Planning Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

#### **12.07 Release of Guarantee**

Prior to the release of any part of the performance guarantee, the CEO shall determine to his satisfaction that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested. Within thirty (30) days of release of guarantee, any unused funds shall be returned to the developer.

#### **12.08 Default**

If upon inspection, the CEO finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he or she shall so report in writing to the municipal officers, the Planning Board, and the applicant or builder. The municipal officers shall take any steps necessary to preserve the municipality's rights.

#### **12.09 Improvements Guarantee**

Performance guarantees shall be tendered for all improvements required to meet the standards of



these regulations and for the construction of the streets, storm water management facilities, public sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.

12.1 Before a subdivider may be released from obligation required by his guarantee of performance, the Board shall require certification from the Municipal Engineer or appointed engineer, and whatever other agencies and department that may be involved, to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards, State and Local Codes and Ordinances.

## ARTICLE 13 INSPECTIONS AND ENFORCEMENT

### 13.01 Inspection of Required Improvements

A. At least five (5) days prior to commencing construction of required improvements, the subdivider or builder shall:

Notify the Code Enforcement Officer (CEO) in writing of the time when (s)he proposes to commence construction of such improvements, so that the CEO can arrange for inspections to assure that all municipal specifications, requirements, and conditions of approval are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board.

B. If the CEO finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, the CEO shall so report in writing to the municipal officers and the subdivider and builder. The municipal officers shall take any steps necessary to assure compliance with the approved plans.

C. If at any time it appears necessary or desirable to modify the required improvements before or during the construction of the required improvements, the CEO is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The CEO shall issue any approval under this section in writing and shall transmit a copy of the approvals to the Planning Board. Revised plans shall be filed with the Board. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than one percent (1%) etc., the subdivider shall obtain approval from the Board to modify the plans in accordance with Article 10.

D. Prior to the sale of any lot, the subdivider shall provide the Board with a letter from a Registered Land Surveyor, stating that all monumentation shown on the plan has been installed.

E. Upon completion of street construction and prior to a vote by the municipal officers to submit a proposed public way to a town meeting, a written certification signed by a professional engineer shall be submitted to the municipal officers at the expense of the applicant, certifying that the proposed public way meets or exceeds the design and construction requirements of this or any other applicable Ordinance or criteria. If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility. "As built" plans shall be submitted to the municipal officers.



- F. The subdivider shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of the improvements by the municipality or control is placed with a ~~low~~ land owners' association.
- G. If the services of a Licensed Professional Engineer are required, the applicant shall assume the cost of this service.

### **13.02 Violations and Enforcement**

- A. No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a Final Plan has been approved by the Planning Board in accordance with this Ordinance.
- B. A person shall not convey, offer or agree to convey any land in a subdivision which has not been approved by the Planning Board and recorded in the Registry of Deeds.
- C. A person shall not sell, lease, or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.
- D. No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a Final Plan has not been approved by the Planning Board.
- E. Development of a subdivision without Planning Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a plan approved as provided in this Ordinance and recorded in the Registry of Deeds.
- F. Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of 30-A M.R.S.A., 4452.

## **ARTICLE 143 – Waivers**

### **14.01 Waivers Authorized.**

Where the Board makes written findings of fact that there are special circumstances of a particular parcel proposed to be subdivided, or that the application is simple and minor in nature, it may waive portions of the submission requirements, unless prohibited by this Ordinance or Maine law, provided that the applicant has demonstrated that the performance and design standard of this Ordinance and the criteria of the subdivision statute have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the Zoning Ordinance or this Ordinance.

### **14.02. Waivers of Certain Improvements Authorized.**

Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the