

ARTICLE 4: PLANNING BOARD ACTIONS

SECTION 4.00 WAIVERS OF COMPLIANCE

- A. In accordance with MGL, Chapter 41, Section 81-R, strict compliance with these regulations may be waived when, in the judgment of the Board, such action is in the public interest and not inconsistent with the intent of the Subdivision Control Law or these regulations.
1. All waiver requests shall be made in writing; identify the regulation being considered; and be submitted to the Board prior to the required public hearing. The waiver request shall state why the waiver is in the best interest of the Town.
 2. The granting of a waiver may be contingent upon the street or streets remaining privately owned and maintained and the requirement to supply mitigation related to the proposed waiver.
 3. Construction waivers may be considered by the Board or its designee after a plan is approved.

SECTION 4.01 PLAN AND DOCUMENT REVIEW

- A. The applicant shall be responsible for the cost of all independent review services required by the Board. These services may be required to review a plans compliance with the Foxborough Subdivision Regulations, or to review Drainage Reports, Traffic Impact Reports or any other documents submitted by the applicant, or required by the Board.
- B. The provider of review services shall be selected at the sole discretion of the Planning Board.
- C. The applicant shall be responsible for the cost of these reviews. These fees shall be completely paid prior to the Board's endorsement of the Plan.

SECTION 4.02 ENVIRONMENTAL IMPACT REPORT

- A. General - At the discretion of the Board, an impact report may be required to identify, and to offer recommendations on methods to minimize or prevent adverse environmental, social, or physical impacts of a subdivision. This finding may be made at any time following the submittal and review of a preliminary plan. The findings of this report shall be considered when rendering a decision on the definitive plan.
- B. The Board may retain the services of an independent, professional consultant(s) to complete this assessment.
- C. If a professional consultant(s) is to be retained, a specific "Scope of Work" shall be produced by the Board and the Director of Land Use and Economic Development or the designee thereof. This scope shall be distributed to consulting agencies to solicit proposals within a set time period.
- D. In creating the Scope of Work, the Board may consider, but is not limited to, the following concerns:

1. The potential of the project to degrade the quality of the environment, negatively impact public/private water supplies, or to achieve short-term goals, to the disadvantage of long-term environmental goals;
 2. Whether possible effects of the project are individually limited but cumulatively significant.
 3. The effects of the project and the potential mitigating methods on the following; surface and ground water quality, erosion/degradation of soils, public or private wells or other environmentally sensitive receptors.
 4. The potential impacts on traffic and Town services and the proposed ameliorative actions;
 5. The adverse effects which cannot be avoided if the plan is to be implemented;
 6. Options to mitigate all identified impacts.
- E. Upon receipt of proposals, the Board shall select the consultant it considers most reasonable and qualified to fulfill the requirements set forth in the Scope of Work.
- F. The applicant shall then be required to make payable a fee for the cost of the report into a "special account" pursuant to MGL, Chapter 44, Section 53F to address the costs of the study.
1. This interest-bearing account shall be administered by the Board and the Director of Land Use and Economic Development or the designee thereof and used solely for the purpose stated. Expenditures from this special account shall be made only in connection with the review of the specific subdivision plan for which the fee has been collected. Failure of an applicant to pay for the study shall be grounds for denial of the application.
 2. Accrued interest from the fee may also be spent on the impact report. All remaining funds and interest shall be returned to the applicant.
 3. The applicant may file an administrative appeal of the selection of the outside consultant to the Board of Selectmen within ten (10) days from the date of the Board's selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications per MGL, Chapter 44, Section 53F. The required time limit for action upon an application by the Planning Board shall be extended by the duration of the administrative appeal. If the Board of Selectmen does not act upon the appeal within thirty days following the filing of the appeal, the Planning Board's selection shall stand.

SECTION 4.03 BOARD OF HEALTH COMMENTS

- A. Pursuant to MGL, Chapter 41, Section 81-0, the Board of Health or the Health Agent shall, within forty-five days after receipt of a definitive plan, report to the Board in writing, its approval or disapproval of the plan. In the event of disapproval, it shall make specific findings as to which, if any, areas shown on such plan cannot be used for building sites without injury to the public health, and include such specific findings and the reasons, therefore, in such report, and where possible, shall make recommendations for the adjustments thereof. Failure of the Board or Health or its Agent to report shall be deemed approval of the plan.
- B. If the plan does not comply with the recommendations of the Board of Health or its Agent, the Board shall modify and approve or shall disapprove such plan. In the event of disapproval, the Board shall state in detail wherein the plan does not conform to the recommendations of the Board of Health and shall revoke its disapproval and approve a plan which, as amended, conforms to these regulations or recommendations.

SECTION 4.04 APPROVAL, MODIFICATION OR DISAPPROVAL

- A. In the case of a residential subdivision where no preliminary plan has been submitted and acted upon, or where forty-five (45) days have elapsed since submission of such preliminary plan, and a definitive plan is submitted, the failure of the Board either to take final action or to file with the Town Clerk a certificate of such action regarding the definitive plan submitted by an applicant within one hundred thirty-five (135) days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof.
- B. If a preliminary plan for a residential subdivision was submitted and acted upon, or where at least forty-five (45) days have elapsed since submission of the preliminary plan, the failure of the Board either to take a final action or to file with the Town Clerk a certificate of such action on the definitive plan within ninety (90) days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof.
- C. In the case of a nonresidential subdivision where a preliminary plan has been duly submitted and acted upon, or where forty-five (45) days have elapsed since submission of the preliminary plan, the failure of the Board either to take final action or to file with the Town Clerk a certificate of such action on the definitive plan within ninety (90) days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof.
- D. Notice of any extensions of time for the Board to vote on a plan shall be requested in writing by the applicant. Extensions may be granted by a majority vote of the Board and shall be filed with the Town Clerk.
- E. The Board may require the creation of a Homeowners' Association which shall be responsible for the maintenance of the USPS Cluster Box Units, Low Impact Development elements, land strips at the entrance of the subdivision (if any), and shade trees. The HOA documents shall be submitted to and approved by the Planning Office prior to the issuance of the first Certificate of Occupancy
- F. The Board may also require the plan to show a park or parks suitably located for playground or recreational purposes pursuant to the provisions of MGL, Chapter 41, Section 81-U.
- G. Approval of all plans may be made upon the condition that all ways and public utilities required be completed and installed within a time period specified by the Board. Failure to complete the ways and the installation of public utilities within this period is grounds for rescission of the definitive plan pursuant to provisions found in MGL, Chapter 41, Section 81-W. No such way shall thereafter be laid out, constructed, completed, or opened for public use unless a new approval is granted by the Board.
- H. Approval must be granted by three (3) affirmative votes of the Board. The date of this action shall be recorded on the original drawing of the definitive plan. Final approval of the definitive plan does not constitute the acceptance by the Town of streets within the subdivision.

- I. The Board shall file a certificate of its action with the Town Clerk, and shall send a copy of this action by registered mail, postage prepaid, to the applicant. This Approval Letter shall contain applicable conditions, modification requirements and/or agreements for the plan to retain its status as an approved definitive plan.
- J. If the plan is denied, the Board shall file a certificate of its action with the Town Clerk, and shall send a copy of this action by registered mail, postage prepaid, to the applicant. This denial shall contain a listing of where the plan was deficient in complying with these regulations. In the case of an OSRD or Residential Compound proposal, failure to comply with those provisions of the zoning bylaws may also be listed. A new public hearing shall be necessary for the Board to consider rescinding this denial.
- K. Appeals shall be filed within twenty (20) days from the date of the filing of a certificate of action with the Town Clerk. All appeals shall be filed pursuant to MGL, Chapter 41, Section 81- BB.

SECTION 4.05 PERFORMANCE GUARANTEE

- A. Prior to its endorsement of an approved plan, the Board shall require that the construction of ways and the installation of municipal services be secured by one, or in part by one and in part by another, of the methods listed below, and as described In MGL, Chapter 41, Section 81-U. If the completion of the subdivision is not secured within the time allowed for the plan to be endorsed, it shall be grounds for the Board to not endorse the plan and consider the approval void. The allowed methods are:
 1. A deposit of money, an Irrevocable Letter of Credit or negotiable securities (See Appendix A),
 2. A covenant (See Appendix A), and/or
 3. An agreement where lender retains funds (See Appendix A).
- B. If a deposit of money, an Irrevocable Letter of Credit or negotiable securities is used to secure completion of the subdivision, the amount of such shall be determined by the actual amount of work to complete the project plus a 20% contingency. The Performance Guarantee shall be based upon a list of quantities and a written estimate of construction costs prepared and submitted by the Applicant's Engineer using the MassDOT Weighted Bid Prices for District 5, or the latest RS Means Data using Union Wage with the Brockton City Cost Index, or the latest SERSG contract costs. These submittals shall be certified by the Applicant's Professional Civil Engineer and be reviewed by the Board's Subdivision Inspector and may be adjusted by the Board as necessary.
 1. The applicant shall provide the Board with the required funds which may, from time to time be reduced by the Board so that the amount retained reflects the expected cost to the Town to complete the remaining work in addition to a 20% contingency.
 2. The Board shall review the Performance Guarantee every 2 years, or at every lot release. The Applicant's Engineer shall update the construction costs and the Applicant shall submit an updated guarantee reflecting the latest estimate plus 20%. The Performance Guarantee shall be increased to reflect the increase in estimated costs for completion of construction.
 3. A performance guarantee may be applied by the Board for the benefit of the Town upon failure to complete the items for which the deposit was given. This shall be to the extent of the reasonable cost to the Town to complete secured work. Such action shall be pursuant to MGL, Chapter 41, Section 81-U.

4. Requests for a reduction in the performance guarantee shall comply with the requirements found in Section 4.07 below.
- C. If the completion of the subdivision is secured with a covenant ensuring that no lots will be built upon prior to the subdivision being completed, the Board shall require it to be recorded with the approved definitive plan. It shall be binding to all successors and assigns. A copy of this recording shall be provided to the Board.
 1. The applicant shall provide to the Board a construction schedule for the subdivision. The Board shall review and approve the schedule.
 2. Lots may be released from the Covenant per Section 4.06 below.
 - D. If the completion of the subdivision is secured by an agreement where a lender retains funds, the Board may require that the lending institution be at the discretion of the Board.
 1. Requests for release of funds shall conform to the requirements found in Section 4.07.
 - E. If the developer does not complete the construction of the street and the installation of municipal services within the time limit set by the Board, the Board may use the performance guarantee being held to complete the job, or, move to rescind its approval of the definitive plan.
 - F. Prior to the release of the last lot in a subdivision the applicant shall submit an additional performance guarantee with the Town of Foxborough. This amount to be held in a cash account by the Town of Foxborough shall be \$5,000.00 or \$10.00/foot of roadway, whichever is greater, and held until acceptance of roadway. This retainage shall be returned upon Town Meeting acceptance of the road. This requirement shall not apply to private roads.

SECTION 4.06 ENDORSEMENT AND RECORDING

- A. Approved definitive plans shall be submitted to the Board for endorsement within twenty (20) days after the twenty (20) day appeal period has ended without an appeal being filed. If an appeal has been filed, the plans shall be submitted for endorsement by the Board within twenty days after the final decree of the court sustaining the status of the approved plan. Failure to comply with this provision shall be considered a violation of the subdivision approval and reason for the Board to move to rescind its approval of the definitive plan.
 1. The date of approval, the approval letter and a list of any waivers granted from these regulations shall be noted on the cover sheet of the plan. A sheet or sheets with a copy of the approval letter shall be placed on the approved plans for endorsement.
 2. In the case of a modification to an approved definitive plan, the modified sheets shall also be listed on the cover sheet.
- B. Prior to the Board's endorsement of the approved plans the following shall occur: the Town Clerk shall indicate on the plans that it can be endorsed by the Board per MGL, Chapter 41, Section-U, a covenant shall be filed with the Board, a Conveyance of Easements and Utilities shall be filed with the Board (Appendix A), and all fees shall be paid. The approval and endorsement dates shall also be noted thereon.
- C. After the definitive plan has been endorsed, the applicant shall record it at the Registry of Deeds or the Registrar of the Land Court within six (6) months from the date of

endorsement. The Approval Letter, Covenant, Special Permit (if applicable) and the Conveyance of Easements and Utilities shall be recorded with the definitive plan.

1. Three (3) copies of the endorsed plan shall be filed with the Board after it has been recorded along with of the recording information for the above documents.

SECTION 4.07 CONSTRUCTION ON/OR RELEASE OF LOTS

- A. No lot shall be built upon until the utilities and binder course of asphalt to service the lot have been completed to the satisfaction of the Board and the construction is secured by one of the methods noted in Section 4.04.
 1. Lots can be built upon only when the street is suitable for access. The Building Commissioner shall be notified of this requirement to prevent the premature issuance of building permits.
 2. A standard street sign meeting the specifications and locational requirements of the Town of Foxborough Public Works Department must be installed before lots are released.
- B. If the developer enters into a covenant with the Board, no lot shall be released from the covenant unless,
 1. All streets and public utilities are completed to service the lot and the street sign has been installed, or
 2. A performance guarantee has been posted to secure the completion of the streets and public utilities. Additionally, the water main, sewer (if applicable), drainage infrastructure, and base course of asphalt been installed.
- C. Lot releases from covenant shall be requested in writing and shall be acted upon at a regularly scheduled meeting of the Board.
 1. Upon acting favorably upon a lot release request, a majority of the Board shall endorse a Lot Release, Form K, and provide an original to the petitioner for recording purposes.
 2. If the lot release request is denied, the Board shall notify the petitioner in writing as to its decision and the specific reasons for the action.
 3. The Board reserves the right to return a lot or lots which have not been sold in good faith, to the covenant. This action may only be taken if the Board finds that the developer has failed to abide by any of the conditions of the subdivision approval or if the performance guarantee being held is deemed to be insufficient to secure the completion of the subdivision.
 4. Action shall occur at a regularly scheduled meeting where the developer shall be allowed an opportunity to be heard.
- D. If the developer chooses to secure the completion of the subdivision by depositing money, an Irrevocable Letter of Credit, negotiable securities or by a lenders agreement without the use of a covenant, the Board may require the applicant to specify a time period within which the construction shall be completed.

SECTION 4.08 REDUCTION OF PERFORMANCE GUARANTEE

- A. When the applicant chooses to secure the completion of the subdivision by the deposit of money (passbook), negotiable securities, Irrevocable Letter of Credit or by a lenders agreement, the Board shall have the authority to reduce the amount being held from time to time.

- B. To obtain such a reduction, the developer is required to submit a written request at least 21 days before a scheduled hearing which shall detail the work completed to date as well as the remaining work on the site in accordance with Section 4.05.B.
- C. The Board, the Director of Land Use and Economic Development or the designee thereof or Inspector shall inspect the work completed. The Owner's Engineer shall develop a list of the work remaining to be completed and its dollar value which may be reviewed by the Director of Land Use and Economic Development or the designee thereof or Inspector.
 - 1. The Board shall vote at a regularly scheduled meeting on the requested performance guarantee reduction.
 - 2. The Board shall be required to vote within twenty- one days upon receipt of the request. Failure to act within this period, without a mutually agreed upon extension, shall be considered approval of the reduction request.
- D. The Board shall notify the petitioner in writing as to the action taken. When necessary, the holder of the funds shall be notified to release the amount voted upon.