

ARTICLE V: ImprovementsSection 5-1. Contracts

Before the Planning Commission shall cause its approval to be endorsed upon the final plat of any subdivision (except in the case of minor subdivisions wherein the Commission imposes no condition or conditions for the approval of the plat), and as a requisite for the approval thereof:

1. Required improvements shall be completed. Such improvements shall be inspected by the Town Engineer and accepted by the Administrator, President and Commission and other proper authorities; or

2. The owner shall enter into a written agreement with the Town in the manner and form set forth by the Town Attorney where he shall agree:

a. to construct or cause to be constructed, at his own expense, all streets, curbs, sidewalks, fire hydrants, drainage facilities, street signs, monuments, water and sewerage facilities, and other improvements shown on or accompanying said final plat when required to do so by the Planning Commission in accordance with the final plats, as finally approved, and in strict accordance with the standards and specifications of the Town;

b. to maintain at his own cost the said streets, curbs, sidewalks, fire hydrants, drainage facilities, street signs, monuments, water and sewerage facilities, and other improvements, until the same are accepted by the Town;

c. to obtain the easements and releases required when any street, drainage facility, or other improvement wherein a subdivision abuts or traverses land of persons other than the person holding legal title to the lands of the subdivision, at his own cost, and to obtain from the owner of the lands so abutted or traversed full releases from all damages which may change in grade, construction, or otherwise, the street, drainage facility, or other improvement, and such releases shall insure to the benefit not only of the owner of the subdivision but to the Town as well.

Section 5-2. Guaranty

In order to assure the Town that the streets, curbs, sidewalks, fire hydrants, drainage facilities, street signs, monuments, water and sewerage facilities, and other improvement shown on or accompanying said final plats

will be constructed and installed in strict accordance with the plats, as finally approved, and with the standards, regulations, and specifications of the Town, and will be maintained until accepted by the Town, the owner shall furnish to the Town cash or a bond with such surety as the President and Commission shall approve in an amount sufficient to cover cost, as estimated by the Administrator, of the construction and installation of the aforesaid improvements, until the same shall be accepted by the Town.

The improvement guarantee shall be conditioned upon:

1. The owner constructing and installing, or causing to be constructed or installed, in strict accordance with the final plat and accompanying submittals, as finally approved, and with the Town standards and specifications, the streets curbs, sidewalks, fire hydrants, drainage facilities, street signs, monuments, water and sewerage facilities, and other improvement shown on or accompanying said final plat.
2. The owner maintaining at his own cost the said streets, curbs, sidewalks, fire hydrants, drainage facilities, street signs, monuments, water and sewerage facilities, and other improvements, until the same are accepted by the Town for public use.
3. The faithful performance by the owner of the contract provided for in these Regulations.

Section 5-3. Temporary Improvement

The applicant shall build and pay for all costs of temporary improvements required by the Planning Commission and shall maintain same for the period specified by the Planning Commission. Prior to construction of any temporary facility or improvement, the applicant shall file with the Town a separate suitable bond for temporary facilities. This bond shall insure that the temporary facilities will be properly constructed, maintained, and removed.

Section 5-4. Failure to Complete Improvement

For subdivisions for which no performance bond has been posted, if the improvements are not completed within the period specified by the Planning Commission in the resolution approving the plat, the approval shall be deemed to have expired. In those cases where a performance bond has been posted and required improvements have not been installed within the terms of such

performance bond, the Town may thereupon declare the bond to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default.

Section 5-5. Inspection of Improvements

1. General Procedure and Fees

The Planning Commission shall provide for inspection of the Town Engineer of required improvements during the construction and insure their satisfactory completion. The applicant shall pay to the Town the Town Engineer's inspection fee. These fees shall be due and payable to the Town upon demand and no building permits or certificates of occupancy shall be issued until all fees are paid. If the Town Engineer finds upon inspection that any of the required improvements have not been constructed in accordance with the Town's construction standards and specifications, the applicant shall be responsible for completing the improvements. Wherever the cost of improvements is covered by a performance bond, the applicant and the bonding company shall be severally and jointly liable for completing the improvements according to specifications.

2. Release or Reduction of Performance Bond

a. Certificate of Satisfactory Completion. The President and Commission will not accept dedication of required improvements, not release nor reduce a performance bond, until the Town Engineer has submitted a certificate stating that all required improvements have been satisfactorily completed and until the applicant's engineer or surveyor has certified to the Town Engineer, through submission of detailed "as-built" survey plat of the subdivision, indicating location, dimensions, materials, and other information required by the Planning Commission or Town Engineer, that the layout of the line and grade of all public improvements is in accordance with construction plans for the subdivision and that a title insurance policy has been furnished to and approved by the Town Attorney indicating that the improvements shall have been completed, are ready for dedication to the Town and are free and clear of any and all liens and encumbrances. Upon such approval and recommendation, the President and Commission shall thereafter accept the improvements for dedication in accordance with the established procedure.

b. Reduction of Performance Bond. A performance bond shall be reduced upon actual dedication of public improvements and then only to the ratio that the public improvement dedicated bears to the total public improvements for the plat. In no event shall a performance bond be reduced below twenty-five percent (25%) of the principal amount.

Section 5-6. Escrow Deposits for Lot Improvements

1. Acceptance of Escrow Funds

Whenever, by reason of the season of the year, any lot improvements required by the subdivision regulations cannot be performed, the Administrator may, nevertheless, issue a certificate of occupancy, provided there is no danger to health, safety, or general welfare upon accepting a cash escrow deposit in an amount to be determined by the Town Engineer for the cost of said improvements. The performance bond covering such lot improvements shall remain in full force and effect.

2. Procedures on Escrow Fund

All required improvements for which escrow monies have been accepted by the Town at the time of issuance of a certificate of occupancy shall be installed by the developer within a period of nine (9) months from the date of deposit and issuance of the certificate of occupancy. In the event that the improvements have not been properly installed, at the end of the time period the Administrator shall give two (2) weeks' written notice to the developer requiring him to install them, and in the event that same are not installed properly in the discretion of the Administrator, the Administrator may request the President and Commission to authorize the Town to proceed to contract out the work for the installation of the necessary improvements in a sum not to exceed the amount of the escrow deposit. At the time of the issuance of the certificate of occupancy for which escrow monies are being deposited with the Administrator, the applicant shall obtain and file with the Administrator prior to obtaining the certificate of occupancy a notarized statement from the purchaser or purchasers of the premises authorizing the Administrator to install the improvements at the end of the nine-month period in the event that the same have not been duly installed by the developer.

Section 5-7. Deferral or Waiver of Required Improvements

1. The Planning Commission may defer or waive at the time of final approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interests of the public health, safety, and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.
2. Whenever it is deemed necessary by the Planning Commission to defer the construction of any improvement required herein because of incompatible grades, future planning, inadequate or lack of connecting facilities, or for other reasons, the applicant shall pay his share of the costs of the future improvements to the Town prior to signing of the final subdivision plat, or the applicant may post a bond insuring completion of said improvements upon demand of the local government.

Section 5-8. Issuance of Building Permits and Certificates of Occupancy

1. Where a performance bond has been required for a subdivision, no certificate of occupancy for any building in the subdivision shall be issued prior to the completion of the improvements and dedication of same to the Town, as required in the Planning Commission's final approval of the subdivision plat.
2. The extent of street improvement shall be adequate for vehicular access by the prospective occupant and by police and fire equipment, prior to the issuance of an occupancy permit. The developer shall at the time of the dedication submit monies in escrow to the Town in a sum determined by the Town Engineer for the necessary final improvement of the street.
3. No building permit shall be issued for the final ten percent (10%) of lots in a subdivision, or if ten percent (10%) be less than two (2), for the final two (2) lots of a subdivision, until all public improvements required by the Planning Commission for the plat have been fully completed and dedicated to the Town.

Section 5-9. Consumer Protection Legislation and Conflicts of Interest Statutes

1. No building permit or certificate of occupancy shall be granted or issued if a developer or his authorized agent shall have violated any federal, state, or local law pertaining to consumer protection of real estate land sales, promotion, or practices, or any applicable conflicts-of-interest legislation with respect to the lot or parcel of land which is the subject of the permit or certificate, until so ordered by a court of competent jurisdiction.

2. With respect to said lot or parcel of land, in the event a building permit or certificate of occupancy has been granted or issued, it shall be subject to revocation by the Town until so ordered otherwise by a court of competent jurisdiction, provided that in no event shall the rights of intervening innocent third parties in possession of a certificate of occupancy be prejudiced in any such revocation.