

Effective Date: 5/1/04

SECTION 05. APPLICATION REVIEW PROCEDURE

05.01. GENERAL

Before preparing an application for subdivision, the subdivider shall be familiar with the provisions of these Regulations, the Plan of Development, the Zoning Map and Regulations, the specifications and requirements for street layout and construction, the official street map of the area in which the proposed subdivision is to be located and the approved plans of adjacent subdivisions, if any.

05.01.01. Who May Apply

An application for approval of a subdivision plan may be made by:

- a) The owner(s) of the land to be subdivided, or a duly authorized agent; or
- b) The purchaser(s) under a written contract to buy the land to be subdivided provided that the written consent of the owner(s) of said premises shall accompany the application.

05.02. PROCEDURAL OVERVIEW

- 1) Submission of an application is in accordance with Section 02.01.02. of these Regulations and must be received by the Commission prior to a regularly scheduled meeting.
- 2) "Receipt" of the application will be, by definition, the "Official Receipt Date".
- 3) The Commission may call for a public hearing on a subdivision application, but shall call for a public hearing on any resubdivision application. The public hearing must begin within 65 days of the "Official Receipt Date" and must be concluded within 30 days of its start.
- 4) At the conclusion of the public hearing, the Commission has 65 days to vote on the application. If no public hearing is held, the Commission has 65 days after the "Official Receipt Date" to vote on the application.
- 5) A notice concerning final action shall be published in a newspaper having substantial circulation in the Town within fifteen (15) days of the decision.
- 6) Any person aggrieved by the Commission's decision may appeal to the Superior Court within fifteen (15) days of publication of the notice.
- 7) Approved modifications or stipulations to the plan must be completed within the time frame granted by the Commission.
- 8) A mylar original and copies of the approved plan must be signed by the Commission within 90 days of approval (180 days if conditional approval granted).
- 9) The approved plan must be filed with the Town Clerk (by the applicant) within 90 days of the Commission Chairman's signature on the plan.

05.03. RECEIPT AND ACCEPTANCE OF APPLICATION

An application for approval of a proposed subdivision or resubdivision shall be considered complete when the Commission, at the regular meeting at which the application is presented, has made a determination that all of the application requirements in these Regulations have been fulfilled by the applicant.

The "Official Receipt Date", as defined in Section 02.15.01. of these Regulations, shall be the beginning of the 65 day time period during which the Commission must make a decision on the application, unless a public hearing is held in accordance with Section 05.05. of these Regulations.

#### 05.04. AMENDMENT OF APPLICATION

Prior to a decision on an application by the Commission, an applicant may amend the subdivision plan at any time within 35 days after submission of the application, provided revised documents, as may be necessary to reflect such amendment, are submitted to the Commission in the form and manner outlined in these Regulations for original applications. A request for an extension of the 65 day time period within which the Commission is required to act upon the application, in accordance with the General Statutes of Connecticut, shall also be submitted.

#### 05.05. PUBLIC HEARING

Upon receipt of an application and all of the required submissions, the Commission shall call a public hearing on any application proposing 4 (four) or more lots or a public improvement, and may call a public hearing on any application if, in its judgement, the specific circumstances require such action. The Commission shall hold a public hearing on any application for a resubdivision.

- 1) The Commission shall submit notices for publication at least twice at intervals of not less than two (2) days, the first not more than fifteen (15) days nor less than ten (10) days, prior to the hearing and the last not less than two (2) days prior to the date of such hearing. Notices shall be published in a newspaper having general circulation in the Town of Durham and a copy of such notice will be sent by certified mail to the applicant.
- 2) The Commission, or it's authorized agent, shall file copies of the subdivision plan and supporting documents, with the Town Clerk for review by the public prior to the hearing.
- 3) The Commission will provide an opportunity for any interested persons to examine and comment upon the subdivision plan and supporting documents at the public hearing.
- 4) The public hearing shall commence within 65 days after receipt of the application and shall be completed within 30 days after such hearing commences.
- 5) The applicant may consent to an extension of time for the public hearing to commence or be completed provided that such extension shall not be for longer than the original period as specified in this section.

#### 05.05.01. Notice of Public Hearing by Applicant

All applicants seeking approval of a proposed subdivision or resubdivision for which a public hearing has been scheduled by the Commission shall post at least one (1) sign notifying the public of the hearing relating to the application.

All signs shall be the responsibility of the applicant and shall be posted on the

property in question in accordance with the following:

1. Sign(s) shall be posted at least seven (7) days prior to the date of the public hearing (eight days if the seventh day is a holiday). Sign(s) shall be firmly secured to the ground to prevent vandalism. Parcels having frontage on more than one (1) street shall be required to provide one (1) sign on each street having frontage. The location of the sign(s) shall be shown on the site development plan and approved by the Planning and Zoning Commission.
2. Sign(s) shall be constructed of durable material (wood or metal) 36" X 36" in size. All signs shall be painted white and shall have black lettering having a minimum height of two (2) inches with a letter stroke of one quarter (1/4) inch.
3. The sign(s) shall advertise the date, time and place of the public hearing for the subdivision or resubdivision.
4. The format for the sign shall be obtained at the Planning and Zoning Office.
5. The Zoning Enforcement Officer shall file a report with the Commission that the sign was observed in place in accordance with the above requirements.
6. An applicant who fails to display the sign(s) shall be required to withdraw the application and file a new application.
7. The sign(s) shall be taken down within one (1) week after the public hearing is closed.

#### 05.06. REFERRAL TO OTHER AGENCIES

- 1) Regional Planning Agency--The Commission shall submit a copy of the plans for any subdivision abutting or including land in a neighboring municipality to the appropriate Regional Planning Agency. The Agency shall, within 30 days, report its findings on the intermunicipal aspects of the proposed subdivision to the Commission and the applicant. Such report shall be purely advisory. If the Agency fails to report within 30 days, it shall be presumed that the Agency does not disapprove of the proposed subdivision. The Commission shall not render a decision on the application until such 30 day time period has expired.
- 2) Inland Wetlands and Water Courses Agency--If an application involves land regulated as an inland wetland or water course, the applicant shall submit an application for a permit to the Inland Wetlands and Water Courses Agency no later than the day the application is filed for subdivision or resubdivision. The Commission shall not render a decision until the Inland Wetlands and Water Courses Agency has submitted a report with its final decision to the Commission. In making its decision, the Commission shall give due consideration to the report of the Inland Wetlands and Water Courses Agency.

If such application has not been filed with the Inland Wetlands and Water Courses Agency as outlined above, the application shall be considered incomplete and the Planning and Zoning Commission shall not proceed further until a copy of the application has been received by the Inland Wetlands and Water Courses Agency for review and approval.

#### 05.07. DECISION ON APPLICATION

Within 65 days after the date of receipt of the application, or in the event of a public hearing, within 65 days of the date that said hearing is completed; the Commission will approve, modify and approve, or disapprove the subdivision application by a resolution which will set forth, in detail, any conditions to which the approval is subject or state the reasons for disapproval. Failure of the Commission to act thereon shall be considered an approval, and a certificate to that effect shall be issued by the Commission on demand. The 65 day period for action may be extended upon approval of a written request by the applicant.

#### 05.08. NOTICE OF ACTION

Notice of all official actions or decisions, not limited to those relating to approval or denial of subdivision plans, shall be published in a newspaper having a substantial circulation in the Town within fifteen (15) days after such action or decision. Notice of such action shall also be sent to the applicant by certified mail within fifteen (15) days of the Commission's action.

#### 05.09. MODIFICATION OF PLANS

If such modifications are not completed within 180 days of the Commission's decision, the approval of said subdivision shall be considered null and void without any further action on the part of the Commission (unless an extension is granted - see Section 05.11 of these Regulations).

#### 05.10. POST-APPROVAL REQUIREMENTS

##### 05.10.01. Bonding Options

##### 05.10.01.01. Performance Bond (Option #1)

The Commission Chairman, Vice-Chairman or Secretary may endorse the record subdivision map after the applicant has submitted a bank teller's check or money order payable to the Town of Durham, to be deposited by the Town in an interest bearing account in an amount specified and in a form approved by the Commission (see Appendix A), to cover the cost of the improvements shown on the approved plans.\* Such bond shall include an amount to cover the escalation of construction and other costs for a two (2) year period. Every two (2) years, the cost of the remaining work shall be reviewed and the bond amount adjusted to reflect current and projected construction and other costs.

Prior to the release of the total amount of the bond, or any portion thereof, the applicant shall submit "as-built" plans and documents to the Commission showing street and storm drainage constructed in accordance with the "Specifications for Road and Street Construction, Town of Durham", as amended. Such plans shall meet A-2 survey standards and be signed and sealed by a Registered Land Surveyor or Professional Engineer as appropriate. All plans and maps shall be prepared on mylar with waterproof ink. All easements, road rights-of-way or open space to be deeded to the Town shall have a written description prepared based on survey data. The removal of conditions shall be made only upon certification by the Commission that all of the required improvements have been completed as required by these Regulations.

This type of bond shall also be required to cover the cost of erosion and sedimentation control measures.

\*A bank teller's check or money order shall be required for bonds of up to \$85,000.00. For bonds in excess of \$85,000.00, the balance of funds shall be deposited in a cash bond account(s) in a bank approved by the Town of Durham.

##### 05.10.01.02. Conditional Approval (Option #2)

In lieu of the completion of the work and improvements shown on the site development plan or the furnishing of a performance bond as required in these

Regulations (Option #1), the Commission may authorize the filing of a plan with a conditional approval endorsed thereon. Such approval shall be conditioned upon: (1) the completion of all subdivision improvements in accordance with the approved site development plan; or (2) posting a bond with the Town of Durham in accordance with Option #1 above. Upon the occurrence of either of such events, the Commission shall cause final approval to be endorsed thereon in the manner provided in these Regulations. Any such conditional approval shall lapse five (5) years from the date it is granted, provided the applicant may apply for and the Commission may, in its discretion, grant a renewal of such conditional approval for an additional period of five (5) years or for such shorter periods of time as it may deem appropriate. Any person, firm or corporation who, prior to such final approval, sells or offers for sale any lot subdivided pursuant to a conditional approval shall be fined not more than \$500.00 for each lot sold or offered for sale.

Prior to final approval by the Commission, the applicant shall submit "as-built" plans and documents to the Commission showing streets and storm drainage constructed in accordance with the "Specifications for Road and Street Construction, Town of Durham", as amended. Such plans shall meet A-2 survey standards and be signed and sealed by a Registered Land Surveyor or Professional Engineer, as appropriate. All plans and maps shall be prepared on mylar with waterproof ink. All easements, road rights-of-way or open space to be deeded to the Town shall have a written description prepared based on survey data.

#### 05.10.01.03. Completion of Improvements (Option #3)

If the applicant does not intend to post a cash bond (i.e. submission of a bank teller's check or money order payable to the Town of Durham - see options #1 and #2 above) or wish to receive conditional approval to assure the construction of improvements shown on the approved site development plan, the applicant may choose to construct the improvements within the statutory time frame for filing of the record subdivision map. The Commission Chairman, Vice-Chairman or Secretary may endorse the record subdivision map only after the applicant has submitted "as-built" plans and documents to the Commission showing streets and storm drainage constructed in accordance with the "Specifications for Road and Street Construction, Town of Durham" as amended. Such plans shall meet A-2 survey standards and be signed and sealed by a Registered Land Surveyor or Professional Engineer, as appropriate. All plans and maps shall be prepared on mylar with waterproof ink. All easements, road rights-of-way or open space to be deeded to the Town shall have a written description prepared based on survey data. All required improvements shall be completed to the Commission's satisfaction prior to endorsement of the maps.

The submission of a bank teller's check or money order payable to the Town of Durham, to be deposited in an interest bearing account, shall be required to cover the cost of erosion and sedimentation control measures.

#### 05.10.02. Maintenance Bonds

A cash maintenance bond, in the form of a bank teller's check or money order payable to the Town of Durham, in the amount of three (3) percent of the total cost of the public improvements shall be furnished to the Town by the developer.

The bond shall be held for a period of two (2) years. The applicant may request the release of this maintenance bond, after a period of one (1) year, if such release is recommended for approval to the Commission by the Town Engineer. following the release of a performance bond (or portion thereof) or Town acceptance of the improvements. The purpose of the maintenance bond is to protect the Town against defective workmanship, materials or design of the improvements.

The developer shall repair all defects in construction or operation of required improvements occurring during the period covered by the maintenance bond. The

developer's failure to perform needed repairs within a reasonable time when so requested by the Board of Selectmen may result in the Town's undertaking the repairs and drawing upon the funds in the bond for the cost of the repairs.

No performance bond shall be released until such time as said maintenance bond has been accepted by the Commission and submitted to the Town of Durham.

No maintenance bond shall be approved by the Commission unless said bond is in a form acceptable to the Commission. The Commission reserves the right to add conditions to the bond which, in the opinion of the Commission, are deemed necessary to indemnify against defective workmanship, materials or design of the improvements.

No maintenance bond shall be released by the Commission until it has been in effect for a minimum of one (1) year's duration. Special conditions may warrant a longer minimum period of time for retention of the maintenance bond. The Commission shall release said bond only upon receipt of a favorable written report from the Town Engineer, or another qualified source retained by the Town to inspect the public improvements, indicating that all improvements are free of defective workmanship, materials or design, or that any defects have been corrected to their satisfaction.

#### 05.11. ENDORSEMENT OF PLANS

- a) Any subdivision plan not filed and recorded in the Office of the Town Clerk within 90 days following its approval by the Commission, or within 90 days of the date upon which such plans are approved by reason of failure of the Commission to act, shall become null and void. In the case of an application that has been approved subject to modification of the plans or the fulfillment of conditions by the applicant, said modifications and/or conditions shall be completed within 180 days following the conditional approval of the subdivision by the Commission or said approval shall become null and void. If the applicant is unable to fulfill the conditions or complete the modifications within said 180 day period, an extension of an additional 180 days, or any part thereof, may be requested. The plan shall be filed and recorded by the applicant in the Office of the Town Clerk only if the approval of the Commission has been endorsed thereon and only upon further certification by the Commission that all of the regulations set forth herein have been fully complied with. Said filing of the plan by the applicant shall be within 90 days of the date such plans were delivered to the applicant. The approval of any plan not so filed shall expire 90 days from the date of such action.
- b) Changes, erasures, modifications or revisions shall not be made on any subdivision plan after the Commission has approved and endorsed said subdivision plan. In the event that a subdivision plan contains any changes when recorded, the plan shall be null and void and of no legal standing. The applicant may then file a corrected plan, as approved, noting the reason for such filing. Any erasures made on a plan prior to its signing shall be initialed and dated by the Chairman of the Commission, or other authorized person, at the time of signing.

#### 05.12. EXPIRATION OF APPROVAL

The Commission shall file notice of expiration of approval in the land records of the Town and shall state such expiration on the subdivision plan on file in the Office of the Town Clerk. No further lots shall be conveyed in the subdivision unless a new application for subdivision of the subject land has been approved by the Commission.

If the statutory five (5) year period for completion of subdivision improvements has expired and lots have been conveyed during this time period, the Town shall call the bond posted for said subdivision in order to complete the work required to serve the conveyed subdivision lots.