

LAND DEVELOPMENT AND SUBDIVISION REGULATIONS

Portsmouth, Rhode Island

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**PORTSMOUTH LAND DEVELOPMENT AND SUBDIVISION REGULATIONS
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Article I PURPOSES AND APPLICABILITY**A. GENERAL PURPOSES**

The purpose of these regulations is to establish procedural and substantive provisions for the subdivision and development of land that will, consistent with the provisions of the Portsmouth Comprehensive Community Plan, the Zoning Ordinance, all other duly adopted land development regulations of the Town of Portsmouth, and Section 45-23 of the R.I. General Laws, accomplish the following:

1. Protect the public health, safety and welfare of the community;
2. Provide for the orderly, thorough and expeditious review and approval of subdivisions and land development projects, by the establishment and consistent application of procedures for record-keeping on all matters of land development and subdivision review, approval and construction.
3. Promote high quality, and appropriate design and construction of subdivisions and land development projects;
4. Protect existing natural and built environments and mitigate the significant negative impacts of proposed development on those environments;
5. Promote subdivision and land development designs that are well-integrated into surrounding neighborhoods, and concentrate development in areas that can best support intensive use because of natural characteristics and existing infrastructure.
6. Provide for design and construction standards to reflect the intent of the community comprehensive plan with regard to the physical character of the various neighborhoods and districts of the community;
7. Require measures for mitigating the impact of new development on the community that are based on clear documentation of needs and are fairly applied and administered;
8. Direct the development of land consistent with state of the art practices that promote and foster growth in a manner that protects the Town's distinctive character while at the same time accommodating economic growth;
9. Guide land development with an emphasis on citing subdivision improvements so as to allow for the maximum preservation of existing natural features;
10. Insure that proposed designs institute best management practices that acknowledge existing site constraints and the natural setting.
11. Make adequate provision for traffic; to lessen traffic accidents; to secure a well-articulated street and highway system; to promote safety from fire and other dangers.
12. Facilitate the adequate, efficient and economic provision of transportation, water supply, sewerage, recreation and other public utilities and amenities.

B. APPLICABILITY

Any person proposing to subdivide any land in the Town of Portsmouth shall make a plat thereof and submit same to the Planning Board, through the Administrative Officer, for approval. No plat of a subdivision of land in the Town shall be accepted for filing or

recording in the land evidence records of the Town until it shall have been approved by the Planning Board, and such approval entered in writing on the plat by the Chair or Secretary of the Planning Board.

Whenever any subdivision of land is proposed, before any development shall take place thereon, before any permit for the erection of a structure shall be granted, and before any lot within the subdivision shall be sold, the owner of said land, or his designated representative, shall apply for and secure approval of such proposed subdivision in accordance with the procedures herein.

C. CONSTRUCTION AND INTENT

1. These regulations are not intended to supersede, abrogate, or interfere with any provision of any ordinance of the Town of Portsmouth.
2. In the event of a conflict between general regulations and a regulation applicable to a specific type of subdivision, the more specific regulation shall be controlling.
3. These regulations are intended to be interpreted so as to be consistent with, and further the implementation of, the Comprehensive Community Plan and the Rhode Island Land Development and Subdivision Review Enabling Act of 1992. Consistency with the Comprehensive Plan means in accordance with the goals, policies, procedures, maps and other policy statements in the plan.
4. If any section or subsection of these regulations is held invalid by a court of competent jurisdiction, such invalidity shall not affect the validity of the remainder of these regulations.

D. EFFECTIVE DATE

These regulations shall take effect on December 31, 1995, and shall supersede all other subdivision regulations in effect at the time of such adoption.

E. VESTED RIGHTS-CONTINUATION OF PRIOR REGULATIONS

Nothing herein contained shall impair the validity of any plat legally recorded prior to the effective date of these regulations. Subdivisions that have been formally submitted to the Planning Board for approval under the Regulations in effect prior to November 27, 1995 (the date these regulations were first advertised for public comment) may be continued to be reviewed by the Planning Board and approved under those Regulations in accordance with the following:

1. FINAL APPROVALS

Any subdivision which, at the time of adoption of these amendments, has received final approval, or final approval with conditions, from the Planning Board, may initiate or construct any part of the development, or record said plans in accordance with the Subdivision Regulations in effect at the time final approval was granted. The Planning Board, may, in its discretion, grant extensions to any such final approval in accordance with the procedure for such extensions as set forth in the Regulations in effect at the time of final approval.

2. PRELIMINARY APPROVALS

Any subdivision which, at the time of adoption of these amendments, has received preliminary approval, or preliminary approval with conditions, from the Planning Board, may continue to be reviewed by the Planning Board in accordance with the Subdivision Regulations in effect at the time preliminary approval was granted provided any one of the following conditions has been met:

- a) The final plat, including all the material required in the Final Plat Checklist, is filed with the Planning Board within one (1) year from the date of preliminary approval;
or,
- b) The subdivision is located within an area and is of a nature to be within the jurisdiction of the Rhode Island Coastal Resources Management Council (CRMC) and the preliminary plans as approved by the Planning Board, have been filed with CRMC for an Assent as required by the Coastal Resources Management Program;
or,
- c) The subdivision is located within an area and is of a nature to be within the jurisdiction of the Rhode Island Department of Environmental Management (RIDEM) and the preliminary plans as approved by the Planning Board have been filed with RIDEM for approval as required by the Freshwater Wetlands Act.

3. OTHER STATUS

Any subdivision which, at the time of adoption of these Regulations, has not received final or preliminary approval; or has been reviewed by the Planning Board for preliminary review but no approval therefore has been granted; or has received preliminary approval more than one year prior to the date of adoption of these regulations; or for which only preapplication conference(s) has (have) been conducted shall be required to be reviewed under the revisions to the Subdivision and Land Development Regulations adopted on December 13, 1995 pursuant to the Rhode Island Land Development and Subdivision Review Enabling Act of 1992.

- a) The Planning Board shall determine vested rights for subdivisions submitted for approval prior to November 27, 1995. Appeals from a decision regarding the application status and vested rights of any subdivision shall be made to the Planning Board of Appeal as herein provided.

ARTICLE II. DEFINITIONS**A. GENERALLY**

Words or terms used in these regulations shall have the meanings stated in this section, unless explicitly noted otherwise within any other section.

Words used in the present tense include the future, the singular includes the plural and the plural the singular. The word "used" includes "designed, intended, or arranged to be used." The word "shall" is mandatory; the word "may" is permissive; the word "building" includes the word "structure"; the word "lot" includes the word "plot"; the word "land" includes the words "marsh" and "water."

B. DEFINITIONS OF TERMS

The following terms for the purposes of these regulations are defined below:

ABUTTER

One whose property abuts, that is, adjoins at a border, boundary, or point with no intervening land. For the purpose of notification, an abutter shall include one whose property is directly across the street.

ADMINISTRATIVE OFFICER

The Secretary of the Planning Board, or in his absence the Chair or Vice Chair of the Planning Board, who will administer the land development and subdivision regulations and coordinate with Town boards and commissions, Town staff and State agencies. Qualifications of said individual subject to provisions of Article XII, Section A.

ADMINISTRATIVE SUBDIVISION

Re-subdivision of existing lots which yields no additional lots for development, and involves no creation or extension of streets. Such re-subdivision shall only involve divisions, mergers, mergers and division, or adjustments of boundaries of existing lots.

APPLICANT

Any person, either owner or duly authorized agent, filing a plat or an application for a subdivision with the Planning Board. If not the owner, applicant shall present satisfactory documentation that he/she is the duly designated agent of the owner.

BOARD OF APPEAL

The Town review authority for appeals of actions of the Administrative Officer and the Planning Board on matters of land development or subdivision, which shall be the Portsmouth Zoning Board of Review constituted as the board of appeal. See Article XIV.

BOND

See improvement guarantee.

BUILD

The word "build" shall include the words "erect", "construct", "alter", "enlarge", "move", "modify" and any other words or terms of like significance.

BUILDABLE LOT

A lot where construction for the use(s) permitted on the site under the Portsmouth Zoning Ordinance is considered practicable by the Planning Board, considering the physical constraints to development of the site as well as the requirements of the pertinent Federal, State and Town regulations. See Article XIII "Developable Land Area".

CERTIFICATE OF COMPLETENESS

A notice issued by the Administrative Officer informing an applicant that the application is complete and meets the requirements of the municipality's regulations, and that the applicant may proceed with the approval process. See Article III.

CLUSTER DEVELOPMENT

A development approach in which building lots may be reduced in size and buildings sited closer together, usually in groups or clusters, provided that the total development density does not exceed that which could be constructed on the site under conventional zoning and subdivision regulations. The additional land that remains undeveloped is then preserved as open space and recreational land.

COMMON SPACE LAND

Land within or related to a development, not individually owned or dedicated for public use, which is designed and intended for the residents of the development. It may include complementary structures and improvement.

CONCEPT PLAN

A drawing with accompanying information showing the basic elements of a proposed land development plan or subdivision as used for pre-application meetings and early discussions, and classification of the project within the approval process. As such, it allows general intentions to be proposed and discussed without the extensive costs involved in submitting a detailed proposal.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

A requirement of all Town land use regulations which means that all such regulations and subsequent actions shall be in accordance with the public policies arrived at through detailed study and analysis and adopted by the municipality as the comprehensive community plan as specified in R.I. General Laws 45-22.2-3.

DEDICATION, FEE-IN-LIEU-OF

Payments of cash which are authorized in the Town regulations when requirements for mandatory dedication of land are not met because of physical conditions of the site or other reasons. The conditions under which such payments will be allowed and all formulas for calculating the amount shall be specified in advance in the Town regulations.

DESIGN FLOOD

The relative size or magnitude of a major flood or reasonable expectancy, which reflects both flood experience and flood potential and is the basis of the delineation of the floodway, the flood hazard area, and the water surface elevations.

DEVELOPER

The legal or beneficial owner or owners of a lot or of any land included in a proposed development. Also, the holder of an option or

contract to purchase, or any other person having enforceable proprietary interest in such land. (May also be referred to as the developer.)

DEVELOPMENT REGULATION

Zoning, subdivision, land development plan, development plan review, historic district, official map, flood plain regulation, soil erosion control or any other governmental regulation of the use and development of land.

DIVISION OF LAND

A subdivision.

DRAINAGE

The removal of surface water or groundwater from land by drains, grading or other means.

DRAINAGE SYSTEM

The system through which water flows from the land, including all watercourse, waterbodies and wetlands.

EASEMENT

A right-of-way granted, but not dedicated, for limited use of private land for a public or quasi-public purpose and within which the owner of the property shall not erect any structures or vegetation nor other use that would impede the use for which the easement is granted.

ENVIRONMENTAL CONSTRAINTS

Natural features, resources, or land characteristics that are sensitive to change and may require conservation measures or the application of special development techniques to prevent degradation of the site, or may require limited development, or in certain instances, may preclude development. See also physical *constraints to development*.

ESCROW

A deed, a bond, money, or letter of credit delivered to the Town, which shall be delivered by the Town to the grantee only upon fulfillment of one (1) or more specified conditions.

FINAL APPROVAL

The official action of the Planning Board taken on a preliminary approved subdivision or site plan, after all conditions, engineering plans, and other requirements have been completed or fulfilled and the required improvements have been installed, or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantee.

FINAL PLAN

The final stage of land development and subdivision review required prior to recording of lots, sale of lots, or start of construction.

FINAL PLAT

The final drawing(s) of all or a portion of a subdivision to be recorded after approval by the Planning Board and any accompanying material as described in the Town's regulations and/or required by the Planning Board.

FLOOR AREA, GROSS

See R.I. State Building Code.

GOVERNING BODY

The Portsmouth Town Council, having the power to adopt Ordinances, accept public dedications, release public improvement guarantees, and collect fees.

GRADE

The slope of a street, or other public way, specified in percentage (%) terms.

GROUND COVER

A planting of low growing plants or sod that in time forms a dense mat covering the area, preventing soil from being blown or washed away and the growth of unwanted plants.

GUTTER

A shallow channel usually set along a curb or the pavement edge of a road for purposes of catching and carrying off runoff water.

IMPERVIOUS SURFACE

Any material that substantially reduces or prevents the infiltration of water.

IMPOUNDMENT

A body of water, such as a pond, confined by a dam, dike, floodgate or other barrier.

IMPROVEMENT

Any natural or built item which becomes part of, is placed upon, or is affixed to, real estate.

IMPROVEMENT GUARANTEE

A security instrument accepted by a municipality to ensure that all improvements, facilities, or work required by the land development and subdivision regulations, or required by the municipality as a condition of approval, will be completed in compliance with the approved plans and specifications of a development. See Article X.

INDIVIDUAL SEWAGE DISPOSAL SYSTEM (ISDS)

A sewage disposal system or any other sewage treatment device approved by the State.

IRREGULARLY SHAPED LOTS

Irregularly shaped lots are lots that are not basically rectangular in shape, particularly within the required front yard area. Irregularly shaped lots shall receive special consideration by the Board in that lot frontage may be determined at a depth of 30 feet, radially opposite and concentric with the front boundary providing that the front boundary line is not less than 75 feet in length. This 30 foot strip to be excluded from the overall lot size requirement.

LOCAL REGULATIONS

The land development and subdivision review regulations adopted under the provisions of the R.I. Land Development and Subdivision Review Enabling Act of 1992. For purposes of clarification, throughout these regulations, where reference is made to local regulations, it shall be understood as the land development and subdivision review regulations,

the zoning ordinance, and all related ordinances and rules properly adopted pursuant to the above enabling act.

MAINTENANCE GUARANTEE

Any security instrument which may be required and accepted by the Town to insure that necessary improvements will function as required for a specific period of time. See *improvement guarantee*.

MAJOR LAND DEVELOPMENT PLAN

Any land development plan not classified as a minor land development plan or administrative subdivision.

MAJOR SUBDIVISION

Any subdivision not classified as either an administrative subdivision or a minor subdivision.

MARGINAL ACCESS STREET

A service street that runs parallel to a higher-order street which, for purposes of safety, provides access to abutting properties and separation from through traffic. May be designed as a residential access street or subcollector as anticipated daily traffic dictates.

MASTER PLAN

An overall plan for a proposed project site outlining general, rather than detailed, development intentions. It describes the basic parameters of a major development proposal, rather than giving full engineering details. Required in major land development or major subdivision review. See Article VI.

MINOR LAND DEVELOPMENT PLAN

A development plan for a residential project as defined in Town regulations, provided that such development does not require waivers or modifications as specified in these regulations. All nonresidential land development projects shall be considered as major land development plans.

MINOR SUBDIVISION

A plan for a residential subdivision of land consisting of five (5) or fewer units or lots, provided that such subdivision does not require waivers or modifications as specified in these regulations. All nonresidential subdivisions shall be considered as major subdivisions.

MODIFICATION OF REQUIREMENTS

See Article XIII.

MULTIPLE DWELLING UNIT DEVELOPMENT

A subdivision designed or intended for the erection thereon of one or more structures each containing two or more dwelling units.

MULTI-FAMILY BUILDING

A building which contains three (3) or more units.

PARCEL

A lot, or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development. It is also referred to as a tract.

PARKING AREA OR LOT

All that portion of a development that is used by vehicles, comprising the total area used for vehicular access, circulation, parking, loading and unloading.

PERFORMANCE GUARANTEE

Any security that may be accepted by the Town as a guarantee that the improvements required as part of an application for development are satisfactorily completed.

PERMITTING AUTHORITY

The Town agency of government specifically empowered by State enabling law and Town Ordinance to hear and decide specific matters pertaining to local land use.

PERSON

A natural person, a corporation, a partnership, an association or any other organization or entity.

PERVIOUS SURFACE

A surface that permits full or partial absorption of water.

PHASED DEVELOPMENT

Development, usually for large-scale projects, where construction of public and/or private improvements proceeds by section(s) subsequent to approval of a master plan for the entire site. See Article VII.

PHYSICAL CONSTRAINTS TO DEVELOPMENT

Characteristics of a site or area, either natural or man-made, which present significant difficulties to construction of the uses permitted on that site, or would require extraordinary construction methods. See also *environmental constraints*.

PLANNING BOARD

The official planning agency of the Town of Portsmouth, whether designated as the plan commission, planning commission, plan board, or as otherwise known. The body established by the Town that has the responsibility to prepare a comprehensive plan and make recommendations concerning that plan to the Town Council, to rule upon subdivisions as provided in the Subdivision Regulations, and to rule upon, review or advise upon other proposals as provided in these regulations.

PLANNED UNIT DEVELOPMENT

An area of a minimum contiguous size, as specified by Ordinance, to be planned, developed, operated, and maintained as a single entity containing one or more structures to accommodate commercial or office uses, or both, and appurtenant common areas and other uses incidental to the predominant uses.

PLANNING BOARD or the term **BOARD**

The Planning Board of the Town of Portsmouth.

PLAT

A drawing or drawings of a land development or subdivision plan showing the location, boundaries, and lot lines of individual properties, as well as other necessary information as specified in the Town regulations.

PRE-APPLICATION CONFERENCE

An initial meeting between developers and Town representatives which affords developers the opportunity to present their proposals informally and to receive comments and directions from the Town officials and others. See Article III.

PRELIMINARY PLAN

The required stage of land development and subdivision review which shall require detailed engineered drawings and all required State and Federal permits. See Articles V, VI and X.

PUBLIC IMPROVEMENT

Any street or other roadway, sidewalk, pedestrian way, tree, lawn, off-street parking area, drainage feature, or other facility for which the Town government or other governmental entity either is presently responsible, or will ultimately assume the responsibility for maintenance and operation upon Town acceptance.

PUBLIC INFORMATIONAL MEETING

A meeting of the Planning Board or governing body preceded by a notice, open to the public and at which the public shall be heard (for developments of more than 5 lots.) See Article VI. Section C.3.

PUBLIC OPEN SPACE

An open space area conveyed or otherwise dedicated to the Town, municipal agency, board of education, State or county agency, or other public body for recreational or conservation uses.

PUBLIC WATER AUTHORITY

For the purposes herein, a public water authority shall be the Portsmouth Water and Fire District, the Newport Water Department, or the Prudence Island Utilities Company, as applicable to the geographic area of Town serviced by or within the franchise area of same.

RESIDENTIAL ACCESS STREET

The lowest order of residential street. Provides frontage for access to private lots, and carries traffic having destination or origin on the street itself. Designed to carry traffic at slowest speed. Traffic volume should not exceed 250 ADT at any point of traffic concentration. The maximum number of housing units should front on this class of street.

RESIDENTIAL COLLECTOR

The highest order of residential street. Conducts and distributes traffic between lower-order residential streets and higher-order streets (arterials and expressways). Since its function is to promote free traffic flow, access to homes and parking should be prohibited. Collectors should be designed to prevent use as shortcuts by non-neighborhood traffic. Total traffic volume should not exceed 3,000 ADT.

RESIDENTIAL DENSITY

The number of dwelling units per gross acre of residential land area including streets, easements and open space portions of a development.

RESIDENTIAL SUBCOLLECTOR

Middle order of residential streets. Provides frontage for access to lots and carries traffic to and from adjoining residential access streets. Traffic should have origin or destination in the immediate

neighborhood. Traffic volume should not exceed 500 ADT at any point of traffic concentration.

RE-SUBDIVISION

Any change of an approved or recorded subdivision plat or in a lot recorded in the municipal land evidence records, or that affects the lot lines of any areas reserved for public use, or that affects any map or plan legally recorded prior to the adoption of the Portsmouth land development and subdivision regulations. For the purposes of these regulations any such action shall constitute a subdivision.

RETAINING WALL

A structure erected between lands of different elevation to protect structures and/or to prevent the washing down or erosion of earth from the upper slope level.

RIGHT-OF-WAY

A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, gas pipeline, water main, sanitary or storm water main, shade trees, or for another special use.

SCREEN

A structure or planting consisting of fencing, berms, and/or evergreen trees or shrubs providing a continuous view obstruction within a site or property.

SCS

U.S. Soil Conservation Service.

SEDIMENTATION

A deposit of soil that has been transported from its site of origin by water, ice, wind, gravity, or other means. See Portsmouth Soil Erosion and Sedimentation Ordinance.

SEPTIC SYSTEM

An underground system with a septic tank used for the decomposition of domestic wastes.

SEPTIC TANK

A watertight receptacle that receives the discharge of sewage.

SETBACK

The distance between the street right-of-way line and the front line of a building or any projection thereof.

SHOULDER

The graded part of the right-of-way that lies between the edge of the main pavement (main traveled way) and the lot line.

SIGHT TRIANGLE

A triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection.

SITE PLAN

An accurately scaled development plan that illustrates the existing conditions

on a land parcel as well as depicting details of a proposed development.

START OF CONSTRUCTION

The date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure.

STORM WATER DETENTION

A provision for storage of storm water runoff and the controlled release of such runoff during and after a flood or storm. A man-made or natural water collector facility designed to collect surface and sub-surfaced water in order to impede its flow and to release the same gradually at a rate not greater than that prior to the development of the property, into natural or man-made outlets.

STORM WATER RETENTION

A provision for storage of storm water runoff. A pond, pool or basin used for storage of storm water runoff.

STREET

A public or private thoroughfare used, or intended to be used, for passage or travel by motor vehicles. Streets are further classified by the functions they perform. The word 'street' shall be defined as the entire width between boundary lines of every way when any part thereof is open to the use of the public for purposes of vehicular traffic. See *street classification*.

STREET, ACCESS TO

An adequate and permanent way of entering a lot. All lots of record shall have access to a public street for all vehicles normally associated with the uses permitted for that lot.

STREET, ALLEY

A public or private thoroughfare primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

STREET, CUL-DE-SAC

A local street with only one outlet and having an appropriate vehicular turnaround, either temporary or permanent, at the closed end.

STREET, LIMITED ACCESS HIGHWAY

A freeway or expressway providing for through traffic. Owners or occupants of abutting property on lands and other persons have no legal right to access, except at such points and in such manner as may be determined by the public authority having jurisdiction over the highway.

STREET, PRIVATE

A thoroughfare established as a separate tract for the benefit of multiple, adjacent properties and meeting specific, municipal improvement standards. This definition shall not apply to driveways.

STREET, PUBLIC

All public property reserved or dedicated for street traffic.

STREET, STUB

A portion of a street reserved to provide access to future development, which may provide for utility connections.

STREET CLASSIFICATION

A method of roadway organization that identifies a street hierarchy according to function within a road system, that is, types of vehicles served and anticipated volumes, for the purposes of promoting safety, efficient land use and the design character of neighborhoods and districts. Local classifications shall use the following as major categories:

- a. **ARTERIAL** - A major street that serves as an avenue for the circulation of traffic into, out of, or around the municipality and carries high volumes of traffic.
- b. **COLLECTOR** - A street whose principal function is to carry traffic between local streets and arterial streets but that may also provide direct access to abutting properties.
- c. **LOCAL** - Streets whose primary function is to provide access to abutting properties.

STREET HARDWARE

The mechanical and utility systems within a street right-of-way, such as hydrants, manhole covers, traffic lights and signs, utility poles and lines, and parking meters.

SUBDIVIDER

Any person who (1) having an interest in land, causes it, directly or indirectly, to be divided into a subdivision or who (2) directly or indirectly sells, leases, or develops, or offers to sell, lease, or develop, or advertises to sell, lease, or develop, any interest, lot, parcel, site, unit, or plat in a subdivision, or who (3) engages directly or through an agent in the business of selling, leasing, developing, or offering for sale, lease, or development a subdivision or any interest, lot, parcel, site, unit, or plat in a subdivision. (May also be referred to as the developer.)

SUBDIVISION

The division or re-division, of a lot, tract or parcel of land into two or more lots, tracts, or parcels. Any adjustment to existing lot lines of a recorded lot by any means shall be considered a subdivision. All re-subdivision activity shall be considered a subdivision. The division of property for purposes of financing constitutes a subdivision.

TECHNICAL REVIEW COMMITTEE

A committee appointed by the Planning Board for the purpose of reviewing, commenting, and making recommendations to the Planning Board with respect to approval of land development and subdivision applications.

TEMPORARY IMPROVEMENT

Improvements built and maintained by a developer during construction of a development project and prior to release of the improvement guarantee, but not intended to be permanent.

TOPSOIL

The original upper layer of soil material which is usually darker and richer than the subsoil.

TOWN

Means the Town of Portsmouth.

VARIANCE

A waiver from compliance with a specific provision of the Subdivision Regulations granted to a particular property owner because of the practical difficulties or unnecessary hardship that would be imposed by the strict application of that provision of the Regulations.

VESTED RIGHTS

The right to initiate or continue the development of an approved project for a specified period of time, under the regulations that were in effect at the time of approval, even if, after the approval, the regulations change prior to the completion of the project. See Article I.

WAIVER OF REQUIREMENTS

See Article XIII.

ARTICLE III. APPLICATIONS**A. GENERAL**

Any person intending to subdivide land in the Town of Portsmouth shall follow the procedure established in these Rules and Regulation and shall provide all the material required in the checklists for the appropriate subdivision. The Planning Board shall refuse to consider a plat of a subdivision until all items in the appropriate checklists have been submitted by the applicant, and no subdivision shall be considered as having been submitted to the Board unless the proposed plat is accompanied by all the material required by the appropriate checklist.

All proposed subdivisions must meet at least the minimum design requirements set forth in these Rules and Regulations. No streets or other improvements may be installed until the Planning Board has approved the final plat. No lots may be sold until the final plat has been signed by the Planning Board Chairman or Secretary and recorded in the land evidence records of the Town.

B. PRE-APPLICATION MEETINGS - CONCEPT PLANS

1. One or more pre-application meetings shall be held for all major land development or subdivision applications. Pre-application meetings may be held for administrative and minor applications, upon request of either the Planning Board or the applicant. Pre-application meetings shall allow the applicant to meet with the Planning Board or appropriate officials, boards and/or commissions, planning staff, and, where appropriate, state agencies, for advice as to the required steps in the approvals process, the pertinent Town plans, ordinances, regulations, rules and procedures and standards which may bear upon the proposed development project.

2. At the pre-application stage the applicant may request the Planning Board for an informal concept plan review for a development. The purpose of the concept plan review is also to provide Planning Board input in the formative stages of major subdivision and land development concept design. (Note: a "concept plan" is not to be confused with a "preliminary plan" or a "master plan".)

3. Applicants seeking a pre-application meeting or an informal concept review shall submit materials on or before the twenty-fifth (25th) of any month in order to be heard at the regular meeting of the Board held on the second (2nd) Wednesday of the month. However, the Board may, in its discretion, order a different date for such meeting.

4. Pre-application meetings shall aim to encourage information sharing and discussion of project concepts among the participants. Pre-application discussions are intended for the guidance of the applicant and shall not be considered approval of a project or its elements. Any tentative approval or acceptance of a pre-application concept plan by the Board shall not be binding upon the Board. Pre-application discussions are not to be considered as vesting of any sort in subdivision, zoning or any other land use ordinances of the Town. The plat shall not be entitled to be recorded nor shall

the Board be required to hold a public hearing on the pre-application concept plan filed.

5. **CONCEPT PLAN SUBMITTAL CONTENTS**

Plan drawn on sheet at least 8.5" x 11" and not more than 24" x 36", on which shall be at least the following:

- a) Notations with date, scale, north arrow, original parcel size;
- b) Existing Plat(s) and Lot(s) number(s) and owner(s);
- c) A locus map at a scale of approximately 1" = 1000';
- d) Boundaries of the entire original tract in a shaded heavy line;
- e) All lots and parcels shall be drawn in approximate location and designated numerically in sequence. The frontage and area in square feet shall be shown for every proposed lot or parcel.
- f) Plan must show all existing and proposed streets, existing streams, wetlands and other environmental features in their approximate size and location.

C. APPLICATION FOR DEVELOPMENT AND CERTIFICATE OF COMPLETENESS

1. **INITIAL APPLICATION**

Applications for subdivision approval shall be made to the Administrative Officer, who shall review all applications for form and content in conformity with the requirements set forth herein. Complete applications shall then be officially filed for review by the Planning Board, and the Administrative Officer shall stamp all such applications with the date of official submission to the Town.

2. **CLASSIFICATION**

The Administrative Officer shall advise the applicant as to which approvals are required and the appropriate Board for hearing an application for a land development or subdivision project. The following three types of applications, as defined in Article II. Definitions, may be filed:

- a) **Administrative subdivision.**
Re-subdivision of existing lots which yields no additional lots for development, and involves no creation or extension of streets.
- b) **Minor subdivision or minor land development plan.**
A plan for a residential subdivision of land consisting of five (5) or fewer units or lots, provided that such subdivision does not require waivers or modifications.
- c) **Major subdivision or major land development plan.**
Any subdivision not classified as either an administrative subdivision or a minor subdivision. All nonresidential subdivisions shall be considered as major subdivisions.

See also Article II. Definitions of "Concept Plan", "Preliminary Plan", "Master Plan", and "Pre-application conference".

3. **APPLICATION SUBMISSION REQUIREMENTS**

- a) Contents of an application shall be, at a minimum, the requirements set forth in these regulations and applicable checklists found in Appendix A. for the three types of applications. The Administrative Officer may, at his discretion, waive or allow later submission of any minor submission requirements, provided that such information is deemed by him to be unnecessary for proper review of the application by the Planning Board. Such decision shall be in writing only.
- b) Applicants seeking an application meeting shall submit materials on or before the twenty-fifth (25th) of any month shall be in order to be heard at the regular meeting of the Board held on the Second (2nd) Wednesday of the month following, provided, however that the Board may in its discretion order a different date for such meeting.

4. **CERTIFICATE OF COMPLETENESS**

An application shall be complete for purposes of commencing the applicable time period for action when so certified in writing on the appropriate checklist by the Administrative Officer. In the event such certification of the application is not made within the time specified in these regulations for the type of plan, the application shall be deemed complete for purposes of commencing the review period. If the application lacks information required for such applications as specified in these regulations and the Administrative Officer has notified the applicant in writing of the deficiencies in the application, the application shall be deemed not complete.

5. **TECHNICAL REVIEW COMMITTEE**

The Planning Board reserves the right to establish a Technical Review Committee for any specific subdivision application and to make recommendations to the Planning Board. When reviewed by the Technical Review Committee:

- a) If the land development or subdivision plan is approved by a majority of the committee members, the application shall be forwarded to the Planning Board with a recommendation for approval with or without further review.
- b) If the plan is not approved by a majority vote of the committee members, the application shall be referred to the Planning Board with a recommendation to deny.

6. **PLANNING BOARD CONSIDERATION**

- a) Notwithstanding subsections 2, 3 and 4 above, the Planning Board may subsequently require correction of any information found to be in error and submission of additional information specified in these Rules and Regulations but not required by the Administrative Officer prior to certification, as is necessary to make an informed decision.
- b) Where the review is postponed with the consent of the applicant, pending further information or revision of information, the time period for review shall be stayed and shall resume when the Planning Board determines that the required application information is complete.

c) Certificate from the Town Tax Collector that all taxes due on the subject land have been paid and that there are no outstanding tax liens thereon must be filed. No plat shall be approved by the Planning Board in the absence of such certificate.

ARTICLE IV. ADMINISTRATIVE SUBDIVISIONS

This article applies to the re-subdivision of existing lots which yields no additional lots for development, which involves no creation or extension of streets. Such re-subdivision shall only involve divisions, mergers, mergers and division, or adjustments of boundaries of existing lots.

GENERAL

A. Any applicant requesting approval of a proposed administrative subdivision shall submit to the Administrative Officer the items required by these regulations.

B. The application shall be certified as complete or incomplete by the Administrative Officer within a fifteen (15) day period from the date of its submission according to the provisions of Article III. Section C Certificate of Completeness.

C. REVIEW PROCESS:

1. Within fifteen (15) days of certification of completeness, the Administrative Officer, or the technical review committee, shall review the application and approve, deny or refer it to the Planning Board with recommendations. The officer or committee shall report its actions to the Planning Board at its next regular meeting, to be made part of the record.

2. If no action is taken by the Administrative Officer or the technical review committee within the fifteen (15) days, the application shall be placed on the agenda of the next regular Planning Board meeting.

3. If referred to the Planning Board, the Board shall consider the application and the recommendations of the Administrative Officer and/or the technical review committee and shall either approve, approve with conditions, or deny the application within sixty-five (65) days of certification of completeness. Failure of the Planning Board to act within the period prescribed shall constitute approval of the administrative subdivision plan and a certificate of the Administrative Officer as to the failure of the Planning Board to act within the required time and the resulting approval shall be issued on request of the applicant.

4. Denial of an application by the Administrative Officer and/or the technical review committee shall not be appealable and shall require the plan to be submitted as a minor subdivision application.

5. Approval of an administrative subdivision shall expire ninety (90) days from the date of approval unless within such period a plat in conformity with such approval is submitted for signature and recording as specified in Article XIII Procedures.

6. All requirements herein for zoning, access, irregular shape lots, availability of water, ISDS approvals, procedures, recording and vesting shall apply to administrative subdivisions.

ARTICLE V. MINOR LAND DEVELOPMENT AND MINOR SUBDIVISION REVIEW

A. APPLICABILITY

A plan for a residential subdivision of land consisting of five (5) or fewer units or lots, provided that such subdivision does not require waivers or modifications as specified in these Regulations, shall be reviewed subject to the provisions of this Article. All nonresidential subdivisions shall be considered as major subdivisions.

B. PROCEDURES

1. **REVIEW STAGES**

Minor plan review shall consist of two stages, preliminary and final. If a street creation or extension is involved, a public hearing is also required. The Planning Board may vote to combine the approval stages, providing requirements for both stages have been met by the applicant to the satisfaction of the Board.

2. **SUBMISSION REQUIREMENTS**

Any applicant requesting approval of a proposed minor subdivision or minor land development, as defined in this Regulation, shall submit to the Administrative Officer the items required by the Application Checklist for Minor Land Developments and Minor Subdivisions.

3. **CERTIFICATION**

The application shall be certified complete or incomplete by the Administrative Officer within twenty-five (25) days, according to the provisions of Article III.

4. **RE-ASSIGNMENT TO MAJOR REVIEW**

The Planning Board may re-assign a proposed minor project to major review only when the Planning Board is unable to make the positive findings required in Article XIII.

5. **DECISION**

a) If no street creation or extension is required, the Planning Board shall approve, deny, or approve with conditions, the preliminary plan within sixty-five (65) days of certification of completeness, or within such further time as is agreed to by the applicant and the Board, according to the requirements of Article XIII.

b) If a street extension or creation is required, the Planning Board shall hold a public hearing prior to approval according to the requirements in Article VI and shall approve, deny, or approve with conditions, the preliminary plan within ninety-five (95) days of certification of completeness, or within such further time as is agreed to by the applicant and the Board, according to the requirements of Article XIII.

c) If an extension of time is agreed to by the applicant and the Board as provided in Article III, this time period shall be stayed.

d) All changes and conditions shall be noted on the plans prior to signature by the appropriate Planning Board official and recording.

C. FAILURE TO ACT

Failure of the Planning Board to act within the period prescribed shall constitute approval of the preliminary plan and a certificate of the Administrative Officer as to the failure of the

Planning Board to act within the required time and the resulting approval shall be issued on request of the applicant. If an extension of time is agreed to by the applicant and the Board as provided in Article III, this time period shall be stayed.

D.FINAL PLAN

A Final Plan shall be submitted to the Administrative Officer, which shall conform to the requirements of the “Final Plat Checklist - Minor Land Developments and Minor Subdivision”, and contain all special conditions imposed by the Planning Board. The Planning Board may delegate final plan review and approval to either the Administrative Officer or the Technical Review Committee. The officer or committee shall report its actions to the Planning Board at its next regular meeting, to be made part of the record.

1. Certificate from the Town Tax Collector that all taxes due on the subject land have been paid and that there are no outstanding tax liens thereon. No plat shall be approved by the Planning Board in the absence of such certificate.

E. VESTING

Approval of a minor land development or subdivision plan shall expire ninety (90) days from the date of approval unless within such period a plat or plan, in conformity with such approval, and as defined in this act, is submitted for signature and recording as specified in Article XIII. Validity may be extended for a longer period, for cause shown, if requested by the applicant in writing, and approved by the Planning Board.

F.MINOR SUBDIVISION INVOLVING NO STREET CREATION OR EXTENSION

Any subdivision of a parcel of land into at least two (2) but no more than five (5) lots for the purpose of development, all of which have frontage on a public street, which meet all applicable area and dimensional requirements of the Zoning Ordinance but which do not require the extension or creation of a street shall be considered to be a minor subdivision and shall be reviewed according to the applicable provisions of this Article.

1. **MINOR SUBDIVISIONS INVOLVING THE CREATION OF 2 LOTS:**

a) Minor subdivisions described above involving the creation of no more than 2 lots (one original lot plus one new lot) shall be reviewed in accordance with the procedure established in Article XII. The applicant shall be required to submit to the Administrative Officer all plans and supporting materials as required by the Preliminary Plat Checklist for Minor Subdivisions.

b) Any further subdivision of either of the 2 lots created hereunder at any time after the effective date of these Regulations, whether immediate or future, shall be considered to be a minor subdivision of 3 or more lots or a major subdivision and shall be reviewed under the applicable provisions of these Regulations.

c) **Criteria for Review**

The following criteria shall be used by the Planning Board in their review of any 2-lot minor subdivision within this subsection:

(1) **Potential for Further Subdivision**

The Planning Board shall consider whether the parcel being subdivided has the potential for further subdivision under current applicable zoning regulations.

If it has such potential, the Planning Board shall consider the impacts from such future development in their review of the proposed subdivision and may impose any or all of the Lot Development Standards provided below as necessary to mitigate such impacts.

(2) Adequacy of the street on which the proposed lots front

- (a) The lots must be provided with access to a street which is adequate for access for vehicular traffic; and,
- (b) The frontage must provide safe and adequate access to a public street.

(3) Adequacy of the access from the lots onto the street

- (a) The lots must be accessible by the fire department, police department and other agencies charged with protection of the public peace, safety and welfare; and,
- (b) The lots must be physically accessible from the street upon which they front, i.e., they cannot be isolated by topographic or natural features which prevent adequate physical access from the street.

(4) Conformance with Zoning

The proposed lots must be in conformance with all applicable zoning ordinance requirements.

(5) Conformity with the Comprehensive Plan

The proposed lots shall be in conformity with the Town's Comprehensive Community Plan with regard to:

- (a) Discouraging the development of residential lots having direct frontage on major streets.
- (b) Establishing a functional classification of roads that encourages residences to take access from local roads.
- (c) Preserving visual quality and rural character.

(6) Relationship to adjacent or nearby uses:

The proposed lots and access thereto shall be designed so as to minimize conflict with existing adjacent uses, driveways, buildings or other structures, streets, intersections, hills, curves or other similar existing features.

e) Lot Development Standards

Standards which may be imposed by the Planning Board on any 2-lot minor subdivision as a condition of approval may include the following:

- (1) The location of the proposed access driveway along the road frontage may be modified or relocated.
- (2) The proposed number of access driveways onto any street from any lot or group of lots may be modified or limited. (See also Traffic Sensitive District in Article X.)¹
- (3) Driveways of adjacent lots, or groups of contiguous lots may be combined and the use of common driveways may be required where feasible.
- (4) Screening, buffering, and/or landscaping of the lot and/or driveway from adjacent public streets may be required.

(5) Preservation of any existing unique natural and/or historic features such as trees or stone walls may be required. The applicant shall endeavor to preserve such features, and the Planning Board may require specific such features to be preserved.

(6) Provisions may be made for ensuring adequate sight distances from the proposed access driveway along adjacent public streets in order to alleviate any potentially hazardous situation.

(7) Subdivision of lots having frontage along Traffic Sensitive District roads shall adhere to the standards of Article X.²

2. MINOR SUBDIVISIONS INVOLVING THE CREATION OF 3 TO 5 LOTS

Minor subdivisions described above involving the creation of 3, 4 or 5 lots for the purpose of development shall be reviewed by the Planning Board in accordance with the procedure established in Article XII. The applicant shall be required to submit to the Administrative Officer all plans and supporting materials as required by the Preliminary Plat Checklist for Minor Subdivisions. Any further subdivision of any lot(s) at any time after the effective date of these Regulations, whether immediate or future, so as to create a total of 6 lots or more from the original lot, after the effective date of adoption of these Regulations shall be considered to be a major subdivision and shall be reviewed under the provisions of Article VI.

a) Criteria for Review

In their review of any 3 to 5-lot minor subdivision, the Planning Board shall use the criteria for review of a 2-lot minor subdivision involving no street creation or extension as provided in Section F.1. above. In addition, the Committee and Planning Board may also consider the following:

(1) Feasibility of Internal Access Streets

Wherever possible and practical, the lots shall be developed on remaining portions of the parcel being subdivided so as to avoid creation of individual lots having direct frontage on an existing public arterial or collector street. In such cases, the Planning Board shall require the applicant to submit alternative plans to demonstrate the feasibility of creating other types of subdivisions, such as a 3 to 5-lot minor subdivision with an internal street, a residential compound, or a conventional subdivision. If the Planning Board determines that such development is feasible and practical, the creation of frontage lots shall be prohibited and the applicant shall be required to develop the property in an alternative fashion.

b) Lot Development Standards

If the creation of 3 to 5 frontage lots is not prohibited under the provisions of a.(2) above, the Planning Board shall review the proposed frontage lots as a 3 to 5-lot minor subdivision. Standards which may be imposed by the Planning Board as a condition of approval of any 3 to 5-lot minor subdivision involving no street creation or extension may include any of the standards for the development of a 2-lot minor subdivision as provided in Section 1.b (1)-(6) above, plus any of the following:

(1) Improvements to the street on which the proposed lot(s) front(s) may be required in order to provide safe vehicular access. Provided, however that the standards for construction or upgrading of any such access street(s) shall not exceed those standards required by Article X of these Subdivision Regulations for construction of streets in minor subdivisions.

(2) Easements may be required to be granted to the Town to prohibit individual driveway access from lots onto frontage streets if adequate provision is made for access from individual lots to service roads.

(3) Provisions may be made for incorporating proposed frontage lots into future subdivision of contiguous land, if such future subdivision is determined to be feasible by the Planning Board. Such provisions may include the following:

(a) Preparation of a concept plan to indicate future access to and development of residual land contiguous to proposed frontage lots;

(b) Reservation of land or easements to provide for future access from access streets to contiguous land; and/or,

(c) Temporary driveways for frontage lots with provisions made for future permanent driveways to be connected to future streets in subdivision of contiguous land.

G. MINOR SUBDIVISIONS INVOLVING STREET CREATION OR EXTENSION

Any subdivision of a parcel of land into at least two (2) but no more than five (5) lots for the purpose of development and which requires the creation or extension of a public street shall be considered a minor subdivision and shall be reviewed by the Planning Board in accordance with the procedures set forth in Section B herein. Standards for the design and required improvements of such minor subdivisions shall be as follows:

1. **CREATION OR EXTENSION OF A PUBLIC STREET**

Any minor subdivision that proposes the creation or extension of a public street shall be required to meet the design improvement standards for public streets as provided in Article X.

2. **CREATION OR EXTENSION OF A PRIVATE STREET**

Creation or extension of private streets shall not be permitted.

3. Subdivision of lots having frontage along Traffic Sensitive District roads shall adhere to the standards of Article X.³

4. As-Built Road and Public Improvement Construction Drawings showing compliance with these regulations and any special conditions imposed by the Planning Board and/or any applicable division of the State of Rhode Island shall be required prior to the release of any performance or road bonds.

ARTICLE V MINOR LAND DEVELOPMENT AND MINOR SUBDIVISION REVIEW V-6

¹ Changed 4/29/98 from '(2) The proposed number of access driveways onto any street from any lot or group of lots may be modified or limited. (See also Traffic Sensitive District in the Portsmouth Zoning Ordinance).'

² Changed 4/29/98 from '(7) Subdivision of lots having frontage along Traffic Sensitive District roads shall adhere to the standards of Article III of the Portsmouth Zoning Ordinance.'

³ Changed 4/29/98 from '(3) Subdivision of lots having frontage along Traffic Sensitive District roads shall adhere to the standards of Article III of the Portsmouth Zoning Ordinance.'

ARTICLE VI. MAJOR LAND DEVELOPMENT AND MAJOR SUBDIVISION REVIEW

A. APPLICABILITY

A plan for a residential subdivision of land consisting of more than five (5) lots shall be reviewed subject to the provisions of this Article. All nonresidential subdivisions shall be considered as major subdivisions.

B. REVIEW STAGES

Major plan review shall consist of three stages:

Master Plan.

Preliminary Plan.

Final Plan.

following the pre-application meeting(s) specified in Article III. Also required is a public informational meeting and a public hearing.

1. The Planning Board may vote to combine the approval stages, providing requirements for both stages have been met by the applicant to the satisfaction of the Board.
2. The Planning Board may vote to combine review stages and to modify and/or waive requirements as specified in Article XIII. Review stages may be combined only after the Planning Board determines that all necessary requirements have been met by the applicant.

C. MAJOR LAND DEVELOPMENT AND MAJOR SUBDIVISION -- MASTER PLAN REVIEW

1. SUBMISSION REQUIREMENTS

- a) The applicant shall first submit to the Administrative Officer the items required by the these regulations for master plans.
- b) Requirements for the master plan and supporting material for this phase of review shall include, but not be limited to: information on the natural and built features of the surrounding neighborhood, existing natural and man-made conditions of the development site, including topographic features, the freshwater wetland and coastal zone boundaries, the floodplains, as well as the proposed design concept, proposed public improvements and dedications, tentative construction phasing, and potential neighborhood impacts.
- c) When an application is submitted for Master Plan approval, the applicant shall submit to the applicable Town, state or private agency as provided in the Master Plan Checklist for Major Land Developments and Major Subdivisions, a copy of the Master Plan narrative report for their review and comment. Comments may be solicited from (1) Town agencies including, but not limited to, the town planner, the Department of Public Works, Fire and Police departments, the conservation commission; (2) adjacent communities, as appropriate,; (3) state agencies, as appropriate, including the Departments of Environmental Management and Transportation, and the Coastal Resources Management Council; and (4) federal agencies, as appropriate. Each agency so notified by

the applicant shall be requested to provide its comments on a form to be provided to the applicant by the Administrative Officer. Comments shall be received from each agency prior to the date of the informational meeting. All such written forms and supplementary material shall be delivered to the Administrative Officer by the reviewing agency within the time limits prescribed. If comments are not received by the Administrative Officer by that date, it shall be assumed that the agency does not wish to comment.

The Administrative Officer shall receive and coordinate review and comments by said agencies and officials.

d) Each department or agency to which such a request for comments is made shall deliver to the Administrative Officer a completed written form, and any supplementary material, which shall describe:

- (1) An estimate of the impact of the subdivision on the facilities and/or services provided by the department or agency;
- (2) Whether existing facilities and/or services are adequate to serve the subdivision's residents;
- (3) Whether plans for the necessary improvements to existing facilities and/or services are included in the Town's Capital Improvement Program or are otherwise planned; and,
- (4) An estimate of how long it would take to provide any necessary improvements to existing facilities and/or services.

2. CERTIFICATION

The application shall be certified complete or incomplete by the Administrative Officer within ninety (90) days, according to the provisions of Article III.

3. INFORMATIONAL MEETING

A public informational meeting shall be held prior to the Planning Board decision on the master plan, unless the master plan and preliminary plan approvals are being combined, in which case the public informational meeting shall be optional, based upon Planning Board determination.

- a) Public notice for the informational meeting is required and shall be given at least seven (7) days prior to the date of the meeting in a newspaper of general circulation within the Town. Postcard notice shall be mailed to the applicant and to all property owners within the notice area, as specified by Town regulations.
- b) At the public informational meeting the applicant shall present the proposed development project. The Planning Board shall allow oral and written comments from the general public. All public comments shall be made part of the public record of the project application.
- c) If the public informational meeting on the master plan and the public hearing on the preliminary plan are combined as provided in Article VI, Section B., all comments from reviewing agencies shall be received prior to the date of the public hearing.

4. DECISION

The Planning Board shall, within one hundred and twenty (120) days of certification of completeness, or within such further time as may be consented to by the applicant, approve of the master plan as submitted, approve with changes and/or conditions, or deny the application, according to the requirements of Article XIII. All changes and conditions shall be noted on the plans prior to signature by the appropriate Planning Board official and recording.

- a) The Planning Board may, at the master plan stage of review, require that the development be completed in phases, per the provisions of Article VII. Any such phasing shall be noted on the plans.
- b) A landscaping plan may be required as part of site plan and subdivision design as part of Master Plan approval for major subdivisions.
- c) The Planning Board may require that up to 5% of the subdivided area be set aside for permanent open space or recreation purposes. A fee in lieu of such dedication may be set by the Planning Board to be used for open space or recreation purposes near the proposed subdivision.

5. FAILURE TO ACT

Failure of the Planning Board to act within the period prescribed shall constitute approval of the master plan and a certificate of the Administrative Officer as to the failure of the Planning Board to act within the required time and the resulting approval shall be issued on request of the applicant.

6. VESTING

- a) The approved master plan shall be vested for a period of one (1) year, with a one (1) year extension upon written request by the applicant, who must appear before the Planning Board for the annual review. Vesting may be extended for a longer period, if requested by the applicant in writing and approved by the Planning Board, as long as it can be proven, to the satisfaction of the Planning Board, that work is proceeding on either the approval stages or on the construction of the development as shown in the approved master plan documents. Master plan vesting shall include the zoning requirements, conceptual layout and all conditions shown on the approved master plan drawings and supporting materials.
- b) The above initial two year vesting for the approved master plan shall constitute the vested rights for the development as required in the Zoning Ordinance.

D. MAJOR LAND DEVELOPMENT AND MAJOR SUBDIVISION - PRELIMINARY PLAN

1. SUBMISSION REQUIREMENTS

- a) The applicant shall first submit to the Administrative Officer the items required by these regulations for preliminary plans.

b) Requirements for the preliminary plan and supporting materials for this phase of the review shall include, but not be limited to: engineering plans depicting the existing site conditions, engineering plans depicting the proposed development project, a perimeter survey, all permits required by state or federal agencies prior to commencement of construction, including permits related to freshwater wetlands, the coastal zone, floodplains, preliminary suitability for individual septic disposal systems, public water systems, and connections to state roads.

c) Final written comments and/or approvals of the Department of Public Works, the Town solicitor, other Town government departments, commissions, or authorities as appropriate.

d) Prior to approval of the preliminary plan, copies of all legal documents describing the property, proposed easements and rights-of-way.

2. CERTIFICATION

The application shall be certified as complete or incomplete by the Administrative Officer within sixty (60) days, according to the provisions of Article III.

3. PUBLIC HEARING

Prior to Planning Board decision on the preliminary plan, a public hearing, which adheres to the requirements for notice described in Section E herein, must be held.

4. PUBLIC IMPROVEMENT GUARANTEES

Proposed arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees shall be reviewed and approved by the Planning Board at preliminary plan approval.

5. DECISION

A complete application for a major subdivision or development plan shall be approved, approved with conditions or denied within one hundred and twenty (120) days of the date when it is certified complete, or within such further time as may be consented to by the developer. **All changes and conditions shall be noted on the plans prior to signature by the appropriate Planning Board official and recording.**

6. FAILURE TO ACT

Failure of the Planning Board to act within the period prescribed shall constitute approval of the preliminary plan and a certificate of the Administrative Officer as to the failure of the Planning Board to act within the required time and the resulting approval shall be issued on request of the applicant.

7. VESTING

The approved preliminary plan shall be vested for a period of one (1) year and vesting may be extended for a longer period, for good cause shown, if requested in writing by the applicant, and approved by the Planning Board. The vesting for the preliminary plan

approval shall include all general and specific conditions as shown on the approved preliminary plan drawings and supporting material.

E. MAJOR LAND DEVELOPMENT AND MAJOR SUBDIVISION - PUBLIC HEARING AND NOTICE

1. A public hearing shall be required for a major land development project or a major subdivision or where a street extension or creation requires a public hearing for a minor land development project or minor subdivision.

2. **NOTICE REQUIREMENTS**

Public notice of the hearing shall be given at least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation within the Town following the Town's usual and customary practices for such advertising. Notice shall be sent to the applicant and to each owner within the notice area as below, by certified mail, return receipt requested, of the time and place of the hearing not less than ten (10) days prior to the date of the hearing. All notices shall specify the general nature of the hearing, and shall also include the street address of the subject property, or if no street address is available, the distance from the nearest existing intersection in tenths (1/10's) of a mile. These regulations may require a supplemental notice that an application for development approval is under consideration be posted at the location in question. Such posting shall be for informational purposes only and shall not constitute required notice of a public hearing.

3. **NOTICE AREA AND RECIPIENTS**

a) All abutting property owners to the proposed development's property boundary, as defined in Article II Definitions, shall receive notice.

b) **WATERSHEDS**

Additional notice within watersheds shall also be sent as required in Article XI.

c) **ADJACENT MUNICIPALITIES**

Notice of the public hearing shall be sent by the Administrative Officer to the Administrative Officer of an adjacent municipality if (1) the notice area extends into the adjacent municipality, or (2) the development site extends into the adjacent municipality, or (3) there is a potential for significant negative impact on the adjacent municipality.

d) A supplemental notice shall be posted at the office of the Town Clerk. This posting shall be for information purposes only and shall not constitute required notice of a public hearing.

4. **NOTICE COST**

The cost of notification, including actual advertising and mailing costs, shall be borne by the applicant.

F. MAJOR LAND DEVELOPMENT AND MAJOR SUBDIVISION - FINAL PLAN

1. **SUBMISSION REQUIREMENTS:**

- a) The applicant shall submit to the Administrative Officer the items required by the Town regulations for final plan, as well as all material required by the Planning Board when the application was given preliminary approval. **All changes and conditions shall be noted on the plans.**
- b) Arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees.
- c) Certification by the tax collector that all property taxes are current.
- d) For phased projects, the final plan for phases following the first phase, shall be accompanied by copies of as-built drawings not previously submitted of all existing public improvements for prior phases.
- e) All changes imposed by other agencies or departments and all other changes not specifically ordered by the Planning Board shall be noted by the applicant on the plans and/or in narrative form.

2. **CERTIFICATION**

The application for final plan approval shall be certified complete or incomplete by the Administrative Officer within forty-five (45) days, according to the provisions of Article III. If the Administrative Officer certifies the application as complete and does not require submission to the Planning Board as per subparagraph 3. below, the final plan shall be considered approved.

3. **REFERRAL TO THE PLANNING BOARD**

The Administrative Officer shall refer the final plans to the Planning Board for review. The Planning Board shall, within forty-five (45) days after the certification of completeness, or within such further time as may be consented to by the applicant, approve or deny the final plan as submitted.

- a) The Board reserves the right to amend its preliminary approval or conditions if the plans have changed significantly for any reason since the preliminary approval.

4. **FAILURE TO ACT**

Failure of the Planning Board to act within the period prescribed shall constitute approval of the final plan and a certificate of the Administrative Officer as to the failure of the Planning Board to act within the required time and the resulting approval shall be issued on request of the applicant.

5. **RECORDING**

The final approval of a major subdivision or land development project shall expire one year from the date of approval unless, within that period, the plat or plan shall have been submitted for signature and recording as specified in Article XIII. The Planning Board may, for good cause shown, extend the period for recording for an additional period.

6. ACCEPTANCE OF PUBLIC IMPROVEMENTS

Signature and recording as specified in Article XIII shall constitute the acceptance by the Town of any street or other public improvement or other land intended for dedication. Final plan approval shall not impose any duty upon the Town to maintain or improve those dedicated areas until the Town Council accepts the completed public improvements as constructed in compliance with the final plans.

7. VALIDITY OF RECORDED PLANS

The approved final plan, once recorded, shall remain valid as the approved plan for the site unless and until an amendment to the plan is approved under the procedure set forth in Article XIII, or a new plan is approved by the Planning Board.

ARTICLE VII.

PHASING OF MAJOR LAND DEVELOPMENT AND SUBDIVISION PROJECTS

A. DETERMINATION OF NECESSITY FOR PHASING

1. When a Major Land Development or Major Subdivision is submitted for Master Plan approval as provided in Article VI, the Planning Board shall review the adequacy of existing and projected future public improvements, services and facilities which may be impacted by the proposed development in its entirety. In so reviewing, the Planning Board shall consider comments received under procedures established in Article VI.C.

2. If the Planning Board determines that such improvements, services and facilities, including but not limited to water supply, sewerage, streets and associated drainage facilities, schools, recreational facilities, and fire and police protection will not be adequate to serve the residents of the subdivision or development at the time of recording of the plat, the Planning Board shall have the authority to establish a rate of development of the entire subdivision by requiring it to be built in phases.

B. GENERAL REQUIREMENTS FOR PHASED PROJECTS

1. If phasing is required, the Planning Board shall review and/or approve the entire master plan first, per the provisions of Article VI Section C., except as provided herein. Thereafter the applicant shall be required to submit plans for preliminary and/or final review and/or approval by phase(s) as stipulated per Article VI.

2. Based on the responses received from the various departments and agencies, the Planning Board shall establish, at the time of master plan approval, a rate of development of the entire subdivision or development that will permit residential construction only when improvements, services and facilities will be adequate to serve the residents of the subdivision or development. As part of such a phasing plan, the Planning Board may require that improvements be installed, or lots sold, in two or more phases.

3. The Planning Board may, at its discretion, impose conditions for determining the physical limits of phases, for allowing progression to additional phases, for allowing two (2) or more phases to proceed in review or construction simultaneously, for interim public improvements or construction conditions, for changes to master or preliminary plans, and may include other provisions as necessitated by special conditions.

4. The master plan approval shall contain information on the physical limits of the phases, the schedule and sequence of public improvement installation, improvement guarantees, and the work and completion schedules for approvals and construction of the phases.

5. The Planning Board shall specify improvement guarantees related to each particular phase. If any off-site improvements or other improvements or conditions which are not directly related to a particular phase are required as a condition of approval, the Board shall, in setting the guarantee amount for each phase, clearly specify when such guarantees are to be provided.

C. VESTING OF MASTER PLAN

The master plan shall remain vested as long as it can be proven, to the satisfaction of the Planning Board, that work is proceeding on either the approval stages or on the construction of the development as shown in the approved master plan documents. Master plan vesting shall include the zoning requirements, conceptual layout and all conditions shown on the approved master plan drawings and supporting materials.

ARTICLE VIII. LAND DEVELOPMENT PROJECTS

Reserved.

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ARTICLE IX. DEVELOPMENT PLAN REVIEW**A. APPLICABILITY**

1. Development plan review of applications for certain uses, as specified in the Portsmouth Zoning Ordinance, requiring a special use permit or a variance, shall be conducted by the Planning Board and shall be advisory to the permitting authority.

2. Development plan review undertaken by the Planning Board shall be subject to Sections 45-23-25 through 45-23-74 of the R.I. General Laws (the Subdivision Enabling Act) plus all Subdivision Regulations of the Town of Portsmouth.

B. PROCEDURE

1. Applications subject to Development Plan Review shall, immediately upon receipt of an application to the Zoning Board of Review, refer the site plan and related documents to the Portsmouth Planning Board for review and advice. Two (2) copies of the site plan shall be delivered to the Portsmouth Planning Board. Said Portsmouth Planning Board shall make a written report to the Zoning Board of Review within forty-five (45) days of receipt of said plan by the Planning Board at its next regularly scheduled meeting.

2. Applications which are materially changed after review by the Planning Board may, at the discretion of the Zoning Board of Review, be referred back to the Planning Board for further review.

3. Nothing herein shall be construed to permit waivers of any regulations unless approved by the permitting authority pursuant to these Regulations.

4. Preliminary plans may be submitted to the Planning Board for informal discussion, provided however, any tentative advisory opinion of a preliminary plan by the Planning Board shall not be binding upon the Planning Board or Zoning Board of Review.

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ARTICLE X. DESIGN AND IMPROVEMENT STANDARDS**A. GENERAL AND PURPOSE**

The purpose of good subdivision and site design is to create a functional and attractive development, to minimize adverse impacts, and to ensure that a project will be an asset to the community. To promote this purpose, land development projects and subdivisions shall conform to the following standards which are designed to result in a well-planned community without adding unnecessarily to development costs. These design and improvement standards are to promote high quality development in character with the rural nature of the Town of Portsmouth, help create neighborhoods and non-residential areas that are pleasant and functional, help create roads and other public improvements that serve their intended purposes for generations to come at minimal added cost to the taxpayer, and to minimize adverse environmental impacts of development.

B. RESPONSIBILITY OF THE APPLICANT

The applicant, at his own expense, shall construct all improvements required by the Planning Board as part of its approval of any subdivision, in accordance with the specifications of these Rules and Regulations.

1. PAPER STREETS

Where access to property being subdivided is proposed to be from streets which are platted but either not constructed or inadequate as to width or condition, the applicant shall be required to construct said access street, in full accordance with this Article, from the public street(s) to one or more of the roads to be constructed, as determined by the Planning Board.

2. PROFESSIONAL STANDARDS

Wherever it is mandated by these Regulations that certain tasks associated with subdivision plans and improvements be performed by registered professional civil engineers, registered land surveyors, and/or landscape architects, as appropriate and required. All such tasks shall be performed according to existing and amended standards of the State of Rhode Island and Providence Plantations Board of Registration for Professional civil engineers and Board of Registration for Land Surveyors.

3. GENERALLY ACCEPTED ENGINEERING PRINCIPALS

Any situation, definition, or practice not fully covered by these Regulations shall be done according to generally accepted engineering principals.

4. CONSTRUCTION SEQUENCE¹

The applicant shall provide and be bound by a sequence of development and construction activities. As part of the final plan approval, the applicant shall submit for approval a sequence of major activities including installation of drainage facilities, construction of streets or street segments, landscaping, erosion controls, and utilities. This approved sequence may be amended from time to time. Minor changes may be approved by the Public Works Director in consultation with the Administrative Officer. Major changes such as the sequence of construction of streets, must be approved by the Planning Board.

C. SITE DESIGN CRITERIA

1. Design of the development shall take into consideration all existing Town and regional plans for the surrounding community. In designing a subdivision, the Board shall require the applicant to incorporate the standards herein.

2. PRESERVATION OF UNIQUE AND NATURAL FEATURES

Development of the site shall be based on the characteristics of the site and upon the site analysis. To the maximum extent practicable, development shall be located to preserve the natural features of the site, to avoid areas of environmental sensitivity, and to minimize negative impacts and alteration of natural features, historic and cultural resources, and areas of scenic value which contribute to the character of the Town.

- a) Among other considerations the Planning Board shall consider are the prevailing winds, flooding, hurricane damage, adjoining land uses, topography, swampy areas, health, welfare and safety. Existing stream channels should be preserved.
- b) Environmental features such as stone walls, specimen trees, water bodies or other outstanding natural or man-made features shall be retained insofar as possible, and incorporated into the design of the subdivision so as to preserve the character of the land.
- c) Where possible, extensive heavy grading or filling should be avoided. Development and disturbance of natural features shall be avoided in areas having a slope of greater than 20%.
- d) The development shall be laid out to avoid adversely affecting ground water and aquifer recharge; to take full advantage of the terrain characteristics and contours to reduce the cuts and fills.; to avoid unnecessary impervious cover; to prevent flooding; to provide adequate access to lots and sites; and to mitigate adverse effects of shadow, traffic, drainage, and utilities on neighboring properties.
- e) The following specific areas shall be preserved as undeveloped open space or lot area, to the extent consistent with the reasonable utilization of land, and in accordance with applicable state or Town regulations:
 - (1) Unique and/or fragile areas, including freshwater wetlands and coastal features;
 - (2) Significant trees or stands of trees, or other vegetative species that are rare to the area or are of particular horticultural or landscape value;
 - (3) Lands in the flood plain, as defined in Article II;
 - (4) Steep slopes in excess of 20 percent as measured over a 10-foot interval unless appropriate engineering measures concerning slope stability, erosion, and resident safety are taken;
 - (5) Habitats of endangered wildlife, as identified on applicable federal or /state lists; and
 - (6) Historically significant structures and sites, as listed on federal or state lists of historic places.

3. SITE ANALYSIS

An analysis of the subdivision site and nearby areas shall be required by the Planning Board for all major subdivisions. The scope and content of the site analysis shall be discussed during the pre-application meeting and shall be presented by the applicant during the Master Plan stage of review. Such an analysis may be required by the Planning Board for minor subdivisions if the Board finds that the proposed development may have a negative impact on the existing natural and built environment or would be inappropriate for the character of the surrounding neighborhood.

a) Such a site analysis shall include written and/or graphic analysis of the following characteristics of the development site: site context; geology and soil; agricultural lands; wetlands; coastal features; topography; ecology; existing vegetation, structures, and road networks; visual features; and past and present use of the site.

4. RESIDENTIAL LOT DESIGN STANDARDS

a) Lot Dimensions - General

All lots shall be designed so as to contain at least the Minimum Developable Land Area required by Article IV of the Zoning Ordinance, and so that intended structures and improvements may be constructed within the limits of the Land Use Requirements Table therein.

(1) Lots in a subdivision not served by a public sewer or water district shall be a minimum of 40,000 square feet of developable land area, or as otherwise designated by the Zoning Ordinance, and designed to comply with State regulations on the separation of drinking water wells from ISDS and from the property line, street or other structures.

(2) A subdivision of land located in an area served by a public water district shall be predicated upon said subdivision being serviced by said public water district. In order to obtain the benefits of the smaller lot area and other lowered requirements of subdivisions in a public water district, said owner must utilize public water district. Intention to do so shall be evidenced by approval of detailed plans for the installation of public water lines by the appropriate water district, which shall be required prior to final approval and recording of the plat.

(3) In the event any subdivision of whatsoever nature is developed in a public water district wherein the owner does not utilize said facilities, all requirements as to said subdivision shall be based upon and shall be the same as those specified in areas not within a public water district.

b) Lot Configuration

The Planning Board may prohibit or require modification to lots shaped or configured so as to conflict with the use of the land for the intended purpose. Long, narrow strips of land, unusual shapes, angles, dimensions, and usable portions separated by easements shall be avoided. The Planning Board may vary street locations, lot shapes and dimensions, yards, and setbacks for the purpose of encouraging and promoting flexibility, economy and

and environmental soundness in layout and design, provided that the lots' areas and dimensions, yards, and setbacks within the subdivision conform to the minimum requirements of the Zoning Ordinance, and provided that such standards shall be appropriate to the type of development permitted.

(1) All lots shall have frontage on a public street equal to the minimum lot width specified in the Town's Zoning Ordinance. For purposes of these Regulations, streets platted but not improved or accepted for maintenance by the Town, shall not be considered existing improved public streets. Where these streets are incorporated within the subdivision, they shall be improved by the developer to meet the Subdivision Regulation standards.

(a) With the written approval of the Planning Board, a lot may have less frontage than that required by the Zoning Ordinance on a cul-de-sac turnaround provided that the distance between the side lot lines on opposite sides of the lot as measured at the front yard depth is no less than the lot width required by the Zoning Ordinance for that zoning district.

(b) With Planning Board approval, lots created pursuant to Article VIII of the Zoning Ordinance and consisting entirely of "common lands" as those terms are defined in Article VIII, Section 1(a) & (b) of the Zoning Ordinance, and lots set aside for permanent open space or recreation purposes pursuant to Article VI, Section C, 4c) of the Portsmouth Land Development and Subdivision Regulations may be exempted from the requirement of possessing frontage on a public street.²

(2) Irregular shaped lots other than on a cul-de-sac may receive special consideration by the Board in that lot frontage may be determined at a depth of 30 feet, radially opposite and concentric with the front boundary providing that the front boundary line is not less than 75 feet in length. This 30 foot strip to be excluded from the overall lot size requirement.

(3) Side lot lines shall be at right angles to street lines or radial to curved street lines unless the Planning Board determines that a variation from this rule will provide a better street or lot plan.

c) Every lot shall have sufficient access to it for emergency vehicles as well as for those needing access to the property in its intended use.

d) Vegetated buffer areas shall be required where necessary to avoid adverse impacts from adjacent uses.

5. COMMERCIAL AND INDUSTRIAL DEVELOPMENT DESIGN

Commercial and industrial developments shall be designed according to the same principles governing the design of residential developments; namely, buildings shall be located according to topography, with environmentally sensitive areas avoided to the maximum extent practicable; factors such as drainage, noise, odor, and surrounding land uses considered in siting buildings; sufficient access shall be provided; and adverse impacts buffered.

6. TRAFFIC SENSITIVE DISTRICTS³

a) Traffic Sensitive Districts are established for the following purposes:

- (1) To facilitate the movement of traffic along major roads in Portsmouth in a safe and orderly manner;
- (2) To reduce the number of and increase the spacing of driveways which may disrupt traffic flow;
- (3) To reduce infringement on the rights of the public to travel roadways in a safe manner, while at the same time providing for adequate access and egress to properties; and
- (4) To protect the public safety along major thoroughfares in the Town where accidents have frequently occurred.

b) All driveway openings onto streets listed in Subparagraph 6 of this Subsection shall have suitable turnaround space so that automobiles do not back out onto said streets.

c) On any lot with frontage on the streets listed in Subparagraph f of this Section the following shall apply:

- (1) Only one driveway or curb opening onto streets listed in Subparagraph f of this Section shall be created to serve the original lot; or
- (2) Future subdivision or lots created from the original lot shall be served by a single common driveway or curb opening onto the streets listed in Subparagraph f of this Section; or
- (3) A public street or street system approved by the Planning Board under the provisions of the Rules and Regulations Regarding the Subdivision of Land shall be created to serve all subsequent lots created from the original lot.

d) Common driveways, rights-of-way or other common means of access to adjacent streets listed in Subparagraph f of this Section shall be reviewed and approved by the Planning Board or Zoning Board of Review before any building permit shall be issued for lots created from the original lot.

e) When a tract fronting on a public street designated herein or in the Town's Zoning Ordinance as in a "Traffic Sensitive District" is to be subdivided into more than ten lots, the Planning Board may require that the lots adjoining the existing street be provided with frontage on a marginal access street, and that access to the public street be restricted.

f) This Section shall be applicable only to lots having frontage on the following streets:

- (1) East Main Road (Route 138)
- (2) West Main Road (Route 114)
- (3) Bristol Ferry Road (Route 114)
- (4) Turnpike Avenue
- (5) Union Street
- (6) Middle Road
- (7) Sandy Point Avenue
- (8) Wapping Road
- (9) Glen Road
- (10) Boyd's Lane
- (11) Braman's Lane

D. STREET LAYOUT, DESIGN, AND ARRANGEMENT

1. GENERAL STANDARDS

- a) Streets in the subdivision shall be coordinated with each other and with the existing street system in a manner satisfactory to the Planning Board, with due regard to securing safety, and emphasizing the attractiveness of the street layout.
- b) The arrangement of streets shall be considered in relation to the existing street system, and to existing topographic and natural conditions. The road system shall be designed to permit the safe, efficient, and orderly movement of traffic; to meet, but not exceed the needs of the present and future population served; to have a simple and logical circulation pattern; to respect natural features and topography; and to create an attractive streetscape.
- c) Streets in the subdivision shall connect to and be accessible from a public way or, with the written approval of the Planning Board, an existing private way, which must be deemed adequate in the opinion of the Planning Board to provide access. If the streets in the subdivision connect to a private way, the applicant must have rights to the private way for the purpose ways are intended and commonly used.
- d) Access
There shall be no reserve strips controlling access to streets unless such strips are to be deeded to the Town at the time of acceptance of the street by the Town. Reserve strips prohibiting access to streets or adjoining property are allowed only where required by the Planning Board along Connector or Through Streets; and where, in the opinion of the Board, such strips are in the public interest.
- e) The Planning Board shall be satisfied that adequate access for emergency vehicles is provided to all of the lots in the subdivision.
- f) Access to adjoining property for pedestrian and/or bicycle circulation shall be required wherever the Planning Board determines that such connection will increase accessibility between adjoining subdivisions, to existing or proposed sidewalks or bicycle paths, from subdivisions to major public or private schools, recreation areas or other facilities or where the public safety will be significantly enhanced by such pedestrian and/or bicycle connections.

In order to foster compliance with the specified design speeds, discernible and effective curvilinear street design shall be introduced as part of the road layout so that the maximum straight length of any portion of the proposed roadway in a residential subdivision shall not exceed three hundred (300) feet in length. The centerline radii of the curve shall be as close to the minimum required as is practical. Larger radii will be discouraged.

2. LAYOUT STANDARDS - RESIDENTIAL SUBDIVISIONS

a) Wherever possible in residential subdivisions, the road system shall be designed to serve the needs of the neighborhood and to discourage use by through traffic. However, in major subdivisions, access shall be designed to avoid street systems which have only one principal means of egress. In order to provide for alternative access, at least two vehicular access streets may be required by the Planning Board, in major subdivisions when determined by the Board to be feasible. Proposed streets within a major subdivision shall provide for their continuation or projection to intersect with principal streets on the perimeter of the subdivision or with adjacent vacant property in order that the streets may be extended at a future time.

(1) A curvilinear road layout, avoiding long straight runs, is generally required to achieve these goals since curves tend to slow traffic speeds and provide varied views within the subdivision.

(2) The minimum center line radii of streets shall be one hundred fifty (150) feet; greater radii may be required for principal streets. The centerline radii of the curve shall be as close to the minimum as practical. Larger radii will be discouraged.

(3) Design speeds for residential roads shall be 25 miles per hour.

b) The location of Residential Streets within the subdivision shall be such that their use by through traffic will be discouraged. The Planning Board may require the construction of streets to abutting land as part of an overall plan to enhance traffic circulation in the Town.

c) Proposed subdivision streets shall not be located along the subdivision boundary. If a boundary location is the only acceptable point of access, the road must turn away as soon as practical from the boundary line in order to mitigate any negative impact to abutters.

3. LAYOUT STANDARDS - COMMERCIAL/INDUSTRIAL SUBDIVISIONS

The same standards for commercial/industrial subdivisions shall be applied as for residential subdivisions, except that wider intersections, straighter roads, less steep slopes and other requirements designed to increase safety and ease of access may be required by the Planning Board.

4. CUL-DE-SACS and DEAD END STREETS

Dead-end streets without cul-de-sacs shall not be permitted except where the Board shall find the same to be necessary or desirable due to the small size of the subdivision or unusual topographical conditions.

a) Where a dead-end street is to provide access to adjacent property, the Planning Board may require provision for a temporary circular turn-around or 'tee' until such time as the adjacent tract is developed and the street is extended. A bond may be required to insure completion of the street or construction of a permanent cul-de-sac within a reasonable period of time. Reservation of strips of land impeding this access will not be permitted unless such land is dedicated to the Town in conjunction with the final plat.

b) All permanent dead-end streets shall terminate in a cul-de-sac constructed according to these regulations. Dead-end streets shall have at their closed end a turn-around with a minimum outside curb radius of forty (40) feet and a right-of-way radius of fifty (50) feet. The Planning Board may limit the length of a dead-end street where necessary to ensure adequate and safe circulation of vehicular traffic.

c) Where streets are terminated temporarily, and may be further extended at a future time, a temporary cul-de-sac shall be constructed as specified in these regulations. A defeasible easement shall be granted to the Town for that portion of a cul-de-sac right-of-way which would be abandoned when temporary cul-de-sac is extended.

(1) Whenever a temporary cul-de-sac is abandoned in order to extend a street, the developer shall remove excess pavement and curbing, landscape such area, and install straight pavement and curbing aligned with the rest of the roadway.

d) For all dead-ends and cul-de-sacs, whether permanent or temporary, an easement, which shall not be built upon or obstructed by deed, shall be granted to the Town of at least 30 feet in width to a nearby existing street to be used for emergency access. Location of said easement shall be determined by the Planning Board.

e) Cul-de-sacs shall not be used as a method to gain additional lots with reduced frontage.

5. STREET RIGHTS OF WAY and PAVEMENT WIDTH

Streets shall be not less than fifty (50) feet in width between property lines and the hard surface for the traveled way shall be not less than twenty-eight (28) feet, and centered between property lines. All paved points of access and egress from said ways to existing Town and State Highways, shall not be less than thirty (30) feet wide, said thirty-foot width to extend thirty-feet back from the State or Town property line.

a) The Planning Board may require wider rights of way where drainage methods used require the Town to own and maintain land beyond fifty feet. The Planning Board may permit narrower pavement widths on dead-ends and cul-de-sacs which will never be extended or connected to another street and where traffic, drainage and utility considerations allow.

6. SPECIFIC LAYOUT STANDARDS - STREET INTERSECTIONS

- a) New street intersections should avoid being located directly opposite existing dwellings and driveways in order to protect the residents from headlight glare, noise, and traffic.
- b) Street intersections shall either coincide precisely with, or be offset by at least 200 feet from other intersections. Intersections shall be at 90 degree angles. Lesser angles between 75 degrees and 90 degrees may be approved by the Planning Board.
- c) Intersections shall not be allowed where visibility is restricted, such as on or just below steep hillcrests or on sharp curves. Streets shall be laid out so as to intersect as nearly as practical at right angles. No street shall intersect any other street at less than sixty (60) degrees.
- d) Property lines at street intersections shall be rounded with a street line radius of not less than one half of the wider right-of-way. Roadway pavements at intersections or where roadways intersect circular pavements shall be rounded with a minimum radius required for the larger classified street at the intersection.
- e) The minimum pavement radii and centerline offsets for all classifications of streets is shown in Table 1:

TABLE 1. Pavement Radii and Centerline Offsets

<u>Street Classification</u>	<u>Pavement Radii</u>	<u>Street Centerline Offsets</u>
Local Residential Street	15'	300'
Connector/Collector Street	20'	500'
Through/Arterial	20'	1000'
Commercial/Industrial Connector	30'	1000'

- f) Three-way intersections, especially within the subdivision, will be encouraged in order to slow traffic and minimize the possibility of collisions. Four-way intersections are not permitted unless in the opinion of the Planning Board public safety will not be compromised. Street jogs shall have minimum centerline offsets from the larger classified street as shown in Table 1.

7. MEDIAN ISLANDS and ENTRANCE FEATURES

Where Residential Through Streets or Commercial & Industrial Streets intersect existing or proposed roadways, an unpaved median island and separate turning lanes may be required. This requirement and the number of turning lanes shall have a direct relationship to anticipated traffic movements and volume. This requirement may be waived by the Planning Board, if in its opinion, a median island and/or separate turning lanes are unnecessary.

- (a) If required, the median island shall extend at least sixty (60) feet back from the intersection and be at least nine (9) feet in width for Residential Streets and twelve (12) feet in width for Commercial & Industrial Streets for the first thirty (30) feet back from the intersection, then taper to two (2) feet in width (unless a continuous median island is required). Said median island shall be identified by signage and designed to be highly visible to oncoming traffic.

Median islands shall have granite or concrete curbing. The unpaved median island shall consist of pervious cover such as grass, gravel, or wood chips and shall be planted with a sufficient number of shrubs to present a year-round visual mass. However, to maintain visibility at the intersection, all shrubs shall not be planted closer than ten (10) feet to the intersection. Shrubs shall be at least one and one-half (1 1/2) feet high but not greater than three (3) feet high, such as spreading juniper or yew.

- b) The number of turning lanes and consequently the pavement width on each side of the median island shall be determined by the Planning Board. Where median islands and the maximum number of turning lanes are required, the right-of-way width at the intersection may need to be wider.

8. The grade of the slopes adjacent to the paved way shall be at a ratio of at least five (5') horizontal to one (1') vertical (20% slope - no greater). The developer shall show cross sections of slopes on the drawings at intervals of no greater than fifty (50') feet.

9. GEOMETRIC DATA

Table 2 below shall be used as a guide in designing local streets within a subdivision. The Planning Board may, at its discretion, order more stringent requirements:

<u>Table 2</u>	
R.O.W. Width	50'
Pavement width (includes berms)	30'
Maximum Grades at centerline:	9%
- within 150' of intersections	2.5%
Minimum Grades at centerline	1%
Minimum Radius of Curve	150'
Min. tangent between curves of Centerline	100'
Min. Sight Distance	200'
Cul-De-Sac Turnaround	
- R.O.W. diameter	100'
- Pavement diameter*	90'
- Max. Grade	4.0%
- Min. Grade	2.0%
Intersection Fillet Curve	
- R.O.W. Min. Radius	30'
- Pavement Min. Radius	25'
Pavement Crown	3.5"

* Where approved by the Planning Board, cul-de-sacs may be designed with a circle with a 40' radius unpaved center. The Planning Board will determine landscape requirements for the unpaved center.

E. STREET CONSTRUCTION STANDARDS and SPECIFICATIONS

1. GENERAL

- a) Construction of all required improvements shall be in accordance with all specifications set forth herein, and shall, as a minimum, meet the construction specifications contained in Standard Specifications for Road and Bridge Construction, published by the State of Rhode Island, Department of Public Works, Division of Road and Bridges, revision of 1971, and any subsequent corrections and addenda. The following specifications for construction of streets shall be in addition to the Standard Specifications for Road and Bridge Construction, and shall serve to further clarify and explain specific construction requirements in the Town of Portsmouth. The Planning Board may, at its option, impose additional requirements in specific situations.
- b) The developer shall, at all times during construction, ensure that all roads in which he is installing utilities are in passable condition and shall take appropriate measures to eliminate the creation of any dust or erosion nuisance during construction.
- c) All construction must proceed with erosion controls in place.
 - (1) Whenever construction is suspended for the winter or for any other reason, erosion controls shall be repaired as necessary in order to serve their intended purpose for the period of suspension.
- d) The asphalt installer must have a minimum of five years relevant experience, and be approved by the Director of the Department of Public Works in advance.
- e) Traffic passing over constructed streets shall be limited to wheeled vehicles. No tracked equipment shall be permitted.
- f) Prior to the construction of any building, the abutting road shall have, at a minimum, the Binder Course installed.

2. ROAD PREPARATION

The entire right-of-way to within three feet of the right-of-way line shall be cleared and grubbed prior to other construction, except upon approval of the Director of Public Works. Healthy trees within the right-of-way shall be left standing provided that the trunk is no more than three (3') feet from the property line. All root systems, trees, stumps, bushes and other objectionable material shall be removed and disposed off site.

- a) Earth Excavation
All earth excavations shall conform to the lines and grades as shown on the approved final plan. Any change in approved excavations due to unforeseen sub-surface conditions shall first be approved by the Director of Public Works to ensure the change does not conflict with any expressed concerns of the Planning Board. Earth excavation shall include, but not be limited to, the removal of clay, sand, gravel, loam, soft or disintegrated rock which can be removed without blasting, boulders of less than one (1) cubic yard in volume, or one-half 1/2 cubic yard in all

trenches, and other unacceptable materials within the limits of the roadway drainage, or other excavation. Earth excavation also shall include the removal of all stumps, backfilling of stump holes and other surface irregularities with suitable fill materials.

(1) Ledge and Rock Excavation

Rock and ledge excavations shall include all hard rock which can be removed by drilling or splitting by hand, by mechanical means or by blasting, and shall be removed to a depth at least twelve (12) inches below sub-grade, and, where applicable, ledge side slopes shall be at least four (4) feet vertical to one (1) foot horizontal.

b) Subsurface Water

Where ground water is encountered within three (3) feet of finished grade, adequate drainage designed by the applicant's engineer and approved by the Director of Public Works shall be constructed to lower ground water levels to a depth of at least four (4) feet below finished grade within the street right-of-way.

c) Retaining Walls

Where street and shoulder grades require more than two (2) feet of cut or fill, retaining walls may be required along abutting property lines unless an alternative is approved by the Planning Board. Details to be approved by the Planning Board.

d) Sub-Drains (On Lots)

Installation of conduits such as tile, pipe, or tubing beneath the ground surface on a lot for the purpose of diverting the ground water, to intercept or prevent water movement into a wet area, to relieve artisan pressure, to remove surface runoff, to serve as an outlet for other drains, or to replace natural subsurface drainage patterns that are interrupted or discontinued due to construction operations shall be allowed only with the written approval of the Planning Board and the supervision by the Department of Public Works. The location and design of lot sub-drains shall be indicated on the drainage plan as required in Section F. of this Article, and shall be designed according to specifications contained in the Rhode Island Erosion and Sediment Control Handbook, 1989, as amended.

3. MATERIALS

Depth of materials shall be measured after thorough compaction.

a) Base Course - The Base Course shall consist of twelve (12) inches bank run gravel borrow which conforms to the requirements of subsection M.01.09 Table I, Column I of the RI Standard Specifications plus the following:

- (1) It shall be practically free from loam, silt, clay and vegetable matter.
- (2) It shall contain no cobbles whose diameter is over three inches (3").⁴
- (3) At least fifty percent (50%) by weight of the gravel shall be of the sizes retained upon a one-quarter (1/4) inch sieve.
- (4) Not over thirty-five percent (35%) of the particles passing a one-quarter (1/4) inch sieve shall pass a No. 40 mesh sieve.

(5) Not more than ten percent (10%) of the particles passing a one-quarter inch (1/4") sieve shall pass a No. 200 mesh sieve.

(6) Recycled asphalt or recycled concrete may be used in the base course only with the written approval of the Director of Public Works, who may stipulate material and installation specifications, and who may require an analysis of material installed.

b) Base Surface - The Base Surface shall consist of processed gravel a compacted depth of two inch (2") of crushed Bank Run Gravel with a foreign content of not more than fifteen (15%) percent, which conforms to the requirements of subsection M.01.09. Table I, Column II of the RI Standard Specifications.

c) The Binder Course shall consist of one-and-one-half inches (1-1/2") of Bituminous Concrete Pavement (hot mix) Class I, Type I - 1 conforming to the requirements of subsection M.03.06 of the RI Standard Specifications.

d) The Surface Course shall consist of one-and-one-half inches (1-1/2") of Bituminous Concrete Pavement (hot mix) Class I, Type - 1 conforming to the requirements of subsection M.03.06 of the RI Standard Specifications.

4. CONSTRUCTION METHODS

a) Sub-Base - All underground sewer and water lines, utilities, laterals, service lines and related facilities shall be installed prior to any street construction. Following filling and compaction of all utility trenches, the sub-base shall be thoroughly compacted with a ten (10) ton roller or its equivalent as necessary to achieve 95% compaction, true to the lines, grades and cross sections shown on the approved drawings, and all subgrades shall be shaped on lines parallel to finished road surface. Said rolling shall provide a stable and unyielding base. All soft spots shall be excavated to firm material and brought to subgrade with gravel or other approved material.

b) Manholes and Catch Basins - All manholes, catchbasins and other underground utility access from the street surface shall initially be installed so that their tops are at Binder Course grade level, then raised to the level of the surface course upon the installation of the surface course.

c) Base Course - Bottom inspection is required before placing gravel. Grade stakes with elevation shall be in place and approved by the Director of Public Works prior to installation of gravel. Grades shall be as shown on the approved final plans. Deviations from said elevations may be approved in writing only by the Director of Public Works. After the sub-base has been properly prepared and the curbs or shoulders set, the Base Course of bank run gravel shall be spread for the full width and in such volume as to provide an twelve (12) inch cross section after compaction with a ten (10) ton roller or equivalent.

d) Base Surface - Following thorough compaction of the Base Course, processed gravel shall be spread for the full width and in such volume as to provide a two inch (2") cross section after compaction with a ten (10) ton roller or equivalent.

e) Binder Course - The Binder Course shall consist of an application of Bituminous Concrete Pavement (hot mix) Class I, Type I-1 applied as follows:

(1) The Base Surface shall be clean of all debris, protrusions shall be removed from any holes, ripples or unevenness in the surface shall be brought back to true line and cross section, prior to Binder Course application.

(2) The Binder Course shall be applied at a temperature of 250-350 degrees Fahrenheit by means of an approved paving spreader. Such material shall be placed in sufficient quantity to provide a minimum compacted cross section of one and one-half (1 1/2) inches.

(3) Compaction - The Binder Course shall be compacted as specified in section 401.03.11 of the RI Department of Transportation Standard Specifications.

(4) Six months after the application of the binder course, if the surface course has not been installed, the binder course shall be vacuum swept clean and a continuously machine applied spray type tack coat shall be applied over the binder course and an emulsion over all curbs and seams, with the approval of the Director of Public Works.

f) Surface Course

The surface course shall be installed no later than six (6) months after the binder course is completed, and after inspection and approval by the Director of Public Works. The surface course shall consist of an application of Bituminous Concrete Pavement (hot mix) Class I, Type I-1, applied as follows:

(1) The Binder Course shall be vacuum swept clean of all sand and debris, ripples or unevenness in the surface shall be brought back to true line and cross section by the spot application and proper compaction of Class I mix.

(2) The Surface Course shall be applied at a temperature of 250-350 degrees Fahrenheit by means of an approved paving spreader. Such material shall be placed in sufficient quantity to provide a minimum compacted cross section of one and one-half (1 1/2) inches.

(3) Compaction - The surface course shall be compacted as specified in Section 401.03.11 of the RI Standard Specification. Upon Completion of the application and compaction of the Surface Course, the street shall be allowed to stand for a minimum of eight (8) hours without traffic.

(4) The finished surface shall have a minimum cross-slope of 0.024 (1/4") per foot.

g) Curbing

There shall be constructed at the time of the installation of the binder course and again at the surface course a monolithic (or integral) paved "Cape Cod" berm of twelve inches (12") wide on each side of the road. The outside elevation of the berm shall be 2" above road crown elevation.

(1) Slope faced precast concrete or granite curbing meeting RI DOT Standard 7.21 may be required at intersection fillet curves in lieu of extruded Cape Cod curbing. Precast or poured concrete wheelchair ramp curbs meeting RI DOT Standard 7.19 shall be installed in areas of frequent pedestrian use as required by the Director of Public Works.

h) Seasonal Limits

No bituminous material shall be laid when the temperature of the area is under or likely to fall under 40 degrees Fahrenheit during the following 24 hours or during other unfavorable weather conditions, as may be determined by the Director of Public Works.

F. DRAINAGE1. GENERAL

Subdivision proposals shall be reviewed to determine whether such proposals will be reasonably safe from flooding. If a proposed subdivision is in a flood-prone area, such proposal will be reviewed to assure that (a) it is consistent with the need to minimize flood damage within the flood-prone area, (b) all public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage, and (c) adequate drainage is provided to reduce exposure to flood hazards by ensuring, at a minimum, that there will be *no net increase in the peak discharge rate of stormwater runoff from the site*.

a) The Planning Board may, at its discretion, require that the rate of runoff be decreased from the condition existing prior to subdivision development.

b) If a detention or retention of water is required by the Planning Board, the detention/retention areas shall be completed prior to placement of any pavement in the subdivision. The bottom of all retention, detention, sediment ponds, flood control holding and similar facilities shall be a minimum of 24" above the seasonal high water table. If a development is to be phased or roadways to be constructed sequentially per an approved Construction Sequence, then drainage facilities sufficient to handle each phase or road section shall be completed prior to placement of any pavement in said phase. In no case shall construction of any improvements be permitted until suitable and adequate drainage facilities to accommodate said construction are functional and inspected.⁵

c) Calculations, design and methods shall be done by a registered professional civil engineer in accordance with the Rhode Island Stormwater Design & Installation Standards Manual, 1993 as amended.

d) All stormwater facilities shall be protected from the buildup of sediment by use of hay bales or filter screens during construction, and cleaned out prior to release of bonds.

e) All drainage plans shall comply with the provisions of Article III, Section F pertaining to Flood Hazard Areas, as applicable.⁶

2. DRAINAGE PLAN - GENERAL

a) At the preliminary plan stage, the applicant shall establish that adequate provision is made for the disposal of surface water without significantly increasing flood hazards or creating conditions harmful to the proposed development or to the adjacent or nearby land and property. Within public water supply watershed areas, the drainage plan shall also show measures to ensure that the public water supply quality is protected. Plan shall provide for adequate and sufficient

drainage facilities throughout the course of construction and development.⁷

b) The applicant shall submit all computations in determining pre-development and post-development rates of storm water runoff to the Planning Board at the preliminary review, as further detailed in subparagraph 3 below. The Planning Board may forward the computations to a review agency or official for verification and review prior to approving the subdivision. These computations shall be based upon an analysis of peak discharge from a two, ten, and twenty-five year frequency, 24 hour duration, type III⁸ distribution storm, and shall use the methodology contained in a report entitled Urban Hydrology for Small Watersheds, Technical Release No. 55 (second Edition) USDA, Soil Conservation Service, 1986, and any subsequent amendments thereto. Where the use of the above report is not practical for reasons based on accepted engineering practice, the Planning Board may permit the use of alternate methodologies for calculating storm water discharge. Provided, however, that such alternate methodologies shall be made at the time of application for a Master Plan review. All computations shall be prepared by a professional civil engineer registered in the State of Rhode Island and the engineer's seal shall be affixed to all required documents.

c) The runoff management systems, a single component or a combination of components, must properly regulate storm discharges from the site to any outlet capable of handling the designed stormwater discharge without increasing downstream or off-site flooding, draining, soil erosion or other runoff related problems to public or private land, facilities, or water resources. Provision shall be made for maintenance of all components of the runoff management systems prior to approval of the subdivision.

d) Drainage plan must consider all runoff from lots to be developed, as well as to and from adjacent property. The grading of lots shall not be designed to excessively drain onto road surfaces. No pumping of stormwater or groundwater onto road surfaces shall be permitted.

3. CONTENTS OF DRAINAGE PLAN

A drainage plan prepared by a registered professional civil engineer shall be submitted with the preliminary plat material. It shall contain all elements required in the "Drainage and Sediment Control Measures Checklist" attached hereto according to the following:

a) Topographic map at a suitable scale of the area within a half-mile of the perimeter of the land being subdivided showing all existing and proposed floodplains, watercourses and floodways, wetlands, storm drains, culverts and all surface and subsurface drainage patterns from the property being subdivided to the ultimate discharge point of the watershed.

b) An estimate of the rate and quantity of storm water surface run-off presently flowing from the land proposed to be subdivided and that which would be generated by the proposed subdivision, calculated on the basis of a twenty-five (25) year frequently rainfall. Due to the prevailing soils types in Portsmouth, computations shall include consideration of all impervious surfaces to be created throughout the fully built-out subdivision, including roads, sidewalks, driveways and building

c) The stormwater drainage calculations, runoff rates and system design shall be based on the application of the appropriate method as follows:

- (1) The Rational Method - This method is the preferred method for small systems of 3 acres or less, where no wetlands, ponds, or other storage depressions are present, and where drainage is toward the point of analysis.
- (2) TR-55 - This is the preferred method for calculating runoff volumes, peak discharge rate, and flood storage requirements for site development between one acre and two thousand acres.
- (3) TR-20 - This is for large complex watersheds and systems beyond the scope of TR-55.

d) An analysis of the capability of existing and proposed watercourses, storm sewers, culverts and other drainage facilities within the land proposed to be subdivided to handle the run-off as calculated under (2) above, and the effect upon floodways and flood holding capacity of any floodplains.

e) Proposals for disposal of surface water run-off, downstream from the subdivision without damage to land and improvements.

f) The drainage plan shall further indicate how the following specific requirements shall be met:

- (1) That each lot shall be adequately drained.
- (2) That natural drainage patterns will be maintained whenever possible.
- (3) That all existing watercourses will be left open, unless approval to enclose is granted by the Planning Board and RIDEM.
- (4) That all new open watercourses will be seeded, sodded, or protected with stone rip rap depending on grades and soil types.
- (5) That an adequate drainage system shall be installed and connected after treatment to a defined and approved watercourse, and is designed so as to accommodate flows resulting from up to a 25-year frequency storm.
- (6) Where any part of the drainage system is proposed for location outside the public street right-of-way, provisions for future maintenance approved by the Planning Board shall be provided.
- (7) That there is or will be adequate access for Town maintenance vehicles to all drainage and stormwater facilities. That all necessary easements to off-site watercourses will be obtained by the applicant and granted to the Town of Portsmouth.

4. DRAINAGE EASEMENTS

The Planning Board may require, whenever necessary, the provision of an easement of a suitable width across any portion of the land being subdivided for the purpose of providing adequate drainage. Such easement shall guarantee access to the Town of Portsmouth to or along any proposed storm water drainage facility or watercourse and shall guarantee the right to construct, maintain or alter any such facility. See also Section M herein.

5. DETENTION/RETENTION POND SAFETY, FENCING and SCREENING

Detention/Retention ponds capable of holding water to a depth of 24 inches or more for a period of 24 hours or more shall be enclosed by a five foot high green vinyl clad chain link fence, unless the Planning Board deems otherwise. All slopes shall be no greater than 3:1. The Planning Board, at its discretion, may require additional vegetative screening, particularly where such ponds are regularly visible from nearby residences.

6. EVALUATION OF DRAINAGE PLAN BY BOARD

In the preparation of a Drainage Plan, the applicant is encouraged to consider measures or construction techniques that can be used to control peak discharges from the development through planned run-off delay and infiltration into the ground. The Planning Board will consider the character of the area being developed, existing ground cover, the likelihood of damage due to flooding and the character of nearby properties. At the preliminary plat stage, it will indicate whether measures to reduce either the volume or the rate of run-off are necessary to achieve desired objectives.

The Board may, after its review of the proposed drainage plan, require that the following provisions apply:

- a) Future-condition storm water run-off discharge do not exceed present condition discharges into the floodway as calculated up to a 25-year frequency storm.
- b) Development be prohibited within the floodway which will result in any increase in flood levels during the occurrence of a 25-year frequency storm discharge.
- c) That there is no reduction in the holding capacity of the 100-year flood plain.
- d) All construction of drainage and flood protection systems and all development within areas subject to flooding are adequately designed so as to withstand a 100-year frequency storm.
- e) Every lot be located so as to provide an area for construction of a residential building which is not within a river line floodway.

7. STORM DRAIN PIPING, CATCHBASINS, AND MANHOLES

Any connection to an existing public storm drainage system shall be allowed only with the approval of the Planning Board and the Director of Public Works, as applicable.

All necessary surface and sub-surface storm drainage structures and facilities shall conform to the R.I. Standard Specifications for Road and Bridge Construction. Such Standard Specifications may be modified at the discretion of the Planning Board.

The Planning Board may require that surface and sub-surface storm drainage pipes and facilities be installed and connected to dry wells or watercourses, to retention or holding ponds, or to an existing public storm drainage system.

a) Drainage Pipes

(1) All pipes shall be reinforced concrete with gasketed seals. Minimum pipe size shall be 12" in diameter for laterals and 18" in diameter for all other drainage pipes.⁹

(2) Where pipe culverts are required across private drives, the applicant shall furnish and install said culverts and provide drives or roads to the road or highway.

(3) All drainage lines are to be saw cut, so as to be flush with the inside surface of the catch basin.

(4) Excavation, Fill and Compaction - Compaction shall be in accordance with R.I.D.O.T. Standard Specifications for Road and Bridge Construction. The installation of the pipe shall be surrounded in six inches of clean broken stone which shall be at least 1/4 inch and not more than 1 1/2 inches in size. The pipe shall be laid true to line and grade, and joints sealed with a commercial gasket approved for drainage pipe used.

(a) In the event that groundwater is encountered during excavation the drainage trench shall be excavated only as fast as the pipe can be installed, with the bottom of the trench being excavated six inches below the elevation at which the pipe will be laid.

(5) Minimum Cover - All subsurface storm drainage pipes within street rights-of-way shall have a minimum cover of three (3) feet. All drainage structures and facilities shall be inspected and approved by the Director of Public Works before covering.

b) Manholes and Catch Basins

Catch basins shall be R.I. Standard 4.31 Type "R" or as directed by the Director of Public Works.

(1) Storm Drain Manholes or Catch Basins shall be located:

- (a) At maximum separation of two hundred (200) feet;
- (b) At all angles in the storm sewer line;
- (c) At all existing and new street intersections and all points where catch basins, inlets or laterals are to be connected;
- (d) At points where pipe sizes change;
- (e) At points where the grade of the storm sewer changes;
- (f) At the bottom of any hill or other significant slopes over 10%.

(2) Notwithstanding State specifications, all catch basins and manholes shall be of pre-cast concrete with neck for frame and cover, and equipped with gaskets at all entrances. Frames and covers shall be as specified by the DPW. Larger catch basins may be required by the Director of Public Works and approved by the Board.

(3) In the event that a catch basin is over six (6) feet deep, metal rungs 3/4" thick shall be set in the side of the basin approximately 12 to 18" apart or as directed by the Director of Public Works.

(4) All manholes, catch basin and other underground utility access from the street surface shall initially be finished to be level with the surface of the binder course, then raised to the level of the surface course upon the installation of the surface course.

(5) Cleanout

Piping manholes and catch basins shall be installed as required and cleaned out prior to release of bonds.

(6) Where drainage pipes are 48" or larger, catch basins shall be approved by the Planning Board.

(7) All outgoing catch basin inverts shall be at least three inches (3") or 0.25 ft. lower than incoming catch basin inverts.

G. EROSION AND SEDIMENT CONTROL

1. A plan meeting the requirements of the Portsmouth Soil Erosion and Sediment Control Ordinance must be filed and approved prior to subdivision preliminary approval for a major subdivision, and before final approval for minor subdivision.

2. All erosion and sediment controls shall be in place prior to the start of construction. Such controls shall be placed to minimize the flow of sediment onto other properties and into catch basins. All catch basins, sediment ponds, hay bales and other structures which may have collected sediment shall be cleaned out after the binder course is approved and prior to release of securities posted to guarantee proper installation of public improvements.

3. The Planning Board may require the following measures to be employed where necessary, and shall be shown upon preliminary subdivision plans:

- a) Sediment in run-off water shall be retained on the site insofar as possible by the use of debris basins, sediment basins, silt traps, or similar measures.
- b) Stripping of vegetation, regrading, cut/fill operations, and extent of disturbed areas shall be kept to a practical minimum. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.
- c) Natural slopes and existing contours shall be retained insofar as possible when locating streets, drainage and structures. No grading or siting shall create conditions which would create insufficient drainage or the likelihood of soil erosion.
- d) Grading plans for individual lots in the subdivision may be required by the Planning Board where it feels there is a reasonable likelihood of erosion, drainage or siting problems.
- e) Lot Slopes - No earth, gravel or sand slope shall exceed a 3 horizontal to 1 vertical ratio without the use of cribbing, a retaining wall or similar structure.

- f) Where the volume and/or velocity of the surface water run-off is high, discharge points shall be adequately protected against erosion or scour.

H. PUBLIC WATER, POWER, LIGHTING AND COMMUNICATION UTILITIES

There shall be filed with the preliminary plat a plan and profile of all contemplated underground utilities and construction. All electricity and gas lines, street lighting lines, telephone, cable and other communication lines shall be installed underground. In cases where underground installation is not feasible due to the physical condition of the site or other limiting factors, an alternative location for these lines, including above ground, may be approved by the Planning Board.

1. PHYSICAL LOCATION

- a) Electrical, Lighting and Communication Utilities shall be located in the west and south shoulders of the street right of way. Such facilities shall be located five (5) feet from the property line and shall have thirty-six (36) inches of cover.
- b) Gas facilities shall be located in the north and east shoulders. In general, they shall be located seven (7) feet from the property line. Gas lines shall be installed at a depth of sufficient to require thirty-six (36) inches of cover.
- c) Water mains shall be located in the north and east shoulders off the paved roadway, as determined by the public water supply agency. In general, they shall be located four (4) feet from the property line.
- d) All utilities shall be marked one foot above the individual utility with a metallic marking tape.

2. INSTALLATION

- a) Installation of all underground utilities shall be performed according to the rules and regulations of the appropriate utility company. Prior to preliminary approval of any subdivision the applicant shall furnish a letter from the appropriate utility companies indicating concurrence with the plan for installation of the utility.
- b) All backfill and compaction for excavations which are located or may be located under road pavements shall be compacted in six inch (6") lifts by mechanical means such as tamping, or by puddling or jetting to a minimum of 95% compaction.
- b) Utility Manholes shall be of pre-cast concrete with neck for frame and cover. Frames and covers shall be as specified by the utility companies.
- c) All utilities shall be installed, inspected and approved prior to the installation of the binder course of road pavement.

3. Any deviation from these requirements shall be approved in writing by the Public Works Director.

4. Each public utility company shall supply the other public utility companies with an "as built mylar plan" of their facilities.

Each public utility company shall also supply the Director of Public Works and the Planning Board with one (1) copy each of the above mentioned "as built mylar plans".

5. STREET LIGHTING

The developer shall provide for street light installation as recommended by the responsible public utility company and approved by the Planning Board. These regulations are not intended to install street lighting until approved by the Town Council. For each street light not installed, prior to release of the bond, the developer shall deposit with the Finance Director a fee commensurate with that installation. The Public Works Director will then be responsible for installation of the light at the appropriate time.

6. PUBLIC WATER SUPPLY

a) Public water in Portsmouth is provided by either the Portsmouth Water and Fire District, the Newport Water Department, or the Prudence Island Utilities Corporation. In subdivisions situated within a water district or water company franchise area, water mains and water services to each lot or building site shall be installed as approved by the public water authority. Where the public water authority does not approve installation of water mains and water services to each lot or building site, conduits for such possible future water supply shall be installed to avoid future road excavations. Specifications for installation of public water supply lines shall be determined by the applicable agency. Approval of plans for the installation of public water supply lines, if any, shall precede final approval or recording of any plat by the Planning Board. Inspection of installed water lines shall be done by the appropriate water supply agency, notification of which shall be as provided in Section N herein.

b) Water mains in any subdivision shall be located off the paved roadway. Where water mains or conduits are installed in any subdivision, the water service or conduits shall be installed from the water main to each and every lot which is on the side of the road in which the main is not installed, before any roadway pavement or surface is installed.

c) Fire Hydrant location and maximum spacing, the number of hydrant ports and thread type shall be approved by both the public water authority and the Chief of the Fire Department, according to their regulations and practices.

d) Detailed plans for the installation of public water mains and hydrants shall be reviewed and approved by the appropriate public water authority prior to the approval of the preliminary and final plans by the Planning Board. Said approved plans shall be submitted to the Administrative Officer and the applicant's civil engineer shall certify that subdivision plans and water supply plans coincide.

(1) No final plan shall be approved or recorded without sufficient evidence of approval by the appropriate public water authority, unless the applicant certifies in writing that the development will not be served by public water.

7. COORDINATION

It shall be the applicant's responsibility to ensure that the Town and the appropriate utilities agree to the same set of plans and coordinate their inspection activities.

I. STREET NAMES and STREET SIGNS

1. All street names must be submitted to the Fire Department for preliminary approval and evidence of such preliminary approval shall be submitted to the Planning Board for final approval.

- a) New street names shall be substantially different in sound and spelling from existing street names in the Town.
- b) Street names shall be continued on extensions of existing streets, and on new streets which begin or end directly across from the terminus of an existing street.

2. The developer shall furnish and install street name signs at all street intersections. Traffic control signs such as "Stop", "Slow Children", "No Parking" and their locations shall be specified by the Chief of Police and recorded in the NOTES section of the plans.

- a) Street name and traffic control signs with supports, of a type acceptable to the Director of Public Works shall be provided and erected by the applicant at each street intersection in the subdivision.
- b) A portion of the Performance Bond shall be retained until street signs are erected.
- c) As an alternate, for each sign not installed, prior to release of the bond the developer shall deposit with the Finance Director a fee commensurate with that installation. The Director of Public Works will then be responsible for installation of the sign(s) at the appropriate time.

J. LANDSCAPING STANDARDS

A landscaping plan may be required as part of site plan and subdivision design as part of Master Plan approval for major subdivisions. It shall be conceived in a total pattern throughout the site, integrating the various elements of site design, preserving and enhancing the particular identity of the site and creating a pleasing site character.

Landscaping may include plant materials such as trees, shrubs, ground covers, grass, flowers, etc. but may also include other materials such as rocks, stone walls, paving materials, planters, signage, and street furniture.

1. REQUIREMENT FOR LANDSCAPE PLAN

A landscape plan shall be submitted to the Planning Board when the Board determines that (a) existing landscaping is insufficient; (b) the site of the proposed subdivision would be disturbed so as to require significant new vegetation; or (c) additional landscaping is necessary to protect, preserve, or enhance significant visual characteristics of the site.

- a) If a requirement for a landscape plan is required by the Board, the applicant shall be advised of this requirement at the preliminary review stage of an administrative or minor subdivision, and at the master plan stage of a major subdivision.

b) Areas which may be required to provide landscaping shall include, but are not necessarily limited to the following:

- Drainage facilities, such as retention/detention basins, or drainage swales.
- Entrance features.
- Open space areas.
- Proposed recreation facilities.
- Buffer areas.
- Lot areas which are disturbed during the construction process or where extensive grading removes a significant amount of natural vegetation.
- Areas subject to regrading or stabilization for soil erosion and sediment control purposes for soil stabilization.

2. LANDSCAPE PLAN AND DESIGN

The plan shall identify existing and proposed trees, shrubs and ground covers; natural features such as stone walls and rock outcroppings; man-made elements such as retaining walls, fences, signs, planters, etc.; proposed grading at two-foot contour intervals; lighting; specifications for loaming, fertilizing and seeding; and other proposed landscaping elements. The plan shall indicate the location of all proposed landscaping and shall include construction details as necessary.

- a) Reasonable landscaping should be provided at site entrances, in public areas, and adjacent to buildings. The type and amount of landscaping required shall be allowed to vary with type of development.
- b) The plant or other landscaping material that best serves the intended function shall be selected. Landscaping materials shall be appropriate for the local environment, soil conditions, and availability of water. The use of grasses that require minimal watering and fertilization is encouraged, particularly in areas that are ecologically sensitive.
- c) A planting schedule shall be included to indicate proposed planting by species, size at time of planting and maintenance requirements. Where existing plantings are to be retained, the plan shall indicate proposed methods of protecting them during construction.

K. SIDEWALKS

Under certain conditions the Planning Board may require the installation of sidewalks where pedestrian traffic is likely, such as near schools, playgrounds, shopping areas, or high traffic volume streets. Location, width and specifications to be set by the Planning Board.

L. EASEMENTS

Easements may be required by the Planning Board where necessary for the proper location and placement of improvements on private land as described below. The Board may, in its own discretion, require the dedication of land to the Town in lieu of easements if such dedication would provide greater control over and

access to the intended use. All easements shall be duly recorded with metes and bounds and legal description. Easements may be required for:

1. Water Line Easements

Easements across lots or on rear or side lot lines shall be provided for public water mains where required for looping of the water system, as determined by the public water authority. The Planning Board may require, as advised by the public water authority, permanent easements plus temporary construction easements. The nominal width for water line easements shall be twenty feet (20').

2. Drainage Easements

Easements to install and maintain underground drainage facilities on private land shall be dedicated to the Town where required. The nominal width for such a drainage easement shall be twenty (20) feet. Where above-ground drainage flows are directed over private property which does not contain natural watercourses or wetlands, or where publicly owned and maintained drainage systems outfall on private land, a drainage easement shall be dedicated to the Town over the area and at a location adequate for the intended purpose. Easements into and upon above-ground drainage facilities such as stormwater detention or retention basins shall be granted to the Town wherever stormwater from Town-owned streets or other improvements is intended to be directed to such basins.

- a) Any required road drainage easements or right of way recommended by the Director of Public Works shall be approved by the Planning Board and obtained by the applicant and be not less than twenty (20) feet wide. Easement piping to be no greater than five (5) feet from the center line of the easement.

3. Grading Easements

The Planning Board may require the dedication of an easement to the Town in order to grade or to maintain grading on private property where such grading is necessary to establish or maintain adequate drainage, sight distances, or topographic features required as a condition of subdivision approval.

4. Sight Distance Easements

Where deemed necessary by the Planning Board to establish or maintain adequate sight distances for vehicular traffic, the dedication of an easement to the Town may be required which would prohibit the erection or maintenance of any visual obstruction.

5. Bicycle or Pedestrian Access Easements

Bicycle and pedestrian access shall be provided, where required by the Planning Board, on a separate strip of land dedicated to the Town or on an easement having a minimum width of 10 feet.

6. Other Easements

At the discretion of the Planning Board, all other required easements shall be of sufficient width and area for the intended purpose. All utility easements shall be a minimum width of 20 feet and contain at least one concrete bound. Utilities shall be located on the centerline of all easements.

M. MONUMENTS

1. Every preliminary and final plan shall show the proposed location and nature of all permanent monuments.
2. **PLACEMENT AND INSTALLATION**
 - a) Monuments shall be placed by a Registered Land Surveyor on the street line at the beginning and end of all horizontal curves on both sides of each subdivision (public) street and shall not be more than five hundred (500) feet apart.
 - b) Monuments shall be of granite or concrete, at least 36 inches long, and set flush with the finished grade of the landscaped shoulder.
 - c) Monuments shall be installed, before the performance bond is released, in accordance with practices set forth by the R.I. Board of Professional Surveyors.

N. GENERAL CONSTRUCTION PROCEDURES - INSPECTIONS

Each phase or step in the construction of required improvements listed below shall be inspected and approved, in writing, on the site by the Director of Public Works or his representative. No subsequent phase or step shall commence until such inspection and approval of the prior phase or step has been completed. The following procedures shall be followed by the subdivider and by contractors under the direction of the subdivider in the construction of any subdivision or related improvement:

1. **PRE-CONSTRUCTION MEETING**

A pre-construction meeting shall be held with the Director of Public Works, the Administrative Officer,¹⁰ and the inspector, if any, hired by the Town to inspect the job at least seven (7) days prior to the start of any subdivision improvements. The subdivider (or his duly authorized representative) and the on-site project manager shall attend this meeting.

2. **REQUEST FOR INSPECTION**

Whenever an inspection is required the developer shall request the Director of Public Works to make such inspection. The Director of Public Works or his representative shall within 48 hours exclusive of Saturday, Sunday and holidays, make such inspection and give to the developer written approval or disapproval of the improvements inspected by him. No subsequent step or phase shall commence until an inspection has been made and approval granted.

3. **MANDATORY INSPECTIONS:**

- a) During and following installation of all underground drainage and utilities, prior to backfilling.
- b) During and following preparation of the sub-base, backfilling and the installation of curbing or shoulders, prior to the application of the base course. A compaction test by a competent independent inspection lab shall be provided after the installation of the sub-base, in locations determined by the Director of Public Works. Bottom inspection is required before placing gravel. Grade stakes with elevation shall be in place and approved by the Director of Public Works prior to installation of gravel.

- c) During and following spreading and compaction of the base course of the roadway, prior to the application of the binder course.
- d) Immediately prior to and during the application and compaction of the surface course on the roadway and sidewalks. A bore core by a competent independent inspection lab shall be provided after the installation of the surface course, in locations determined by the Director of Public Works.
- e) During and following completion of all improvements and installation of monuments.
- f) At periodic intervals as required to ensure compliance with the approved Erosion and Sediment Control Plan.
- g) Final Inspection immediately prior to release of any and all bonds or portions thereof.

4. ADDITIONAL INSPECTIONS

The Planning Board, as part of its approval conditions, or the Director of Public Works, at their discretion, may require inspection at such other intervals or for installation of other improvements which they may deem necessary to assure proper construction and installation of improvements.

5. FIELD VERIFICATION

Notwithstanding the provisions of this Article, the developer's engineer shall be responsible for verifying all field elevations and grades, plus locations of manholes, underground utilities and piping. The developer's engineer shall be responsible for ensuring that construction is done in accordance with the approved plans and specifications, as well as the requirements of these regulations. The developer's engineer shall submit reports on the progress of construction to the DPW Director, with copy to the Administrative Officer, as reasonably required by the DPW Director, not less than weekly and at critical junctures as directed at the preconstruction meeting.¹¹

6. INSPECTION AUTHORITY

The Director of Public Works shall have the authority to issue a "cease and desist order" on construction of required improvements if he finds that work is not being done in a satisfactory manner or according to approved plans. The results of all inspections shall be reported to the Planning Board in writing.

O. CONSTRUCTION AND/OR IMPROVEMENT GUARANTEES

1. DEFINITION AND PURPOSE

An *improvement guarantee* is a security instrument accepted by the Town to ensure that all improvements, facilities, or work required by these Regulations or as a condition of approval of a subdivision plan by the Planning Board will be completed in compliance with the approved plans and specifications.

Improvement guarantees shall be provided to ensure the proper installation and maintenance of required street, utility, drainage and other physical improvements and to ensure compliance with other nonstructural conditions of final plat approval (if any). The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the subdivider.

2. GENERAL PROCEDURES

Before any land development or subdivision plan is endorsed by the Planning Board, and before the recording of any subdivision plats, the Planning Board shall be required to approve agreements for the completion of all required improvements.

a) The provisions of subparagraphs 3 through 6 of this Article, below, shall apply for financial guarantees of public improvements.

b) Improvements that are proposed to be privately owned and maintained, such as, but not limited to, streets, utilities, and drainage systems, may be covered by an improvement guarantee if required by the Board.

3. PROCEDURES FOR FINANCIAL GUARANTEES

a) Amount

Improvement guarantees shall be in an amount sufficient to cover all costs and conditions to secure for the Town the actual construction and complete installation of all of the required improvements for active subdivisions or phases thereof as appropriate, and the satisfactory completion of all conditions of final approval within the time periods required for completion provided in subparagraph b) of this subparagraph below. The amount of the bonds shall be set by the Planning Board. If the subdivider disagrees with the amounts, he/she shall have the opportunity to submit a detailed estimate along with supporting justification for the proposed revisions. The Board may set the guarantee in a reasonable amount in excess of the estimated costs in order to anticipate for increases in economic or construction conditions.

At the expiration of the final plan approval period, if all required improvements are not complete, the Planning Board shall review the status of improvements and may (1) require the subdivider to extend the duration of the entire improvement guarantee; (2) reduce the amount of the improvement guarantee to cover the estimated costs of remaining improvements; or (3) authorize the Administrative Officer to take the steps necessary to ensure completion of the remaining work by using improvement guarantee funds.¹²

If at any time during the guarantee period the procedures, implementation measures, methods, materials, and/or schedules of construction are determined by the Planning Board not to be in compliance with the approved plans, the Board may, after proper notification to the subdivider, authorize the use of improvement guarantee funds to ensure proper compliance.

b) Time Period

All performance guarantees shall contain starting and ending dates. No Performance Guarantee shall automatically expire before construction is completed. All construction covered by a Performance Guarantee under subparagraph c) below shall be completed within twenty four (24) months after the Planning Board endorses the Final Plat.

c) Required Form

The security shall be in the form of a financial instrument acceptable to the Finance Director and approved by the Town Solicitor, and shall enable the Town to gain immediate access to the secured funds within the period stipulated in the guarantee, for cause. Performance covenants shall run with the land, such that the ownership if all or a portion of subject land is transferred, the new owner shall be subject to the provisions of the performance covenant. Performance and maintenance guarantees may be provided by one of the following:

- (1) Security bond. The subdivider may obtain an irrevocable security bond from a surety bonding company authorized to do business in the State of Rhode Island.
- (2) Letter of credit. The subdivider may provide an irrevocable letter of credit from a bank or other financial institution.
- (3) Escrow account. The subdivider may deposit cash, or other instruments readily convertible into cash at face value, either with the Town or in escrow with a bank.

d) Recording of Performance Covenant and Sale of Lots

Before endorsement of its approval of the Final Plan, the Planning Board shall require a Performance Covenant from the applicant which shall ensure construction of ways and the installation of municipal services in accordance with the applicable Subdivision Regulations and conditions set by the Board. The Performance Covenant and endorsed Final Subdivision Plan shall be recorded with the Town Clerk. Lots shall not be released to allow sale or building unless performance is secured by any of the three (3) methods described above, which method or combination of methods may be selected and varied by the Board, and required improvements have been installed as stipulated herein.

e) Releases

Release of security shall be conditioned on the satisfactory completion of construction and installation of required improvements to the land within two (2) years of the date of final approval. At the expiration of the final plan approval period, if all required improvements are complete and satisfactory as-built drawings have been received, any improvement guarantee shall be returned to the subdivider, subject to the recommendation of the Planning Board and approval by the Town Council. Partial releases or reductions in the guarantee amount may also be authorized prior to the expiration of final approval. A written request for release or reduction of any improvement guarantees shall be made to the Administrative Officer. After satisfactory inspection of all required improvements, the Director of Public Works shall recommend in writing to the Planning Board, which may then recommend to the Town Council to (a) authorize the Finance Director to return all improvement guarantees to the subdivider, (b) that the amount of the guarantee being held by the Town be reduced to cover the estimated cost of remaining improvements; or (c) that no releases or reductions be made. No reduction in the amount of the security at any one time shall be greater than fifty percent (50%) of the total

amount of the initial improvement guarantee, nor shall the cumulative reductions reduce the security to less than 50% of the initial improvement guarantee prior to final release of the guarantee. The Planning Board may, in its sole discretion allow a reduction in the amount of the initial improvement guarantee one time only prior to the provision of the security instrument by the developer.¹³

f) As-Built Drawings

Within 30 working days of completion of construction of all required improvements, and before the performance guarantee is released and the maintenance bond is accepted, the developer shall furnish two sets of transparent mylar as-built drawings of required improvements to the Administrative Officer. Additionally, a complete set of As-Built Drawings showing all changes made to the original construction plans shall be provided to the Administrative Officer. The As-Built Drawings shall be marked "As-Built Drawing" and shall be certified by a registered professional civil engineer or a registered land surveyor.

g) Phased Subdivisions

In the case of land development projects or subdivisions which are approved and constructed in phases, the Planning Board shall specify improvement guarantees related to each particular phase. If any off-site improvements or other improvements or conditions which are not directly related to a particular phase are required as a condition of approval, the Board shall, in setting the guarantee amount for each phase, clearly specify when such guarantees are to be provided.

h) Acceptance of Improvements

(1) Upon completion of all required improvements, the subdivider shall convey all public improvements to the Town for ownership and maintenance. Private facilities, such as open space and privately maintained drainage systems shall not be conveyed to the Town. The applicant shall first request the Department of Public Works to conduct a final inspection as provided in Article X Section N. The Director of Public Works shall certify to the Administrative Officer in writing that all required improvements have been satisfactorily completed.

(2) The applicant shall also request, in writing to the Administrative Officer, that public improvements, streets, land, easements or other facilities be accepted by the Town. This request shall contain a description of all facilities to be accepted and shall be accompanied by an accurate legal description of all streets, easements, land or other facilities by metes and bounds and by reference to the final plat drawing(s) and by a warranty deed transferring ownership to the Town and describing any special conditions or other requirements.

(3) Upon certification of completion of all required improvements, and upon receipt of all required information from the applicant, the Administrative Officer shall place the request for acceptance on the next available agenda of the Planning Board. If all requirements of these Regulations have been met by the applicant, the Planning Board shall recommend acceptance by the Town Council of all such improvements to be dedicated to the Town, and shall transmit such recommendation to the Town Council in writing. In such recommendation for acceptance by the Town Council, the Planning

Board shall also recommend an amount for a maintenance bond in accordance with these Regulations and shall recommend to the Town Council that no public improvements or facilities be accepted for ownership and maintenance until such maintenance bond has been submitted as required in subparagraph 4 of this Section.

(4) Upon their acceptance by the Town Council, all improvements to be dedicated to the Town shall be permanently owned and maintained by the Town as part of the municipal system and the subdivider shall be no longer responsible for their care, repair, or maintenance.

4. MAINTENANCE GUARANTEES

Prior to acceptance of the improvements for maintenance by the Town and release of the security, the applicant shall be required to file with the Finance Director a maintenance bond equal to five percent (5%) of the total surety amount, guaranteeing the proper functioning and durability of all improvements for a period of one (1) year after the date of their acceptance by the Town. At the end of the one-year maintenance period, the Director of Public Works shall inspect all improvements subject to the guarantee and shall certify in writing to the Administrative Officer as to their condition. If found to be unacceptable, the Administrative Officer shall recommend an extension of the guarantee period to the Finance Director, and the original funds shall not be returned to the subdivider. If public improvements are in good condition and have not been damaged due to the fault of the subdivider, or through faulty workmanship or design, the maintenance guarantee shall be returned to the subdivider.

a) In cases where the Planning Board finds there are extenuating circumstances, the initial maintenance period may be established for a period longer than one year. The reasons for establishing a longer maintenance period and the nature of the extenuating circumstances shall be made a part of the record.

5. EXTENSION OF TIME

If, due to circumstances beyond the control of the applicant, the construction of required improvements to the land cannot be completed within the prescribed time, the Planning Board may grant a time extension for legitimate reason, for a period of time determined by the Planning Board to be appropriate to ensure satisfactory completion of all improvements. During such time extension, all guarantees shall remain in full force and written performance guarantees shall be extended for same amount of time. Such requests for an extension of time shall be made in writing to the Planning Board at least ninety (90) days prior to expiration of the original security.

6. DEFAULT

a) Condition of Default

The Town of Portsmouth shall hold the applicant and surety in default of guarantee should any one or more of the following conditions occur:

(1) Failure to comply with all specifications for construction, inspections, and/or required improvements to the land.

- (2) Failure to properly notify the Director of Public Works on the beginning and completion of all phases of construction of required improvements to the land.
- (3) Failure to protect existing improvements and/or properly repair such improvements should any damage occur during the construction within the subdivision.
- (4) Failure to remove all debris from the site and adjacent areas immediately and upon completion of construction with the subdivision and/or as directed by the Director of Public Works.
- (5) Failure to complete the required improvements to the land within the time prescribed by these Rules and Regulations.

b) Certificate of Default

Should any of the conditions cited in subparagraph 6.a) above occur, the Director of Public Works shall certify in writing to the Planning Board that the subdivider has not complied with the requirements of the Subdivision Rules and Regulations. The Director of Public Works shall further certify the extent of non-compliance and the conditions thereof.

c) Execution of Guarantee

The Planning Board shall under the provisions of Title 45, Chapter 23.46, of the General Laws of Rhode Island, 1992, as amended, execute only that portion of the guarantee which shall be necessary to correct the deficiency for which the subdivider and surety are held in default.

d) Payment by Surety

Upon notification to the surety by the Planning Board that the subdivider has been held in default of guarantee, the surety shall promptly pay to the Town of Portsmouth that portion of the guarantee which shall be necessary to correct the deficiency for which the subdivider and surety are held in default.

P. INSURANCE

The applicant shall be required to provide to the Town insurance sufficient to indemnify the Town of Portsmouth against any claims for damage to property or personal injury, including coverage for all persons authorized in Article V. Section E. to inspect the improvements on behalf of the Town, which may occur on the property being subdivided as a result of any construction activity required as a condition of subdivision approval. Such insurance shall be submitted to the Administrative Officer for review prior to endorsement of the plat by the Planning Board, and shall remain in full force and effect during the construction period.

Q. INSPECTION FEES

Two percent (2%) of the total estimated cost of all required public improvements as estimated in accordance with the procedure established in Section O. shall be paid to the Town for deposit in an account to be used to pay for inspection services. Inspection fees shall be paid in full before final approval by the Planning Board or recording of the plat, or phase thereof, or in any case prior to any construction, for which there will be

public improvements requiring inspection. The Planning Board may require the developer to pay additional inspection fees based on actual costs should the 2% fee be insufficient. Inspection, verification and preparation of reports by the developer's engineer shall not be compensable out of the 2% inspection fee.¹⁴

R. OTHER FEES

Other fees shall be paid in accordance with a separate fee schedule adopted by the Portsmouth Town Council.

¹ Added 4/29/98

² Adopted : June 23, 1999

³ Changed 4/29/98 from '6 TRAFFIC SENSITIVE DISTRICTS – RESTRICTION OF ACCESS

When a tract fronting on a public street designated herein or in the Town's Zoning Ordinance as in a "Traffic Sensitive District" is to be subdivided into more than 10 lots, the Planning Board may require that the lots adjoining the existing street be provided with frontage on a Marginal access street, and that access to the public street be required.'

⁴ Changed 4/29/98 from '(2) It shall contain no Cobbles whose diameter is over (2/3) the depth of the course being laid'.

⁵ Changed 4/29/98 from '(b) If a detention or retention of water is required by the Planning Board, the detention/retention areas shall be completed prior to construction of any improvements in the subdivision. The bottom of all retention, detention, sediment ponds, flood control holding and similar facilities shall be a minimum of 24" above the seasonal high water table.'

⁶ Added 4/29/98

⁷ Last sentence added 4/29/98

⁸ Changed 4/29/98 from type II

⁹ Changed 4/29/98 from '(1) All pipes shall be reinforced concrete with gasketed seals. Minimum pipe size shall be 12" in diameter.'

¹⁰ Added 4/29/98

¹¹ Last two sentences added 4/29/98

¹² Changed 4/29/98 from 'a) Amount Improvement guarantees shall be in an amount sufficient to cover all costs and conditions to secure for the Town the actual construction and complete installation of all of the required improvements, and the satisfactory completion of all conditions of final approval within the time periods required for completion provided in subparagraph b) of this subparagraph below. The amount of the bonds shall be set by the Planning Board. If the Subdivider disagrees with the amounts, he/she shall have the opportunity to submit a detailed estimate along with supporting justification for the proposed revisions. The Board may set the guarantee in a reasonable amount in excess of the estimated costs in order to anticipate for increases in economic or construction conditions. However, the amount of such increase shall not exceed 120 percent of the estimated cost of improvements.

¹³ Last sentence changed 4/29/98 from 'No reduction in the amount of the security at any one time shall be greater than fifty percent (50%) of the total amount of the security.'

¹⁴ Last sentence added 4/29/98

ARTICLE XI. ADOPTION OF REGULATIONS AND AMENDMENTS**A. AUTHORITY TO CREATE AND ADMINISTER REGULATIONS.**

The Planning Board is empowered to adopt, modify and amend regulations and rules governing land development and subdivision projects within the Town of Portsmouth and to control land development and subdivision projects pursuant to those regulations and rules.

B. PROCEDURE FOR ADOPTION AND AMENDMENT.

1. The Planning Board shall adopt or repeal, and provide for the administration, interpretation, and enforcement of land development and subdivision review regulations.

2. Provisions of these regulations and appendices may incorporate maps, and other technical and graphic material. These regulations, and all the amendments thereto, shall be consistent with all provisions of the Rhode Island Land Development & Subdivision Review Enabling Act of 1992, as well as Portsmouth's Comprehensive Plan and Zoning Ordinance.

C. PUBLIC HEARING AND NOTICE REQUIREMENTS.

1. No regulations shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the Planning Board. The Planning Board shall first give notice of the public hearing by publication of notice in a newspaper of general circulation within Portsmouth at least once each week for three (3) successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held. At this hearing opportunity shall be given to all persons interested to be heard upon the matter of the proposed regulations. Written notice, which may be a copy of the newspaper notice, shall be mailed to the Associate Director of the Division of Planning of the Rhode Island Department of Administration at least two (2) weeks prior to the hearing. The newspaper notice shall be published as a display advertisement, using a type size at least as large as the normal type size used by the newspaper in its news articles, and shall:

- a) Specify the place of said hearing and the date and time of its commencement;
- b) Indicate that adoption, amendment or repeal of these regulations is under consideration;
- c) Contain a statement of the proposed amendments to the regulations that may be printed once in its entirety, or may summarize or describe the matter under consideration;
- d) Advise those interested where and when a copy of the matter under consideration may be obtained or examined and copied; and
- e) State that the proposals shown thereon may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any such alteration or amendment must be presented for comment in the course of said hearing.

2. Notice of the public hearing shall be sent by first class mail to the Planning Board of any municipality where there is a public or quasi-public water source, or private water source that is used or is suitable for use as a public water source, located within two thousand feet (2,000') of the municipal boundaries.
3. Notice of a public hearing shall be sent to the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or surface watershed that is used or is suitable for use as a public water source located within either Portsmouth or two thousand feet (2,000') of the municipal boundaries, provided, however, that a map survey has been filed with the building inspector, which shall be kept as a public record, showing areas of surface water resources and/or watersheds and parcels of land within two thousand feet (2,000') thereof.
4. No defect in the form of any notice under this section shall render any regulations invalid, unless such defect is found to be intentional or misleading.
5. The above requirements are to be construed as minimum requirements.

D. PUBLICATION AND AVAILABILITY.

1. Printed copies of these regulations shall be available to the general public and shall be revised to include all amendments. Any appendices shall also be available. A reasonable charge may be made for copies.
2. Upon publication of these regulations and any amendments thereto, the Planning Board shall send a copy to the Rhode Island Department of Administration's Division of Planning and

ARTICLE XII. ADMINISTRATION

A. THE ADMINISTRATIVE OFFICER

1. Administration of these Regulations shall be under the direction of the Administrative Officer, who shall report to the Planning Board.

2. The Administrative Officer shall be appointed by and serve at the pleasure of the Planning Board. He/She shall oversee and coordinate the review, approval, recording and enforcement provisions of these Regulations. The Administrative Officer shall serve as the chair of the Technical Review Committee, if any. The minimum qualifications for this position shall be at least (a) high school graduation with 5 years of direct experience in land use planning and site plan review, or (b) a member of the Planning Board.

3. The Administrative Officer shall be responsible for coordinating reviews of proposed land development projects and subdivisions with adjacent municipalities as is necessary to be consistent with applicable federal, state and local laws and as directed by the Planning Board.

4. Enforcement of these Regulations shall be under the direction of the Administrative Officer. The officer shall be responsible for coordinating the enforcement efforts of the zoning enforcement officer, the building inspector, planning staff, the department of public works and other local officials responsible for the enforcement or carrying out of discrete elements of these Regulations.

B. TECHNICAL REVIEW COMMITTEE

1. The Planning Board, may, at its discretion, establish a Technical Review Committee to conduct technical reviews of specific applications subject to their jurisdiction on an as-needed basis. The Administrative Officer shall serve as chair. Membership of this subcommittee shall be as established by the Planning Board.

2. The Technical Review Committee's responsibilities shall include all reviews required or requested by the Planning Board or the Administrative Officer.
 - a) The timing and minimum content of such reviews shall be as required in Articles III through X of these Regulations. The Technical Review Committee shall review and comment upon proposed road layout and design, drainage, impact upon adjacent properties, impact upon natural resources, impact upon town services, and proposed covenants governing the proposed subdivision.
 - b) A simple majority vote of the committee shall be necessary to recommend to the Planning Board or Administrative Officer. If a majority vote is not possible within the required time frame, the plan may be referred back with or without comment.

3. Reports of the Technical Review Committee to the Planning Board shall be in writing and shall be kept as part of the permanent documentation on the development application. In no case shall the recommendations of the Technical Review Committee be binding on the Planning Board in its activities or decisions.

C.ADMINISTRATIVE FEES

A reasonable fee schedule shall be adopted and amended as needed from time to time by the Town Council, and attached to these Regulations. Fees shall not exceed actual costs incurred, and shall be paid by the applicant for the adequate review and hearing of applications, issuance of permits and the recording of the decisions thereon. Said fee schedule shall specify the timing of the payment of such fees, in coordination with these Regulations.

ARTICLE XIII. PROCEDURES

A. REQUIRED FINDINGS

In all administrative, minor and major development applications the approving authorities responsible for land development and subdivision review and approval shall address each of the general purposes stated in Article I and shall make positive findings on the following standard provisions, as part of the proposed project's record prior to approval:

1. The proposed development is consistent with the Portsmouth Comprehensive Community Plan and/or has satisfactorily addressed the issues where there may be inconsistencies;
2. The proposed development is in compliance with the standards and provisions of the Portsmouth's Zoning Ordinance;
3. There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;
4. Subdivision, as proposed, will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. (See definition of *Buildable lot*.) Lots with such physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and

a) **Developable Land Area**

This provision shall not apply to any lot of less than two acres in area existing and recorded prior to July 1, 1994.

For the purpose of calculating the minimum lot size required by these Regulations or calculating the maximum number of units, maximum lot coverage, or maximum density permitted in accordance with any development standards contained in these Regulations, the terms "land", "land area", "lot size", and "lot area" or any such similar term shall mean "developable land area", which is defined as follows:

Developable Land Area is the total gross land area of the parcel proposed for development LESS the total of the following:

- (1) Freshwater wetlands as defined in Title 2, Chapter 1 of the General Laws of Rhode Island as amended and in any rules and regulations adopted pursuant thereto. Provided, however, that any setback requirement from the edge of a wetland as so defined in Title 2, Chapter 1, shall not be included in the calculation of wetland area.
- (2) Coastal shoreline systems as defined by Section 120.0-2A.1 of the Rhode Island Coastal Resources Management Program, as amended February 1982, or subsequent amendments thereto, as follows:
 - (a) Beaches and barrier beaches
 - (b) Cliffs, ledges and bluffs
 - (c) Coastal wetlands
 - (d) Sand dunes
 - (e) All directly associated contiguous areas which are necessary to preserve the integrity of such features.

- (3) Any public or private street or street right-of-way.
- (4) Existing water surfaces.
- (5) Areas required for stormwater retention/detention under these Regulations, or any other Ordinance of the Town of Portsmouth, or by the RI Dept. of Environmental Management, or by the RI Coastal Resources Management Council.
- (6) Areas required for utility easements of public utilities.

5. All proposed land developments and all subdivision lots shall have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered compliance with this requirement.

B. PRECEDENCE OF APPROVALS BETWEEN PLANNING BOARD AND OTHER LOCAL PERMITTING AUTHORITIES

1. ZONING BOARD OF REVIEW

- a) Where an applicant requires both a variance from the Zoning Ordinance and Planning Board approval, the applicant shall first obtain an advisory recommendation from the Planning Board, as well as conditional Planning Board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain conditional Zoning Board of Review relief, and then return to the Planning Board for subsequent required approval(s).
- b) Where an applicant requires both a special-use permit under the Portsmouth Zoning Ordinance and Planning Board approval, the applicant shall first obtain an advisory recommendation from the Planning Board, as well as conditional Planning Board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional special-use permit from the Zoning Board of Review, and then return to the Planning Board for subsequent required approval(s).

2. TOWN COUNCIL

Where an applicant requires both Planning Board approval and Town Council approval for a Zoning Ordinance or zoning map change, the applicant shall first obtain an advisory recommendation on the zoning change from the Planning Board, as well as conditional Planning Board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional zoning change from the Town Council, and then return to the Planning Board for subsequent required approval(s).

C. RELEASE OF LOTS FOR SALE OR BUILDING

1. RELEASE OF LOTS

A release of lots form to allow the sale or issuance of building permits for individual lots in the subdivision as a whole or in approved phases shall be signed by the Planning Board if all of the following, as applicable, have been received by the Planning Board:¹

- a) A copy of the recorded final plan, filed per the provisions of Section F. herein.
- b) A copy of the recorded performance covenant, if applicable.

- c) A copy of the recorded restrictive covenant, if applicable.
- d) A form signed by the Administrative Officer that any special conditions of approval, as required by the Planning Board, have been met.
- e) The construction of roads and required public improvements have either been completed or the construction thereof secured by one or more of the methods described in Article X.

2. SALE OF LOTS

The applicant shall record the Release of Lots form prior to the sale of any of the subject lots.

3. BUILDING PERMITS

The Building Inspector shall deem a building lot inaccessible, and shall not issue a building permit for a new structure, until all drainage, underground utilities, and a roadway binder course for the entire frontage of the lot have been installed to the satisfaction of the Director of Public Works, per the provisions of Article X. herein.²

D. MODIFICATIONS AND REINSTATEMENT OF PLANS.

1. WAIVER OF DEVELOPMENT PLAN APPROVAL

- a) The Planning Board may waive requirements for development plan approval where there is a change in use or occupancy and no extensive construction of improvements is sought. The waiver may be granted only by a decision by the Planning Board finding that the use will not affect existing drainage, circulation, relationship of buildings to each other, landscaping, buffering, lighting and other considerations of development plan approval, and that the existing facilities do not require upgraded or additional site improvements.
- b) The application for a waiver of development plan approval review shall include documentation, as required by the Planning Board, on prior use of the site, the proposed use, and its impact.

2. WAIVER AND/OR MODIFICATION OF REQUIREMENTS

The Planning Board shall have the power to grant such waivers and/or modifications from the requirements for land development and subdivision approval as may be reasonable and within the general purposes and intents of the provisions for these Regulations. The only grounds for such waivers and/or modifications shall be where the literal enforcement of one (1) or more provisions of the regulations is impracticable and will exact undue hardship because of peculiar conditions pertaining to the land in question or where such waiver and/or modification is in the best interest of good planning practice and/or design as evidenced by consistency with the Portsmouth's comprehensive plan and Zoning Ordinance.

3. REINSTATEMENT WHERE DEADLINE EXCEEDED.

When an applicant has exceeded a deadline established by these Regulations for submission of material for a subdivision or land development, thereby rendering a previously granted approval invalid, an application for reinstatement of a previously approved subdivision shall be made to the Planning Board in writing by the subdivider. The Planning Board, in approving or denying the request for an extension, shall make findings of fact which shall be made part of the record. The application may be reinstated by the Planning Board under the following conditions:

- a) The subdivision is consistent with the Comprehensive Community Plan;
- b) The Subdivision Regulations are substantially the same as they were at the time of original approval;
- c) The zoning of the subdivision parcel is substantially the same as it was at the time of original approval;
- d) Physical conditions on the subdivision parcel are substantially the same as they were at the time of original approval; and,
- e) Any applicable State or federal regulations are substantially the same as they were at the time of original approval.

4. DECISION

The Planning Board shall approve, approve with conditions or deny the request for either a waiver or modification as described in paragraph 1 or 2 above, according to this Article.

E. MEETINGS -- VOTES -- DECISIONS AND RECORDS

1. All records of the Planning Board proceedings and decisions shall be written and kept permanently available for public review. Completed applications for proposed land development and subdivision projects under review by the Planning Board, shall be available for public review.

2. Participation in a Planning Board meeting or other proceedings by any party shall not be a cause for civil action or liability except for acts not in good faith, intentional misconduct, knowing violation of law, transactions where there is an improper personal benefit, or malicious, wanton, or willful misconduct.

3. All final written comments to the Planning Board from the Administrative Officer, municipal departments, the technical review committee, state and federal agencies, and Town commissions shall be part of the permanent record of the development application.

4. VOTES

All votes of the Planning Board shall be made part of the permanent record and shall show the members present and their votes. A decision by the Planning Board to approve any land development or subdivision application shall require a vote for approval by a majority of the current Planning Board membership.

5. RECORD DECISIONS

All written decisions of the planning board shall be recorded in the land evidence records within thirty-five (35) days after the planning board vote. A copy of the recorded decision shall be mailed within one business day of recording, by any method that provides confirmation of receipt, to the applicant and to any objector

who has filed a written request for notice with the administrative officer.³

F. SIGNING AND RECORDING OF PLATS AND PLANS

1. All approved final plans and plats for land development and subdivision projects shall be signed by the appropriate Planning Board official with the date of approval. Plans and plats for major land developments and subdivisions shall be signed by the Planning Board chairperson or the secretary of the Planning Board attesting to the approval by the Planning Board. All minor land development or subdivision plans and plats and administrative plats shall be signed by the Planning Board chairperson or secretary or the board's designated agent.⁴

- a) All recorded plans for merging adjacent lots as Administrative Subdivisions shall be either 1) Class I Surveys or 2) full metes and bounds descriptions of the revised parcel(s) accompanied by a drawing to scale of the perimeter boundaries of the merged lot conforming to the deed description. Deed descriptions may be utilized only if they reference a pre-existing recorded plat(s).⁵
- b) All other recorded plans shall be Class I Surveys. Each plan shall be stamped and dated by a registered professional surveyor in the State of Rhode Island.⁶
- c) The size of all plans to be recorded in the Land Evidence Records shall be within a minimum of 22 X 32 inches and a maximum of 24 x 36 inches.⁷

2. Upon signature, all plans and plats shall be submitted to the Administrative Officer prior to recording and filing in the appropriate municipal departments. The material to be recorded for all plans and plats shall include all pertinent plans with notes thereon concerning all the essential aspects of the approved project design, the implementation schedule, special conditions placed on the development by the Town, permits and agreements with state and federal reviewing agencies, and other information as required by the Planning Board.

3. Other parts of the applications record for subdivisions and land development projects, including all meeting records, approved master plan and preliminary plans, site analyses, impact analyses, all legal agreements, records of the public hearing and the entire final approval set of drawings shall be kept permanently by the municipal departments responsible for implementation and enforcement.

4. The Administrative Officer shall notify the statewide "911" emergency authority and the local police and fire authorities servicing the new plat with the information required by each of the authorities.

G. CHANGES TO RECORDED PLATS AND PLANS

1. For all changes to the approved plans of land development projects or subdivisions subject to this act, an amendment of the final development plans is required prior to the issuance of any building permits. Any changes approved in the final plan shall be recorded as amendments to the final plan in accordance with the procedure established for recording of plats in section E. above.

2. Minor changes, as defined in these Regulations, to a land development or subdivision plan may be approved administratively, by the Administrative Officer, whereupon a permit may be issued. Such changes may be authorized without additional public hearings, at the discretion of the Administrative Officer. All such changes shall be made part of the permanent record of the project application. This provision shall not prohibit the Administrative Officer from requesting a recommendation from either the technical review committee or the Planning Board. Denial of the proposed change(s) shall be referred to the Planning Board for review as a major change.

3. Major changes, as defined in these Regulations, to a land development or subdivision plan may be approved, only by the Planning Board and must follow the same review and public hearing process required for approval of preliminary plans as described in Article VI.

¹ Changed 4/29/98 from ‘ A release of lots form to allow the sale or issuance of building permits for individual lots in the subdivision as a whole or in approved phases shall be signed by the Planning Board if all of the following, as applicable, have been received by the Planning Board.’

² Changed 4/29/98 from ‘ 2. SALE OF LOTS The applicant shall record the release of Lots form prior to the sale of any of the subject lots. 3) BUILDING PERMITS The Building Inspector shall deem a building lot inaccessible, and shall not issue a building permit for a new structure, until all drainage, underground utilities, and a roadway binder course for the entire frontage of the lot have been installed to the satisfaction of the Director of Public Works, per the provisions of Article X. herein.

³ Adopted 1/11/2012

⁴ Changed 4/29/98 from ‘ 1. All approved final plans and plats for land development and subdivision projects shall be signed by the appropriate Planning Board official with the date of approval. Plans and plat for major land developments and subdivision shall be signed by the Planning Board Chairperson or Secretary of the Planning Board attesting to the approval by the planning Board. All minor land development or subdivision plans and administrative plats shall be signed by the Planning Board chairperson or the secretary or the board’s designated agent.’

⁵ Subparagraph a. added 4/29/98.

⁶ Subparagraph b. added 4/29/98

⁷ Adopted 1/11/2012

ARTICLE XIV. APPEALS**A. THE BOARD OF APPEAL**

The Portsmouth Zoning Board of Review shall be the board of appeal to hear appeals of decisions of the Planning Board or the Administrative Officer on matters of review and approval of land development and subdivision projects.

B. RIGHT OF APPEAL

1. An appeal from any decision of the Planning Board, or Administrative Officer charged in the these Regulations with enforcement of any provisions, except as provided herein, may be taken to the board of appeal by an aggrieved party.

2. An appeal from a decision of the board of appeal may be taken by an aggrieved party to the Newport County Superior Court.

C. PROCESS OF APPEAL

1. An appeal to the board of appeal from a decision or action of the Planning Board or Administrative Officer may be taken by an aggrieved party. Such appeal must be taken within twenty (20) days after the decision has been recorded and posted in the office of the Town Clerk.

2. The appeal shall be in writing and shall state clearly and unambiguously the issue or decision which is being appealed, the reason for the appeal, and the relief sought. The appeal shall either be sent by certified mail, with a return receipt requested, or shall be hand-delivered to the board of appeal. The Town Clerk shall accept delivery of an appeal on behalf of the board of appeal.

3. Upon receipt of an appeal, the board of appeal shall require the Administrative Officer to transmit forthwith to the board of appeal, all papers, documents and plans, or a certified copy thereof, constituting the record of the action which is being appealed.

D. STAY OF PROCEEDINGS

An appeal shall stay all proceedings in furtherance of the action being appealed.

E. PUBLIC HEARING

1. The board of appeal shall hold a public hearing on the appeal within forty-five (45) days of the receipt of the appeal, give public notice thereof, as well as due notice to the parties of interest. At the hearing any party may appear in person, or may be represented by an agent or attorney. The board shall render a decision within ten (10) days of the close of the public hearing.

The cost of any notice required for the hearing shall be borne by the appellant.

2. The board of appeal shall only hear appeals of the actions of a Planning Board or Administrative Officer at a meeting called especially for the purpose of hearing such appeals and which has been so advertised.

3. The hearing, which may be held on the same date and at the same place as a meeting of the Zoning Board of Review, must be held as a separate meeting from any Zoning Board of Review meeting. Separate minutes and records of votes as required by section F. below shall be maintained by the board of appeal.

F. APPEALS -- STANDARDS OF REVIEW

1. In instances of a board of appeal's review of a Planning Board or Administrative Officer's decision on matters subject to this chapter, the board of appeal shall not substitute its own judgment for that of the Planning Board or the Administrative Officer but must consider the issue upon the findings and record of the Planning Board or Administrative Officer. The board of appeal shall not reverse a decision of the Planning Board or Administrative Officer except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record.

2. The concurring vote of three (3) of the five (5) members of the board of appeal sitting at a hearing, shall be necessary to reverse any decision of the Planning Board or Administrative Officer

3. In the instance where the board of appeal overturns a decision of the Planning Board or Administrative Officer, the proposed project application shall be remanded to the Planning Board or Administrative Officer, at the stage of processing from which the appeal was taken, for further proceedings before the Planning Board or Administrative Officer and/or for the final disposition, which shall be consistent with the board of appeal's decision.

4. The board of appeal shall keep complete records of all proceedings including a record of all votes taken, and shall put all decisions on appeals in writing. The board of appeal shall include in the written record the reasons for each decision.

G. APPEALS TO THE SUPERIOR COURT

1. An aggrieved party may appeal a decision of the board of appeal, to the Newport County Superior Court by filing a complaint setting forth the reasons of appeal within twenty (20) days after the decision has been recorded and posted in the office of the Town Clerk. The board of appeal shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies thereof, together with such other facts as may be pertinent, with the clerk of the court within thirty (30) days after being served with a copy of the complaint. When the complaint is filed by someone other than the original applicant or appellant,

such original applicant or appellant and the members of the Planning Board shall be made parties to the proceedings. The appeal shall not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make such other orders as it deems necessary for an equitable disposition of the appeal.

2. The review shall be conducted by the superior court without a jury. The court shall consider the record of the hearing before the Planning Board and, if it shall appear to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to such appeal to present such evidence in open court, which evidence, along with the report, shall constitute the record upon which the determination of the court shall be made.

3. The court shall not substitute its judgment for that of the Planning Board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions or decisions which are:

- a) In violation of constitutional, statutory, ordinance or Planning Board Regulations provisions;
- b) In excess of the authority granted to the Planning Board by statute or ordinance;
- c) Made upon unlawful procedure;
- d) Affected by other error of law;
- e) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

H. APPEALS TO THE SUPERIOR COURT -- ENACTMENT OF OR AMENDMENT OF TOWN REGULATIONS

1. An appeal of an enactment of or an amendment of these Regulations may be taken to the Newport County Superior Court by filing a complaint, as set forth herein, within thirty (30) days after such enactment, or amendment has become effective. The appeal may be taken by any legal resident or landowner of Portsmouth or by any association of residents or landowners of Portsmouth. The appeal shall not stay the enforcement of these Regulations, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make such other orders as it deems necessary for an equitable disposition of the appeal.

2. The complaint shall set forth with specificity the area or areas in which the enactment or amendment is not consistent with the Comprehensive Planning Act, chapter 22.2 of this title; the Zoning Enabling Act of 1991, section 45-24-27 et seq.; Portsmouth's comprehensive plan; or Portsmouth's Zoning Ordinance.

3. The review shall be conducted by the court without a jury. The court shall consider whether the enactment or amendment of these Regulations is consistent with the Comprehensive Planning Act, chapter 22.2 of this title; the Zoning Enabling Act of 1991, section 24-27 et seq.; Portsmouth's comprehensive plan; or Portsmouth's Zoning Ordinance. If the enactment or amendment is not consistent, then the court shall invalidate the enactment or the amendment, or those parts of such enactment or amendment which are not consistent. The court shall not revise these Regulations to be consistent, but may suggest appropriate language as part of the court decision.

4. The court may in its discretion, upon motion of the parties or on its own motion, award reasonable attorney's fees to any party to an appeal, as set forth herein, including a municipality.

I. APPEALS TO THE SUPERIOR COURT -- PRIORITY IN JUDICIAL PROCEEDINGS

Upon the entry of any case or proceeding brought under the provisions of this chapter, including pending appeals and appeals hereinafter taken to the court, the court shall, at the request of either party, advance the case, so that the matter shall be afforded precedence on the calendar and shall thereupon be heard and determined with as little delay as possible.

ARTICLE XV. VIOLATIONS AND PENALTIES

GENERAL

A. Any violation of these Regulations or any violation of any terms or conditions of any action imposed by the Planning Board or of any other agency or officer charged in these Regulations with enforcement of any of the provisions shall be subject to the provisions of this Article.

B. Violation of these Regulations includes any action related to the transfer or sale of land in unapproved subdivisions. Any owner, or agent of the owner, who transfers, sells or negotiates to sell any land by reference to or exhibition of, or by other use, a plat of the subdivision before the plat has been approved by the Planning Board and recorded in the municipal land evidence records, shall be in violation of these Regulations and subject to the penalties described herein.

D. The Town may also cause suit to be brought in the supreme or superior court, or any municipal court, including a municipal housing court having jurisdiction, in the name of the Town, to restrain the violation of, or to compel compliance with, the provisions of this zoning ordinance. The Town may consolidate an action for injunctive relief and/or fines under these Regulations in the superior court.

1. It shall be the duty of the Town Solicitor, on authorization by the Town Council wherever a violation or a contemplated violation of these Regulations is brought to its attention, to institute due legal proceedings to compel compliance with said Regulations and to restrain the erection, alteration or use of any building, structure or other thing erected or used in violation of the provisions of these Regulations.

E. Any person, firm or corporation employed by an applicant or developer, who shall violate or assist in the violation or fail to comply with the requirements of any provision of these Regulations, or for a violation of any terms or conditions of any action imposed by the Planning Board or of any other agency or officer charged in these Regulations with enforcement of any of its provisions, upon conviction thereof shall be punishable by a fine of not more than five hundred (\$500.00) dollars for each offense and each day of the existence of any such violation shall be deemed a separate offense, all such fines shall inure to the benefit of the Town.

F. ENFORCEMENT

1. Any member of the Portsmouth Planning Board, the Technical Review Committee, if any, the Administrative Officer, Town Planner, the Building Inspector, or Town Solicitor shall have the right to investigate any subdivision, its layout, construction and adherence to these rules and regulations in order to determine compliance with said rules and regulations.

2. Enforcement of these Regulations shall be under the direction of the Administrative Officer. The officer shall be responsible for coordinating the enforcement efforts of the zoning enforcement officer, the building inspector, Town Planner, the Department of Public Works and other Town officials responsible for the enforcement or carrying out of individual elements of these Regulations.

3. Furthermore, it shall be the duty of the Administrative Officer wherever a violation or a contemplated violation of these Regulations is brought to his attention to notify the Planning Board, Town Administrator and the Town Council, and the Town Council shall cause to be instituted due legal proceedings to compel compliance with the provisions of these Regulations, and to restrain the erection, alteration or use of any building, structure or other thing erected, altered or used in violation of the provisions of these Regulations.

Portsmouth Planning Board
Revised January 12, 2012

Leon C. Lesinski
Executive Secretary