

**SECTION 5: PROCEDURES FOR THE  
SUBMISSION AND APPROVAL OF SUBDIVISION PLANS**

**5.0 PRE-SUBMISSION REVIEW**

Prior to investing in extensive professional design efforts for subdivision plans, it will often prove useful to review the proposed development of a parcel of land with the Town Planner and other professional staff of the Town in order that general approaches and potential problems can be freely explored. Pencil sketches, which need not be professionally prepared, will assist the discussion and might show some but not all of the information shown on a preliminary plan.

**5.1 PRELIMINARY PLAN**

**1. Submission Requirements**

A preliminary plan of a subdivision may be submitted by the Applicant to the Planning Board for discussion and approval by the Board. The submission of such a preliminary plan will enable stakeholders to discuss and clarify issues pertaining to the proposal. A preliminary plan is optional in cases of residential subdivisions and, pursuant to M.G.L. Chapter 41, Section 81S, required in cases of non-residential subdivisions. The submission of such preliminary plan will enable the Applicant, Board, its agents, other municipal officials, and abutters to discuss and clarify the problems of such subdivision before a definitive plan is prepared. Therefore, it is strongly recommended that a preliminary plan be filed in every case.

If such review and approval are desired, the Applicant shall submit three (3) full-scale prints of the preliminary plan, seven (7) reduced size prints, the original and two (2) copies of Form B (See Appendix A), an electronic version of the entire application, and the appropriate submission and professional and technical review fees (See Appendix A – Fee Schedule) to the Department of Planning and Development by delivery or by certified mail (postage prepaid, receipt required). The Applicant shall submit one (1) copy of the preliminary plan to the Board of Health and one full-scale print of the preliminary plan, one (1) copy of the Form B and one electronic version of the entire application to the Planning Board's consulting engineer. In addition, the Applicant shall provide written notice of such submission using Application Form B to the Town Clerk by delivery or by certified mail (postage prepaid, receipt required). The date of submission shall be determined as described in Section 3.7. (rev. 5/10/21)

**2. Contents**

Three (3) copies of the preliminary plan shall be on paper sized twenty-four inches by thirty-six inches (24" x 36") and seven (7) prints shall be reduced to eleven inches by seventeen inches (11" x 17"). Said preliminary plan shall be drawn at a scale of one inch equals forty feet (1" = 40') or other suitable scale acceptable to the Board and shall show sufficient information about the subdivision to form a clear basis for discussion of any issues, and for the preparation of the definitive plan. Such information shall include the following: (rev. 05/10/21)

- a. The subdivision name, boundaries, reference north point, date, datum (NAD 83 and NAVD 88), scale, legend and title "Preliminary Plan".
- b. The names, addresses and telephone numbers of the record owner and the Applicant and the names, addresses, telephone numbers, stamps and signatures of the engineer and surveyor responsible for the preparation of the plan.
- c. The names and addresses of all abutters, as determined from the most recent tax list (See Appendix A, Form E).
- d. The existing and proposed lines of streets, ways, easements, and any public area within the subdivision in a general manner.
- e. The proposed system of drainage, including the location of all swamps, marshes and lowland, water bodies, streams, open drains and ditches, natural or man-made, and flowage rights, public and private, adjacent to or within the proposed subdivision in a general manner.
- f. The approximate boundary lines of proposed lots, with approximate areas, dimensions and regularity factor calculations in conformance with the Millbury Zoning Bylaws, Section 32.12 Odd-Shaped Lots Prohibited.
- g. The names, approximate locations and widths of adjacent streets bounding, approaching or within five hundred feet (500') of the proposed subdivision street(s).
- h. Major site features such as existing stone walls, fences, buildings, historic sites, archeological features, large trees with a caliper of twelve inches (12") or larger four feet (4') above finished grade or wooded areas, rock ridges and outcroppings, certified vernal pools, floodplains, wetlands as defined by the Wetlands Protection Act (MGL Chapter 131, Section 40) (estimated location based on best available data), and water bodies.
- i. Topography of the land at ten foot (10') contour intervals based upon USGS data and SCS soil maps, if available.
- j. The proposed sanitary sewer system and water distribution system, in a general manner.
- k. If the preliminary plan does not include all tracts of land that can be further subdivided that are owned or controlled by the Applicant or owner and lie adjacent to or across the street from the subdivision, a sketch plan shall be submitted showing a possible or prospective street layout and the present drainage, natural or constructed for such adjacent land.
- l. An index plan at a scale of one inch equals four hundred feet (1" = 400'), when multiple sheets are used.
- m. A locus plan at a scale of one inch equals one thousand feet (1" = 1,000').
- n. Zoning districts of all areas shown on the plan.

- o. At least three (3) boundary marker locations, remotely separated, shall be indicated with Massachusetts Grid Plane Coordinates. The elevation and coordinates of boundary markers must be indicated on the Plan.

### **3. Review of Plan**

In addition to the Board of Health, the Department of Planning and Development shall transmit the preliminary plan for review and comment to the Department of Public Works, Sewer Department, Aquarion Water Company, Building Department, Conservation Commission, Earth Removal Board, Fire Department, Police Department, and such other boards, committees, departments, or agencies as the Board may deem appropriate. Such municipal officials are granted thirty-five (35) days from the date that the Department of Planning and Development distributes the preliminary plan to submit written comments.

### **4. Action by Board**

Within forty-five (45) days of submission of a complete application, the Planning Board shall act on the preliminary plan. The forty-five (45) day period may be extended if agreed upon in writing by the Applicant. The Board shall approve, approve with modifications suggested by the Board or agreed upon by the person submitting the Plan, or disapprove the preliminary plan. A disapproval by the Board will be accompanied by a detailed statement of reasons for the action. Disapproval does not disqualify the plan, but does record the Board's position that changes may be required for definitive plan approval. Failure of the Planning Board to act within the specified timeframe shall not mean approval of the preliminary plan.

### **5. Relation of Preliminary to Definitive Plan (MGL Chapter 41 Section 81Q, Chapter 40A, Section 6)**

Approval of a preliminary plan does not constitute approval of a subdivision, and a preliminary plan cannot be recorded in the Registry of Deeds. If a definitive plan is duly submitted within seven (7) months from the date of submission of the preliminary plan, the Rules and Regulations in effect at the time of submission of the preliminary plan shall govern approval of the definitive plan. If the definitive plan is so approved, the zoning provisions in effect at the time of the submission of the preliminary plan shall govern the land shown on the plan for eight (8) years from the date of the Board's endorsement of the subdivision plan.

## **5.2 PRE-APPLICATION CONSULTATIONS**

Pre-application consultations between an Applicant and the professional staff of the Town are highly recommended. The Town staff will review applications in an attempt to avoid unnecessary technical deficiencies in the proposed application and promote efficiency in the formal review and hearing process. Staff may also review a proposed application for its thoroughness and completeness. It is the Applicant's responsibility to assure that the application to be submitted to the Board for its review is thorough, complete and accurate.

### 5.3 **DEFINITIVE PLAN**

#### 1. **Submission Requirements**

Any person who desires approval of a definitive plan of a subdivision shall submit to the Planning Board the following, with the drawings consolidated onto a single sheet or on separate sheets:

- a. Three (3) prints of the definitive plan, dark line on white background, on sheets measuring twenty-four inches by thirty-six inches (24" x 36"), and seven (7) reduced prints on sheets measuring eleven inches by seventeen inches (11" x 17") consisting of the street plans and profiles, construction plan (See Section 5.3(5), and erosion and sedimentation control plan (See Section 5.3(9)). The original drawing of the definitive plan will only be needed if and when signing of the plan takes place. Street plans and profiles shall be drawn at a scale of one inch equals forty feet (1" = 40'), showing location of all utilities and other elements within the street right-of-way, and typical cross sections of any altered drainage courses or off-street paths. (rev. 05/10/21)
- b. Ten (10) copies of a locus plan of the subdivision at one inch equals one thousand feet (1" = 1000'), showing proposed roads and their relation to the surrounding area, and the location of the zoning district or districts applicable to the site. (rev. 05/10/21)
- c. Ten (10) copies of an index plan at a scale of one inch equals four hundred feet (1" = 400') when multiple sheets are used. (rev. 05/10/21)
- d. A properly executed application Form C (See Appendix A).
- e. A Designer's Certificate (See Appendix A, Form D).
- f. List of abutters certified by the Assessors Office (See Appendix A, Form E).
- g. Two copies of a surveyor's certificate that the center-line stationing stakes of all the roads within the subdivision have been set and marked, and the center-line cleared so that it may be walked without difficulty.
- h. The required submission and professional and technical review fees (See Appendix A – Fee Schedule).
- i. Drainage calculations certified by the engineer who prepared them, which shall include design criteria, drainage area and other information sufficient for the Board to verify the adequacy of any proposed drain, drain field, culvert, catch basin, detention or retention basin, other storm water management facility, or bridge, and to verify compliance with applicable local, state and federal regulations.
- j. Evidence of ownership and, if requested by the Board, traverse notes, language of any easements, covenants or deed restrictions applying or proposed to apply to the area being subdivided, rights and easements obtained for utilities or drainage outside of the subdivision, description of erosion control methods to be employed, and cross sections of proposed streets at critical locations showing existing and proposed

grades for the width of the right-of-way plus twenty-five feet (25') on each side.

- k. A letter documenting the authorizing vote if the Applicant is acting in the name of a trust, corporation or company.
- l. If necessary in order to determine compliance with the requirements or intent of this Regulation as specified in Section 1.0, the Board may require specialized engineering or specialized environmental analysis to be prepared at the expense of the Applicant.
- m. Ten (10) copies of the Environmental Analysis, if required (See Section 5.3(4)). (rev. 05/10/21)
- n. The Board shall require soil surveys and/or test pits or borings every one hundred feet (100') along proposed roads to be prepared at the Applicant's expense to determine the suitability of the land for the proposed ways, drainage and utilities.
- o. If private wastewater disposal is proposed, the results of percolation tests required by the Board of Health in accordance with Title 5 of the State Environmental Code.
- p. A statement signed by the property owner authorizing the Board or its authorized representatives to enter upon the property for site visits, as may be necessary.
- q. A list of mortgage holders which shall be kept current during the period of subdivision development.
- r. One electronic version of the entire definitive plan submittal. (rev. 05/10/21)

Submit to the Planning Board's consulting engineer by delivery or certified mail:

- a. One full-scale print of the definitive plan and associated submittals;
- b. One electronic version of the entire definitive plan submittal. (rev. 05/10/21)

Submit to the Town Clerk by delivery or certified mail:

- a. A notice stating the date of definitive plan submission to the Planning Board; and
- b. A copy of the completed application Form C.

Submit to the Board of Health:

- a. Two copies of the definitive plan;
- b. Two copies of the Street Plans and Profiles;
- c. A copy of the completed application Form C; and
- d. Two copies of the soils test and environmental analysis, if any.

Submit to the Board of Selectmen:

- a. One copy of the Street Plan and Profiles;
- b. A copy of the completed application Form C.

Per Section 3.7, failure of an Applicant to meet all requirements of this section will constitute an incomplete submittal. No time limit for Planning Board action shall commence unless the Applicant has made a complete filing.

## **2. Contents**

The definitive plan shall be prepared by a surveyor and an engineer, and consist of the following:

- a. Subdivision name, reference north point, legend, date, datum (NAD 83 and NAVD 88) annotation of revision dates and contents, and bar scale.
- b. Names, addresses and telephone number of record owner and Applicant and the names, addresses, telephone numbers, stamps and signatures of the engineer, surveyor, and any other professionals engaged in the design, in each case certifying that elements of the plan for which they are responsible have been prepared in accordance with these Regulations.
- c. Location, names and legal references of all abutters, consistent with Form E, as they appear on the most recent tax list, including property owners on the opposite side of any streets abutting the subdivision.
- d. Sufficient data to readily determine the location, direction, and length of every existing and proposed street, way, easement, lot and boundary line, and to establish those lines on the ground. The purpose of easements shall be indicated.
- e. The area of each lot and easement in square feet and acres.
- f. Regularity factor calculations in conformance with the Millbury Zoning Bylaws, Section 32.12 Odd-Shaped Lots Prohibited.
- g. Lot numbers shown enclosed in a circle.
- h. The following statement: "Street numbers are assigned by the Millbury Police Department; for further information call (508) 865-3521". (rev. 05/10/21)
- i. Location of all permanent monuments identified as to whether existing or proposed.
- j. Location, names and present widths of streets bounding, approaching or within reasonable proximity of the subdivision, and designation as to whether public or private.
- k. Existing and proposed wetlands as defined by the Wetlands Protection Act (MGL Chapter 131, Section 40) and confirmed by a certified wetlands scientist, watercourses and water bodies.
- l. Reference identifying applicable Street Plans and Profiles, covenants, and/or relevant

documents, whether recorded or not.

- m. Precise boundaries of any zoning district insofar as the boundaries touch on the subdivision.
- n. Existing and proposed drainage including drainage areas inside the subdivision, areas outside the subdivision which drain into it, and the route, for all existing and proposed drainage discharging from the subdivision, to the primary receiving water course or other body of water. Calculations shall be figured on the modified soil cover complex method, unless the Board agrees to some other method, using a twenty-five (25) year storm frequency for street drainage and a one hundred (100) year storm for culverts. Cross sections of each drainage ditch or pond shall be included. Stormwater drainage facilities shall be shown on separate lots to be owned in common by all owners of lots within the subdivision. The applicant shall provide documents establishing the owner's association, to be approved by the Board.

If surface water drains will discharge onto adjacent existing streets or onto adjacent properties not owned by the Applicant, the Applicant shall clearly indicate what course the discharge will take, and shall present to the Board evidence that such discharge is satisfactory to the owner of adjacent property and permitted by public or private ownership of adjacent street or property.

- o. Size, location and types of existing and proposed water supplies and their appurtenances, hydrants, sewer pipes and their appurtenances and/or sewer disposal systems, storm drains and their appurtenances, and easements pertinent thereto, and curbs and curb dimensions, including data on borings and soil test pits, and methods of carrying water to the nearest watercourse or easements for drainage as needed, whether or not within the subdivision.
- p. Suitable space for endorsement by the Town Clerk and by the Planning Board, with spaces for annotating date of approval and date of endorsement.
- q. Location of Base Flood elevation if encountered within one hundred feet (100') of the subdivision.
- r. At least three (3) boundary marker locations, remotely separated, shall be indicated with Massachusetts Grid Plane Coordinates. The elevation and coordinates of boundary markers must be indicated on the Plan.
- s. Relative error of closure shall exceed CMR 250.6 requirement and a signed statement to this effect shall appear on the Plan.
- t. Where the owner or Applicant also owns or controls tract(s) of land that can be further subdivided and lie adjacent to or across the street from that shown on the definitive plan, the Applicant shall submit a sketch plan showing a possible or prospective street layout and the present drainage, natural and constructed, for such adjacent land, unless such a plan has already been submitted to the Board with a preliminary plan.
- u. Reference to all plans, deeds and oral evidence used to create the subdivision plan.

### **3. Street Plans and Profiles**

For each street there shall be a separate plan at one inch equals forty feet (1" = 40'), and profile at one inch equals forty feet (1" = 40') horizontal, one inch equals eight feet (1" = 8') vertical, elevations referenced to the North American Vertical Datum of 1988, showing the following data:

- a. Subdivision name, owner's name and address, boundary lines of ways, north point, scale, date, annotation of revision dates and content, as on the definitive plan.
- b. Names and addresses of people preparing the plan together with their Massachusetts registration certificate number as land surveyor and/or engineer.
- c. The plan shall show bearings and distances, radii and arcs, central angle and tangent distances on all curves with stationing on the center line. All non-tangent arcs shall be defined.
- d. The profile shall show the existing ground on the center line in a solid black line, the existing right side in a short dash line and the existing left side in a long dash line; the proposed grade shall be shown in a heavy black line with the elevation shown at each twenty-five foot (25') station, with the rate of grade indicated.
- e. The grade of all streets intersecting the proposed streets shall be shown for at least one hundred feet (100') along each side of the intersection of street center line.
- f. The proposed drainage, catch basins, manholes, pipes and any other drainage facilities shall be shown on both plan and profile.
- g. The proposed sewage collection system, including pipes, connecting wyes, laterals to the edge of the street right-of-way, chimneys, manholes, lift station (if necessary) and other related appurtenances shall be shown on both plans and profile. If a lift station is required, a site plan, scale one inch equals twenty feet (1" = 20') must be submitted.
- h. Existing and proposed sidewalks, bikeways and walkways shall be shown with widths and grade elevations, and any necessary drainage.
- i. Locations of existing and proposed streetlights as well as proposed street light specifications.
- j. All plans and profiles shall include a notation on each drawing that the same is one of an indicated total number of sheets.
- k. Such additional information as the Board may deem necessary.

### **4. Environmental Analysis**

Any non-residential subdivision or residential subdivision creating frontage potentially allowing ten (10) or more units shall be based upon an Environmental Analysis, and, in addition, the Board may require, for subdivisions of fewer than ten (10) units, that certain of the following be submitted where such information is necessary to evaluate the plan



because of special circumstances of the site or proposal. At a preliminary scoping session to be held between the Applicant and the Board or its agent(s), and upon submission of evidence from the Applicant, the Board may waive any section(s) of the requirements which it deems non-applicable to the proposed project or may require additional information on any aspect of the requirements. The entire cost of the Environmental Analysis will be the responsibility of the Applicant. Environmental Analyses shall be prepared by an interdisciplinary team that may include a planner, surveyor, civil engineer, traffic engineer, architect, landscape architect, hydrologist, hydrogeologist, biologist, and other environmental professionals as may be directed by the Planning Board. The following documentation is required for each such analysis:

- a. A set of plans at uniform scale shall be submitted, encompassing the entire subdivision on a single sheet not larger than forty-two inches by sixty inches (42" x 60") showing the following:
  - 1) The same data as on the definitive plan reproduced as a clear polyester film overlay.
  - 2) Topography at one-foot contour intervals, with graphic drainage analysis; indication of annual high water mark, location of existing structures, including fences and walls and watershed boundaries. (rev. 1/12/09)
  - 3) Vegetative cover analysis, including identification of general cover type (wooded, cropland, brush, wetland, etc.); location of all major tree groupings, plus other outstanding trees or other botanical features; important wildlife habitats; and identification of areas not to be disturbed by construction.
  - 4) Soil types, based on a U.S.D.A. soils study; approximate groundwater level, location and results of soil percolation or other subsurface tests.
  - 5) Visual analysis, including analysis of scenic vistas and locations of visual prominence.
  - 6) Location of surface water bodies, wetlands as defined by the Wetlands Protection Act (MGL Chapter 131, Section 40) and confirmed by a certified wetlands scientist, aquifer or recharge areas for existing or potential drinking water supplies.
- b. The Environmental Analysis shall also include a Development Impact Statement (DIS) (See Appendix B) describing the effects the proposed project has or will have on: (1) the immediate neighborhood or land area, (2) surrounding neighborhoods or land areas, and (3) the community at large.

The DIS shall include a detailed assessment of the probable impacts of the proposed project on a wide variety of environmental, fiscal, and socioeconomic elements and factors. Environmental impacts shall mean any destruction, damage, or impairment, actual or probable, to any of the natural resources of the Town and shall include but not be limited to water pollution, air pollution, improper sewage disposal, pesticide pollution, excessive noise, impairment and eutrophication of rivers, streams, floodplains, ponds, lakes or other surface or subsurface water resources; destruction of wetlands, open spaces, natural areas, parks or historic districts or sites.

The DIS shall contain detailed information describing the nature and extent of the proposed work and its environmental impact; all measures being utilized to minimize environmental damage; any adverse short-term and long-term environmental consequences which cannot be avoided should the work be performed; and alternatives to the proposed action and their environmental consequences. The DIS shall also develop, describe, and objectively weigh alternatives to the proposed development which are allowed by the Zoning Bylaws.

Fiscal and socioeconomic impacts shall include traffic circulation and safety, neighborhood character, school enrollment, public facilities, community services, associated fiscal expenditures and revenues, and effect on housing and other development activity.

## **5. Construction Plan**

The Construction Plan shall be drawn at the same scale as the definitive plan. It shall contain the following:

- a. Subdivision name, north point, legend, date, datum (NAD 83 and NAVD 88) annotation of revision dates and contents, and scale.
- b. At one-foot contour intervals, existing topography and topography resulting from development of streets, drainage, and other required improvements. (rev. 1/12/09)
- c. Location of tree cover and individual trees over twelve inch (12") diameter at four (4') above finished ground level, existing structures including fences and walls, existing water supplies and on site disposal systems, wetlands as defined by the Wetlands Protection Act (MGL Chapter 131, Section 40), perennial streams, and if encountered, the boundary of Flood Plain District established in the Zoning Bylaws;
- d. Existing and proposed streets, ways, and easements and their official status;
- e. Road centerline stationing, referenced to the Street Plans and Profiles;
- f. Drainage system schematic layout, with elevations and sizes for any facilities not shown on the Plans and Profiles of Streets.

## **6. Landscape Plan**

A plan showing proposed street tree locations, the planting plan for the center island within a cul-de-sac, if applicable, and any other proposed landscaping features shall be submitted. The island shall be designed to allow for proper emergency vehicle and snowplow access around the island without requiring driving of the vehicle off the travel way. (rev. 05/10/21)

## **7. Waste Control Plan**

A plan to control wastes that lists the construction and waste materials expected to be generated or stored on the construction site shall be required. These wastes include, but are not limited to, discarded building materials, concrete truck washout, chemicals, litter,

sanitary waste and material stockpiles. An applicant must also describe in narrative form the Best Management Practices that it will utilize to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater. (rev. 05/10/21)

## **8. Operation and Maintenance Plan**

An operation and maintenance (O&M) plan for the stormwater system shall be included in all applications. The maintenance plan shall be designed to ensure compliance with the MS4 permit and these Rules and Regulations, and shall demonstrate that the Massachusetts Surface Water Quality Standards, 314 CMR 4.00, are met in all seasons and throughout the life of the system. The O&M plan shall include those elements listed in §13.15.080, Operation and maintenance plans, of the Town's Post-Construction Stormwater Management bylaw (Millbury Municipal Code, Chapter 13.15). (rev. 05/10/21)

## **9. Erosion and Sediment Control Plan**

A plan for erosion and sedimentation control covering all proposed excavation, filling and grade work for improvements shall be required. Said plan shall be prepared and certified by a Registered Professional Engineer.

- a. Said plans shall show proper measures to control erosion and reduce sedimentation, as set forth in Section 7.8. Such Erosion and Sedimentation Control Plan shall consist of:
  - 1) All Construction Plan contents plus,
  - 2) Location of areas to be stripped of vegetation and other exposed or unprotected areas.
  - 3) A schedule of operations to include starting and completion dates for major development phases, such as land clearing and grading, street, sidewalk, and storm drain installation, and sediment control measures.
  - 4) Seeding, sodding, or revegetation plans and specifications for all unprotected or unvegetated areas.
  - 5) Location and design of structural sediment control measures, such as diversions, waterways, grade stabilization structures, debris basins, etc.
  - 6) Information relating to the implementation and maintenance of the sediment control measures including a maintenance schedule.

The Board may refer these plans to the Worcester County Conservation District or Worcester County Soil Conservation Service for technical assistance.

## **10. Review Procedures**

- a. Review by Board of Health

The Board of Health shall, within forty-five (45) days after the plan is filed, report to the Planning Board in writing, recommending approval or disapproval of said plan, and, in the event of disapproval, shall make specific findings as to which, if any, areas shown on such plan cannot be used for building sites without injury to the

public health, and include such specific findings and the reasons therefore in such report, and where possible, shall make recommendations for the adjustments thereof. Failure of such Board to report shall be deemed approval by such Board. When the Definitive Plan shows that no town sewer system is to service the proposed lots, approval by the Board of Health shall not be treated as, nor deemed to be approval of a permit for the construction and use of any lot of an individual sewage system; and approval of a Definitive Plan for a subdivision by the Board of Health shall not be treated as, nor deemed to be, an application for a permit to construct or use an individual sewage system on any lot contained therein. If the report of the Board of Health shall so require, the approval by the Planning Board shall be on condition that no building or structure shall be built or placed upon the areas designated, without consent by said Board of Health. In the event approval by the Board of Health is by failure to make a report, the Planning Board shall note on the plan that approval by the Board of Health is by failure to report. (See M.G.L. Ch. 41, S. 81-U).

b. Review by Other Town Officials

Prior to approval of any Definitive Plan, the Planning Board will require a letter of review from the following authorities:

- Conservation Commission as to protection of resource areas specified under the Massachusetts Wetlands Protection Act (M.G.L. Chapter 131, Section 40);
- Department of Public Works as to the design and layout of street systems, location of easements, and design of drainage systems;
- Sewer Department as to design of sewerage system and location of easements;
- Earth Removal Board as to removal of materials and grading of the site;
- Aquarion Water Company as to the location and size of water mains, including service to fire hydrants;
- Fire Chief as to the installation of emergency water supply systems for fire fighting, location of hydrants or other fire suppression facilities and adequacy of water flow at hydrants;
- Board of Selectmen as to street light locations and specifications;
- Police Department as to vehicular and pedestrian circulation and safety; and
- Tree Warden as to the location, size and species of proposed and/or existing street trees.

If any of the above authorities fails to report within forty-five (45) days of receiving the definitive plan from the Department of Planning and Development, such failure shall be noted in the minutes of the public hearing.

c. Public Hearing

The Board will not approve a definitive plan submitted to it until it holds a public hearing with respect to such plan. Notice of each such public hearing shall be given by the Board in accordance with M.G.L. Ch. 41, Section 81-T.

## **11. Action by Planning Board and Performance Guarantees**

### **a. Decision**

Criteria for action by the Board shall be:

- 1) Completeness and technical adequacy of all submissions;
- 2) Conformity with the Board's design and construction standards;
- 3) Conformity with all applicable zoning requirements;
- 4) Consistency with the purposes of the Subdivision Control Law.

Following such action, the Board will file the certificate of its action with the Town Clerk and will send notice of its action by certified mail to the Applicant at the address stated in the application. The Board will prepare a brief summary of its action. Such summary will be available to any person upon request.

Final approval, if granted, shall be endorsed on the final version of the original drawing of the definitive plan by the signatures of the majority of the Board, but not until the statutory twenty (20) days appeal period has elapsed following the filing of the certificate of the action of the Board with the Town Clerk and said Clerk has notified the Board that no appeal has been filed.

Final approval of the definitive plan does not constitute the laying out or acceptance by the Town of streets within the subdivision.

### **b. Copies of Documents**

At the time of endorsement of the definitive plan, the Applicant shall submit a CD or diskette containing the final version of the definitive plan and of the standard digital file per MassGIS standards for digital plan submittals. All geographic data shall be submitted in accordance with the criteria specified in Section 3.8.

Following plan approval, endorsement and recording, the Applicant shall provide the Board with one print reproducible, and five copies of the definitive plan and two copies of final covenants and restrictions, noting book and page number, and date of recording for each; and one print reproducible and five copies of the Street Plan and Profiles. One copy of the definitive plan and covenant shall be transmitted to the Inspector of Buildings by the Planning Board.

### **c. Performance Guarantee**

Before the Board endorses its approval on the plan, the Applicant shall provide assurances as set out below. The Board prefers surety in the form of a deposit of money or a bank passbook.

#### **1) Approval with Bonds or Surety**

The Board may permit the Applicant to file a surety company performance bond, or a deposit of money or negotiable securities in an amount determined by the Board to be sufficient to cover the cost of all or any part of the improvements as

shown on the definitive plan and as specified in the design and construction standards not covered by a covenant. The bond or surety shall include a twenty-five percent contingency factor based on the anticipated cost to construct the entire project, which may be used by the Planning Board to cover inflation, inspections, repair costs, maintenance costs, legal costs, engineering costs, surveying costs, and/or other costs associated with completion of the subdivision in accordance with the approved decision and Definitive Plan. If the proposed subdivision will be unusually expensive to build due to the presence of excessive quantities of ledge, steep slopes, and/or other physical constraints, the Planning Board may require a higher contingency factor. Such bond or security, if filed or deposited, shall be approved as to form and manner of execution by Town Counsel and as to sureties by the Town Treasurer. The Planning Board reserves the right to limit its approval of security to types of financial instruments and financial institutions that the Town Treasurer believes are financially sound. If a bond is used, such bond filing will be accompanied by a cash deposit of twenty-five thousand dollars (\$25,000), to be held in escrow, to cover the initial costs of "calling the bond" in the event of default and/or cover the costs of maintaining streets and systems. The Board will not accept bonds with expiration dates. The bond or security shall be contingent on the completion of such improvements within three (3) years of the date of the bond. At the discretion of the Board, a time extension may be granted for the completion of improvements for additional periods at intervals of one (1) year; provided that such an extension(s) may be conditioned upon an increase in the amount of such bond or security as determined necessary or appropriate by the Board. (rev. 1/12/09) (rev. 2/22/10)

## 2) Approval with Mortgage Agreement

Following the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the Applicant by the lender, the Board may, at its option, release lots from the operation of the covenant given pursuant to Section 5.1, Subsection 8(b)(3) without receipt of a bond or deposit of money upon delivery to the Board of an agreement with said Board, which shall be executed by the Applicant and the lender and shall provide for retention by the lender of sufficient funds otherwise due the Applicant to secure the construction of ways and the installation of municipal services plus a twenty-five percent contingency factor based on the anticipated cost to construct the entire project. The contingency factor may be used by the Planning Board to cover inflation, inspections, repair costs, maintenance costs, legal costs, engineering costs, surveying costs, and/or other costs associated with completion of the subdivision in accordance with the approved decision and Definitive Plan. If the proposed subdivision will be unusually expensive to build due to the presence of excessive quantities of ledge, steep slopes, and/or other physical constraints, the Planning Board may require a higher contingency factor. Said agreement shall also provide for a schedule of disbursement which may be made to the Applicant upon completion of various tasks, and shall further provide that in the event the work is not completed within the time set forth by the Applicant as determined by the Planning Board, any funds that have not been disbursed shall be available to the Town of Millbury for completion of the unfinished work and correction of deficiencies. (rev. 2/22/10)

### 3) Approval with Covenant

The owner may execute and record an appropriate covenant running with the land in accordance with Massachusetts General Laws, Chapter 41, Section 81-U. Such covenant (See Appendix A – Form I) shall stipulate that no lot shown on the plan shall be sold or buildings or other structures erected or placed on any such lot until:

- All required improvements serving the lots released from the covenant and shown on the plans and profiles have been constructed in accordance with the requirements of these Rules and Regulations;
- The subdivision plan, bearing the Board's signed endorsement thereon, and a signed copy of such agreement have been recorded in the Registry of Deeds or with the Recorder of the Land Court;
- The owner has executed a contract with the Board on behalf of the Town, accompanied by appropriate security to secure performance of the terms and conditions thereof, to complete construction of all required improvements not later than a specified date;
- The owner has recorded in the Registry of Deeds or with the Recorder of the Land Court a certificate of release (See Appendix A – Form J) from the Board indicating that the conditions set forth above inclusive of this section have been met.

## **12. Maintenance of Streets and Utilities**

As a condition of approval of a subdivision, the Applicant shall maintain all infrastructure, including, but not limited to, streets, paths, easements, and utilities within a subdivision until such time as the Town accepts the infrastructure or the infrastructure is conveyed to a Homeowner's Association.

Upon the occasion of a snow and/or ice event, the Applicant shall snow plow and/or sand unaccepted ways within a subdivision in a timely fashion and periodically throughout the duration of the storm event. In the event that the Applicant fails to snow plow and/or sand unaccepted ways within a subdivision in a timely fashion, the Town may do so at the Applicant's expense when in the opinion of the Director of Public Works, Police Chief, or Fire Chief it becomes a matter of public safety.

The Planning Board shall require that the Applicant submit a maintenance plan for approval as part of the Definitive Plan review process, and a bond or other surety to ensure compliance with the maintenance plan. The maintenance plan shall include, but not be limited to, the snowplowing, sanding and sweeping of subdivision streets; the maintenance of catch basins, retention and/or detention basins and other drainage structures; and provisions for public water, sewer, and street lights. The Planning Board may also include other items which, if not maintained, could have adverse impacts on the health, safety and welfare of the Town and/or the residents of the subdivision.

### **13. Evidence of Satisfactory Performance**

Before the Board will release the interest of the Town in a performance bond or deposit to an amount less than thirty percent (30%) of the original cost of construction, or \$30,000, whichever is greater, or release the last lot in the case of approval with covenant:

- a. The Applicant shall file with the Planning Board a certified copy of the layout (as-built) plan of each street or way and associated improvements within the subdivision, in accordance with the provisions set forth in Section 5.3, Subsection 16 and the Town's Post-Construction Stormwater Management Bylaw (Municipal Code, Chapter 13.15). (rev. 5/10/21)
- b. The Board shall obtain in writing from the Applicant's engineer a statement that all work required by the Rules and Regulations has been inspected and approved as to the methods of construction and materials used in the performance of such work.
- c. The Board shall obtain in writing from the Tree Warden a statement that installation of street trees and other plantings required by the Rules and Regulations and approved definitive plan have been completed satisfactorily, that such plantings have been exposed to one winter season (November 15 – April 30) and that damaged plantings, if any, have been replaced to the satisfaction of the Tree Warden.
- d. The owner shall execute an instrument, in a form approved by the Board transferring to the Town, homeowner's association or an approved public utility company without cost, valid unencumbered title to all sanitary sewers, water mains, and appurtenances thereto, and other utilities constructed and installed in the subdivision or approved portion thereof, and conveying to the Town, homeowner's association or approved public utility company without cost and free of all liens and encumbrances, perpetual rights and easements to construct, inspect, repair, renew, replace, operate, and forever maintain such sanitary sewers and water mains, with any manholes, pipes, conduits, and other appurtenances and to do all acts incidental thereto, in, through, and under the whole of all streets in the subdivision or approved portion thereof, and if any such sewers or water mains have been constructed and installed in land not within such streets, then in, through, and under a strip of land extending ten feet (10') in width on each side of the centerline of all such sewers and water mains.

### **14. Release of Performance Guarantee**

- a. Upon completion of improvements required by these Rules and Regulations, the Applicant may request either full or partial release of the bond, deposit, mortgage agreement, or covenant by sending a statement of completion and request for release by certified mail to the Planning Board and to the Town Clerk. Copies of release from covenants or agreements regarding building or use and occupancy permits shall be sent by the Planning Board to the Inspector of Buildings. (rev. 2/22/10)
- b. Partial Release. The Board may grant partial release from such security for partial completion of improvements, provided that the Board determines that the completed portion provides a reasonable system for circulation and utilities pending completion of the rest and provided that appropriate arrangements have been made for later



disposition of interim facilities.

- c. Security. The Board may release the Applicant from a covenant upon receipt of an agreement executed by the Applicant and by the holder of a first mortgage on the premises providing for retention of funds and their availability to the Town upon default (see Ch. 41, G.L., Sec. 81-U)
- e. Retainment of Security after Completion. The Board shall retain security in an amount equal to twenty-five percent (25%) of the original surety amount, and the full cost of implementing any maintenance agreement, or twenty thousand dollars (\$20,000), whichever is more, to ensure construction adequacy against hidden faults or damage, and to ensure that the subdivision is adequately maintained for the safety and convenience of the residents therein. Such security shall not be released until the fee has been conveyed to the Town and the road has been accepted at Town Meeting, or the fee has been conveyed to a homeowner's association. The Planning Board may, if it believes it necessary and for specified purposes, require a greater amount. (rev. 2/22/10)
- f. Refusal of Release. If the Planning Board determines that said construction or installation has not been completed, it shall specify in a notice sent by certified mail to the Applicant and to the Town Clerk the details wherein said construction and installation fails to comply with the requirements of these Rules and Regulations, the approved definitive plan, and/or decision. In such case, the Board reserves the right to utilize the performance guarantee to complete such construction or installation.

#### **15. Modification, Amendment or Rescission**

In accordance with the requirements and procedures of M.G.L. Chapter 41, Section 81-W, the Planning Board, on its own motion or on the petition of any person interested, shall have power to modify, amend or rescind its approval of a definitive subdivision, or to require a change in a plan as a condition of its retaining the status of an approved plan. Failure of the Applicant to record the definitive plan within six (6) months of its endorsement, or to comply with the construction schedule incorporated into the performance agreement or to either initiate construction of improvements or sell lots in a subdivision or portion thereof within three (3) years of the approval of the definitive plan, or to comply with all applicable Zoning Bylaws, or unauthorized departure from these Rules and Regulations, the approved Definitive Plan and/or the decision, whether or not at the direction of other public agencies or officials, shall constitute sufficient reason for the Planning Board to consider rescission of such approval. (rev.2/22/10)

#### **16. Roadway Acceptance and As-Built Drawings**

- a. The Applicant shall retain title to the fee of each street, path or easement in or appurtenant to the subdivision until conveyed to the Town of Millbury or a homeowner's association. Notation that this is to be done shall be placed on the definitive plan and a notation stating "the grantor hereby retains all title in the streets, paths and easements referenced to in the description" or words of similar import and meaning, shall be placed on all deeds transferring lots within the subdivision. If title of the fee for the right-of-way is Land Court, the right-of-way shall have its own unique parcel label shown on the decree plan.

- b. Upon completion of a street in a manner fulfilling the requirements of the Board, the Applicant may request the Board to inspect it in order to give a recommendation to Town Meeting who will consider the question of laying out said street under the provisions of M.G.L Chapter 82. Street acceptances within a subdivision are the financial and legal responsibility of the Applicant.

The Applicant shall have the original plans and profiles of the definitive plan, as approved by the Board, corrected and certified by his engineer or surveyor to show the actual as-built locations and grades of all utilities, roadway profiles, location of all main buildings and any changes authorized by the Board. The Applicant shall submit to the Board one (1) mylar, three (3) prints of the As-Built Plan at the same scale as the street plans in Section 5.2, a CD or DVD containing geographic data in accordance with the criteria specified in Section 3.8 of these Rules and Regulations, and a level III standard digital file (SDF), per MassGIS standards for digital plan submittals to municipalities. The As-Built Plan shall indicate the actual locations, distances, bearings, and complete curve data for all street sidelines. As-built centerline profile grades shall be shown in elevation on the lower portion of the sheet. Any curbing, sidewalks/bicycle paths, drainage facilities, “as-built” contours for detention and retention basins with contour intervals matching those depicted on the definitive plan, invert and top of frame elevations for drainage structures, other appurtenances as may have been required, permanent monuments, permanent easements, and underground utilities within the right-of-way and on the lots must be shown. In addition, for all sewerage collection systems the following information shall be included in plan and in profile (rev. 5/10/21):

- 1) Property line locations;
- 2) MH locations (ties), MH locations (stations), MH inverts
- 3) Wye locations;
- 4) Elevation (inverts) of house service lines;
- 5) Location of house service line;
- 6) Location of chimneys;
- 7) Elevation of chimneys;
- 8) Angle of pipes (at chimneys);
- 9) House service lines (from main to foundation);
- 10) Lift station (if required).

The Board shall also require the Applicant to submit the following information before making a recommendation to Town Meeting:

- 1) Two (2) copies of the proposed deed conveying the fee in the street plus associated easements to the Town, and legal evidence that the fee has not been inadvertently conveyed to abutting lot owners.
- 2) Two (2) copies of a written description, prepared by a surveyor or engineer, of the location and length of the street to be considered for acceptance.
- 3) A copy of recorded deeds and other instruments for any common land or public open space, park or other such parcels contained within the subdivision.
- 4) Written evidence from the Town Treasurer that the owner and/or Applicant is not

on the list generated in conformance with Chapter 13.15 of the Town of Millbury  
Municipal Code.