

4. Costs adjusted to add a 25% inflation/safety factor
5. Engineering inspection, materials testing, legal and other soft costs.

Final Approval: Final approval of the Definitive Plan does not constitute acceptance by the Town of streets within a subdivision, which requires a Town Meeting vote. No representations of these regulations or the Planning Board should be presumed to even imply that Town Meeting might be willing to accept any new road.

Section 8. Performance Guarantee

Before endorsement of the Planning Board's approval of a Definitive Plan of a subdivision, the subdivider shall agree to complete the required improvements specified in these Regulations and in the Definitive Plan approval, such construction and installation to be secured in accordance with Section 81U of the Subdivision Control Law by one, or in part by the other, of the following methods which may from time to time be varied with the applicant:

1. Approval with Financial Performance Guarantees (Surety Bonds, Cash Escrow/Money, Three Party Lender Agreement, or Letters of Credit). The applicant shall either file a surety company performance bond or provide a deposit of money or negotiable securities, including letters of credit, in an amount determined by the Planning Board in consultation with their advisers to be sufficient to cover the cost of all or any part of the improvements specified in these regulations at State "prevailing wage rates" not covered by a covenant under "b" below, and to cover the costs of inspections, record plans, street acceptance plans, and legal work, and a 20% contingency/inflation factor. Warranty principal shall be not less than 15% of the estimated cost of those components of the entire project which shall be dedicated for public use and shall cover workmanship and materials.
 - a. If financial performance guarantees are used, at least two lots in a subdivision which can be built on must be covered by a covenant (under paragraph b below) to insure that all work, including legal work, is completed.
 - b. Letters of Credit, three-party agreement for lender retention of funds, surety bonds and other financial performance guarantees must be drafted so that the only requirement that must be met for the Planning Board to draw on the letter is to notify the financial institution (grantor) that "We have incurred liability by reason of the failure of the applicant/developer/owner, within ninety days of the expiration of this letter, to complete the construction of their project (insert name of subdivision and plans) in accordance with the definitive subdivision plans and submittal, the subdivision approval, the Zoning, and the Subdivision Rules and Regulations. The amount drawn, which may be more than required to complete the project, will be held in a segregated bank account until the work can be bid competitively and the bid awarded and paid for or until the contract for the work is otherwise let and the work paid for. Any excess over the cost of completing the work will be returned to the grantor."
 - c. Such bond, deposit of money or negotiable securities, shall be approved as to form, the surety or financial institution, and manner of execution by the Planning Board.

- d. For any surety bond, 1) the surety must agreed that any litigation stemming out of the bond will take place in Massachusetts, 2) the bond must include the name and address of the person to be served for any legal action, 3) The bond must specifically include the terms above, and 4) No expiration date may be allowed in the bond (the bond must be valid until the work is complete) and the warranty performance period has been completed.
 - e. The applicant must provide an Irrevocable Right-of-Entry to allow the Town of Tyringham to enter the property to make any necessary improvements required in the Subdivision Regulations and the Definitive Plan approval if the Town is forced to call the financial performance guarantees. Accepting, calling, or using financial performance guarantees does not provide the Town with any responsibility to complete a project beyond that for which the Town is willing to undertake and for which there are sufficient performance guarantee funds to pay for. The property owner shall subordinate all property mortgages to the Irrevocable Right-of-Entry and record it in the Registry of Deeds or Land Court, as applicable.
2. Approval with Covenant. Instead of filing a bond or depositing money, the applicant may fulfill a covenant, executed and duly recorded concurrent with recording the subdivision approval by the owner of record, running with the land, that no lot in the subdivision shall be sold and no building erected thereon until such ways, services and, whenever applicable, temporary turnarounds are constructed and installed, and until record plans, street acceptance plans, and other required work are accepted by the Planning Board in accordance with these Rules and Regulations so as to adequately serve the lots.

Such covenant shall be inscribed on the Definitive Plan or on a separate document referred to on the plan and delivered to the Planning Board. The Planning Board shall turn over the covenant agreement to the town counsel, who shall review its contents and forward his/her comments in writing to the Planning Board. Upon approval of the covenant by the Planning Board, the applicant shall note the Planning Board's action on the Definitive Plan, record the covenant, endorsed Definitive Plan, and other appropriate documents at the Registry of Deeds or Land Court, as appropriate, and provide certified copies of the same to the Planning Board.

Completion Time Schedule. The covenant or financial performance guarantee shall be contingent upon the completion of such improvements, and the required a one year warranty as required in these Rules and Regulations within a maximum period of three (3) years of the date of such bond, deposit of money, or covenant. After the completion date of all improvements and the one-year Warranty Period, there shall be at least a three (3) month Warranty Settlement period before the expiration date of any bond, deposit of money, or letter of credit. Said three (3) month period shall give the Planning Board the opportunity to collect the financial performance guarantee so that it will be able to complete the necessary improvements in case (a) the developer is unable to do so; and/or (b) the Planning Board denies any requests for an extension of time. "Warranty" shall include all workmanship and materials.

Upon written request from the applicant, the Planning Board may, at its discretion, grant an extension of time, and such agreement shall be executed and affixed to the financial performance guarantee or covenant.

In the case of a surety company bond, such an agreement for an extension shall not be effective until the surety delivers to the Planning Board a written statement that the surety agrees to the proposed alteration of the completion schedule and that such alteration shall not relieve or affect the liability of the surety company.

Failure to complete all improvements as required by these Rules and Regulations within the time allotted shall cause the Planning Board (a) to draw upon the performance guarantee (surety bond, deposit of money, letter of credit) in order to complete said improvements; and/or (b) schedule a Public Hearing in order to rescind approval of the subdivision in accordance with appropriate sections of M.G.L. Chapter 41, Section 81.

3. Recording of Plan. The Developer, with a representative of whenever applicable, the Planning Board's Order of Conditions, public easements (plans and documents), restrictive covenants, master deeds, etc., at the Registry of Deeds or Land Court, as applicable. The cost of said recording shall be borne by the developer.

Subsequent to said recording and prior to any Building Permit being issued, the Project Applicant shall file within seven (7) calendar days one (1) print of the Definitive Plan with the Building Inspector. Further, in accordance with the statute, where approval with covenant is noted thereon, the Inspector shall issue no permit for the construction of a building on any lot within the subdivision, except upon receipt from the Planning Board of a copy of the Certificate of Performance) releasing the lot in question.

4. Procedures for Partial Release. The subdivider may, upon partial completion and installation of required improvements in a subdivision, the security for the performance of which was given by bond, deposit of money, letter of credit, or covenant, make formal application, in writing, to the Planning Board for partial release of the Performance Guarantee, in accordance with the procedures set forth herein:
 - a. Financial Performance Guarantee. The amount of a such bond, or deposit of money, or letter of credit or three-party agreement for lender fund retention, held may, from time to time, be reduced by the Planning Board. The applicant shall present to the Planning Board a list of all construction items performed and/or completed, said list to be based on the subdivision approval, and the subdivision regulations in their entirety. The amount to be reduced by the Planning Board, after consultation with their agents and advisers, shall be based upon State prevailing wage construction costs at the time the application for reduction is made. The Planning Board shall withhold adequate funds to complete the project, but shall withhold no less than twenty (20%) percent of the original approved cost estimate or fifty thousand dollars (\$50,000), whichever is greater. At the completion of the project (based on a written acceptance from the Planning Board that the project has been completed) and a one-year warranty period, the amount withheld shall be released.

- b. **Covenant.** The subdivider may request a Release of Conditions for lots where the required improvements have been completed for that section of roadway beginning at any intersection with an accepted street and abutting lots up through the last lot to be released. Lots may only be released if they abut the completed portion of the road. No partial release from the covenants will be approved if the total length of roadway, including a temporary turnaround, abutting said designated lots, exceeds the maximum allowable length for dead-end streets, unless the Planning Board has already approved within the limits of the development a dead-end street exceeding said limits.

In the absence of financial performance guarantees, adequate covenants will be held to insure completion of the project, including record plans, street acceptance plans, site inspections, and legal work. In addition, a covenant on two lots which can be built on will be held until all work in the subdivision, including the signing of all necessary legal documents, has been completed.

5. **Procedures for Full Release.** The subdivider may, upon completion and installation of required improvements in a subdivision, the completion of record plans and street acceptance plans, as specified in these Rules and Regulations, and the completion of a one-year labor and materials warranty period make formal application, in writing, to the Planning Board for full release of any outstanding performance guarantee. Before the Planning Board releases their full interest in said performance guarantee, the Planning Board shall:
 - a. Obtain from the applicant's professional engineer a written certificate of statement certifying that all work required by these Rules and Regulations has been constructed in conformance with the approved construction plans.
 - b. Obtain from the applicant, letters from the electric, telephone, gas and cable TV companies stating that their respective underground systems have been installed to their satisfaction.
 - c. Obtain from the applicant, a set of record construction plans. Said plans shall include, but not be limited to, all the information requested in Record Plans.
 - d. Obtain from the applicant, street acceptance plan or plans and necessary documents, as stated in Acceptance Plans.
 - e. Obtain from the applicant, where applicable, an instrument, in a form approved by the Planning Board, transferring to the municipality or to 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 of approved portion thereof, and conveying to the municipality or to an 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, water mains and other utilities, with any manholes, 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 fifteen (15) feet in width on each side of the centerline of all such sewers and water

- mains. The Planning Board may require greater than fifteen (15) feet in width on each side of the centerline where it deems necessary.
- f. If the Planning Board determines that all improvements as shown on the endorsed Definitive Plan and all required plans and legal documents have been completed satisfactorily, release all the interest of the municipality in such performance guarantee and return the bond to the person who furnished the same, or release the covenant, by appropriate instrument, duly acknowledged, which may be recorded.
 - g. If the Planning Board determines after inspection that said construction or installation has not been completed, or wherein said construction or installation fails to comply with these Rules and Regulations, send by registered mail to the applicant and to the municipal clerk the details wherein said construction or installation fails to comply with its rules.
 - h. The applicant shall have thirty (30) days after receipt of such notice to correct all problems mentioned in the above. Failure of the applicant to finish all the necessary work within said thirty (30) days shall cause the Planning Board to draw upon the bond or deposit of money as mentioned below.
 - i. Any such bond may be enforced and any such deposit may be applied by the Planning Board for the benefit of the municipality, as provided in M.G.L. Chapter 41, Section 81 upon failure of the performance for which any bond or deposit was given to the extend of the reasonable cost to the municipality of completing such construction and installation.
6. Release of Lots from Covenant in Exchange for Financial Performance Guarantee. The subdivider may request a Release of Lots from Covenant in exchange for a financial guarantee provided that:
- a. The lots run consecutively and are released on both sides of the road simultaneously, beginning with the lots nearest any intersection of the subdivision road and an existing municipal road.
 - b. The amount of the financial guarantee and the financial guarantee process shall be determined by the Planning Board, as described above.

Section 9. Design Standards and Required Improvements

General Project Layout Standards

No plan of a subdivision shall be approved unless all of the building lots shown on the plan comply with the Zoning and the design and construction standards located herein.

Except as herein noted, the following shall be used as design standards. Where a difference between the standards as these Regulations exists, these Regulations shall be followed unless a waiver is granted by the Planning Board:

1. Streets, sidewalks, water systems, sanitary sewers, storm drain systems, public and private utilities and other infrastructure shall be constructed in accordance with these subdivision regulations and the current edition of the Massachusetts Highway