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CHAPTER 3 SUBDIVISION

SECTION 3-1 - AUTHORITY AND ADMINISTRATION

A. PURPOSE

The purpose of this chapter of the Land Use and Development Code is to provide uniform procedures and standards for observance by the Planning Board, other Officers of the Town, and developers in regulating new subdivisions in the Town of Gorham.

B. AUTHORITY

In accordance with the provisions of Maine Revised Statutes, the following regulations governing the development of the Town are adopted by the Town of Gorham.

C. ADMINISTRATION

- 1) The Gorham Planning Board, hereinafter called the Planning Board, shall administer this chapter.
- 2) Whenever a subdivision of three (3) or more lots is proposed for a parcel or assembly of parcels of land, and before any contract or offer for the conveyance of the proposed development or any portion thereof shall have been made, and before any plat of subdivision into three or more lots shall have been recorded by the registry of deeds, and before any permit for the erection of a structure within such development shall be issued, and before any improvements, including the installation of roads or utilities, shall be undertaken, and before the sale of a third lot shall have been made from a parcel for which a subdivision plat has not been approved, the developer or his authorized agent shall obtain the endorsement of the Planning Board for Final Approval of such development. All developments shall be executed in strict conformance with approved plans.
- 3) As to any intended development, the developer or his authorized agent shall prepare and formally submit to the Planning Board both a Preliminary Plan for study, and modification where required, and a Final Plan, the Final Plan shall not be submitted until the developer has received from the Planning Board written notice that a legal majority of the Planning Board has approved the Preliminary Plan. These requirements may be waived by the Planning Board in accordance with Subsection F following.
- 4) Abutting property owners shall be notified by mail of a pending application for subdivision review. This notice shall indicate the time, date, and place of Planning Board consideration of the application.

D. ENFORCEMENT

When the violation of any provision of this chapter shall be found to exist, the Town Council or the Code Enforcement Officer is hereby authorized and directed to institute in the name of the Town any and all actions and proceedings that may be appropriate or necessary to the enforcement of the provisions of this chapter.

E. FINES AND PENALTIES

Any person, firm, corporation or other legal entity who conveys or offers to convey, including by rental or lease, land within a proposed development before receiving Final Approval as required by this Chapter shall be subject to the fines and penalties contained in 30-A MRSA Section 4452.

F.

VARIATION

- 1) A variation in the strict application of this chapter or a provision thereof may be permitted only where in the opinion of the Planning Board, strict application to the developer and his property would cause undue hardship, or would not be in the best interest of the Town, or would be waived according to Paragraph 2 following.
- 2) The Planning Board may waive the procedures leading up to the Final Approval required under Sections 3-3 and 3-4 of this chapter when, in its opinion, the development is not of potential impact so as to require governance by this chapter or provisions thereof. The developer may make such request in writing to the Planning Board without appearing in person before it. In so waiving the requirements of those sections, the Planning Board shall nonetheless require a satisfactory description of the nature and extent of the development proposed in drawings and otherwise as necessary to provide a basis on which to give approval. The documents necessary to making application for a Building Permit may be sufficient for this purpose.

G. CONFLICT WITH OTHER ORDINANCES

In any case where a provision of this chapter is found to be in conflict with a provision of any other ordinance or code of the Town existing on the effective date of this Code, the provision which establishes the higher standard for the promotion of health and safety shall prevail.

H. APPEALS

An appeal from any order, relief, or denial of the Planning Board may be taken by any party to Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B. The hearing before Superior Court shall be a trial de novo without jury.

I. SEVERABILITY

The invalidity of any section, subsection, paragraph, sentence, clause, phrase or word of this chapter shall not be held to invalidate any other section, subsection, paragraph, sentence, clause, phrase or word of this chapter; to this end, the provisions of this chapter are hereby declared to be severable.

SECTION 3-2 - PRE-APPLICATION

A. CONFERENCE

- 1) Prior to formal application for approval, the developer may appear before the Planning Board to discuss the proposed development. No binding commitments shall be made between the Town and the developer at this conference.
- 2) If the developer chooses to meet with the Planning Board in this manner, he shall make request by due process that he be scheduled upon the agenda of a regular meeting of the Planning Board. At that meeting he shall appear with information sufficient to:
 - a) Locate the site and identify the zoning classification.
 - b) Describe the site: its area, shape, and existing features, both natural and man-made.
 - c) Describe the general intent of development. If possible, materials (such as a sketch plan) should be informally submitted to Planning Board staff to allow staff review prior to the meeting.
- 3) The Planning Board shall respond generally by indicating to the developer its concerns and by making suggestions as to what may be possible.

SECTION 3-3 - PRELIMINARY PLAN

A. APPLICATION

Complete written application for approval shall be filed with the staff of the Planning Board, together with the Preliminary Plan and all supporting information, at least three weeks prior to a regularly scheduled meeting of the Board. Such written application shall be on forms as prescribed by the Planning Board.

To help recover costs incurred by the Town in the review, administration, site inspection, and public notice associated with the application, the following fees and deposit in such amount(s) and for such purpose(s) as the Town Council may from time to time establish by Council order shall be paid by the applicant to the Town of Gorham at the time of filing the Preliminary Plan application:

- 1) Publishing and public notice fee;
- 2) Application fee; and
- 3) Independent consulting and peer review escrow account to be deposited with the Town in accordance with Chapter 2, Section 2-9 of this Code.

No fees shall be refunded except unexpended escrow deposits, which shall be refunded in accordance with Chapter 2, Section 2-9, Subsection B of this Code. If a subdivision application is also subject to site plan review under Chapter 4 of this Code, or municipal review under any other ordinance, then the applicant shall pay only the larger review fee exclusive of escrow deposit.

B. REQUIREMENTS

The Preliminary Plan application submitted by the developer shall consist of four copies of all materials necessary to provide the following information. Where practical, sheet size of drawings shall be 24" x 30". The developer may request a waiver of requirements not relevant or not of substantial import to his proposal, in which case he shall list them.

- 1) Names of: project, Owner, Developer, Surveyor and/or Engineer and/or Architect.
- 2) Graphic and written scale, north point, date.
- 3) Location within the Town, abutting owners, boundaries of tract with accurate distances and bearings.
- 4) Zoning District classification, proposed uses, special exceptions and variances required.
- 5) As applicable: building areas, lot areas and lot coverage ratios; net residential density ratios; street frontages; front, side and rear setbacks; buffer strips; and distances between structures.
- 6) Proposed dedications to open space or public use, and proposed restrictive covenants.
- 7) Proposed construction schedule and phasing of improvements. Plans requiring phasing shall be designed so that each subdivision phase must be recorded in the registry of deeds as a distinct and separate plan. The required Planning Board signature block shall be added to each of the phased subdivision plans.
- 8) Identification, approximate dimensions locating and sizing major features of the development as proposed for approval, including as applicable, streets, drives,

maneuvering space, parking areas, number of spaces, easements and rights-of-way, both within and adjacent to the development; lots or other divisions of land; heights and shapes of existing and proposed structures; and other improvements and facilities.

- 9) Widths and cross-sections including curbs and sidewalks of all proposed and existing streets as prescribed in Chapter 2, Section 2-5.C.1 of this Code; sight distances at proposed intersections with existing streets; directions of traffic flow; means of access for general, service, and emergency vehicles.
- 10) Existing and proposed topography in contours of two foot intervals with all elevations referred to U.S.G.S. datum, and indicating all grading and filling.
- 11) Location and boundaries of soil areas and their names in accord with the National Cooperative Soil Survey Classification, and identifying each soil for any separate area of one-eighth of an acre or larger in size. Such study shall be undertaken or approved as to its accuracy by the Cumberland County Soil and Water Conservation District as supplied with technical assistance by the Soil Conservation Service.
- 12) Location of any tests or studies made, such as percolation tests, sample borings, bearing studies, etc.
- 13) Location of existing and proposed modification of natural features such as water bodies, springs, streams, swamps and wetlands, woodlands, cleared areas, trees over 5 inch diameter, gullies and ravines, ledge and outcroppings.
- 14) Proposed planting, including buffer and screening provisions and integration with natural features.
- 15) Existing pattern of surface drainage, modifications proposed to it, flow on and from existing and proposed paved areas.
- 16) Location, size and type of existing and proposed sanitary and storm sewers identifying direction of flow. Description of proposed disposal of storm water and sewage, if connection to public storm and sanitary sewers is not proposed.
- 17) Location, size and type of existing and proposed water supply for both general consumption and fire protection.
- 18) Location of existing and proposed electric and telephone service.
- 19) Proposed means of snow removal, garbage and trash collection, and facilities necessary thereto.
- 20) Proposed storage areas, including facilities for maintenance of the proposed development.
- 21) Proposed outdoor recreation facilities.
- 22) Proposed conservation provisions.
- 23) Where application is made for approval of development of only a portion of a larger tract, the developer shall submit a plan indicating the general form of future development over the remainder and its relationship to the proposed development as submitted for approval.
- 24) Submissions for preliminary subdivision approval shall include evidence that affirmatively demonstrates that the developer has the financial capacity to undertake the proposed development, including the following information:

- a) Accurate and complete cost estimates of the development;
- b) Time schedule for construction;
- c) One of the following three items:
 - 1. A letter from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds and the purposes for which the funds may be utilized; or
 - 2. In cases where funding is required but there can be no commitment of money until approvals are received, a letter of "intent to fund" from the appropriate funding institution indicating the amount of funds and their specified uses; or
 - 3. Copies of bank statements or other evidence indicating availability of funds when the developer will personally finance the development.
- d) Any other information deemed relevant by the Planning Board for the specific project.

C. PRELIMINARY PLAN REVIEW

- 1) The Planning Board shall review the Preliminary Plan of the proposed development as submitted. It shall verify the provision of all information as required under the preceding subsection B, and shall accept or deny any waivers requested as listed by the developer at its discretion. It may require the developer to undertake further studies as it deems necessary to ascertain that the public convenience, safety, health and welfare are protected, that the Town will not in the future incur extraordinary expense as a result of the development, either on or off the site, and that the environment will not be harmed unduly.

The applicant shall submit such additional information within twelve (12) months of said Planning Board request. The failure to timely submit such information will result in the application being placed on the next Planning Board meeting agenda for final review.

- 2) The Planning Board shall include in its review the following general and specific requirements that the development as proposed for approval:
 - a) Shall be in conformance with the Comprehensive Plan of the Town, and with all pertinent State and local codes and ordinances, including the Performance Standards related to specific types of development which are stipulated in Chapter 2.
 - b) Will not cause congestion or unsafe conditions with respect to use of the highways or public roads, existing or proposed on or off the site.
 - c) Will not place an unreasonable burden by either direct cause or subsequent effect on the ability of the Town to provide municipal services including utilities, waste removal, adequate roads, fire and police protection, school facilities and transportation, recreational facilities, and others.
 - d) Has sufficient water supply available for present and future needs as reasonably foreseeable.
 - e) Will provide for adequate solid and sewage waste disposal for present and

future needs as reasonably foreseeable.

- f) Will not result in undue pollution of air, or surficial or ground waters, either on or off the site. The Planning Board shall consider at least: the nature, location and course of all potential contaminants to the air or water; and particularly in respect to pollution of water, the elevation of the proposed development above bodies of water in the vicinity, the extent of flood plains, the nature of soil and subsoil both in their function as aquifers and in their ability to adequately support waste disposal-- the topography of the land and its relation to the movement and disposal of effluents, and the availability, adequacy and suitability of streams for the disposal of effluents.
 - g) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
 - h) Will not affect the shoreline of any body of water in consideration of pollution, erosion, flooding, destruction of natural features and change of ground water table so that a dangerous or unhealthy condition may result.
 - i) Will respect fully the scenic or natural beauty of the area, trees, vistas, topography, historic sites and rare or irreplaceable natural or manmade assets.
 - j) Financial Capacity to Meet Subdivision Regulations. The applicant must have adequate financial resources to construct the proposed improvements and meet the criteria standards of these regulations. The Board will not approve any plan if the applicant has not proven its financial capacity to undertake it.
- 3) Every subdivision shall be responsible for providing open space and recreational land and facilities to meet the additional demands created by the residents of the subdivision. This requirement shall be met by the payment of a Recreational Facilities and Open Space Impact Fee in accordance with Chapter 7.
- 4) The requirements of this paragraph shall apply if an applicant chooses to create open space and/or recreational land and facilities within the subdivision in addition to paying the impact fee. The reserved land shall remain private property owned in common by a homeowners association and must be of suitable dimension, topography and general character for the proposed-use and must be reasonably accessible and open to use by residents of the development and may, at the applicant's option, be open to the residents of the Town.
- a) Land Improvements: The applicant shall improve the land according to the proposed use of the land and the requirements of the Planning Board.
 - b) Owners Association: The Planning Board shall require as a condition of approval for any subdivision with common recreational land and facilities and/or open space, that the lot owners form a homeowners association by written agreement to provide for the perpetual care of the recreation land and shall specify the rights and responsibilities of each lot owner with respect to the repair and maintenance of the land reserved for recreational or open space purposes. The homeowner's association agreement shall be in a form acceptable to the town attorney and, upon approval by the Planning Board, shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date of subdivision approval by the Planning Board. The agreement shall also

contain a provision that allows the Town, at its option, to repair and maintain this land and charge the costs to the lot owners through the homeowners association in the event that the association fails to maintain the property as agreed, after the Town has first provided reasonable notice and an opportunity to cure.

- 5) The Planning Board shall decide on the acceptability of the Preliminary Plan and shall issue its approval, conditional approval, or denial. It shall note all specific aspects which do not meet with its approval either in specifically satisfying the criteria listed in Subsections B and C above, in meeting the Performance Standards stipulated in Chapter 2, or in generally providing for the protection and preservation of the public's health, safety and welfare. The Planning Board may grant its conditional approval of any or all aspects of the Preliminary Plan pending any changes required in order to bring it into conformance with its approval, or pending the results of further studies required of the developers as provided for in Subsection C:1 above.
- 6) The Planning Board shall issue a written notice through its minutes or otherwise, of its decision within sixty days after complete application for a proposed development has been submitted. By mutual agreement between the Planning Board and the applicant, this period may be extended as necessary to permit the developer to seek an appeal on land use from the Zoning Board of Appeals.

SECTION 3-4 - FINAL PLAN

A. APPLICATION

A request for Final Approval shall be made by the developer in writing to the Planning Board, and shall be accompanied by the Final Plan, a Performance Guarantee and other materials as described herein. Application for Final Approval shall be made on forms as prescribed by the Planning Board.

B. REQUIREMENTS

- 1) The Final Plan shall be prepared by a registered professional surveyor or a registered professional engineer. The Final Plan shall include the original drawn on permanent transparency material and three dark-line prints, all prepared to the same scale as the Preliminary Plan unless otherwise prescribed by the Planning Board as being necessary to show all details clearly. The seal(s) of the registered professional surveyor and/or engineer, and/or architect responsible for the Final Plan shall be affixed to all sheets. The plan drawing shall list all others submitted with it to include them by reference as part of the Final Plan. It shall also provide space for the Signatures of a legal majority of the Planning Board and the date of approval following the words, "Approved: Town of Gorham Planning Board." The following information shall be required:
 - a) All information required of the Preliminary Plan.
 - b) The identification and location of all monuments, existing and proposed.
 - c) Information sufficient to establish on the ground the exact location, direction, width and length of every street and way line, easement, property line and boundary line.
 - d) The location, size and type of planting and landscaping for such parks, esplanades or other open spaces as may be proposed or prescribed.

- e) Longitudinal profiles, radii of curves, and angles of intersections for all proposed streets.
- 2) The Final Plan shall be accompanied by the following documents as applicable:
- a) Private restrictions and easements, conditions of sale and trusteeships, and their periods of existence.
 - b) A statement from the Superintendent of the Portland Water District of conditions on which the District will supply water, and approving the size and location of mains, valves and hydrants proposed.
 - c) A statement from the Fire Chief of the Town of Gorham approving the number, size and location of hydrants and their supply mains proposed.
 - d) A statement from the Public Works Director if connection to public storm sewers is proposed approving the location, diameter, slope and invert elevations of the storm sewers proposed.
 - e) Statements of approval of the means of sanitary sewerage proposed from the appropriate State Agencies having jurisdiction, together with evidence of suitability of soil and/or water bodies to dispose of the effluent from the proposed treatment of sanitary wastes and from storm water run-off.
 - f) Offers of cession in a form certified as satisfactory by the Town Attorney of all land included in streets, highways, parks or other open space ultimately to be dedicated for public use, or not specifically reserved by the developer.
 - g) Proof from the Board of Appeals of the granting of an appeal for a variance or special exception, if required, and any conditions imposed.

C. FINAL PLAN REVIEW

- 1) The Planning Board shall review the Final Plan of the proposed development as submitted. It shall verify the provision of all information as required under the above subsections, and the provision of any additional information requested during the Preliminary Review. It shall examine any changes made subsequent to the Preliminary Plan for satisfactory correction.
- 2) The Planning Board shall approve or deny the Final Plan, taking into consideration the general and specific requirements listed under this Chapter.
- 3) No Final Plan shall be approved by the Planning Board unless submitted by the developer or his authorized agent within 12 months from the Issuance of Preliminary Approval.
- 4) The Planning Board shall issue a written notice directed to the applicant through its minutes or otherwise, of its decision within thirty days after application for Final Approval has been submitted.
- 5) The approval of a Final Plan by the Planning Board shall not be deemed an acceptance by the Town of the dedication of any street, or other public way or grounds.
- 6) The approval of a Final Plan shall be certified on the original tracing by the signatures of a legal majority of the members of the Planning Board.
- 7) Two signed copies of the Final Plan as approved shall be retained by the Planning Department (1) and the Assessing Department (1). One (1) original mylar of the signed plan shall be recorded in the Registry of Deeds. A mylar copy of the recorded mylar shall be returned to the Planning Department.
- 8) No subdivision plan shall be released for recording at the Registry of Deeds until the required performance guarantee has been posted. If an approved plan is not recorded in the Registry of Deeds within one (1) year of the original approval, it shall become null and void. If a plan has received phased approval, the first phase shall be recorded within one (1) year of the original approval and subsequent phases shall be recorded within five (5) years of the original approval. If a phased plan is not recorded within those time periods, the phases that have not been recorded shall become null and void.
- 9) Municipal subdivision approval granted prior to August 1, 1972 of any final plan or other subdivision plat shall be deemed withdrawn unless said plan is recorded in the Cumberland County Registry of Deeds by August 1, 1982.

SECTION 3-5 - POST APPROVAL ACTIVITIES

A. Performance Guarantee:

- 1) Purpose: Improvement guarantees shall be provided to ensure that the applicant has the financial capability to properly install and maintain the required street, utility, and other improvements.
- 2) Types of Guarantees. The applicant shall provide one of the following performance guarantees for an amount adequate to cover 125% of the total construction costs of all required improvements. Performance and maintenance guarantees shall be provided by a variety of means including, but not limited to the following, which must

be approved as to form and enforceability by the Town Manager and Town Attorney:

- a. Escrow Account: Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as sole owner;
 - b. Security Bond: A performance bond payable to the municipality issued by a surety bonding company authorized to do business in the State of Maine;
 - c. Letter of Credit: An irrevocable letter of credit, from a bank or other reputable lending or financial institution.
- 3) Contents of Guarantee: The performance guarantee must contain the following:
 - a. Construction schedule; and
 - b. Cost estimates for each phase of construction taking into account as-built drawings, survey monumentation, required legal documents, provisions for inspections of each phase of construction, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction.
- 4) Escrow Account. A cash contribution for the establishment of an escrow account must be made by either a certified check made out to the Town of Gorham, the direct deposit into a savings account, or the purchase of a certificate of deposit.
 - a. For any account opened by the applicant, the Town of Gorham must be named as owner or co-owner, and the consent of the Town must be required for any withdrawal.
 - b. The Town shall be authorized to make withdrawals without the signature of the applicant, pursuant to the performance schedule.
- 5) Performance Bond. A performance bond must detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents must specifically reference the subdivision for which approval is sought and the approved costs estimates.
 - a. The applicant shall submit a draft copy of the performance bond to the Town Planner for review and approval prior to issuance of the final performance bond.
- 6) Letter of Credit. An irrevocable letter of credit from a bank or other reputable lending institution with offices in the region must indicate that funds have been set aside for the construction of the subdivision.
 - a. The letter of credit must use the template established by the Town of Gorham, unless waived by the Town Manager in consultation with the Town Attorney.
- 7) Phasing of Development: The Planning Board may approve plans to develop a subdivision in separate and distinct phases. If the subdivision is located in the Rural or Rural-Manufactured Housing zoning district, and the subdivision has ten (10) lot or more, subdivision phases shall be limited so that no more than five (5) lots are allowed in an individual phase. For all other zones, if the subdivision has fifty (50) lots or more, subdivision phases shall be limited so that no more than twenty-five (25) lots are allowed in an individual phase. Only one (1) phase will have building permits issued at a time until at least ninety percent (90%) of the certificates of occupancy have been issued for that phase and all required improvement for that phase have been completed, except for finish paving of streets. In no event shall

more than two (2) phases of the subdivision be under construction at the same time. The phases must be designed so that they can be recorded at the Registry of Deeds as separate and distinct plans. No phased plans will be released for recording at the Registry of Deeds until the performance guarantee for that phase has been established as required under this section.

- 8) Release of Guarantee. While partial draws are permitted, the amount of each must be no less than twenty percent (20%) of the original amount. The developer shall submit to the Town Planner a copy of the approved schedule of values identifying items substantially completed and being requested for release. The Town Planner shall send a copy of such notice to the appropriate municipal officials: The Zoning Administrator, Fire Chief, Town's Inspecting Engineer, and/or the Public Works Director or the Director's designee. The respective municipal officials shall inspect all improvements of which such notice has been given and shall file a report with the Town Planner indicating either approval, partial approval, or rejection. Prior to the release of any part of the performance guarantee, the Town Manager, or his designee, shall determine to his/her satisfaction, in part upon the report of the Town's consulting engineer or other qualified individual retained by the municipality and departments who may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested.
- 9) Default: If upon investigation, the Town or the Town's consulting engineer finds that any of the required improvements have not been constructed in general conformance with the plans and specifications filed as part of the application, he or she shall report in writing to the Code Enforcement Officer, the Town Manager, the Town Planner, and the applicant or builder. The Town Manager, or his designee, shall take any steps necessary to preserve the municipality's rights.
- 10) Performance guarantees for subdivision containing streets designed to the Town's public way standards and meant to be offered to the Town for acceptance are subject to the provisions under Chapter 2, Section 2-5: Minimum Standards for the Design and Construction of Streets and Ways, E. Acceptance of Streets and Ways, 4), h).

B. Improvements

In no event shall building permits be issued for more than 50% of the lots or units within a development until:

- 1) All required off-site public improvements have been completed, unless otherwise approved by the Planning Board, based upon the Board's determination that extenuating circumstances exist and an adequate performance guarantee is in place to ensure the completion of the uncompleted public improvements. For purposes of this section only, extenuating circumstances may include, but are not limited to, delays in related Town, State or federal improvement projects that impact the required public improvements or delays caused by weather or unforeseen site conditions. The Planning Board's decision on whether extenuating circumstances exist to excuse completion of required off-site improvements prior to the issuance of more than 50% of the building permits shall be final.
- 2) All required streets are either constructed or the guarantee required by Chapter 2, Section 2-5.E.4.f has been posted with and accepted by the Town.
- 3) All required stormwater facilities and erosion control measures have been installed, as required by the approved plan, other than those facilities required as part of the development of an individual lot.

- 4) Where the Planning Board has approved a phased development, this limitation shall apply to each separate phase. Public improvements both on- and off-site shall be assigned to a phase of development as part of the Planning Board's approval of the subdivision.