

**ARTICLE 7 - SUBDIVISION REVIEW (#20)**

**701 PURPOSES**

The purposes of these regulations are:

- 701.1** To provide for an expeditious and efficient process for the review of proposed subdivisions;
- 701.2** To clarify the approval criteria of the state Subdivision Law, found in Title 30-A M.R.S.A., Section 4404;
- 701.3** To assure new development in the City of Brewer meets the goals and conforms to the policies of the Brewer Comprehensive Plan;
- 701.4** To assure the comfort, convenience, safety, health and welfare of the people of the City of Brewer;
- 701.5** To protect the environment and conserve the natural and cultural resources identified in the Brewer Comprehensive Plan as important to the community;
- 701.6** To assure that a minimal level of services and facilities are available to the residents of new subdivisions and that lots in subdivisions are capable of supporting the proposed uses and structures;
- 701.7** To minimize the potential impacts from new subdivisions on neighboring properties and on the municipality; and
- 701.8** To promote the development of an economically sound and stable community.
- 701.9** The subdivision provisions set forth in this Article are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

**702 AUTHORITY AND ADMINISTRATION**

**702.1 AUTHORITY**

1. These standards have been prepared in accordance with the provisions of Title 30-A M.R.S.A., Section 4403.
2. These standards shall be known and may be cited as "Subdivision Ordinance of the City of Brewer, Maine."

**702.2 ADMINISTRATION**

1. The Planning Board of the City of Brewer, hereinafter called the Board, shall administer these regulations.
2. The provisions of these regulations shall pertain to all land and buildings proposed for subdivision within the boundaries of the City of Brewer.
3. Notwithstanding the provisions of this Article, leased dwelling units are not subject to subdivision review if the Municipal Reviewing Authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under Article 6 of this Land Use Code.

**702.3 AMENDMENTS**

This Article may be amended in accordance with Article 1 of this Land Use Code.

**703 ADMINISTRATIVE PROCEDURE**

In order to establish an orderly, equitable and expeditious procedure for reviewing subdivisions and to avoid unnecessary delays in processing applications for subdivision review, the Board shall prepare a written agenda for each regularly scheduled meeting. The agenda shall be prepared no less than one week in advance of the meeting, distributed to the Board members and any applicants appearing on the agenda, and posted at the municipal offices. Applicants shall request to be placed on the Board's agenda by contacting the City Planner. Applicants who attend a meeting but who are not on the Board's agenda may be heard only after all agenda items have been completed, and then only if a majority of the Board so votes. However, the Board shall take no action on any application not appearing on the Board's written agenda.

**704 PREAPPLICATION PROCEDURES AND SKETCH PLAN AND REVIEW**

**704.1 PURPOSE**

The purpose of the pre-application meeting and on-site inspection is for the applicant to present general information regarding the proposed subdivision to the Board and receive the Board's comments prior to the expenditure of substantial sums of money on surveying, soils identification, and engineering by the applicant.

**704.2 PROCEDURE**

1. The applicant shall present the Pre-application Sketch Plan and make a verbal presentation regarding the site and the proposed subdivision.
2. Following the applicant's presentation, the Board may ask questions and make suggestions to be incorporated by the applicant into the application.
3. The date of the on-site inspection is selected.

**704.3 SUBMISSION**

The Pre-application Sketch Plan shall show in simple sketch form the proposed layout of streets, lots, buildings and other features in relation to existing conditions. The Sketch Plan, which does not have to be engineered and may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. It will be most helpful to both the applicant and the Board for site conditions such as steep slopes, wet areas and vegetative cover to be identified in a general manner. The Sketch Plan shall be accompanied by:

1. A copy of a City of Brewer five foot (5') contour topographic map or similar map with 5 foot contours, showing the outline of the proposed subdivision.
2. A copy of the Brewer assessor's map(s) on which the land is located.

**704.4 CONTOUR INTERVAL AND ON-SITE INSPECTION**

Within thirty days of the pre-application meeting, the Board shall hold an on-site inspection of the property and inform the applicant in writing of the required contour interval on the Preliminary Plan, or Final Plan in the case of a Minor Subdivision. The applicant shall place "flagging" at the centerline of any proposed streets, and at the approximate intersections of the street centerlines and lot corners, prior to the on-site inspection. The Board shall not conduct on-site inspections when there is more than one foot of snow on the ground.

**704.5 RIGHTS NOT VESTED**

The pre-application meeting, the submittal or review of the sketch plan or the on-site inspection shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1 M.R.S.A., Section 402.

**704.6 ESTABLISHMENT OF FILE**

Following the pre-application meeting the Board shall establish a file for the proposed subdivision. All correspondence and submissions regarding the pre-application meeting and application shall be maintained in the file.

## **705 MINOR SUBDIVISION REVIEW PROCESS**

### **705.1 GENERAL**

The Board may require, where it deems necessary to make a determination regarding the criteria for approval from Title 30-A M.R.S.A., Section 4404, or the Performance Standards from Section 710 of this Article, that a Minor Subdivision comply with some or all of the submission requirements for a Major Subdivision.

### **705.2 PROCEDURE (#37)**

1. **REQUEST FOR FINAL PLAN REVIEW.** Within six months after the on-site inspection by the Board, the applicant shall submit an application for approval of a final plan at least four weeks prior to a scheduled meeting of the Board. Applications shall be submitted by mail to the Board in care of the City Planner or delivered by hand to the City Planner. Failure to submit the application within six months shall require resubmission of the Sketch Plan to the Board. The final plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board.
2. **APPLICATION FEE AND TECHNICAL REVIEW/ESCROW ACCOUNT.** All applications for final plan approval for a Minor Subdivision shall be accompanied by a non-refundable application fee as set forth in the City Council adopted fee schedule, payable to the City of Brewer. In addition, an applicant applying for minor subdivision approval shall pay a separate technical review and recording fee of \$200.00 per lot or dwelling upon submitting the application. Said funds shall be held in escrow and used to cover the cost of legal notices, recording plans and documents in the Registry of Deeds, and for any of the following support services which the City of Brewer reasonably incurs in the review, approval or disapproval of the application:
  - A. attorney, including the City Solicitor
  - B. engineer
  - C. architect
  - D. surveyor
  - E. any other expert the Planning Board, City Council, City Planner and/or Code Enforcement Officer feels is necessary to adequately evaluate the proposed subdivision plan. All technical review consultants shall be chosen by the City and not the applicant.

If the balance in this account is drawn down by 50% or more, the Board or City Planner shall notify the applicant, and require that an additional \$150.00 per lot or dwelling unit be deposited by the applicant within ten days in order for the application to proceed. The Board or City Planner shall continue to notify the applicant and require an additional \$150.00 per lot or dwelling unit be deposited as necessary whenever the balance of the account is drawn down 50% of the original deposit. Any monies not expended shall be returned to the applicant or his designee, without interest, by the City.

No application shall be deemed complete until the required money has been posted with the City. No application shall be acted upon by the board and/or City Council until sufficient funds have been posted to cover the total cost of the support services required by the City in reviewing the application.

3. **STAFF REVIEW.** The City Planner shall review the submission packet and place on the agenda of the technical review committee as needed. If the City Planner determines that the submission packet is not complete, notification of the missing information will be forwarded to the applicant. The City Planner shall not place an applicant on the Planning Board agenda until determining that the applicant has presented the submission packet required for Minor Subdivisions by this Ordinance.

If the City Planner determines that the submission packet is complete, the applicant shall be notified and placed on the agenda of the next regularly scheduled Planning Board meeting.

4. **APPLICANT ATTENDANCE.** The applicant, or his duly authorized representative, shall attend the meeting of the Board to present the final plan. Failure to attend the meeting to present the final plan shall result in a delay of the Board's receipt of the plan until the next meeting which the applicant attends.
5. **PLANNING BOARD REVIEW.** Within thirty days of the receipt of the final plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application. A failure to submit a complete final plan application within the time frame specified in Section 705.2.1 shall require the application be re-reviewed as provided in Section 704, Sketch Plan.

Upon a determination that a complete application has been submitted for review, the Board shall notify the applicant in writing of that determination. The determination of a complete application does not constitute the Planning Board's approval of the information submitted. The Planning Board reserves the right to request additional information throughout the review process up to and until Final Plan approval. Full evaluation of the final plan shall begin only after the Planning Board has determined that a complete application has been submitted. The Board shall hold a public hearing on the final plan application.

6. **FINAL PLAN PUBLIC HEARING.** The Board shall hold the hearing within thirty days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing. A copy of the notice shall be mailed to the applicant and abutters. Cost for mailing notices and publishing in the newspaper shall be paid for by the applicant.

7. **PLANNING BOARD DECISION.** Within thirty days from the public hearing or within sixty days of determining a complete application has been received, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria contained in Title 30-A M.R.S.A., Section 4404 and the standards of Section 710. If the Board finds that all the criteria of the Statute and the standards of Section 710 have been met, they shall approve the final plan. If the Board finds that any of the criteria of the statute or the standards of Section 710 have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the criteria and standards will be met by the subdivision. The Board shall issue a written notice of its decision to the applicant, including its findings, conclusions and any reasons for denial or conditions of approval.
8. **PERFORMANCE GUARANTEE.** Within sixty (60) days of Planning Board approval, the final plan shall be submitted to the City Council for its approval on any contracts or bonds. Submission to the City Council shall include Planning Board and city staff recommendations.
9. **SIGNATURES.** Upon approving the Final Plan, those members of the Planning Board voting for approval shall sign two (2) reproducible copies (mylars) and two (2) paper copies of the approved subdivision plan.
10. **DIGITAL PLAN.** The applicant shall supply the City Planner with a digital copy of the approved subdivision plan in order to facilitate the addition of the subdivision into the municipal property records. The digital file shall be supplied prior to recording the subdivision plan in the Registry of Deeds and in a format compatible with the assessor's records.
11. **FILING OF APPROVED FINAL PLAN.** After the City Council has approved any contracts and bonds and they have been filed with the City Clerk, the City shall record the subdivision plans and documents in the Registry of Deeds at the expense of the applicant using the escrowed technical review/recording fee funds as provided by the Article. Any subdivision not recorded in the Registry of Deeds within ninety (90) days of the date which the plan is approved and signed by the Planning Board or ninety (90) days after City Council approval on any contracts or bonds, whichever is later, shall become null and void.

The City Planner shall forward the second mylar to the City Assessor One paper signed paper copy shall be forwarded to the Code Office and one copy retained by the City Planner.

12. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the municipality, approval of the plan shall not constitute an acceptance by the municipality of such areas. The Board shall require the

plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the municipal officers covering future deed and title dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.

### **705.3 SUBMISSIONS**

The final plan application shall consist of the following items.

1. **APPLICATION FORM AND EXHIBITS.** The application form and attachments for minor subdivisions shall be submitted as specified in Section 707.
2. **FINAL PLAN.** The subdivision plan for a Minor Subdivision shall contain information as specified in Section 707 and consist of two reproducible, stable-based transparencies, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office, and fifteen copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch. The reproducible transparencies shall be embossed with the seal of the individual responsible for preparation of the plan. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. In addition, one copy of the Plan(s) reduced to a size of 8 1/2 by 11 inches or 11 by 17 inches shall be submitted.
3. **APPLICATION FEES AND ESCROW ACCOUNT.** The application fees and escrow account monies shall be submitted as specified in Section 705.2.2.

## **706 MAJOR SUBDIVISION REVIEW PROCEDURES**

### **706.1 PROCEDURE (#37)**

1. **REQUEST FOR PRELIMINARY PLAN REVIEW.** Within six months after the on-site inspection by the Board, the applicant shall submit an application for approval of a preliminary plan at least four weeks prior to a scheduled meeting of the Board. Applications shall be submitted by mail to the City Planner or delivered by hand to the City Planner. Failure to submit an application within six months shall require resubmission of the Sketch Plan to the Board. The preliminary plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board.
2. **APPLICATION FEE AND TECHNICAL REVIEW/ESCROW ACCOUNT.** All applications for preliminary plan approval for a Major Subdivision shall be accompanied by an application fee as set forth in the then current City Council adopted fee schedule, payable to the City of Brewer. In addition, an applicant applying for major subdivision approval shall pay a separate technical review and escrow account fee of \$200.00 per lot

or dwelling upon submitting the application. Said funds shall be held in escrow and used to cover the cost of legal notices, recording plan and documents in the Registry of Deeds, and for any of the following support services which the City of Brewer reasonably incurs in the review, approval or disapproval of the application:

- A. attorney, including the City Solicitor
- B. engineer
- C. architect
- D. surveyor
- E. any other expert the Planning Board, City Council, City Planner and/or Code Enforcement Officer feels is necessary to adequately evaluate the proposed subdivision plan application submission. All technical review consultants shall be chosen by the City and not the applicant.

If the balance in this account is drawn down by 50% or more, the Board or City Planner shall notify the applicant, and require that an additional \$150.00 per lot or dwelling unit be deposited by the applicant within ten days in order for the application to proceed. The Board or City Planner shall continue to notify the applicant and require an additional \$150.00 per lot or dwelling unit be deposited as necessary whenever the balance of the account is drawn down by 50% of the original deposit. Any monies not expended shall be returned to the applicant or his designee, without interest, by the City.

No application shall be deemed complete until the required money has been posted with the City. No application shall be acted upon by the board and/or City Council until sufficient funds have been posted to cover the total cost of the support services required by the City in reviewing the application.

3. **STAFF REVIEW.** The City Planner shall review the submission packet and place on the agenda of the technical review committee as needed. If the City Planner determines that the submission packet is not complete, notification of the missing information will be forwarded to the applicant. The City Planner shall not place an applicant on the Planning Board agenda until determining that the applicant has presented the submission packet required for Preliminary Plan for Major Subdivisions by this Ordinance.

If the City Planner determines that the submission packet is complete, the applicant shall be notified and placed on the agenda of the next regularly scheduled Planning Board meeting.

4. **APPLICANT ATTENDANCE.** The applicant, or his duly authorized representative, shall attend the meeting of the Board to present the preliminary plan application. Failure to attend the meeting to present the preliminary plan application shall result in a delay of the Board's receipt of the plan until the next meeting that the applicant attends.
5. **PLANNING BOARD REVIEW.** Within thirty days of the receipt of the preliminary plan application, the Board shall determine whether the application is complete and notify the



6. applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application. A failure to submit a complete preliminary plan application within the timeframe specified in Section 706.1.1 shall require the application be re-reviewed as provided in Section 704, Sketch Plan.

Upon determination that a complete application has been submitted for review, the Board shall notify the applicant in writing of its determination. The determination of a complete application does not constitute the Planning Board's approval of the information submitted. The Planning Board reserves the right to request additional information throughout the review process up to and until Final Plan approval. Full evaluation of the final plan shall begin only after the Planning Board has determined that a complete application has been submitted. The Board shall hold a public hearing on the preliminary plan application.

7. **PRELIMINARY PLAN PUBLIC HEARING.** The Board shall hold the hearing within thirty days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing. A copy of the notice shall be mailed to the applicant. Cost for mailing notices and publishing in newspaper shall be paid for by the applicant.
8. **PLANNING BOARD DECISION ON PRELIMINARY PLAN.** Within thirty days from the public hearing, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the preliminary plan application. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.

When granting approval to a preliminary plan, the Board shall state the conditions of such approval, if any, with respect to:

- A. The specific changes which it will require in the final plan;
- B. The character and extent of the required improvements for which waivers may have been requested and which the Board finds may be waived without jeopardy to the public health, safety, and general welfare; and

Approval of a preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design of the preliminary plan as a guide to the preparation of the final plan. The final plan shall be submitted for approval by the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval, if any. Prior to the approval of the final plan, the Board may require that additional information be submitted and changes in the plan be made as a result of further study of the proposed subdivision or as a result of new information received. No mylars or signatures on the Preliminary Plan shall be required.

9. **REQUEST FOR FINAL PLAN REVIEW.** Within six months after the approval of the preliminary plan, the applicant shall submit an application for approval of the final plan at least four weeks prior to a scheduled meeting of the Board. Applications shall be submitted by mail to the City Planner or delivered by hand to the City Planner. If the application for the final plan is not submitted within six months after preliminary plan approval, the Board shall require resubmission of the preliminary plan, except as stipulated below. The final plan shall approximate the layout shown on the preliminary plan, plus any changes required by the Board.

If an applicant cannot submit the final plan within six months, due to delays caused by other regulatory bodies, or other reasons, the applicant may request an extension. Such a request for an extension to the filing deadline shall be filed, in writing, with the Board prior to the expiration of the filing period. In considering the request for an extension the Board shall make findings that the applicant has made due progress in preparation of the final plan and in pursuing approval of the plans before other agencies, and that municipal ordinances or regulations which may impact on the proposed development have not been amended.

10. **STAFF REVIEW.** The City Planner shall review the submission packet and place on the agenda of the technical review committee as needed. If the City Planner determines that the submission packet is not complete, notification of the missing information will be forwarded to the applicant. The City Planner shall not place an applicant on the Planning Board agenda until determining that the applicant has presented the submission packet required for Final Plan for Major Subdivisions by this Ordinance.

If the City Planner determines that the submission packet is complete, the applicant shall be notified and placed on the agenda of the next regularly scheduled Planning Board meeting.

11. **APPLICANT ATTENDANCE.** The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the final plan. Failure to attend the meeting to present the final plan application shall result in a delay of the Board's receipt of the plan until the next meeting which the applicant attends.

12. **PLANNING BOARD REVIEW.** Within thirty days of the receipt of the final plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application. A failure to submit a complete preliminary plan application within the timeframe specified in Section 706.1.8 shall require the application be re-reviewed as provided in Section 704, Sketch Plan.

Upon determination that a complete application has been submitted for review, the Board shall notify the applicant in writing of its determination. The determination of a complete application does not constitute the Planning Board's approval of the information submitted. The Planning Board reserves the right to request additional information

throughout the review process up to and until Final Plan approval. Full evaluation of the final plan shall begin only after the Planning Board has determined that a complete application has been submitted. The Board shall hold a public hearing on the final plan application.

13. **FINAL PLAN PUBLIC HEARING.** The Board shall hold the hearing within thirty days of determining it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of local circulation at least two times, the date of the first publication to be at least seven days before the hearing. In addition, the notice of the hearing shall be posted in at least three prominent places within the municipality at least seven days prior to the hearing. Cost for mailing notices and publishing in newspaper shall be paid for by the applicant.
14. **PLANNING BOARD DECISION ON FINAL PLAN.** Within thirty days from the public hearing, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria for approval contained in Title 30-A M.R.S.A., Section 4404 and the standards of these regulations. If the Board finds that all the criteria of the statute and the standards of these regulations have been met, they shall approve the final plan. If the Board finds that any of the criteria of the statute or the standards of these regulations have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.
15. **PERFORMANCE GUARANTEE.** Within sixty (60) days of Planning Board approval, the final plan shall be submitted to the City Council for its approval on any contracts or bonds. Submission to the City Council shall include Planning Board and city staff recommendations.
16. **SIGNATURES.** Upon approving the Final Plan, those members of the Planning Board voting for approval shall sign two (2) reproducible copies (mylars) and two (2) paper copies of the approved subdivision plan.
17. **DIGITAL PLAN.** The applicant shall supply the City Planner with a digital copy of the approved subdivision plan in order to facilitate the addition of the subdivision into the municipal property records. The digital file shall be supplied prior to recording the subdivision plan in the Registry of Deeds and in a format compatible with the assessor's records.
18. **FILING OF APPROVED FINAL PLAN.** After the City Council has approved any contracts and bonds and they have been filed with the City Clerk, the City shall record the subdivision plans and documents in the Registry of Deeds at the expense of the applicant using the escrowed technical review/recording fee funds as provided by the Article. Any subdivision not recorded in the Registry of Deeds within ninety (90) days of the date which the plan is approved and signed by the Planning Board or within ninety

(90) days of City Council approval on any contracts or bonds, whichever is later, shall become null and void.

The City Planner shall forward the second mylar to the City Assessor. One signed paper copy shall be forwarded to the Code Office and one copy retained by the City Planner.

19. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the municipality, approval of the plan shall not constitute an acceptance by the municipality of such areas. The Board shall require the plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the municipal officers covering future deed and title dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.

## **706.2 SUBMISSIONS**

1. **APPLICATION FORM AND EXHIBITS.** The application form and attachments for minor subdivisions shall be submitted as specified in Section 707.
2. **PLAN.** The subdivision plan for a Major Subdivision shall contain information as specified in Section 707 and consist of two reproducible, stable-based transparencies, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office, and fifteen copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch. The reproducible transparencies shall be embossed with the seal of the individual responsible for preparation of the plan. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. In addition, one copy of the Plan(s) reduced to a size of 8 1/2 by 11 inches or 11 by 17 inches shall be submitted.
3. **APPLICATION FEES AND ESCROW ACCOUNT.** The application fees and escrow account monies shall be submitted as specified in Section 706.1.2.

## **707 SUBDIVISION APPLICATION, EXHIBITS, AND PLANS**

### **707.1 APPLICATION FORM**

The applicant shall include an application form supplied by the City Planner and filled out by the applicant. Said application form shall include the following information:

1. Date of application.

2. Tax map designation
3. Zoning designation of the property, including whether or not any part of the parcel is within shoreland zoning.
4. Name, address, and phone number of the applicant.
5. Name address, and phone number of the record owner.
6. Name and contact information of person in which all City correspondence is sent.
7. Estimated dates of starting and completing any proposed construction.

## **707.2 EXHIBITS AND PLANS**

The applicant shall include the following information either in the form of an exhibit(s) or shown on the plan(s):

Note: All plans shall include the date the plan was prepared, who prepared the plan, north point, and graphic scale.

### **707.2.1 INFORMATION ON THE APPLICANT, CONSULTANTS, AND PROPERTY**

1. Name of proposed or existing subdivision, number of proposed lots or units, and total acreage. If part of an existing subdivision or phase of an existing subdivision, include a history of the development including number of existing lots or units and plan recording designations.
2. Location map drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties and to allow the Board to locate the subdivision within the municipality.
3. Copy of Brewer tax map(s) with the proposed subdivision shown.
4. If the applicant is not the record owner, a letter from the record owner stating approval of applicant to proceed with the proposed subdivision.
5. If an agent is applying on behalf of the applicant, and the name, address, phone number and email address of the applicant's authorized agent and an authorization letter from the applicant.
6. The name, address, phone number, email address, and Maine professional registration number of the Land Surveyors and any other professionals employed by the applicant to design or consult on the proposed subdivision. All professionals must hold current professional licenses with the State of Maine.
7. Verification of right, title or interest in the property. An application will be considered only when an applicant has demonstrated sufficient title, right or interest in all of the property which is proposed for development or use. An applicant shall demonstrate in writing sufficient title, right or interest as follows:

- A. When the applicant claims ownership of the property, copies of the deeds to the property shall be supplied.
  - B. When the applicant has an option to buy the property, a copy of the option agreement shall be supplied. Option agreements shall contain terms deemed sufficient by the Board to establish future title. Copies of the current deeds to the property shall also be supplied.
  - C. When the applicant has a lease on the property, a copy of the lease shall be supplied. The lease shall be of sufficient duration, as determined by the Board, to permit construction and reasonable use of the development. Copies of the current deeds to the property shall also be supplied.
  - D. When the applicant has eminent domain power over the property, evidence shall be supplied of the ability and intent to use the eminent domain power to acquire sufficient title, right, or interest as determined by the Board. Copies of the current deeds to the property shall also be supplied.
  - E. When the applicant has a bond for deed for a deed on the property, a copy of the bond for a deed shall be supplied. Copies of the current deeds to the property shall also be supplied.
  - F. When the applicant has a purchase and sale agreement to purchase the property, the applicant shall provide a copy of the purchase and sale agreement. Copies of the current deeds to the property shall also be supplied.
8. Information on whether the applicant is a business or corporation, and if so, a current Certificate of Good Standing from the State of Maine.
  9. A history narrative and graphic of the property, prepared, signed and stamped by a licensed Maine Professional Land Surveyor, to include ownership of the past five years including any land which was acquired, land conveyed out, property line agreements, and leases. This history shall include names and deed references, and copies of the documents if unrecorded.
  10. Information regarding the applicant's or record owner's interest in any property abutting the parcel to be subdivided and that the proposed subdivision plan covers his/her entire, contiguous holdings.
  11. A current standard boundary survey of the property, giving complete descriptive data by bearings and distances, made and certified by a licensed Maine Professional Land Surveyor bearing the surveyor's seal and signature and prepared in accordance with the Maine Board of Licensure for Professional Land Surveyors. The corners of the parcel shall be located on the ground and marked by permanent monuments indicated on the plan.
  12. Information on all easements, rights-of-ways, leases, restrictions, or other encumbrances currently affecting the property. The locations of such encumbrances shall be accurately shown on plans and copies of deeds and documents included.

13. The current use of the property to be subdivided, location of existing buildings, existing vegetative cover type, and any other essential existing physical features. The location of any trees larger than 14 inches in diameter at breast height shall be shown on the plan.
14. A medium intensity soil survey map and a written report describing the soils present on the site, prepared by a Maine Certified Soil Scientist. The Board may require a high intensity soil survey for areas of intensive development such as roads and structures.
15. The location of all wetlands and vernal pools shall be identified on the survey, regardless of size, prepared by a State Certified Soil Scientist or Geologist registered in the State of Maine, or other qualified professional showing expertise in wetland delineation, and based on an on-site investigation. Said submission shall include a narrative describing method of delineation and location and a description of such wetland features including functions and values.
16. The location of all farmland shall be identified on the survey, regardless of size. Said submission shall include a narrative description of such farmland.
17. The location of all rivers, streams and brooks, as defined in Title 38, section 480-B, subsection 9, within or adjacent to the proposed subdivision
18. A narrative stating whether any portion of the proposed subdivision is located in the direct watershed of a great pond and if so, which great pond.
19. Contour lines at the interval specified by the Board showing elevations in relation to mean sea level.
20. The zoning district(s) in which the proposed subdivision is located and location of any zoning boundaries affecting the subdivision, including shoreland zoning.
21. The location of the project site drawn to scale on the current Federal Emergency Management Agency Flood Insurance Rate Map for the City of Brewer, Maine. If any portion of the subdivision is in a flood prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the municipalities Flood Insurance Rate Map shall be delineated on the plan.
22. The location of open drainage courses, wetlands, vernal pools, stonewalls, graveyards, fences, stands of trees, and other important or unique natural areas and site features, including but not limited to, floodplains, deer wintering areas, significant wildlife habitats, fisheries, scenic areas, high or moderate value habitat, habitat for rare and/or endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archeological resources, together with a description of such features. Major subdivision applications shall include letters from State and Federal agencies, including the Maine Department of Inland Fisheries and Wildlife, Maine Natural Areas Program, and the Maine Historic Preservation Commission.

23. The location of snowmobile trails shown on the Interconnecting Trail System map published by the Maine Department of Conservation, or recognized, club-maintained trails.
24. The width and location of any existing or proposed streets, public improvements or open space shown upon the official map and the comprehensive plan, if any, within or adjacent to the proposed subdivision.

#### **707.2.2 INFORMATION ON PROPOSED DEVELOPMENT**

1. Name of proposed subdivision and number of proposed lots or units.
2. A subdivision plan, based on a standard boundary survey of the parcel, made and certified by a Maine Professional Land Surveyor bearing the surveyor's seal and signature and prepared in accordance with the Maine Board of Licensure for Professional Land Surveyors. Said subdivision plan shall include, but is not limited to:
  - a. Name of proposed subdivision.
  - b. Boundary and lot lines giving complete descriptive data by bearings and distances.
  - c. Type and location of permanent monuments at the corners of the corners of the proposed lots and set on the ground if not existing.
  - d. Lot numbers and areas. For lots containing wetlands and/or water bodies, the net area of the lot shall be included.
  - e. Names of adjacent property owners.
  - f. Signature block for Planning Board approval as supplied by the City.
3. The location and design of any proposed streets meeting the requirements of Article 9 of the Brewer Land Use Code.
4. A copy of any deed restrictions intended to cover all or part of the lots or dwelling units in the proposed subdivision.
5. The location of areas where clearing for lawns and structures shall be permitted and/or any restrictions to be placed on clearing existing vegetation.
6. The location, size and type of proposed plantings including street trees.
7. An indication of the type of sewage disposal to be used in the proposed subdivision:
  - A. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Director of Environmental Services shall be submitted stating that the facility has the capacity to collect and treat the waste water and that the department approves the design plans for extensions where necessary.
  - B. When sewage disposal is to be accomplished by subsurface waste water disposal systems, test pit analyses, prepared by a Maine Licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.



8. An indication of the type of domestic water supply system(s) to be used in the proposed subdivision:
  - A. When domestic water is to be supplied by public water supply, a written statement from the City Water Department shall be submitted indicating that there is adequate supply and pressure for the subdivision and that the department approves the design plans for extensions where necessary.
  - B. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.
  
9. An indication of the type of fire protection to be used in the proposed subdivision along with a written statement from the Fire Department approving the method.
  - A. When water for fire protection is to be supplied by public water supply, a written statement from the Fire Department shall be submitted indicating approval of the location of existing and/or proposed fire hydrants and type of hydrants.
  - B. When water for fire protection is to be supplied by ponds with dry hydrants, underground water storage reservoirs or other methods, a written statement from the Fire Department shall be submitted indicating approval of the type, location and design. An easement shall be granted to the municipality granting access to and maintenance of dry hydrants or reservoirs where necessary.
  
10. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
  
11. A hydrogeologic assessment prepared by a Certified Geologist or Registered Professional Engineer, experienced in hydrology, when the subdivision is not served by public sewer and
  - A. Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Sand and Gravel Aquifers, Map 28", by the Maine Geological Survey, Open File No. 81-60; or
  - B. The subdivision has an average density of more than one dwelling unit per 100,000 square feet.

The Board may require a hydro geologic assessment in other cases where site considerations or development design indicate greater potential of adverse impacts on ground water quality. These cases include extensive areas of shallow to bedrock soils; or cluster developments in which the average density is less than one dwelling unit per 100,000 square feet but the density of the portion is in excess of one dwelling unit per 80,000 square feet; or proposed use of shared or common subsurface waste water disposal systems.

12. If the proposed subdivision is in the direct watershed of a great pond, phosphorus control plan.

- A. For subdivisions which qualify for the simplified review procedure as described in Section 710.16.2, the plan shall indicate the location and dimensions of vegetative buffer strips or infiltration systems.
- B. For subdivisions which do not qualify for the simplified review procedure as described in Section 710.16.2, the following shall be submitted:
  - 1. A phosphorus impact analysis and control plan conducted using the procedures set forth in Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development, published by the Maine Department of Environmental Protection, September 1992 revision.
  - 2. A long term maintenance plan for all phosphorus control measures.
  - 3. The contour lines shown on the plan shall be at an interval of no less than five feet.
  - 4. Areas with sustained slopes greater than 25% covering more than one acre shall be delineated.
- 13. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from the latest version of the ITE Trip Generation Manual, the current version being the sixth edition 1997, published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.
- 14. For subdivisions involving 40 or more parking spaces or projected to generate more than 400 vehicle trips per day, a traffic impact analysis, prepared by a Maine Registered Professional Engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicle trips, peak hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets.
- 15. For subdivisions requiring driveways or entrances onto a state or state aid highway located outside the urban compact area as defined by Title 23, section 754, documentation by the Maine Department of Transportation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section shall be submitted.
- 16. A stormwater management plan, prepared by a Maine Licensed Professional Engineer, in accordance with the Stormwater Management for Maine: Best Management Practices, published by the Maine Department of Environmental Protection (1995), in accordance with the Maine Stormwater Management Law, Title 38 M.R.S.A. 420D, and in accordance with Brewer Codes and Ordinances. The Board may not waive submission of the stormwater management plan unless the subdivision is not in the watershed of a great pond, the proposed subdivision will not involve grading which changes drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.

17. An erosion and sedimentation control plan prepared in accordance with the Maine Erosion and Sedimentation Control Handbook or Construction: Best Management Practices, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, March 1991. The Board may not waive submission of the erosion and sedimentation control plan unless the subdivision is not in the watershed of a great pond, the proposed subdivision will not involve grading which changes drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.
18. For subdivisions located within the watershed of a great pond, a report on how the long-term cumulative effects of the subdivision will not unreasonably increase the great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.
19. The location and method of disposal for land clearing and construction debris.
20. A narrative stating whether the property has been timber harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14.
21. The location of any open space to be preserved and a description of proposed improvements and its management.
22. Visual, historic resources, unique natural resources, wetland and vernal pool protection, groundwater, and fisheries and wildlife habitat impact statement prepared by qualified professionals, detailing steps that have been taken or will be taken to minimize any adverse impact from the proposed subdivision on such significant resources.
23. The location and description of any proposed easements and rights-of-ways. Final plan submissions shall include copies of legal documents ready for signatures.
24. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Final plan submissions shall include written offers to convey title to the municipality of all open spaces shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the applicant or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the municipality, written evidence that the municipal officers are satisfied with the legal sufficiency of the written offer to convey title shall be included. Final plan submission shall also include copies of legal documents ready for signatures.
25. A list of construction items, with cost estimates, that will be completed by the applicant prior to the sale of lots, and evidence that the applicant has financial commitments or resources to cover these costs.
26. A proposed performance guarantee, meeting Section 714 of this Article, for an amount adequate to cover the total construction costs of all required improvements, taking into

account the time-span of the construction schedule and the inflation rate for construction costs.

27. A compliance statement outlining the proposed subdivision's conformance with the City's adopted Comprehensive Plan, Land Use Code, and other applicable locally adopted ordinances and regulations along with a list of all required State and/or Federal reviews and permits and their status.

## **708 REVISIONS TO APPROVED PLANS**

### **708.1 PROCEDURE**

An applicant for a revision to a previously approved plan shall, at least ten days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.

### **708.2 SUBMISSIONS**

The applicant shall submit a copy of the approved plan as well as twelve copies of the proposed revisions. The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of these regulations and the criteria of the statute. The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.

### **708.3 SCOPE OF REVIEW**

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

## **709 INSPECTIONS AND ENFORCEMENT**

### **709.1 INSPECTION OF REQUIRED IMPROVEMENTS (#4)**

1. At least five working days prior to commencing construction of required improvements, the sub divider or builder shall notify the code enforcement officer and city engineer in writing of the time when (s)he proposes to commence construction of such improvements, so that the municipal officers can arrange for inspections to assure that all municipal specifications, requirements, and conditions of approval are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board. The sub divider shall also notify the

City of the name of the qualified inspector whom will be responsible for the continuing inspection of the on-going work.

2. If the Code Enforcement Officer, City Engineer or City Planner finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the sub divider, the Code Enforcement Officer shall take any steps necessary to assure compliance with the approved plans.
3. If at any time it appears necessary or desirable to modify the required improvements before or during the construction of the required improvements, the City Planner is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The City Planner shall issue any approval under this section in writing and shall transmit a copy of the approval to the Board. Revised plans shall be filed with the Board. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1%, etc., the sub divider shall obtain permission from the Board to modify the plans.
4. At the close of each summer construction season the City shall, at the expense of the sub divider, have the site inspected by a qualified individual. By October 31 of each year during which construction was done on the site, the inspector shall submit a report to the Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate. The report shall also include a discussion and recommendations on any problems which were encountered.
5. Prior to the sale of any lot, the sub divider shall provide the Board with a letter from a Maine Registered Land Surveyor, stating that all permanent monumentation shown on the plan has been installed.
6. Acceptance of streets shall be in accordance with Section 712 of this Article.
7. The sub divider shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of the improvements by the municipality or control is placed with a lot owners' association.

#### **709.2 VIOLATIONS AND ENFORCEMENT (#2)**

1. No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Board and the contracts and/or bonds approved by the City Council, which is then filed with the City Clerk in accordance with this Article.
2. A person shall not convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and the contracts and/or bonds approved by the City Council, which is then filed with the City Clerk and recorded in the Registry of Deeds as hereinbefore provided.

3. No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Board and endorsed in writing on the plan, unless the revised final plan is first submitted and the Board and the City Council approves any contract and/or bond modifications that is filed with the City Clerk, except in accordance with Section 708 of this Article. The Board shall make findings that the revised plan meets the criteria of Title 30-A M.R.S.A., Section 4404, and the standards of these regulations. Review and approvals of the final plan revision shall follow Section 705 or Section 706 as provided in this Article. In the event that a Plan is recorded without complying with this requirement, it shall be considered null and void, and the Board shall institute proceedings to have the plan stricken from the records of the Registry of Deeds.
4. A person shall not sell, lease or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.
5. No public utility, utility district, water department, sanitary department or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Board.
6. Development of a subdivision without Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a plan approved as provided in these regulations and recorded in the Registry of Deeds.
7. No lot in a subdivision may be sold, leased, or otherwise conveyed prior to the completion of all improvements proposed for the subdivision unless specifically stated in the Planning Board approval. Notwithstanding the foregoing, the Code Enforcement Officer may authorize the sale, lease, or conveyance of one lot in an approved subdivision when the said lot is located within the Industrial (IND) and Industrial-2 (IND2) districts and all required improvements are being constructed by the City of Brewer with City Council approval. No unit in a multi-family development shall be occupied before the street upon which the unit is accessed is completed in accordance with the Brewer Land Use Code and all improvements are constructed. (#8)
8. No lot which has received subdivision approval shall be further divided without approval from the Planning Board, except the division of an approved lot by the transfer to the State of Maine or City of Brewer shall not require Planning Board approval.
9. Except in the case of a phased development plan, failure to begin construction within six months of the date of approval and signing of the plan and complete construction of the subdivision within two years of the date of approval and signing of the plan shall render the plan null and void. Phased developments shall be completed as stated in the Planning Board approval. Upon determining that a subdivision's approval has expired under this paragraph, the Board shall have a notice placed in the Registry of Deeds to that effect.

10. No plan shall be approved by the Board as long as the applicant is in violation of the provisions of a previously approved Plan within the municipality.
11. Violations of the above provisions of this Section are a nuisance and shall be punished in accordance with the provisions of Title 30-A M.R.S.A., Section 4452.

## **710 PERFORMANCE STANDARDS**

### **710.1 GENERAL**

The performance standards in this Article are intended to clarify and expand upon the criteria for approval found within the subdivision statute (Title 30-A M.R.S.A., Section 4404). In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance standards and make findings that each has been met prior to the approval of a final plan. Compliance with the design guidelines of Section 711 shall be considered to be evidence of meeting the appropriate performance standards. Proposed subdivisions not in compliance with the design guidelines of Section 711 may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standard(s) and the statutory criteria. In all instances the burden of proof shall be upon the applicant to present adequate information to indicate all performance standards and statutory criteria for approval have been or will be met.

### **710.2 POLLUTION**

1. The proposed subdivision shall not discharge waste water to a water body without a license from the Maine Department of Environmental Protection.
2. Discharges of storm water shall be treated to remove oil, grease, and sediment prior to discharge into surface water bodies. When the subdivision is within the watershed of a great pond, the storm water shall be treated in order to remove excess nutrients.

### **710.3 SUFFICIENT WATER (#4)**

1. Water Supply
  - A. Any subdivision within the area designated in the comprehensive plan for future public water supply service shall make provisions for connection to the public system. When public water supply service will not be available at the time of construction of the subdivision, a "capped system" shall be installed within the subdivision to allow future connection when service becomes available without excavation within the right-of-way of any street within the subdivision.
  - B. When a subdivision is to be served by a public water system, the complete supply system within the subdivision including fire hydrants shall be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants,

and service connections shall be reviewed and approved in writing by the City Water Department Superintendent and the Fire Chief. Fire hydrants shall be placed every eight hundred (800) feet along all public streets, roads and ways on the public water system with privately paid hydrants connected to the public system every eight hundred (800) feet along private roads and ways that lead to any structure(s). The last hydrant on a dead end street shall be within four hundred (400) feet of the end of the street or road. Hydrants shall also be placed such that one (or more if required by the AHJ) shall be located within five hundred (500) feet of all structures, as fire apparatus can travel in all seasons. The hydrants are to be standard hydrants as approved by the AHJ. Said hydrants to supply seven hundred fifty (750) gpm or more each with a residual pressure of 20 psi. Further, for selected developments, subject to the AHJ, more hydrants and larger fire flows may be required for greater than normal hazards or large structures.

- C. When a proposed subdivision is not within the area designated for public water supply service in the comprehensive plan, water supply shall be from individual wells or a private community water system.
- 1) Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface waste water disposal systems and other sources of potential contamination.
  - 2) Lot design shall permit placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the latest version of the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.
  - 3) If a central water supply system is provided by the applicant, the location and protection of the source, the design, construction and operation of the system shall conform to the latest version of the standards of the Maine Rules Relating to Drinking Water (10-144E C.M.R. 231).
  - 4) In areas where the comprehensive plan has identified the need for additional water storage capacity for firefighting purposes, the applicant shall provide adequate water storage facilities. Facilities may be ponds with dry hydrants, underground storage reservoirs or other methods acceptable to the fire chief. An easement shall be granted to the municipality granting access to and maintenance of dry hydrants or reservoirs where necessary. The Board may waive the requirement for water storage only upon submittal of evidence that the soil types in the subdivision will not permit their construction or installation and that the fire chief has indicated in writing that alternate methods of fire protection are available.



2. Water Quality

- A. Water supplies shall meet the primary drinking water standards contained in the latest version of the Maine Rules Relating to Drinking Water (10-144E C.M.R. 231). If existing water quality contains contaminants in excess of the secondary drinking water standards in the Maine Rules Relating to Drinking Water, that fact shall be disclosed in a note on the plan to be recorded in the Registry of Deeds.

**710.4 IMPACT ON EXISTING WATER SUPPLIES (#4)**

- 1. In meeting the standards of Section 710.3.1., a proposed subdivision shall not generate a demand on the source, treatment facilities or distribution system of the City Water Department beyond the capacity of those system components, considering improvements that are planned to be in place prior to occupancy of the subdivision.
- 2. The applicant shall be responsible for paying the costs of system improvements to the City's water system as necessary to alleviate existing deficiencies.

**710.5 SOIL EROSION**

- 1. The proposed subdivision shall prevent soil erosion from entering water bodies, wetlands, and adjacent properties.
- 2. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.
- 3. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.

**710.6 TRAFFIC CONDITIONS**

- 1. In general, provision shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to:
  - A. Safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision;
  - B. Avoid traffic congestion on any street; and
  - C. Provide safe and convenient circulation on public streets and within the subdivision.
- 2. More specifically, access and circulation shall also conform to the following standards.

- A. The vehicular access to the subdivision shall be arranged to avoid through traffic use of existing streets which the comprehensive plan has classified as residential access streets.
- B. The street giving access to the subdivision and neighboring streets and intersections which can be expected to carry traffic generated by the subdivision shall have the capacity or be suitably improved to accommodate that traffic and avoid unreasonable congestion. No subdivision shall reduce the Level of Service (LOS) (see Article 14) of the street giving access to the subdivision and neighboring streets and intersections to "E" or below, unless the comprehensive plan has indicated that Levels of Service "E" or "F" are acceptable for that street or intersection.
- C. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycle ways and traffic controls within existing public streets.
- D. Access ways to non-residential subdivisions or to multifamily subdivisions shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity shall be provided to meet anticipated demand. A study or analysis to determine the need for a left-turn storage lane shall be done.
- E. Where topographic and other site conditions allow, provision shall be made for street connections to adjoining lots of similar existing or potential use within areas of the municipality designated as growth areas in the comprehensive plan; or in non-residential subdivisions when such access shall be provided if it will:
  - 1) Facilitate fire protection services as approved by the fire chief; or
  - 2) Enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a public street.
- F. Street Names, Signs and Lighting. Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality, and shall be subject to the approval of the Board. No street name shall be the common given name of a person. The developer shall either install street name, traffic safety and control signs meeting municipal specifications or reimburse the municipality for the costs of their installation. Street lighting shall be installed as approved by the Board.
- G. Clean-up. Following street construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris from the entire street right-of-way. If on-site disposal of the stumps and debris is proposed, the site

shall be indicated on the plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.

**710.7 SEWAGE DISPOSAL**

1. Public System

- A. Any subdivision within the area designated in the comprehensive plan for future public sewage disposal service shall be connected to the public system.
- B. When a subdivision is proposed to be served by the public sewage system, the complete collection system within the subdivision, including manholes and pump stations, shall be installed at the expense of the applicant.
- C. The Director of Environmental Services shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be complete prior to the construction of the subdivision.
- D. The Director of Environmental Services and/or the City Engineer shall review and approve the construction drawings for the sewerage system. The size and location of laterals, collectors, manholes, and pump stations shall be reviewed and approved in writing by the servicing sewer department.

2. Private Systems

- A. When a proposed subdivision is not within the area designated for public sewage disposal service in the comprehensive plan, connection to the public system shall not be permitted. Sewage disposal shall be private subsurface waste water disposal systems or a private treatment facility with surface discharge.
- B. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the latest requirements of the State of Maine Subsurface Wastewater Disposal Rules.
  - 1) The site evaluator shall certify in writing that all test pits which meet the requirements for a new system represent an area large enough to install a disposal area on soils which meet the Disposal Rules.
  - 2) On lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.

**710.8 IMPACT ON THE MUNICIPALITY'S ABILITY TO DISPOSE OF SOLID WASTE**

1. If the additional solid waste from the proposed subdivision exceeds the capacity of the municipal solid waste facility, causes the municipal facility to no longer be in compliance with its license from the Department of Environmental Protection, or causes the municipality to exceed its contract with a non-municipal facility, the applicant shall make alternate arrangements for the disposal of solid waste. The alternate arrangements shall be at a disposal facility which is in compliance with its license. The Board may not require the alternate arrangement to exceed a period of five years.

**710.9 IMPACT ON NATURAL BEAUTY, AESTHETICS, HISTORIC SITES, WILDLIFE HABITAT, RARE NATURAL AREAS OR PUBLIC ACCESS TO THE SHORELINE**

1. Preservation of Natural Beauty and Aesthetics
  - A. The plan shall, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plan.
  - B. Except in areas of the municipality designated by the comprehensive plan as growth areas, the subdivision shall be designed to minimize the visibility of buildings from existing public roads.
  - C. The Board may require the application to include a landscape plan that will show the preservation of any existing trees larger than 14 inches diameter breast height, the replacement of trees and vegetation, and graded contours.
  - D. When a proposed subdivision street traverses open fields the plans shall include the planting of street trees.
2. Retention of Open Spaces and Natural or Historic Features
  - A. If any portion of the subdivision is located within an area designated by the comprehensive plan as open space or greenbelt, that portion shall be reserved for open space preservation.
  - B. If any portion of the subdivision is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.
  - C. If any portion of the subdivision is designated a site of historic or prehistoric importance by the comprehensive plan or the Maine Historic Preservation Commission, appropriate measures for the protection of the historic or prehistoric resources shall be included in the plan.

- D. The subdivision shall reserve sufficient undeveloped land to provide for the recreational needs of the occupants. The percentage of open space to be reserved shall depend on the identified needs for outdoor recreation in the portion of the municipality in which the subdivision is located according to the comprehensive plan, the proposed lot sizes within the subdivision, the expected demographic makeup of the occupants of the subdivision, and the site characteristics.
  - E. Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended.
  - F. Reserved open space land may be dedicated to the municipality.
  - G. Where land within the subdivision is not suitable or is insufficient in amount, where the applicant prefers, or when suggested by the comprehensive plan, a payment in lieu of dedication may be substituted for the reservation of some or part of the open space requirement. Payments in lieu of dedication shall be calculated based on the percentage of reserved open space that otherwise would be required and that percentage of the projected market value of the developed land at the time of the subdivision, as determined by the municipal tax assessor. The payment in lieu of dedication shall be deposited into a municipal land open space or outdoor recreation facility acquisition or improvement fund.
3. Protection of Significant Wildlife Habitat
- A. If any portion of a proposed subdivision lies within 250 feet of the following areas identified and mapped by the Department of Inland Fisheries and Wildlife or the comprehensive plan as:
    - 1) Habitat for species appearing on the official state or federal lists of endangered or threatened species;
    - 2) High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
    - 3) Shorebird nesting, feeding and staging areas and seabird nesting islands;
    - 4) Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; or
  - B. 1,320 feet of an area identified and mapped by the Department of Inland Fisheries and Wildlife as a high or moderate value deer wintering area or travel corridor;
  - C. Or other important habitat areas identified in the comprehensive plan including coastal wildlife concentration areas, the applicant shall demonstrate that there shall be no adverse impacts on the habitat and species it supports. A report prepared by a wildlife biologist certified by the Wildlife Society with

demonstrated experience with the wildlife resource being impacted shall be submitted. This report shall assess the potential impact of the subdivision on the significant habitat and adjacent areas that are important to the maintenance of the affected species and shall describe appropriate mitigation measures to ensure that the subdivision will have no adverse impacts on the habitat and the species it supports.

- D. Any existing public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space with provisions made for continued public access.

**710.10 CONFORMANCE WITH REQUIREMENT OF ARTICLES 3 AND 4 OF THE LAND USE CODE**

- 1. All lots other than cluster subdivisions shall meet or exceed the minimum dimensional requirements set forth in Article 3 of this Land Use Code for the zoning district in which they are located. The proposed subdivision shall meet all applicable performance standards or design criteria set forth in Article 4 of this Land Use Code.

**710.11 FINANCIAL AND TECHNICAL CAPACITY**

- 1. Financial Capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the statute and the standards of this Article. When the applicant proposes to construct the buildings as well as the subdivision improvements, the applicant shall have adequate financial resources to construct the total subdivision. In making the above determinations the Board shall consider the proposed time frame for construction and the effects of inflation.
- 2. Technical Ability
  - A. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision.
  - B. In determining the applicant's technical ability the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

**710.12 IMPACT ON GROUND WATER QUALITY OR QUANTITY**

1. Ground Water Quality

- A. When a hydro geologic assessment is submitted, the assessment shall contain at least the following information:
  - 1) A map showing the basic soils types.
  - 2) The depth to the water table at representative points throughout the subdivision.
  - 3) Drainage conditions throughout the subdivision.
  - 4) Data on the existing ground water quality, either from test wells in the subdivision or from existing wells on neighboring properties.
  - 5) An analysis and evaluation of the effect of the subdivision on ground water resources. In the case of residential subdivisions, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, or at the subdivision boundaries; or at a distance of 1,000 feet from potential contamination sources, whichever is a shortest distance.
  - 6) A map showing the location of any subsurface waste water disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.
- B. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
- C. No subdivision shall increase any contaminant concentration in the ground water to more than one half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.
- D. If ground water contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.
- E. If ground water contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.
- F. Subsurface waste water disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction

standards for drinking water wells or other measures to reduce ground water contamination and protect drinking water supplies are recommended in the assessment, those standards shall be included as a note on the final plan, and as restrictions in the deeds to the affected lots.

2. Ground Water Quantity

- A. Ground water withdrawals by a proposed subdivision shall not lower the water table beyond the boundaries of the subdivision.
- B. A proposed subdivision shall not result in a lowering of the water table at the subdivision boundary by increasing runoff with a corresponding decrease in infiltration of precipitation.

**710.13 FLOODPLAIN MANAGEMENT**

When any part of a subdivision is located in a special flood hazard area as identified by the latest version of the Federal Emergency Management Agency, Flood Boundary and Floodway Map (Community Panel No. 230104 0005 B) the most current version being dated June 1, 1978:

- 1. All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damages.
- 2. Adequate drainage shall be provided so as to reduce exposure to flood hazards.
- 3. The plan shall include a statement that structures in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation. Such a restriction shall be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The statement shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on the plan.

**710.14 IDENTIFICATION OF FRESHWATER WETLANDS**

All freshwater wetlands shall be identified in accordance with the most current version of the Corps of Engineers Wetland Delineation Manual, published by the United States Army Corps of Engineers, the most current version being dated 1989.



**710.15 STORM WATER MANAGEMENT (#4)**

1. Adequate provision shall be made for the management of the quantity and quality of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, underdrains, storm drains and best management practices equivalent to those described in the latest version of the Erosion and Sedimentation Control: Best Management Practices, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, the current version being dated March 2003, in conformance with the policies of the comprehensive plan. The storm water management system shall be designed to meet the following standards:
  - A. Quantity. Peak discharge rates shall be limited to the pre-development levels for the 2-year, 10-year, and 25-year frequency, 24-hour duration storm unless storm water from the subdivision will drain directly into a major water body such as a great pond or the ocean.
  - B. Quality.
    - 1) Major Subdivisions. Storm water run-off in major subdivisions must be treated by the use of best management practices equivalent to those described in the latest version of the Erosion and Sedimentation Control: Best Management Practices, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, the current version being dated March 2003, to achieve, by design, 40% reduction in total suspended solids.
    - 2) Minor Subdivisions. Storm water run-off in minor subdivisions must be treated by the use of best management practices equivalent to those described in the latest version of the Erosion and Sedimentation Control: Best Management Practices, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, the most current version being dated March 2003, to achieve, by design, 15% reduction in total suspended solids.
2. Where necessary to achieve the above standards, there shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water within the subdivision and over other properties. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements shall be provided as necessary.

**710.16 RESERVATION OR DEDICATION AND MAINTENANCE OF OPEN SPACE AND COMMON LAND, FACILITIES AND SERVICES**

1. All open space common land, facilities and property shall be owned by:

- A. The owners of the lots or dwelling units by means of a lot owners' association or in common;
  - B. An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
  - C. The municipality.
2. Further subdivision of the common land or open space and its use for other than non-commercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land. When open space is to be owned by an entity other than the municipality, there shall be a conservation easement deeded to the municipality prohibiting future subdivision.
  3. The common land or open space shall be shown on the final plan with appropriate notations on the plan to indicate:
    - A. It shall not be used for future building lots; and
    - B. Which portions of the open space, if any, may be dedicated for acceptance by the municipality.
  4. The final plan application shall include the following:
    - A. Covenants for mandatory membership in the lot owners' association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.
    - B. Draft articles of incorporation of the proposed lot owners' association as a not-for-profit corporation; and
    - C. Draft by-laws of the proposed lot owners' association specifying the responsibilities and authority of the association, the operating procedures of the association and providing for proper capitalization of the association to cover the costs of major repairs, maintenance and replacement of common facilities.
  5. In combination, the documents referenced in subsection 710.16.4.C above shall provide for the following:
    - A. The homeowners' association shall have the responsibility of maintaining the common property or facilities.
    - B. The association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.

- C. The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.
- D. The developer or sub divider shall maintain control of the common property, and be responsible for its maintenance until development sufficient to support the association has taken place. Such determination shall be made by the Board upon request of the lot owners' association or the developer.

**710.17 PHOSPHORUS IMPACTS ON GREAT PONDS**

- 1. Phosphorus Export
  - A. Any subdivision within the watershed of a great pond shall limit its post development phosphorus export to the standards contained in Table 711.10.3, dependent on the great pond in whose watershed the subdivision is located.
  - B. The Board shall keep an accurate record of permits issued by watershed and shall notify the comprehensive planning committee of the actual development rates at five year intervals, as the comprehensive plan is revised. The above table shall be amended as required by amendments to the comprehensive plan, reflecting changes in expected development rates.
- 2. Simplified Phosphorus Review. The simplified review may be used for any:
  - A. Proposed subdivision of three or four lots with less than 200 feet of new or upgraded street with a cumulative driveway length not to exceed 450 feet for a three lot subdivision or 600 feet for a four lot subdivision;
  - B. Proposed subdivision of three or four lots with no new or upgraded street with a cumulative driveway length not to exceed 950 feet for three lot subdivisions or 1,100 feet for four lot subdivisions; or
  - C. Proposed subdivision consisting of multi-family dwellings that have less than 20,000 square feet of disturbed area including building parking, driveway, lawn, subsurface waste water disposal systems, and infiltration areas, and new or upgraded streets not exceeding 200 linear feet.
  - D. A proposed subdivision which creates lots which could be further divided such that five or more lots may result shall be subject to the standard review procedures unless there are deed restrictions prohibiting future divisions of the lots.
- 3. Standard Review. This section shall apply to proposed subdivisions which do not qualify for the simplified review. Phosphorus export from a proposed subdivision shall be calculated according to the latest version of the procedures in Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development, published by the Maine Department of Environmental Protection, the most current

version being dated September, 1992. When a proposed subdivision creates lots which are more than twice the required minimum lot size and there are no deed restrictions proposed to prohibit future divisions, the applicant shall either calculate phosphorus loading based on the maximum feasible number of lots, and shall design controls adequate to limit the resulting phosphorus loading, or shall reserve a portion of the permitted phosphorus export for future divisions.

4. Maintenance and Use Restrictions for Phosphorus Control Measures. Provisions for monitoring, inspections, and maintenance of phosphorus control measures shall be included in the application.

- A. Vegetative Buffer Strips. Individual lot owners shall be required to maintain buffer areas on their individual lots in accordance with the following standards, to be specified in recorded deed restrictions and as notes on the plan. Where a vegetative buffer strip is to be owned in common by property owners in the subdivision, documentation establishing the lot owners' association shall include the following standards.

- 1) Wooded Buffers. Maintenance provisions for wooded buffers shall provide for either of the following two options.

- a) No Disturbance. Maintenance and use provisions for wooded buffer strips which are located on hydrologic soil group D soils and within 250 feet of the great pond or a tributary, or which are located on slopes over 20% shall include the following.

- i. Buffers shall be inspected annually for evidence of erosion or concentrated flows through or around the buffer. All eroded areas must be seeded and mulched. A shallow stone trench must be installed as a level spreader to distribute flows evenly in any area showing concentrated flows.
- ii. All existing undergrowth (vegetation less than four feet high), forest floor duff layer, and leaf litter must remain undisturbed and intact, except that one winding walking path, no wider than six feet, is allowed through the buffer. This path shall not be a straight line to the great pond or tributary and shall remain stabilized.
- iii. Pruning of live tree branches that do not exceed twelve feet above the ground level is permitted provided that at least the top two-thirds of the tree canopy is maintained.
- iv. No cutting is allowed of trees except for normal maintenance of dead, wind-blown, or damaged trees.
- v. Buffers shall not be used for all-terrain vehicle or vehicular traffic.

- b) Limited Disturbance. Maintenance and use provisions for other buffer strips may include the following:
  - i. There shall be no cleared openings. An evenly distributed stand of trees and other vegetation shall be maintained.
  - ii. Activity within the buffer shall be conducted to minimize disturbance of existing forest floor, leaf litter and vegetation less than four feet in height. Where the existing ground cover is disturbed and results in exposed mineral soil, that area shall be immediately stabilized to avoid soil erosion.
  - iii. Removal of vegetation less than four feet in height is limited to that necessary to create a winding foot path no wider than six feet. This path shall not be a straight line to the great pond or a tributary. The path must remain stabilized.
  - iv. Pruning of live tree branches that do not exceed 12 feet in height above the ground level is permitted provided that at least the top two-thirds of the tree canopy is maintained.
  - v. Where the removal of storm-damaged, diseased, unsafe, or dead trees results in a cleared opening, those openings shall be replanted with native trees at least three feet in height unless existing new tree growth is present.
  - vi. Buffers shall not be used for all terrain vehicle or vehicular traffic.
- 2) Non-wooded Buffers.
  - a) Non-wooded buffers may be allowed to revert or to be planted to forest, in which case the standards above shall apply.
  - b) A buffer must maintain a dense, complete and vigorous cover of "non-lawn" vegetation which shall be mowed no more than once a year. Vegetation may include grass, other herbaceous species, shrubs and trees.
  - c) Activity within the buffer shall be conducted so as to prevent damage to vegetation and exposure of mineral soil. Burning of vegetation shall be prohibited.
  - d) Buffers shall not be used for all-terrain vehicles or other vehicular traffic.
- 3) Infiltration Systems. Individual lot owners shall be responsible for maintenance of individual infiltration systems according to the standards specified in the latest version of Phosphorus Control in Lake Watersheds: A Technical Guide for

Evaluating New Development, published by the Maine Department of Environmental Protection, the current version being dated September, 1992. Requirements for maintenance shall be included in deed restrictions and as notes upon the plan. As an alternative to maintenance by individual lot owners, the applicant may designate some other entity to be contracted to take the responsibility, and shall include the above referenced maintenance provisions in any contractual agreement. Where infiltration systems serve more than one lot, a lot owners' association shall be established and the above referenced maintenance provisions shall be referenced in the documentation establishing the association.

- 4) Wet Ponds. A lot owners' association shall be established to maintain wet ponds, unless the municipality or some other public entity agrees to assume inspection and maintenance duties. Documentation establishing the association or establishing an agreement with a public entity shall include the maintenance standards specified in the latest version of the manual Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development, published by the Maine Department of Environmental Protection, the current version being dated September, 1992.

## **711 DESIGN GUIDELINES**

### **711.1 GENERAL**

1. This section is intended to provide an example of design guidelines, which if followed will result in meeting the appropriate performance standards of Section 710.
2. Compliance with these guidelines shall be considered evidence of meeting those Performance Standards.
3. Proposed subdivisions not in compliance with the design guidelines of this Article may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standard(s), the standards of the Land Use Code of the City of Brewer, Maine and the statutory criteria applicable to subdivisions, as applicable.
4. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate all ordinance requirements, performance standards and statutory criteria for approval have been or will be met.

**711.2 SUFFICIENT WATER**

1. Well Construction

- A. Due to the increased chance of contamination from surface water, dug wells shall be prohibited on lots smaller than one acre. On lots of one acre or smaller, the applicant shall prohibit dug wells by deed restrictions and a note on the plan.
- B. Wells shall not be constructed within 100 feet of the traveled way of any street if located downhill from the street, or within 50 feet of the traveled way of any street if located uphill of the street.
- C. This restriction shall be included as a note on the plan and deed restriction to the affected lots.

2. Fire Protection

- A. Fire hydrants connected to a public water supply system shall be located no further than 500 feet from any building.
- B. A minimum storage capacity of 10,000 gallons shall be provided for a project not served by a public water supply. Additional storage of 2,000 gallons per lot or commercial development unit shall be provided. If multiple principal buildings are present in the project, storage capacity shall be provided sufficient for initial flows to automatic fire suppression systems required by the Brewer Building Code, or any other applicable codes or ordinances.
- C. Hydrants or other provisions for drafting water shall be provided to the specifications of the Fire Department. Minimum pipe size connecting dry hydrants to ponds or storage vaults shall be eight inches.
- D. Where the dry hydrant or other water source is not within the right-of-way of a proposed or existing street, an easement to the municipality shall be provided to allow access. A suitable access way to the hydrant or other water source shall be constructed.
- E. The Board shall require an opinion of adequacy of fire protection water supply from the Fire Chief and the Brewer Water Department Superintendent. (#4)

**711.3 STREET DESIGN CRITERIA (#4)**

All subdivision proposals shall comply with Article 9 of this Land Use Code.

**711.4 IMPACT ON NATURAL BEAUTY, AESTHETICS, HISTORIC SITES, WILDLIFE HABITAT, RARE NATURAL AREAS OR PUBLIC ACCESS TO THE SHORELINE**

1. Preservation of Natural Beauty and Aesthetics

- A. Unless located in areas designated as a growth area in the comprehensive plan, a subdivision in which the land cover type at the time of application is forested shall maintain a wooded buffer strip no less than fifty feet in width along all existing public roads. The buffer may be broken only for driveways and streets.
- B. Unless located in areas designated as a growth area in the comprehensive plan, building location shall be restricted from open fields, and shall be located within forested portions of the subdivision. When the subdivision contains no forest or insufficient forested portions to include all buildings, the subdivision shall be designed to minimize the appearance of building when viewed from existing public streets.
- C. When a proposed subdivision contains a ridge line identified in the comprehensive plan as a visual resource to be protected, the plan shall restrict tree removal and prohibit building placement within 50 feet vertical distance of the ridge top. These restrictions shall appear as notes on the plan and as covenants in the deed.
- D. When proposed subdivision street traverses open fields, the plan shall include the planting of street trees. Street trees shall include a mix of tall shade trees and medium height flowering species. Trees shall be planted no more than fifty feet apart.

2. Protection of Significant Wildlife Habitat and Important Habitat Areas

The following guidelines are designed to protect the significant wildlife resources identified in the municipality. The Board recognizes that wildlife management must take into account many site specific variables. Applicants proposing to subdivide land within identified wildlife resources must consult with the Maine Department of Inland Fisheries and Wildlife or a qualified wildlife biologist and provide their written comments to the Board. The guidelines of this section shall apply to only those subdivisions which include significant wildlife habitat or resources identified in Section 710.9.3.

A. Protection of Habitat of Endangered or Threatened Species

- 1) Habitat or species appearing on the official state or federal lists of endangered or threatened species shall be placed in open space.
- 2) Deed restrictions and notes on the plan shall reflect standards from the Department of Inland Fisheries and Wildlife for removal of vegetation within 250 feet of the habitat for species appearing on the list of endangered or threatened species unless the Department of Inland Fisheries and Wildlife has approved cutting of vegetation in writing.



B. Protection of Waterfowl, Shorebird, and Wading Bird Habitat, Atlantic Salmon Spawning and Nursery Areas.

- 1) There shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water mark of the following habitat areas:
  - a) Shorebird nesting, feeding and staging areas and seabird nesting islands;
  - b) High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
  - c) Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission, or
  - d) Other important habitat areas identified in the comprehensive plan.
- 2) This restriction shall appear as a note on the plan and as a deed restriction to the affected lots.

C. Protection of Deer Wintering Areas. The report prepared by a wildlife biologist, selected or approved by the Board, shall include a management plan for deer wintering areas.

D. Protection of Important Shoreland Areas.

- 1) Except as provided elsewhere in this Land Use Code, within all areas subject to the 250 foot shoreland zone:
  - a) Tree removal shall be limited to no more than 40% of the volume of trees 4 inches or more in diameter measured at 4 1/2 feet above the ground level on any lot in any ten year period.
  - b) Harvesting operations shall not create single clear-cut openings greater than 10,000 square feet in the forest canopy. Where such openings exceed 5,000 square feet they shall be at least 100 feet apart. Such clear-cut openings shall be included in the calculation of total volume removal. For the purposes of the guidelines volume may be considered to be equivalent to basal area.
  - c) Cleared openings for subdivision, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, shall not exceed in the aggregate, 25% of the lot area or 10,000 square feet, whichever is greater, including land previously developed.
- 2) These restrictions shall appear as notes on the plan and as deed restrictions to the affected lots.

- E. If the proposed subdivision includes other important wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the comprehensive plan, the restrictions on activities in and around these areas shall be reviewed by the Department or a qualified wildlife biologist and their comments presented in writing to the Board.

#### **711.5 STORM WATER MANAGEMENT DESIGN GUIDELINES**

1. Design of best management practices shall be substantially equivalent to those described in the latest version of the Erosion and Sedimentation Control: Best Management Practices, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, the most current version being dated March 2003.
2. Drainage easements for existing water courses or proposed drainage ways shall be provided at least 30 feet wide, conforming substantially with the lines of existing natural drainage.
3. The minimum pipe size for any storm drainage pipe shall be 15 inches for driveway entrances and eighteen inches for cross culverts. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet. Pipe shall be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to a minimum of twelve inches above the top of the driveway pipe and eighteen inches above the cross culvert.
4. Catch basins shall be installed where necessary and when located within a street shall be located at the curb line.
5. Storm Drainage Construction Standards
  - A. Materials.
    - 1) Storm drainage pipes shall conform to the requirements of Maine Department of Transportation materials specifications Section 706 for non-metallic pipe and Section 707 for metallic pipe. Plastic (polyethylene) pipes shall not be installed except in closed systems such as street underdrains. Bituminous-coated steel pipes shall not be used.
    - 2) Where the storm drainage pipe is to be covered by ten feet or more of fill material, pipe material with a fifty year life shall be used. These materials include concrete pipe, polyvinyl-chloride (PVC) pipe, polyethylene (PE) pipe, and corrugated aluminum alloy pipe.
    - 3) Where storm drainage pipe may come into contact with salt water, corrugated aluminum alloy pipes shall be used.

- B. Drain inlet alignment shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained in writing from the Board, after consultation with the municipal engineer.
- C. Manholes shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes shall be placed at a maximum of 300 foot intervals.
- D. Upon completion, each catch basin or manhole shall be cleaned of all accumulation of silt, debris or foreign matter and shall be kept clean until final acceptance.

**711.6 BLOCKS**

- 1. Where street lengths exceed 1,000 feet between intersections with other streets, the Board may require a utility/pedestrian easement, at least 20 feet in width, to provide for underground utility crossings and/or a pedestrian pathway of at least five feet in width.
- 2. Maintenance obligations of the easement shall be included in the written description of the easement.

**711.7 LOTS**

- 1. Wherever possible, side lot lines shall be perpendicular to the street.
- 2. The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division. Deed restrictions and notes on the plan shall either prohibit future divisions of the lots or specify that any future division shall constitute a revision to the plan and shall require approval from the Board, subject to the criteria of the subdivision statute, the standards of these regulations and conditions placed on the original approval.
- 3. If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream, tidal water, or road to meet the minimum lot size.
- 4. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

**711.8 MONUMENTS**

1. Granite, precast concrete monuments or iron pins shall be set at all street intersections and points of curvature, but no further than 750 feet apart along street lines without curves or intersections.
2. Granite, precast concrete monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135 degrees or less.
3. Granite, precast concrete monuments or iron pins shall be a minimum of four inches square at the top and four feet in length, and set in the ground at final grade level. After they are set, a drill hole 1/2 inch deep shall locate the point or points described above.
4. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by iron pins as required by the Maine Board of Registration of Land Surveyors.

**711.9 CLUSTER SUBDIVISIONS**

1. Purpose
  - A. The purpose of these provisions is to allow for flexibility in the design of housing subdivisions to allow for the creation of open space which provides recreational opportunities or protects important natural features from the adverse impacts of development, provided that the net residential density shall be no greater than is permitted in the district in which the subdivision is proposed.
  - B. Notwithstanding provisions elsewhere in this Land Use Code relating to dimensional requirements, the Board, in reviewing and approving proposed residential subdivisions, may modify the provisions related to dimensional requirements to permit flexibility in approaches to housing and environmental design in accordance with the following guidelines. This shall not be construed as granting variances.
2. Application Procedure
  - A. The Board may allow lots within subdivisions to be reduced in area and width below the minimum normally required by this Land Use Code in return for open space where the Board determines that the benefits of the cluster approach will decrease subdivision costs, increase recreational opportunities or prevent the loss of natural features without increasing the net density of the subdivision. Two sketch plans shall be submitted with one layout as a standard subdivision and the second as a cluster subdivision indicating open space and significant natural features. Each lot in the standard subdivision shall meet the minimum lot size and lot width requirements of this ordinance, and if not serviced by public sewer have an area suitable for subsurface waste water disposal according to the Maine Subsurface Wastewater

Disposal Rules. The number of buildable lots or dwelling units in the cluster subdivision shall in no case exceed the number of lots or dwelling units in the standard subdivision.

- B. Estimated costs of infrastructure development (roads, utilities, etc.) shall accompany the plan. The written statement shall describe the natural features which will be preserved or enhanced by the cluster approach.
  - C. Natural features include, but are not limited to moderate-to-high value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high yield aquifers and important natural or historic sites identified by the comprehensive plan as worthy of preservation. The statement shall also compare the impacts upon the municipality from each plan.
  - D. Examples of impacts are municipal cost for roads, school bussing, solid waste removal, utility efficiencies, recreational opportunities, protection of flood water storage areas, environmental impacts on sensitive lands caused by construction activities, underground utilities, reclamation of land and provision of land for conservation use.
  - E. Within ten days of receiving the application, the Board shall invite comments on the application from the conservation commission, the recreation commission, other appropriate City agencies, and abutters.
  - F. Within thirty days of receiving the application, the Board shall determine whether to allow the subdivision to be developed in accordance with the cluster standards of this section.
3. Basic Requirements for Cluster Subdivisions
- A. Cluster subdivisions shall meet all requirements of these regulations.
  - B. Each building shall be an element of an overall plan for site development. Only subdivisions having a total site plan for structures will be considered. The application shall illustrate the placement of buildings and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of these regulations.
  - C. The net residential acreage shall be calculated by taking the total area of the lot and subtracting, in order, the following:
    - 1) 15% of the area of the lot to account for roads and parking.
    - 2) Portions of the lot which, because of existing land uses or lack of access, are isolated and unavailable for building purposes or for use in common with the remainder of the lot, as determined by the Board.

- 3) Portions of the lot shown to be in a floodway or a coastal high hazard zone as designated in the Flood Boundary and Floodway Map prepared by the Federal Insurance Administration.
  - 4) Portions of the lot which are unsuitable for development in their natural state due to topographical, drainage or subsoil conditions such as, but not limited to:
    - a) slopes greater than 20%
    - b) organic soils.
    - c) wetland soils.
    - d) 50% of the poorly drained soils.
  - 5) Portions of the lot subject to rights of way.
  - 6) Portions of the lot located in the resource protection zone.
  - 7) Portions of the lot covered by surface waters.
  - 8) Portions of the lot utilized for storm water management facilities.
- D. In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage shall be divided by the minimum lot size required by the zoning ordinance. No building shall be sited on slopes steeper than 25%, within 100 feet of any water body or wetland, or on soil classified as being very poorly drained.
- E. The total area of reserved open space within the subdivision shall equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required by the zoning ordinance. No less than 30% of the reserved open space shall be usable open space.
- F. Every building lot that is reduced in area below the amount normally required shall be within 1,000 feet of the common land.
- G. The distance between dwellings shall not be less than 25 feet.
- H. No individual lot or dwelling unit shall have direct vehicular access onto a public road existing at the time of subdivision.
- I. Shore frontage shall not be reduced below the minimum normally required by the zoning ordinance.
- J. Where a cluster subdivision abuts a body of water, a usable portion of the shoreline, as well as reasonable access to it, shall be a part of the common land.

**711.10 PHOSPHORUS EXPORT**

1. When a proposed subdivision is within the direct watershed of a great pond and qualifies for the simplified review procedure, buffer strips shall be provided in accordance with the following table.
  - A. Buffer strips shall be provided on the downhill side of all lots along all tributaries to great ponds and along the great pond.
  - B. The minimum required width of buffer strips are designated in Table 711.10.3 and depend on the watershed in which the proposed subdivision is located, the size of the lot, the hydrologic soil group, and whether deed restrictions are proposed to limit the area which may be cleared on each lot.
  
2. When the proposed subdivision is within the direct watershed of a great pond and does not qualify for simplified reviewed, the phosphorus control measures shall meet the design criteria in the latest version of the Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development, published by the Maine Department of Environmental Protection, the most current version being dated September, 1992.

Table 711.10.3 Buffer Strip Widths in Watershed of Hypothetical Pond Phosphorus Standard: 0.07 - 0.08 lbs./acre Buffer Width in Feet Per Lot			
Lot	Hydrologic Soil Group	Clearing Restricted to 12,500 sq. ft.	No Clearing Restrictions
< 1 Acre	A	75	85
	B	130	150
	C	NA	NA
	D	NA	NA
1-1.99 Acres	A	25	25
	B	25	55
	C	55	190
	D	200	NA
2-2.99 Acres	A	25	25
	B	25	25
	C	25	50
	D	25	200

All lots 3 acres and larger shall provide a minimum 25 foot buffer.

**711.11 UTILIZATION OF THE SITE**

Utilization of the Site - The plan for the development will reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers will be maintained and preserved to the maximum extent. The development shall include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction and limiting the extent of excavation.

**711.12 HISTORIC AND ARCHAEOLOGICAL RESOURCES**

Historic and Archaeological Resources - If any portion of the site has been identified as containing historic or archaeological resources, the development shall include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, limiting extent of excavation.

**712 ACCEPTANCE OF STREETS IN A FULLY APPROVED SUBDIVISION**

Upon the application of the sub divider and the receipt of a written certification from a professional engineer licensed in the State of Maine that a street or streets and any improvements associated therewith in a fully approved subdivision in the City of Brewer has been constructed and/or reconstructed in accordance with this Subdivision Article, other City Ordinances, and the conditions of approval imposed by the Brewer Planning Board and/or City Council, the City Council shall refer the written certification to the City Engineer and the City Manager for their review. Within thirty (30) days after the City Engineer and the City Manager receive the written certification, they shall review the street and associated improvements for compliance with this Subdivision Article and the conditions of approval imposed by the Brewer Planning Board or City Council and they shall each submit to the City Council their written recommendation on the proposed acceptance of the street and reasons therefor. The City Council shall accept the street as a city street upon the written certification of a professional engineer as hereinbefore provided for and favorable recommendations from both the City Engineer and City Manager to accept the street. Conversely, if the City Council does not receive a favorable recommendation from either the City Engineer or City Manager, the City Council need not accept the street and may take such action as it deems appropriate.

The sub divider shall file a deed conveying the street to the City satisfactory to the City Council and an affidavit stating the sub divider voluntarily offers to transfer the street to the City and waives any claim for damages in accordance with Title 23 M.R.S.A. Section 3025 before the City Council shall consider acceptance of the proposed street.



A sub divider may not request a street in a fully approved subdivision be accepted by the City Council more than twice in any calendar year.

All applications which shall include "as built" plans and certifications under this Article shall be filed with the City Clerk as agent for the City Council.

### **712.1 ENGINEERING CERTIFICATION**

A professional engineer, licensed in the State of Maine and paid for by the developer, shall certify in writing to the City that the following have been constructed in accordance with the provisions of this subdivision article, other ordinances of the City of Brewer, and any conditions of the subdivision's approval established by the Brewer Planning:

1. Utilities which are located below the surface of the street have been properly installed. Utilities shall include, but not be limited to water, sewer, storm drains, and underdrains.
2. The sub-grade has been properly prepared and installed.
3. The gravel base has been tested for material compliance, thickness and properly graded, compacted and installed.
4. All asphalt materials have been properly installed.
5. Curbs, ditches and any stormwater detention facilities and any stormwater structures have been properly installed.
6. Permanent monumentation of all property lines and street rights-of-ways have been set.

#### **712.1.1 DEVELOPER'S RESPONSIBILITIES FOR TESTING, INSPECTION AND REPORTING (#6)**

Testing of the various materials used for construction of the street and inspection of the in-place products is the responsibility of the developer. A qualified inspector shall be retained by the developer to provide these services. The following items shall be submitted to the City Engineer upon application for conditional or final acceptance of a street as minimum evidence that the street has been constructed in accordance with the provisions of this ordinance.

- A. The project inspector will be required to certify that all underground utilities have been installed in accordance with the approved subdivision plans and generally accepted construction standards. Prior to acceptance, the City may also videotape

sewers and storm drains to check for sagging, squatting, misalignment or other evidence of improper installation.

- B. Prior to placing filter fabric and sub-base gravel, the subgrade shall be visually inspected to ensure proper grubbing and sloping has been accomplished. The condition of the subgrade shall also be visually evaluated for suitability to support the sub-base material. Proper compaction of all utility trenches should be verified. Copies of all inspection reports shall be forwarded to the City Engineer.
- C. The specifications for the gravel sub-base and base materials shall be shown on the project drawings. Samples of each should be obtained from the source and tested by an MDOT approved lab to ensure compliance with the MDOT gradation specifications and to determine the theoretical maximum density and optimum water content. The project inspector shall evaluate the lab results to ensure compliance with the project and City specifications and a copy of the results shall be sent to the City Engineer.
- D. Compaction testing shall be performed on each layer of the road base gravel to ensure 95% compaction is achieved. The method, location and frequency of tests shall be determined by the inspector to ensure representative results are obtained for the project. The certified results of all compaction testing shall be forwarded to the City Engineer. Visual inspections shall be performed daily, or as necessary, to ensure that contaminated materials are removed from the sub-base and base gravels. Measurement of the depth of each layer of gravel shall be made by the project inspector to ensure compliance with the project specifications and results shall be sent to the City Engineer.
- E. Final approval of the road base prior to paving shall be performed by the project inspector based on the visual inspection and the testing specified above. Final lines and grades shall meet MDOT tolerances. Prior to the start of paving a written certification from a Registered Professional Engineer shall be submitted to the City Engineer stating that the roadway base was constructed in accordance with the project specifications and is ready for paving.
- F. As-built drawings certified by a Registered Professional Engineer shall be submitted to the City Engineer prior to the acceptance of any street. These shall document all changes to the approved plans and show final locations of all utilities including water, sewer and storm drain stubs to individual lots.

#### **712.1.2 WRITTEN ADVICE**

The City Council shall receive the written recommendations of the City Engineer, City Planner, and the City Manager on the advisability of the acceptance of the street prior to acceptance. Such advice may include conditions of street acceptance and recommendations as to the necessity of additional guarantees.

**712.1.3 SUBDIVIDER RESPONSIBILITY**

The sub divider accepts complete responsibility for any damages or problems with the street and improvements until the street is accepted by the City Council. In the event that the City Council determines additional security is necessary, a guarantee shall be provided at the City Council's discretion according to Section 714 of this Article. Said guarantee shall be filed with the City Clerk prior to street acceptance.

**713 (LEFT BLANK/SKIPPED)**

**714 PERFORMANCE GUARANTEES**

**714.1 TYPES OF GUARANTEES**

With submittal of the application for final plan approval, the applicant shall provide one of the following performance guarantees for an amount adequate to cover the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs:

1. Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account;
2. A performance bond payable to the municipality issued by a surety company, approved by the City Council;
3. An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision, from which the City may draw if construction is inadequate, approved by the City Council; or
4. An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed.

The conditions and amount of the performance guarantee shall be determined by the City Council based upon the recommendation of the Planning Board.

**714.2 CONTENTS OF GUARANTEE**

The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction.

**714.3 ESCROW ACCOUNT.**

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the applicant, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the applicant unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the applicant and the amount withdrawn to complete the required improvements.

**714.4 PERFORMANCE BOND**

A performance bond shall 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 shall specifically reference the subdivision for which approval is sought. Performance bond shall be approved as to form by the City Solicitor.

**714.5 LETTER OF CREDIT**

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan. Letter of Credit shall be approved as to form by the City Solicitor.

**714.6 CONDITIONAL AGREEMENT**

The Board at its discretion may provide for the applicant to enter into a binding agreement with the municipality in lieu of the other financial performance guarantees. Such an agreement shall provide for approval of the final plan on the condition that no more than four lots may be sold or built upon until either:

1. It is certified by the Board, or its agent, that all of the required improvements have been installed in accordance with these regulations and the regulations of the appropriate utilities; or
2. A performance guarantee, acceptable to the municipality, is submitted in an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and prorated for the portions of the required improvements already installed.

Notice of the agreement and any conditions shall be on the final plan that is recorded at the Registry of Deeds. Release from the agreement shall follow the procedures for release of the performance guarantees contained in Section 714.

**714.7 PHASING OF DEVELOPMENT**

The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

**714.8 RELEASE OF GUARANTEE**

Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part upon the report of the City Planner or other qualified individual retained by the municipality and any other agencies 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.

**714.9 DEFAULT**

If upon inspection, the City Planner or other qualified individual retained by the municipality finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he or she shall so report in writing to the code enforcement officer, the City Council, the Board, and the applicant or builder. The City Council shall take any steps necessary to preserve the municipality's rights.

**714.10 IMPROVEMENTS GUARANTEED**

Performance guarantees shall be tendered for all improvements required to meet the standards of these regulations and for the construction of the streets, storm water management facilities, public sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.

**715 WAIVERS**

**715.1 WAIVERS AUTHORIZED**

Where the Board makes written findings of fact that there are special circumstances of a particular parcel proposed to be subdivided, it may waive portions of the submission requirements, unless otherwise indicated in the regulations, provided the applicant has demonstrated that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the zoning ordinance, or these regulations.

**715.2 FINDINGS OF FACT REQUIRED**

Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirement for such improvements, subject to appropriate conditions, provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the Land Use Code, or these regulations, and further provided the performance standards of these regulations and the criteria of the subdivision statute have been or will be met by the proposed subdivision.

### **715.3 CONDITIONS**

Waivers may only be granted in accordance with Sections 715.1 and 715.2. When granting waivers, the Board shall set conditions so that the purposes of these regulations are met.

### **715.4 WAIVERS TO BE SHOWN ON FINAL PLAN**

When the Board grants a waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted and the date on which they were granted.

## **716 BUILDING PERMITS**

The Code Enforcement Officer shall not issue any building permit required under this Land Use Code and/or Chapter 16 of the Brewer Charter, Codes and Ordinances for any structure upon a lot in a subdivision for which a plan has not been approved and the street that the lot is located upon has not been accepted or conditionally accepted under this Land Use Code. Notwithstanding the foregoing, the Code Enforcement Officer may issue building and other required permits on one lot in an approved subdivision, located in the Industrial (IND) and Industrial-2 (IND2) districts, where all required improvements are being constructed by the City of Brewer, with City Council approval, and where site plan approval has been obtained from the Planning Board if required. (#8)

## **717 APPEALS**

### **717.1 APPEALS TO THE BOARD OF APPEALS**

Pursuant to Article 13 of this Land Use Code and Chapter 34 of the City of Brewer Charter, Codes and Ordinances, an administrative appeal may be taken to the Brewer Zoning Board of Appeals by an aggrieved party from any decision of the Brewer Planning Board. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from.

### **717.2 APPEALS TO SUPERIOR COURT**

*Brewer City Ordinances, Chapter 24 Land Use Code, Article 7*

An aggrieved party may appeal any decision of the Board of Appeals under these regulations to Penobscot County Superior Court, within thirty days of the date the Board issues a written order of its decision.