

## CHAPTER 3. SUBDIVISION ORDINANCE

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### SECTION 1. ADMINISTRATION

The Planning Board of the Town of China, hereinafter called the Board, shall administer these standards.

### SECTION 2. EXEMPTION

The provisions of this Ordinance shall not apply to any subdivision which has been approved by the municipal officers or the Planning Board and recorded in the Registry of Deeds of Kennebec County prior to enactment of the Ordinance, unless such subdivision is submitted for revision or re-subdivision at which time the provisions of this ordinance shall be applied to all undeveloped lands in the original subdivision.

### SECTION 3. PREAPPLICATION

#### 3.1 Procedure.

- A. Applicant presentation and submission of sketch plans.
- B. Question and answer period. Board makes specific suggestions to be incorporated by the applicant into subsequent submissions.
- C. Scheduling of on-site inspection by the code enforcement officer.

#### 3.2 Submission.

The Preapplication sketch plan shall show, in simple sketch form, the proposed layout of the roads/streets, lots, buildings and other features in relation to existing conditions. The Sketch Plan, which 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.

#### 3.3 Contour Interval and On-Site Inspection.

Within thirty days, the Board shall determine and inform the applicant in writing what, if any, contour interval will be required on the Preliminary Plan, or Final Plan in the case of a Minor Subdivision. The code enforcement officer will hold an on-site inspection and report to the Board within the same thirty day period. The applicant shall place "flagging" at the center line of any proposed streets, and at the approximate intersections of the street center lines and lot corners, prior to the on-site inspection.

### 3.4 Rights not Vested.

The submittal or review of the preapplication sketch plan 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., S302.

## SECTION 4. MINOR SUBDIVISIONS

### 4.1 General.

The Board may require, where it deems it necessary for the protection of public health, safety, and welfare, that a Minor Subdivision comply with all or any of the submission requirements for a Major Subdivision.

### 4.2 Procedure.

- A. Within six months after the on-site inspection by the code enforcement officer, the subdivider shall submit an application for approval of a Final Plan. Failure to do so shall require resubmission of the Sketch Plan to the Board. The Final Plan shall approximate the layout on the Sketch Plan, plus any recommendations by the Board.
- B. All applications for Final Plan approval for Minor Subdivisions shall be accompanied by an application fee which is set by the Town's Select Board.
- C. The subdivider, or his duly authorized representative, shall attend the meeting of the Board to discuss the Final Plan.
- D. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the subdivider. The Board shall schedule a public hearing to be held within thirty days, or within another time limit mutually agreed to by the Board and the subdivider. Public notice shall be given for the hearing, and the abutting landowners to the proposed subdivision shall be notified by the applicant by certified mail return receipt, with the applicant to be responsible for all costs of the mailing and the public notice. A complete application shall include the information listed in Section 4.3 of this Ordinance.
- E. Within thirty days of the public hearing, the Board shall approve, approve with conditions, or deny the Final Plan. The Board shall specify in writing the reasons for any conditions or denial.
- F. Before granting approval of any application for a subdivision, the Board shall determine that, based on clear and convincing evidence presented to it by the applicant, the proposed project meets the guidelines in Section 7 of this Ordinance.

### 4.3 Submissions.

- A. The subdivision plan for a Minor Subdivision shall consist of one reproducible, stable based, transparent original to be recorded at the Registry of Deeds and three copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch. 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. Three copies of all information accompanying the plan shall be submitted.

The application for approval of a Minor Subdivision shall include the following information:

1. Proposed name of the subdivision, or identifying title, the name of the town in which it is located, plus the Assessor's Map and Lot numbers.
2. Verification of right, title or interest in the property as shown by notarized documentation.
3. A Boundary Survey by a licensed land surveyor. The plan shall indicate the type of monument to be set or found at each corner. Monuments shall be set in accordance with Section 11.6(A) of this Ordinance.
4. A copy of the deed from which the survey was based. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.
5. A copy of any deed restrictions intended to cover all or part of the lots in the subdivisions.
6. For each proposed lot a test pit analysis, prepared by a Licensed Site Evaluator, shall be provided. A map showing the location of all test pits dug on the site shall be submitted. Acceptance of such test pit analysis for the purpose of subdivision does not imply that the requirements of the Town of China Land Use Ordinance for subsurface wastewater disposal systems have been met.
7. 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.
8. The date the plan was prepared, north point, graphic map scale, names and addresses of the record owner, applicant/subdivider and individual or company who prepared the plan, and the names and addresses of abutting property owners. If the subdivider is not the owner of the property, evidence of the subdivider's right, title or interest to the property.
9. Location of existing and proposed water mains, wells, hydrants; sewers and septic systems; and electric poles.

10. Lots, if any, to be used for purposes other than single family dwellings.
11. A copy of the portion of the county Soil Survey covering the subdivision. When the medium intensity soil survey shows soils which are generally unsuitable for the uses proposed, the Board may require the submittal of a high intensity soil survey or a report by a Registered Soil Scientist or Registered Professional Engineer experienced in geotechnics, indicating the suitability of soil conditions for those uses.
12. The number of acres within the proposed subdivision, location of property lines, lot areas in square feet, existing buildings, watercourses, vegetative cover type, and other essential existing physical features. On wooded sites, the plan shall indicate the area where clearing for lawns and structures shall be permitted.
13. Contour lines at the interval specified by the Board, showing elevations in relation to Mean Sea Level.
14. 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 shall be delineated on the plan.
15. A hydrogeologic assessment prepared by Certified Geologist or Registered Professional Engineer, experienced in hydrogeology, when any part of the subdivision is located over a sand and gravel aquifer as shown on a map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers" by the Maine Geological Survey, 1985, Maps No. 17 & 18.

## SECTION 5. MAJOR SUBDIVISIONS

### 5.1 Procedure.

- A. Within six months after the on-site inspection by the code enforcement officer, the subdivider shall submit an application for approval of a Final Plan. Failure to do so shall require resubmission of the Sketch Plan to the Board. The Final Plan shall approximate the layout on the Sketch Plan, plus any recommendations by the Board.
- B. All applications for Final Plan approval for Major Subdivisions shall be accompanied by an application. An additional fee may be required by the Planning Board to pay for the services of independent consultants to review the application or portions thereof. For this purpose a fee shall be deposited by the applicant in a special account to be established by the Town of China and used only for the purposes designated. If the balance in this special account shall be drawn down by 75% the Board shall notify the applicant, and require that an additional fee be deposited by the applicant. The Board shall continue to notify the applicant and require an additional fee be deposited as necessary whenever the balance of the account is drawn down by 75% of the original deposit. The total of this fee shall not exceed \$5,000. Any balance in the account remaining after a decision on the final plan application by the Board shall be returned to the applicant. All fees are set by the Town's Select Board.

- C. Prior to submittal of the Final Plan application, the following approvals shall be obtained in writing, where appropriate:
  - 1. Maine Department of Environmental Protection, under the Site Location of Development Act, Alteration of Coastal Wetlands Act, Great Ponds Act, Fresh Water Wetlands Act, Alteration of Streams and Rivers Act, or if a Wastewater Discharge License is needed.
  - 2. Maine Department of Human Services, if the subdivider proposes to provide a central water supply system.
  - 3. Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system(s) is to be utilized.
- D. The subdivider, or his duly authorized representative, shall attend the meeting of the Board to discuss the Final Plan.
- E. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the subdivider. The Board shall schedule a public hearing to be held within thirty days, or within another time limit mutually agreed to by the Board and the subdivider. Public notice shall be given for the hearing, and the abutting landowners to the proposed subdivision shall be notified by the applicant by certified mail return receipt, with the applicant to be responsible for all costs of the mailing and the public notice. A complete application shall include the information listed in Section 5.2 of this Ordinance.
- F. Within thirty days of the public hearing, the Board shall approve, approve with conditions, or deny the Final Plan. The Board shall specify in writing the reasons for any conditions or denial.
- G. Before granting approval of any application for a subdivision the Board shall determine that based on clear and convincing evidence presented to it by the applicant, the proposed project meets the guidelines in Section 7 of this Ordinance.

5.2 Submissions for approval of a Major Subdivision shall be the same as the submissions listed for a Minor Subdivision plus the following items:

- A. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
- B. The location, names, and present widths of existing and proposed streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
- C. The location of any open space to be preserved and a description of proposed improvements and its management.
- D. A soil erosion and sedimentation control plan, prepared in accordance with the standards contained in the latest revised edition of the Environmental Quality Handbook published by

the U.S. Soil Conservation Service.

- E. A plan for the disposal of surface drainage waters designed to minimize the transport of phosphorus to China Lake or Three-Mile Pond.
- F. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers of cession to the Town of China of all public 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 developer 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 Town of China Board of Selectman are satisfied with the legal sufficiency of the written offer of cession shall be included.
- G. In a non-residential subdivision an estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours.
- H. 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 Registered Professional Engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular 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. Trip generation rates used shall be the mean value reported in Table 3 of Development and Application of Trip Generation Rates, Kellercro, Inc., published by the Federal Highway Administration, January 1985.
- I. If the application calls for the construction of new roads, streets or portions thereof, the application shall also include the following information:
  - 1. The anticipated starting and completion dates of each major phase of street construction;
  - 2. A statement indicating the nature and volume of traffic expressed in average daily traffic (ADT) expected to use the proposed street.
  - 3. The plans and illustrations submitted as part of the application shall be prepared by a registered land surveyor or professional engineer and shall include the following information:
    - a. The scale of the plan. (All streets and roadway plan and profile drawings shall be drawn to a scale 1"=50' horizontal and 1"=10' vertical.);
    - b. The direction of magnetic north;
    - c. A plan profile and typical cross section views of all proposed streets;

- d. The starting and ending point with relation to established roads, streets or ways, and any planned or anticipated future extensions of the streets. (All terminal points and the center line alignment shall be identified by survey stationing.);
- e. The roadway and roadway limits with relation to existing buildings and established landmarks;
- f. Dimensions, both lineal and angular, necessary for locating boundaries, and necessary for locating subdivisions, lots, easements, and building lines;
- g. The lots, if any, as laid out and numbered on said street, showing the names and addresses of all owners of abutting property, and the registry references to the abutting property;
- h. All natural waterways and watercourses in or on land contiguous to the said streets or ways;
- i. The kind, size, location, profile and cross section of all existing and proposed drainage ways and structures and their relationship to existing natural waterways;
- j. The soil erosion and sedimentation control plan showing interim and final control provisions;
- k. Curve data for all horizontal and vertical curves shall include the center line radius, arc length along the centerline radius, beginning of curve and end of curve points along the centerline radius;
- l. All center line gradients shall be shown and expressed as a percent;
- m. All curve and property line radii of intersections;
- n. The limits and location of any proposed sidewalks and curbing;
- o. The location of all existing and proposed overhead and underground utilities, to include, but not limited to the following: [NOTE: When a location, in the case of any underground utility, is an approximate location, it shall be noted on the plan as such.]
  - (1)Storm drains;
  - (2)Telephone line poles or underground vaults;
  - (3)Electrical power line poles or underground vaults;
  - (4)Street lights;
  - (5)Public water supply lines;
  - (6)Sanitary sewer lines;
- p. The name(s) of each proposed new road or street.

- J. If the subdivision plan contains a private road, a Proposed Road Maintenance Declaration;
- K. If the subdivision plan contains a private road, Proposed Road Association Articles of Incorporation.
- L. Name of engineer or design professional to certify, at the applicant's expense, that the road or street design has been met.

## SECTION 6. NON-RESIDENTIAL SUBDIVISIONS

### 6.1 General.

All Non-residential subdivisions shall comply with the submission requirements for a Major Subdivision.

## SECTION 7. GUIDELINES

Before granting approval of any application for a subdivision the Board shall determine that, based on clear and convincing evidence presented to it by the applicant, the proposed project meets the following guidelines.

- 7.1 Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of the land above sea level and its relation to the flood plain; the nature of the soils and subsoils and their ability to adequately support waste disposal; protection of the aquifer and the rights of present and future users of the aquifer to a safe water supply; the slope of the land and its effect on effluents; the proximity to streams and other water bodies; and the applicable state and local health and water resources regulations.
- 7.2 Has sufficient water available for the reasonably foreseeable needs of the subdivision.
- 7.3 Will not cause an unreasonable burden on an existing water supply if one is to be utilized.
- 7.4 Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- 7.5 Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed.
- 7.6 Will provide for adequate solid and sewage waste disposal.
- 7.7 Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized.
- 7.8 Will not place an unreasonable burden on the ability of the local governments to provide



municipal or governmental services.

- 7.9 Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.
- 7.10 Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any.
- 7.11 The subdivider has adequate financial and technical capacity to meet the above listed standards.
- 7.12 Whenever situated, in whole or in part, within 500 feet of any pond, lake or river, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.
- 7.13 The subdivision shall be consistent with the provisions of the Town of China Land Use Ordinance in terms of soil suitability, lot dimensions, and types of land uses for which lots are to be sold.

#### SECTION 8. FINAL SUBDIVISION APPROVAL

- 8.1 No plan shall be approved by the Board as long as the subdivider is in violation of the provisions on a previously approved Plan.
- 8.2 The Planning Board shall not sign the final plan until a licensed surveyor certifies in writing that all the required monuments have been correctly placed.
- 8.3 Upon findings of fact and determination that all standards in Section 7 of this Ordinance, and any other applicable state or local regulations have been met, and upon voting to approve the subdivision the Board shall sign the Final Plan. The Board shall specify in writing its findings of fact and reasons for any conditions or denial. The applicant shall provide two reproducible transparencies and three paper copies of the plan. One copy of the signed plan shall be retained by the Board as part of its permanent records. One copy of the signed plan shall be forwarded to the Tax Assessor. One copy of the signed plan shall be forwarded to the Code Enforcement Officer. Any subdivision not recorded in the Registry of Deeds within ninety days of the date upon which the plan is approved and signed by the Board shall become null and void.
- 8.4 The approval by the Planning Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the Town of China of any road or street, easement, or other open space shown on such plan as a public road or street, easement or open space. When a park, playground or other recreation area shall have been shown on the plan to be dedicated to the Town of China, approval of the Plan shall not constitute an acceptance by the Town of China 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 Town of China Select Board, covering future deed and title, dedication and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.

- 8.5 Failure to commence substantial construction of the subdivision within five years of the date of approval and signing of the Plan shall render the Plan null and void. 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.

## SECTION 9. REVISIONS TO APPROVED PLANS

### 9.1 Procedure.

An applicant for a revision to a previously approved plan shall, at least seven 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 units, the procedure for preliminary plan approval shall be followed. If the revisions involve only modifications of the approved plan, without the creation of additional lots or units, the procedures for final approval shall be followed.

### 9.2 Submissions.

The applicant shall submit a copy of the approved plan, as well as two reproducible transparencies and three paper 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.

### 9.3 Scope of Review.

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed except when such changes involve the creation of two (2) or more additional lots and/or units.

## SECTION 10. ENFORCEMENT

### 10.1 Inspection of Required Improvements.

- A. At least five days prior to commencing each major phase of construction of required improvements, the subdivider or builder shall:

1. Notify the Code Enforcement Officer in writing of the time when he proposes to commence construction of such improvements so that the Select Board may cause inspection to be made to insure that all town specifications and requirements shall be met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Planning Board.

2. Deposit with the Select Board a check for an amount no greater than 2% of the estimated costs of the required improvements to pay for the costs of inspection. The Select Board may waive this requirement at their discretion.

B. If the Code Enforcement Officer finds upon inspection the improvements have not been constructed in accordance with the plans and specifications filed by the subdivider and/or do not meet the requirements of the applicable ordinance of the Town of China, he shall so report in writing to the Select Board, Planning Board, and the subdivider or builder. The Select Board shall take any steps necessary to preserve the Town of China's rights.

C. The Code Enforcement Officer is authorized to approve minor modifications in the required improvements due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. Such approval shall be given in writing with a copy to the Planning Board. For major modifications such as changes of grade by more than 1%, relocation of rights-of-way, property boundaries, etc., the subdivider shall obtain permission to modify the plan from the Board. If there is a question as to whether or not a modification is minor or major the Planning Board shall decide.

D. The subdivider or builder shall be required to provide for the maintenance of all required improvements and provide for snow removal on streets and sidewalks until acceptance of the improvements by the Town of China.

## 10.2 Violations and Enforcement.

A. No plan of a subdivision of land within the Town of China which would constitute a subdivision shall be recorded in the Registry of Deeds until a Final Plan has been approved by the Board in accordance with these regulations.

B. No person, firm, corporation or other legal entity may convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.

C. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in an approved subdivision which is not shown on the Final Plan as a separate lot.

D. Any person, firm, corporation or other legal entity who conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by these regulations shall be punished by a fine of not less than \$100, and not more than \$2,500 for each such conveyance, offering or agreement. The Town of China may institute proceedings to enjoin the violation of this section, and may collect attorney's fees and court costs if it is the prevailing party.

E. No public utility, water district, sanitary district 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.

F. 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 Final Plan approval as provided in these regulations and recorded in the Registry of Deeds.

- G. No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which the lot fronts is completed in accordance with these regulations up to and including the entire frontage of the lot. No unit in a multi-family development shall be occupied before the street upon which the unit is accessed is completed in accordance with these regulations.

## SECTION 11. GENERAL STANDARDS

### 11.1 Conformance with Comprehensive Plan.

All proposed subdivisions shall be in conformity with the Comprehensive Plan of the Town of China and with the provisions of all pertinent state and local codes and ordinances.

### 11.2 Retention of Open Spaces and Natural or Historic Features.

- A. The Board may limit the clearing of trees to those areas designated on the plan. In addition the Board may require that a proposed subdivision design include a landscape plan that will show the preservation of existing trees larger than 24" in diameter at breast height, the replacement of trees and vegetation, graded contours, streams, and the preservation of scenic, historic, or environmentally desirable areas. The street and lot layout shall be adapted to the topography. Extensive grading and filling shall be avoided as much as possible.
- B. In major subdivisions the Board shall require the reservation of between five and ten percent of the area of the subdivision as open space in order to provide for the recreational needs of the occupants of the subdivision or to maintain the scenic or natural beauty of the area. The developer may instead make a payment in lieu of dedication into an open space or recreation land acquisition fund established by the Town of China.
- C. Reserved land within a subdivision may be restricted for use to the property owners in the subdivision. If reserved land is so restricted the cost of maintenance and development of such land shall be borne by the property owners of the subdivision. The manner of providing for the cost of development and/or maintenance of the reserved land shall be included in the instrument of conveyance to each property owner of the subdivision.
- D. Reserved land acceptable to the Board and subdivider may be dedicated to the Town of China, subject to approval by the Select Board, as a condition of approval.
- E. Land reserved for open space purpose shall be of a character, configuration and location suitable for the particular use intended.
- F. Where land within the subdivision is not suitable or is insufficient in amount, or where the

applicant prefers, a payment in lieu of dedication shall be calculated at the market value of the developed land at the time of the subdivision, as determined by the municipal tax assessor, and deposited into a land acquisition or improvement fund established by the Town of China.

- G. If the proposed subdivision contains any identified historical or archaeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall be included in the open space, and suitably protected by appropriate covenants and management plans.
- H. Any 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.

### 11.3 Roads

- A. **Applicability:** This subsection 11.3 applies to (1) all new private roads, streets or portions thereof which provide access to, or are located within major residential and/or commercial subdivisions, and (2) all existing private roads, streets or portions thereof which provide access to, or are located within major residential and/or commercial subdivisions approved after the effective date of this subsection, but excluding roads or portions thereof located within a subdivision approved before the effective date of this subsection.
- B. **Procedural Requirements:**
  - 1. Copies of any new major subdivision plans containing private roads shall be forwarded to the municipal officers, the fire chief and the road commissioner for review.
  - 2. All roads must be shown on the subdivision plan submitted to the Planning Board for review.
  - 3. The developer of any approved subdivision containing private roads must record in the Kennebec County Registry of Deeds, contemporaneously with the approved subdivision plan, a road maintenance declaration approved by the Planning Board. The road maintenance declaration shall provide for (1) the maintenance and upkeep of the road(s) shown on the approved plan, (2) the incorporation by the developer under the Maine Nonprofit Corporation Act of a road association, (3) membership in the road association, (4) voting rights of lot owners, (5) road easement rights of lot owners, (6) assessments for expenses, (7) liens for expenses, (8) enforcement of association rights, (9) subordination of the association liens to the rights of any mortgage holder and (10) any other matters relating to the road maintenance association.
  - 4. If a subdivision borders an existing narrow road (not meeting the width requirements of the standards for roads in this ordinance), or if the China Comprehensive Plan indicates plans for realignment or widening of a road that would require use of some of the land in the subdivision, the subdivision plan shall designate reserved areas for widening or

realigning the road which shall be marked “Reserved for Road Realignment (Widening) Purposes.” Land reserved for such purposes may not be included in computing lot area or setback requirements.

5. Approval by the Planning Board of the subdivision application shall not be deemed to constitute, or be evidence of, the acceptance by the Town of any roads located in said subdivision as Town roads. A private road may be accepted as a Town road only if the road meets the standards set forth in the Town’s Ordinance For the Acceptance Of Streets And Ways and is approved for acceptance by an affirmative vote at a duly held Town meeting. Any subdivision plan containing private roads must designate them as such and the following words must appear on the recorded plan:

Every road shown on this subdivision plan as a private road shall remain a private road, to be owned and maintained by the developer, landowners or road association, and shall not be maintained by the Town unless (1) the road was constructed in accordance with the then-current version of the Town of China “Ordinance for the Acceptance of Streets and Ways” and (2) the road is accepted as a town road by Town vote. Any road shown on this plan is subject to a Road Maintenance Declaration recorded in the Kennebec County Registry of Deeds.

C. Design Standards for Private Roads:

1. Road Specifications:

**ROAD STANDARDS**

ROAD DESIGN	PRIVATE SUBDIVISION ROAD SPECIFICATION
Right-of-Way Width	50 feet
Travelway Width	20 feet
Aggregate Sub-base Required (compacted)	18 inches compacted in 6-inch lifts
Aggregate Base Gravel	3 inches
Shoulder widths	4 feet
Maximum side slopes	3:1 down slope and back slope
Roadway Crown	½ inch per foot (gravel)
Maximum Grade	10%
Minimum Angles at Intersection	75 <u>degrees</u>
Minimum Center Line Radius for Curves	150 feet
Minimum Tangent Length between Curves	150 feet
Maximum side slopes	3 feet horizontal to one (1) foot vertical
Culverts	Driveway: 30 foot length (min.) 15 inch diameter (min)

	Roadway: 40 foot length (min.) 15 inch diameter (min.) Cross-culverts: 30 foot length (min) 15 inch diameter (min)
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2. General Road Specifications: Pursuant to Section 11.3, the road specifications for subdivisions with more than 20 lots and for commercial subdivisions shall be identical to the road specifications for major residential and commercial subdivisions except that the width of the travel way of roads in subdivisions with more than 20 lots and for commercial subdivisions shall be paved with bituminous pavement to a depth of at least three (3) inches after compaction: a two (2) inch binder and a one (1) inch wearing course.
  
3. Specific Road Specifications:
  - a. Specifications for aggregate subbase: Aggregate subbase must conform to MDOT 703.06 (as amended), Type 'D' Gravel, of hard durable particles free from vegetable matter, lumps or balls of clay and other deleterious substances. The gradation of that part that passes a 3 inch sieve shall meet the following requirements:
    - (1) ¼ inch sieve: 25 to 70 percent passing by weight
    - (2) No. 40 sieve: 0 to 30 percent passing by weight
    - (3) No. 200 sieve: 0 to 70 percent passing by weight
    - (4) Type 'D' aggregate shall not contain particles of rock which will not pass the 6-inch square mesh sieve.
  
  - b. Specifications for aggregate base: a. Aggregate base must conform to MDOT 703.06 (as amended), Type 'A' Crushed Gravel, of hard durable particles free from vegetable matter, lumps or balls of clay and other deleterious substances. The gradation of that part that passes a 3 inch sieve shall meet the following requirements:
    - (1) ½ inch sieve: 45 to 70 percent passing by weight
    - (2) ¼ inch sieve: 30 to 55 percent passing by weight
    - (3) No. 40 sieve: 0 to 20 percent passing by weight
    - (4) No. 200 sieve: 0 to 5 percent passing by weight
    - (5) Type 'A' aggregate shall not contain particles of rock which will not pass the 2-inch square mesh sieve.
  
4. Centerline: The centerline of the road shall be the centerline of the road right-of-way.
  
5. Dead-end roads: Dead-end roads shall service no more than twenty (20) dwelling units. Dead-end roads shall be constructed to provide a cul-de-sac turn-around with the following requirements for radii: 65 feet to property lines and 50 feet to the edge of the nearest pavement. Dead-end roads may provide a permanent "T" or hammer head turn-around in lieu of a cul-de-sac. Such turn-arounds shall be a minimum of 35 feet in length

and 20 feet in width. The right-of-way dimensions shall be 50 feet in length and 30 feet in width.

6. Through traffic: Roads in residential subdivisions shall be designed to discourage through traffic.
7. Grades, intersections and sight distances:
  - a. Grades of all roads shall conform in general to the terrain, so that cut and fill are minimized while maintaining the grade standards above.
  - b. All changes in grades shall be connected by vertical curves providing for the minimum sight distances set forth herein.
  - c. Where new road intersections or driveway curb-cuts are proposed, sight distances, as measured along the road onto which traffic will be turning, shall be based upon the posted speed limit and conform to the table below:

<u>Posted Speed Limit</u>	<u>Sight Distance</u> <u>(Each Direction)</u>
25 mph	250 feet
30 mph	300 feet
35 mph	350 feet
40 mph	400 feet
45 mph	450 feet
50 mph	500 feet
55 mph	550 feet

Where necessary, corner lots shall be cleared of all growth and sight obstructions, including ground excavation, to achieve the required visibility.

- d. Cross (four-cornered) road intersections shall be avoided insofar as possible, except as shown in the China Comprehensive Plan or at other important traffic intersections. A minimum distance of 200 feet shall be maintained between centerlines of side streets.
- D. Design Standards for Public Roads: The design standards for public roads are set forth in the Town of China “Ordinance For The Acceptance Of Streets And Ways.”
- E. Design Standards for roads in Mobile Home Parks: The design standards for roads in mobile home parks are set forth in China, Me., Land Development Code, Chap. 3, Section 11.9(K).
- F. Construction Standards for Private Roads:
1. Preparation:



- a. Before any clearing has started for the proposed road, the centerline and side lines of the new road shall be staked or flagged at 50-foot intervals.
  - b. Before the aggregate subbase is placed or, in the event engineering fabric is to be used as set forth below, before the aggregate base is placed, the entire proposed road shall be cleared of all stumps, roots, brush, ledge, large boulders and other objectionable material as determined by the Planning Board.
  - c. All organic materials shall be removed to a depth of two (2) feet below the subgrade of the road. Rocks and boulders shall also be removed to a depth of two (2) feet below the subgrade of the road. On soils which have been identified as not suitable for roads, the subsoil shall be removed from the road site to a depth of two (2) feet below the subgrade and replaced with material meeting the specifications for aggregate subbase set forth in this ordinance. In lieu of removal of all organic material, engineering fabric (geotextile) may be used to stabilize the road base.
2. Construction:
- a. Side slopes shall be graded, limed, fertilized and seeded according to the specifications of the erosion and sedimentation control plan.
  - b. Underground utilities shall be installed prior to road completion.
  - c. Erosion control procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction and clean-up stages.
  - d. Following road construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris from the entire road 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.
3. Inspection and certification:
- a. Certification: Before a lot may be sold, the applicant must submit to the Planning Board or its designee, the CEO, at the expense of the applicant, a written certification signed by a professional engineer registered in the State of Maine, certifying that the road(s), as built, from a public road outside the subdivision up to and including frontage along the lot that is to be sold, meets or exceeds the design and construction requirements of this ordinance.
  - b. Notification: At least ten (10) days prior to commencing construction of, or alteration of, any road in a subdivision, the applicant shall notify, in writing, the

CEO and the licensed professional engineer designated to inspect the road, of the date when construction of the road is to begin.

- c. **Modification of Design Standards:** If, at any time before or during the construction of the road, it is demonstrated to the satisfaction of the professional engineer that unforeseen conditions make it necessary or appropriate to modify the location or design of the road, the professional engineer may, upon application to and approval by the Planning Board, authorize modifications.
- d. **Non-compliance:** If it is found upon inspection of the improvements that the private road is not being or has not been constructed in accordance with the approved plans and specifications, the licensed professional engineer shall so report to the Planning Board and their designee, the CEO. Until the non-conforming construction has been corrected and meets all the approved plans and specifications, no further lots may be sold in the subdivision. The CEO shall then notify the applicant and shall take all necessary enforcement steps pursuant to China, Me., Land Development Code, Chap. 10 (June 5, 1993). Should any performance guarantee require further action, said measures shall be taken to preserve the integrity of the road.
- e. **Inspection Fee:** The Planning Board, with the approval of the Selectmen, may require the assessment of additional fees to cover the costs of construction inspection.

G. **Higher Design and Construction Standards:** Nothing in this ordinance shall be construed to prevent the design and construction of roads which meet higher design or construction standards, use improved methods or higher quality materials than required by the above standards.

#### 11.4 Land Not Suitable for Development.

The following lands shall not be included in the calculations of lot area for the purpose of meeting Minimum Lot Size requirements.

- A. Land which is situated below the normal high water mark of any body of water.
- B. Land which can be identified as inland wetlands on the basis of soils, vegetation, or other criteria including but not limited to swamps, marshes or bogs.
- C. Land which is part of a right-of-way, or easement, including utility easements.
- D. Land that has been created by filling or draining a pond or wetland.

#### 11.5 Lots.

- A. All lots shall meet the minimum requirements of the Town of China Land Use Ordinance or

other appropriate ordinance of the Town of China, unless otherwise stated herein.

- B. All lots shall be designed to provide adequate off-street parking based upon the type of development contemplated.
- C. When lots have frontage on two or more roads, the plan, and deed restrictions shall indicate vehicular access shall be located only on the less traveled way.
- D. Wherever possible, side lot lines shall be perpendicular to the street.
- E. No further division of lots within an approved subdivision shall be allowed except as provided for in Section 9 of this ordinance.
- F. If a lot on one side of a stream, 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, or road to meet minimum lot size.

#### 11.6 Required Improvements.

##### A. Monuments.

1. Monuments 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. 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. Above monuments shall be a 5/8 inch or larger solid metal bar set permanently in the ground. A cap shall be permanently placed over the end of one metal bar located in one corner of each lot. Said cap will provide the registration number of the surveyor responsible for the project.
4. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by suitable monumentation.

##### B. Water Supply.

1. If a central water supply system is provided by the subdivider, the location and protection of the source, and the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144 A.C.M.R. 231).

##### C. Sewage Disposal.

1. The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of

the State of Maine Subsurface Wastewater Disposal Rules.

2. In no instance shall a disposal area be permitted on soils or on a lot which requires a New System Variance from the Subsurface Wastewater Disposal Rules.

D. Fire Protection.

If possible the subdivider shall construct dry hydrants for fire-fighting purposes. An easement shall be granted to the Town of China granting access to and maintenance of the dry hydrants where necessary.

E. Stormwater Runoff.

Stormwater runoff from improved areas, roads, etc., and from developed lots shall be controlled in such a way as to minimize the transportation of phosphorus into lakes or ponds or streams which empty into lakes or ponds within or without the Town of China.

11.7 Cluster Developments.

Cluster developments are prohibited.

11.8 Condominiums.

The form of ownership involving condominiums shall be allowed pursuant to 33 M.R.S.A. § 1601 et seq. subject to the provisions of the China Land Development Code, including but not limited to Chapter 2, Land Use Ordinance, Section 5, Land Use Standards; and Chapter 4, Phosphorus Control Ordinance.

11.9 Mobile Home Parks

The following provisions shall apply to all development proposals for new construction of mobile home parks and to any expansion of existing mobile home parks.

- A. Plan. An approved mobile home park plan shall be necessary under the terms of this Ordinance, prior to the establishment or expansion of a mobile home park, and shall consist of a site plan, including all attachments, signed by the Planning Board, and may include any conditions attached by the Planning Board. The establishment or expansion of a mobile home park shall be subject to the Town of China Subdivision Ordinance.

An approved mobile home park plan shall not exempt an applicant from meeting other applicable local, state, or federal requirements.

- B. Access. No mobile home park shall be developed unless adequate access for mobile homes and attached vehicles, emergency vehicles, fuel delivery, refuse collection and other vehicles is provided.

C. Buffer Strips. A buffer strip, as determined by the Planning Board and in compliance with the Phosphorus Control Ordinance, shall be provided along all property boundaries that:

1. Abut residential land which has a gross density of less than half of that proposed in the park, or
2. Abut residential land that is zoned at a density of less than half of that proposed in the park; and or
3. Lie on the downslope side of the development.

Further, no structures, streets or utilities may be placed in the buffer strip except that they may cross a buffer strip to provide services to the park.

Within 25 feet of any property line and within the buffer strip, visual screening and/or landscaping shall be provided. The visual screening may consist of fences, landscaping (such as shrubs and trees) and/or natural existing vegetation. This screening shall effectively screen at least 80% of the homes from view from the adjacent property and shall be maintained throughout the life of the project.

D. Mobile Home Park Lots.

1. General. The bounds of each space shall be clearly marked with permanent corner pins for each lot, and the space shall be well surfaced or seeded to provide adequate drainage beneath and adjacent to any manufactured housing units parked thereon. Each space shall provide for -
  - a. continuing and potable supply of safe and sanitary water,
  - b. connection to an adequate sewage disposal system,
  - c. adequate electric power service and
  - d. compliance with local, State and Federal laws pertaining to manufactured housing.

Each lot and unit shall be numbered with a sign that is visible day and night and legible from the road, and shall be easily accessible to emergency vehicles (permitting emergency vehicles to approach within 50 feet of the unit).

2. Grading. Every lot used for a mobile home park shall be properly graded and drained for disposal of surface and storm water.
3. Lot Size.
  - a. Lots served by individual subsurface sewage disposal system shall be the larger of:
    - 20,000 square feet; or

- 80,000 square feet if over an aquifer identified in the State of Maine Hydrogeological Map for Sand and Gravel Aquifers.

The minimum lot width shall be 100 feet

- b. Lots served by a central subsurface wastewater disposal system shall be the larger of:
  - 12,000 square feet; or
  - 80,000 square feet if over an aquifer identified in the State of Maine Hydrogeological Map for Sand and Gravel Aquifers.

The Minimum lot width shall be 75 feet

For parks with a lot size requirement of 12,000 square feet, the overall density of the mobile home park shall be no greater than one unit per 20,000 square feet of total park area.

- c. Overall Density. The overall density of the mobile home park shall be the combined area of its manufactured housing lots plus:
  - The area required for road rights-of-way;
  - The area required for buffer strips, if any.

#### 4. Lot Setbacks.

- a. The following lot setbacks shall apply to all manufactured housing units and accessory buildings:

Front setback: 25 feet

Side setback: 10 feet

Rear setback: 15 feet

If a lot is on a public road, the setback shall conform with the residential setback requirements applicable to residential dwelling units.

- E. Safety Standards. The safety standards contained in Rule 02-385 Department of Professional and Financial Regulation, Manufactured Housing Board, Rules Pursuant to Establishing a Criteria as a Guide to Allow Park Operators to Institute a Safety Standard in Order to Resell a Mobile Home in a Manufactured Home Community, shall apply to ALL manufactured units to be located in a mobile home park.
- F. Manufactured Housing Storage. No unoccupied manufactured housing unit or trailer shall be stored or exhibited for sale for commercial purposes within a mobile home park.
- G. Motor Vehicle Parking Space. Not less than 300 square feet of parking space shall be provided in every mobile home park for each individual manufactured housing space in addition to manufactured housing space requirements and all such spaces shall have a well-

drained stabilized or paved surface maintained in good repair.

- H. Service Area. Not less than 150 square feet of laundry drying space shall be provided in every mobile home park for each four manufactured housing spaces. Such laundry drying spaces shall not be located between the street and the mobile homes or between individual mobile homes, but rather shall be so located as to be as inconspicuous as possible from the adjacent numbered route or Town Road. Such spaces shall have a well-drained, stabilized or paved surface maintained in good repair. Such areas shall be surrounded by a sightly fence or hedge at least 4 feet in height.
- I. Playground Area. Not less than 150 square feet of play space for each individual manufactured housing space shall be provided and restricted in every mobile home park exclusively to playground and/or recreational use, and such spaces shall be protected from streets and parking areas and shall have a well-drained, stabilized or paved surface maintained in good repair. Adequate playground or recreational equipment shall be provided in this area.
- J. Utility Services. Every manufactured housing unit shall be provided with adequate hygiene and sanitation facilities. Water supply, water service, plumbing, sewage disposal and treatment, electric power service, bottled gas service, heating equipment and fuels, refuse and garbage storage and disposal, and insect and rodent control shall be provided in full conformity with all pertinent state and local health regulations.
- K. Road Design Standards.
  - 1. Private Roads. Privately owned roads within the mobile home park shall be designed by a Professional Engineer, registered in the State of Maine, and shall be built according to accepted engineering standards.
  - 2. Roads for Public Acceptance. Roads within mobile home parks which are to be offered for acceptance to the community shall meet the minimum road standards of Town of China Ordinance For The Acceptance Of Streets And Ways.
  - 3. Intersection with Public Roads. Mobile home park roads which intersect with public roads shall meet the following standards:
    - a. Angle of intersection. The desired angle of intersection shall be 90 degrees. The minimum angle of intersection shall be 75 degrees.
    - b. Grade. The maximum permissible grade within 75 feet of the intersection shall be 2%.
    - c. Minimum sight distance. The minimum sight distance shall be 10 times the posted speed limit on the existing road. Sight distances shall be measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3 1/2 feet above the pavement and the height of object 4 1/4 feet.

Where necessary, the park land bordering the intersection shall be cleared of all growth and sight obstructions to achieve the required visibility.

4. Access and Circulation.

- a. The layout and general development plan for streets and driveways within the mobile home park, together with the location and dimensions of access junctions with existing public streets and rights-of-way shall be approved by the Planning Board.
- b. A traffic impact analysis shall be required if the park will generate more than 500 trips/day.
- c. For mobile home parks expected to generate 200 trips per day or more, there shall be at least two entrances from public streets or roads.
- d. On-street parking shall be prohibited.
- e. Curvilinear streets shall be utilized wherever possible. No street within the park shall be more than 200 feet without a curve or bend.
- f. No manufactured housing lot may have vehicular access directly onto an arterial street.

5. Right-of-way and Pavement Width.

- a. Two-way park roads shall have a minimum right-of-way of 23 feet and a minimum paved surface of 20 feet.
- b. One-way streets shall have a minimum right-of-way of 18 feet and a minimum paved surface of 14 feet.
- c. Cul-de-sac turnarounds shall have a minimum radius of 75 feet at the outer edge of the pavement.

L. Park Administration.

The owner or operator of a mobile home park shall be responsible for ensuring the maintenance of all structures and their sites. Park management shall conform to State laws.

Compliance with this Ordinance shall not exempt the park owner, developer, or manager from complying with other applicable local, state, and federal codes and regulations.

M. Conversion of Park.

No lot in a mobile home park may be sold or conveyed without the prior approval of the Planning Board, and any such lot sold or conveyed shall meet the lot size requirement for a



site-built, single family dwelling.

#### 11.10 Multi-Unit Dwellings.

The following provisions shall apply to the construction of any multi-unit dwelling, the conversion of any existing structure to a multi-unit dwelling, and the expansion of any existing structure to create a multi-unit dwelling.

- A. Shoreland Zone: multi-unit dwellings are prohibited in the shoreland zone.
- B. Road frontage: at least 200 feet on any town, county, state or private road.
- C. No building shall contain more than ten (10) dwelling units.
- D. Entrance to site: all developments containing fifteen or more dwelling units may be required by the Planning Board to have more than one street access (for emergency and safety purposes). No more than two accesses shall be allowed on any single street or roadway.
- E. Parking: the layout and design of all parking areas shall provide for at least two parking spaces per unit.
- F. Building exits: where the structure, with the proposed addition or alteration is two stories or more above the ground, it shall have two means of egress from the second floor; either two stairways inside the structure, or one inside stairway and a reasonable means of external fire escape which has been inspected and approved by the State Fire Marshall if required by Title 25, M.R.S.A., Section 2396.
- G. All multi-unit dwellings shall be connected to a common water supply and distribution system, and a common sewage disposal system, at no expense to the Town.
- H. All multi-unit dwellings shall comply with State and local fire and safety regulations, including the fire prevention and fire protection provisions of the Maine Revised States Title 25, Part 6, and the State of Maine Rules Relating to Drinking Water, Department of Human Services, rule 10-144E, Chapter 231.

#### 11.11 Affordable Housing Developments

A housing development that is an affordable housing development as defined in Chapter 11 shall be subject to the following requirements.

- A. An affordable housing development that is located in the South China Development District or is served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system shall be allowed to have a dwelling unit density of at least 2.5 (two and one-half) times the base density that is otherwise allowed and may not be required to provide more than two off-street parking

spaces for every three units. The development must comply with minimum lot size requirements in accordance with Title 12, chapter 423-A, as applicable.

- A. Before granting final approval of an affordable housing development, including but not limited to issuing an occupancy permit, the Town shall require that the owner of the affordable housing development has executed a restrictive covenant, recorded in the registry of deeds, for the benefit of and enforceable by a party acceptable to the Town, to ensure that for at least 30 years after completion of construction:
- i. For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy;
  - ii. For owned housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.
- B. The owner of an affordable housing development shall provide written verification that each unit of the housing development is connected to adequate water and wastewater services before the development is certified for occupancy. Written verification under this subsection must include:
- i. If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;
  - ii. If a housing unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under 30-A M.R.S. Section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;
  - iii. If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
  - iv. If a housing unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

## SECTION 12. PERFORMANCE GUARANTEES

### 12.1 Performance Guarantee.

Before Planning Board approval of the Final Plan, the subdivider shall file with the Planning Board a performance guarantee in an amount sufficient to defray all expenses of building the streets and all other required improvements shown on the Final Plan. This may be tendered in the form of:

- A. A certified check payable to the Town of China; or
- B. A performance bond running to the Town of China and issued by a surety company acceptable to the Planning Board of the Town of China.

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

#### 12.2 Conditional Agreement.

The Planning Board, at its discretion, may provide for the subdivider to enter into a binding agreement directly with the Town of China in lieu of the other financial performance guarantees. Such agreement shall provide for approval of the Final Plan with the following condition that the certification required by 11.3(F)(3)(1) be received and that no more than four lots may be built upon or sold until either:

- A. It is certified by a licensed professional engineer that all required improvements, except road improvements, have been installed in accordance with these regulations; or
- B. A performance guarantee, acceptable to the Planning Board, is submitted in an amount necessary to cover the completion of the required improvements at an amount prorated for the portions of the required improvements already installed.

#### 12.3 Release of Guarantee.

Prior to the release of any part of the performance guarantee, a licensed professional engineer shall determine that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.

#### 12.4 Default.

If, upon inspection, the licensed professional engineer 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 shall so report in writing to the Select Board, the Planning Board, the Code Enforcement Officer, and the subdivider or builder. It shall be the responsibility of the Select Board to take any steps necessary to preserve the Town's rights.

### SECTION 13. WAIVERS

- 13.1 Where the Board finds that extraordinary difficulty may result from strict compliance with these regulations or where there are special circumstances of a particular plan, it may waive any of these regulations, except lot size, provided such waiver will not have the effect of nullifying the purpose of these regulations, the Comprehensive Plan, or any other ordinance.
- 13.2. In granting any waiver, the Board shall require such conditions as will, in their judgment, secure the objectives of the requirements so waived.
- 13.3. All waivers must be requested in writing by the applicant prior to acceptance of the application for subdivision.
- 13.4. No waiver shall be granted without a public hearing. Such public hearing shall be held within thirty days of receipt of a written request for waiver, or within another time limit mutually agreed to by the Board and the subdivider. Public notice shall be given for the hearing, and the abutting landowners to the proposed subdivision shall be notified by the Town Manager.
- 13.5 No waiver shall be granted unless all members of the Planning Board agree.