

ARTICLE VI GUARANTEES OF PUBLIC IMPROVEMENTS

6-1 *Definition and Purpose*

- (A) *Improvement Guarantee.* A security instrument accepted by the Town to ensure that all improvements, facilities, or work required by these regulations or as a condition of approval of a subdivision plan by the Planning Board will be completed in compliance with the approved plans and specifications.
- (B) Improvements guarantees shall be provided to ensure the proper installation and maintenance of required street, utility and other physical improvements and to ensure compliance with other nonstructural conditions of final plat approval (if any). The nature and duration of the guarantee shall be structured to achieve this goal.

6-2 *General Procedures*

- (A) Before any land development or subdivision plan is endorsed by the Planning Board, and before the recording of any subdivision plats, the Planning Board shall be required to approve agreements for the completion of all required improvements. Such agreements may, at option of subdivider, take the form of (1) completion of actual construction of all improvements; (2) improvements guarantees; or (3) a combination thereof.
- (B) At the preliminary plat review stage, the subdivider shall submit either of the following: (1) a letter to the Planning Board indicating their intent to complete the required improvements prior to Planning Board's endorsement of the final plat; or (2) a letter requesting that security sufficient to cover the cost of required improvements be established by the Board.
- (C) If improvements are to be constructed without financial guarantee, all work shall be completed prior to endorsement and recording. Inspections shall be done by the Public Works Department at all required stages of construction as specified in Section 11-10 *Certification of Improvements (Reserved)*. All construction shall be inspected and approved under the direction of the Public Works Director and according to the procedures in Article XI *Specifications for Construction of Public Improvements*. Upon completion of all required improvements, the Administrative Officer shall certify in writing of such completion, and a copy shall be provided to the subdivider upon request. The final plat shall be endorsed by the Planning Board and the plat shall be recorded as provided in Section 9-7 *Signing and Recording of Plats and Plans*, at which time the lots within the subdivision may be transferred or sold.
- (D) If improvements are to be guaranteed, the provisions of Section 6-3 *Procedures for Final Guarantees*, below, shall apply.

6-3 *Procedures for Final Guarantees*

- (A) Amount. Improvement guarantees shall be in an amount and with all necessary conditions to secure for the Town the actual construction and complete installation of all of the required improvements, and the satisfactory completion of all conditions of final approval within the time periods required for completion provided in Article V *Design Standards*.
- (B) The amount shall be based upon actual cost estimates which would be required for the Town to complete all improvements required as a condition of final approval. These estimates shall be initially prepared by the subdivider/developer and submitted to the Director of Public Works who shall review the estimates, with the subdivider. If the Director of Public Works disagrees with the estimated amount, a revised estimate along with supporting justification for the revision will be reviewed with the subdivider and the Administrative Officer.
- (C) The Public Works Director shall make a recommendation to the Planning Board regarding the improvement guarantee. The Planning Board shall review and approve the final amount. The Board may set the guarantee in a reasonable amount in excess of the estimated costs in order to anticipate for increase in economic or construction conditions.
- (D) At the expiration of the final plan approval period, if all required improvements are not completed, the Planning Board shall review the status of improvements and may (1) require the subdivider to extend the duration of the entire improvements guarantee; (2) reduce the amount of the improvements guarantee to cover the estimated costs of remaining improvements; or (3) authorize the Administrative Officer to take the steps necessary to ensure completion of the remaining work by using improvement guarantee funds.
- (E) If at any time during the guarantee period the procedures, implementation measure, methods, materials, and/or schedules of construction are determined by the Planning Board not to be in compliance with the approval plans, the Board may, after proper notification to the subdivider, authorize the use of improvement guarantee funds to insure proper compliance.

6-4 *Required Form*

- (A) The security shall be in the form of a financial instrument acceptable to the Finance Director and shall enable the Town to gain timely access to the secured funds, for cause.
- (B) Performance and maintenance guarantees may be provided by a variety of means including, but not limited to, the following:

1. *Security Bond:* The subdivider must obtain a security bond from a surety bonding company. The surety bonding company must be authorized to do business in the State of Rhode Island. The company must be rated at or higher than the industry equivalent of an A rating as described in Standard & Poor's Rating Service, Moody's Insurance Financial Strength Ratings or Best's Ratings services. The applicant shall provide a current rating report prior to the submittal of the security bond for Planning Board approval.
2. *Escrow Account.* The subdivider may deposit cash or other instruments readily convertible into cash at face value, either with the Town or in escrow with the bank. Any interest accrued shall remain with the deposit, or instrument, and shall remain with the Town in the event of a forfeiture.

6-5 *Releases*

At the expiration of the final plan approval period, if all required improvements are complete, any improvements guarantee shall be returned to the subdivider. Partial releases or reductions in guarantee amount may also be authorized at any time prior to the expiration of final approval. A written request for release or reduction of any improvement guarantees shall be made to the Administrative Officer, who shall refer such request to the Director of Public Works. After inspection of all improvements the Director of Public Works shall recommend:

- (a) that the Planning Board authorize the Finance Director to return all improvement guarantees to the subdivider;
- (b) that the amount of the guarantee being held by the Town be reduced to cover the estimated cost of remaining improvements; or
- (c) that no releases or reduction be made.

The Planning Board shall act on all such releases or reductions of improvement guarantees.

6-6 *Phased Subdivision*

In the case of land development projects or subdivisions which are approved and constructed in phases, the Planning Board shall specify improvements guarantees related to each particular phase. If any off-site improvements or other improvements or conditions which are not directly related to a particular phase are required as a condition of approval, the Board shall, in setting the guarantee amount for each phase, clearly specify when such guarantees are to be provided.

6-7 *Maintenance Guarantees*

The Planning Board shall require that a maintenance guarantee be provided by the subdivider for all improvements which are being dedicated to the Town for public acceptance and maintenance. The amount of the maintenance guarantee shall not exceed 20% percent of the original performance bond or other original guarantee amount. In the absence of such a guarantee, 20% percent of the total estimated cost of all required improvements shall be required. The initial period for such maintenance guarantee shall be one (1) year. At the end of one-year maintenance period, the Director of Public Works shall inspect all improvements subject to the guarantee and shall certify in writing to the Administrative Officer as to their condition. If found to be unacceptable, the Administrative Officer shall recommend an extension of the guarantee period to the Finance Director, and the original funds shall not be returned to the subdivider. If public improvements are in good condition and have not been damaged due to the fault of the subdivider, or through faulty workmanship or design, the maintenance guarantee shall be returned to the subdivider. All retention basins, catch basins, drainage structures and other public improvements must be cleaned and functioning prior to the release of the Maintenance Guarantee.

In cases where the Planning Board finds there are extenuating circumstances, the initial maintenance period may be established for a period longer than one year. The reasons for establishing a longer maintenance period and the nature of the extenuating circumstances shall be made a part of the record, for example when the construction of retention and detention ponds is involved.

6-8 *Acceptance of Improvements*

- (A) Upon completion of all required improvements, the subdivider shall convey all public improvements to the Town for ownership and maintenance. The applicant shall first request the Department of Public Works to conduct a final inspection as provided in Article XI *Specifications for Construction of Public Improvements*. The Director of Public Works shall certify to the Administrative Officer in writing that all required improvements have been satisfactorily completed.
- (B) The applicant shall also request, in writing to the Administrative Officer, that public improvements, street, land, easements or other facilities be accepted by the Town. This request shall contain a description of all facilities to be accepted and shall be accompanied by an accurate description of all streets, easements, land or other facilities by metes and bounds and by reference to the final plat drawing(s) and by a warranty deed transferring ownership to the Town and describing any special conditions or other requirements.
- (C) Upon certification of completion of all required improvements, and upon receipt of all required information from the applicant, the Administrative Officer shall place the request for acceptance and bond release on the next available agenda of the Planning

Board. If all requirements have been met by the applicant, the Planning Board shall recommend acceptance by the Town Council of all such improvements and shall transmit such recommendation to the Town Council in writing. In such recommendation for acceptance by the Town Council, the Planning Board shall recommend that the public improvements and facilities be accepted for ownership and maintenance by the Town.

- (D) Upon their acceptance by the Town Council, all improvements shall be permanently owned and maintained by the Town as part of the municipal system.

