

ARTICLE 8
PERFORMANCE GUARANTEE

8.1 Before approval or conditional approval of a Final Plan, the subdivider shall agree to meet all conditions of approval and to complete the required improvements specified in these Regulations and standards for all lots in the subdivision. Such construction and installation shall be secured by one, or by a combination of the following two methods described in 8.1.1 and 8.1.2.

8.1.1 Final Approval With Financial Guarantee (Amended 2/7/06; 9/2/08)

The subdivider shall file either a Letter of Credit or a deposit of money to a bank or credit union, or to the City of Saco to cover the cost of the improvements specified in the conditions of approval and these standards, that is not covered by a covenant under 8.1.3.

The Letter of Credit or deposit of money shall be provided in an amount equal to 150 percent of the total construction costs of all required improvements and shall expire only upon acceptance by the City of all improvements offered to the City, and upon receipt by the City of record drawings found satisfactory by the City. Such Letter of Credit or deposit may be approved as to form and manner of execution by the City Finance Director in consultation with the City Planner. The performance guarantee shall contain:

- a construction schedule,
- itemized cost estimates for each element of construction taking into account inflation,
- a provision permitting the City to review the status and amount of Letter of Credit or deposit and to require an increase if warranted by changing economic conditions or other circumstances, said determination to be made in the sole judgment and discretion of the City,
- provisions for inspections of each phase of construction,
- provisions for the release of part or all of the performance guarantee to the developer. While partial draws are permitted, the amount of each shall be no less than twenty percent (20%) of the original amount. While partial draws may be requested upon completion of construction items, the City will determine in its sole judgment whether the requested release of funds shall be approved,
- and, a date after which the developer will be in default and the City shall have access to the funds to finish construction. Said date shall be thirty-six (36) months after the posting of the financial guarantee. All street and

infrastructure construction shall be completed within thirty-six (36) months after the posting of the financial guarantee. All streets and infrastructure intended for City acceptance shall be offered to the City as outlined in Section 11.25 of these Regulations and in Section 186-37 of City Code within ninety (90) days of said date.

The following types of performance surety are acceptable:

8.1.2.1 Escrow Account.

A cash deposit to an escrow account shall be made by either a certified check made out to the City, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the subdivider, the City shall be named as owner or co-owner, and the consent of the city shall be required for any withdrawal. The City shall be authorized to make withdrawals without the signature of the subdivider, pursuant to the performance schedule and default dates in the financial guarantee. Any interest earned on the escrow account shall be returned to the subdivider.

8.1.2.2 (Reserved) (Amended 1/24/01)

8.1.2.3 Letter of Credit. (Amended 1/24/01)

An irrevocable letter of credit from a state or federally chartered bank or credit union in the name of the City of Saco 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. The city may draw from the fund if construction is inadequate or incomplete. The City will determine in its sole judgment the adequacy of the letter of credit and the bank.

8.1.3 Final Approval With Covenant

The subdivider may file a covenant acceptable to the Planning Board, executed by the owner of record and duly recorded, running with the land, whereby conditions specified in the conditions of approval are met, and whereby such streets, other improvements, and services as specified in these standards and the conditions of approval shall be provided to service any lot before such lot will be built upon or conveyed.

8.2 EVIDENCE OF SATISFACTORY PERFORMANCE

Before the Board will release the interest of the City in any performance bond or deposit, or, in the case of approval with covenant, before the Board issues a release of any covenant, the applicant shall:

8.2.1 File with the Director of Public Works a certified copy of the actual layout plan of each street in the subdivision (or, in the case of approval with covenant a certified copy of a layout plan of the street or streets serving the lots for which a release is desired). Certification shall be by a registered engineer and shall indicate that streets, storm drains, sewers, water mains and their appurtenances have been constructed, and monuments have been installed, in accordance with the as-built plan and they are accurately located as shown thereon.

8.2.2 Ten percent of the deposit of money or negotiable instruments will not be released until a final plan showing the precise location of water valves, shutoff, manholes, sewer elevations, etc. as constructed is presented to the Director of Public Works.

8.3 ADDITIONAL PROFESSIONAL ADVICE

Before the Board releases the interest of the City in any performance bond or deposit (in the case of approval with covenant, before the Board issues a release of covenant), the Board may at its discretion obtain or require the subdivider to obtain, at the subdivider's expense, additional professional engineering advice as to the satisfactory completion of the construction of each street or way in the subdivision, all storm drains, water mains and their appurtenances, and completion of the installation of all other services required according to the Final Plan.

8.4 RELEASE OF PERFORMANCE GUARANTEE

Upon completion of the improvements, the applicant shall send to the Planning Board a written statement that the construction or installation in connection with which a bond, deposit, or covenant has been given meets the requirements of these standards and the conditions of approval. 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 Engineer and whatever other agencies and departments may

be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested. If the Board determines that the construction or installation has been completed to its satisfaction, it shall release the interest of the City in the Bond, deposit, or covenant, and return the bond or deposit to the person who furnished it, or issue a release of covenant in a form for recording. If the Board determines that the construction or installation has not been completed to its satisfaction, it shall specify to the applicant in writing how the construction and installation fails to comply with the requirements.

8.5 The Planning 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 road which is covered by performance guarantees. When development is phased, road construction shall commence from the public way. Final approval of house lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to the first phase of development.

8.6 DEFAULT

If, upon inspection, the City Engineer or Director of Public Works find 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 Planning Board agent, and to the subdivider or builder. The City shall take all legal steps necessary to preserve its rights according to the terms of the bond or surety or covenant.

8.7 FINANCIAL CAPACITY TO MEET SUBDIVISION REGULATIONS (Amended 5/30/89)

8.7.1 Submissions. Applications for preliminary subdivision approval shall include evidence that affirmatively demonstrates that the developer has the financial capacity to undertake the proposed development, including the following information:

8.7.1.1 Accurate and complete cost estimates of the development; and

8.7.1.2 The time schedule for construction; and

8.7.1.3 One of the following three items:

- a. A letter from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds and the purposes for which the funds may be utilized; or
- b. In cases where funding is required but there can be no commitment of money until approvals are received, a letter of "intent to fund" from the appropriate funding institution indicating the amount of funds and their specified uses.
- c. Copies of bank statements or other evidence indicating availability of funds when the developer will personally finance the development.

8.7.1.4 Any other information deemed relevant by the Planning Board for the specific project.

8.7.2 Scope of Review. In determining whether the developer has the financial capacity to meet all subdivision standards, the Board shall consider all relevant evidence to the effect that the developer is able to construct, operate, and maintain all aspects of the development.

8.7.3 Approval. The Board shall not approve any plan if the applicant has not proven the financial capacity to undertake it.

8.7.4 Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has the financial capacity to meet the subdivision regulations, including but not limited to requiring a financial guarantee or deed restriction as outlined in Article 8.

8.8 TECHNICAL ABILITY TO MEET SUBDIVISION REGULATIONS (Amended 5/30/89)

8.8.1 Submissions. Applications for approval of a proposed development shall include evidence that affirmatively demonstrates that the developer has the technical ability to undertake the proposed development, including the following information:

8.8.1.1 A statement of the developer's prior experience or appropriate training, relating to the nature of the proposed development.

8.8.1.2 A description of the training, qualifications and capabilities of the general contractor who will be employed to build the project and of the engineers and other professionals who will design it.

8.8.1.3 The names and locations of all projects in Saco during the last 10 years.

8.8.1.4 The names and locations of all projects elsewhere in the last five years.

8.8.1.5 Information concerning all previous violations of local, state, federal land use, environmental, and building laws, ordinances, and regulations.

8.8.1.6 Any other information deemed relevant by the Planning Board for the specific project.

8.8.2 Scope of Review. In determining whether the developer has the technical ability to meet these standards, the Board shall consider all relevant evidence to that effect, including:

8.8.2.1 Evidence regarding the developer's prior conduct as a measure of willingness to meet all terms and conditions of approval established by the Board. As evidence the Board shall consider:

- a. A history of violations of local, state, or federal land use, environmental, and building laws, ordinances and regulations; and
- b. A history of incomplete or poorly completed developments.

8.8.2.2 Evidence that the general contractor is capable of properly installing and maintaining roads, drains, sewers, septic systems, erosion and sedimentation controls, and all other aspects of the approved plan, particularly if a large or complex development is to be undertaken. (This submission requirement and 8.8.2.3 may be submitted at final plan if the general contractor is not known at the time of preliminary submission.)

8.8.2.3 Evidence that, even if the applicant's technical personnel have never before constructed a development like the one proposed, competent engineering and field operational personnel will be available and can adapt their training and experience to accomplish the required tasks.

8.8.3 Approval. The Board shall not approve any plan if the applicant has not proven the technical capacity to undertake it.

8.8.4 Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has the technical ability to meet the standards of these subdivision regulations. When the development is of substantial size and/or of a complex nature, the Board may require the provision of an independent consultant to conduct on-site inspection at the developer's expense to ensure proper execution of plans as approved, including any conditions imposed by the Board, or may require other reasonable measures to assure technical compliance. If after approval the general contractor or professionals designing the project are changed, the subdivider must seek approval from the Planning Board under these standards.