

SECTION 3.0 GENERAL PROVISIONS

3.1 Separability

Should any provision of these Subdivision Regulations be determined to be invalid by a court of competent jurisdiction, the remaining provisions hereof not manifestly inseparable from the invalid provisions shall remain in full force and effect.

3.2 Reference to Statute

For matters not covered by these Regulations, MGL Chapter 41 Sections 81K through 81GG inclusive, as may be amended from time to time, shall govern.

3.3 Zoning Compliance and Suitability of Land

3.3.1 Zoning Compliance

Any application for which compliance with all provisions of the Reading Zoning Bylaw is not demonstrated as to each proposed buildable lot shall be considered not to be a complete application within the meaning of Section 3.5 below. It is the responsibility of the applicant to comply with and to demonstrate compliance of the plans with the Zoning Bylaw. If an action or determination by another Board or Commission, such as the Zoning Board of Appeals or the Conservation Commission, is necessary for the full demonstration of zoning compliance, then such action or determination shall be sought and obtained by the applicant prior to the submission of any application pursuant to these Regulations.

3.3.2 Suitability of Land

No Definitive Plan of a subdivision of land shall be approved unless, after consultation with the Board of Health, the CPDC determines that the land on which the subdivision is proposed can be so used without danger to health. For the protection of health, the CPDC or the Board of Health shall deem unsuitable for the erection of a dwelling any portion of a lot not more than six feet in elevation above the nearest water body, marsh, bog, swamp, or wetland as shown on the current edition of the U.S. Coast and Geodetic Survey or as delineated by the Conservation Commission, or that is less than four feet above the highest groundwater level as determined by the Board of Health. The Developer's Engineer shall set minimum cellar or basement floor elevation for each proposed lot not lower than two feet above groundwater as so determined by the Board of Health and as consistent with the design profile or site grading as shown on the Preliminary and Definitive Plans; such cellar or basement floor elevation shall be noted on said plans with respect to each proposed lot.

3.4 Authority to Undertake a Subdivision

No subdivision within the meaning of MGL Chapter 41 shall be made or the improvement or sale of lots, the construction of ways, or the installation of utilities therein shall proceed unless and until a Definitive Subdivision Plan has been submitted to and approved by CPDC, and only then may commence or continue such work in strict accordance with the conditions of such approval, with the procedures set out in these Regulations, with the Reading Zoning Bylaw, with the conditions set forth by the Board of Health, and with all other applicable rules, regulations, and laws.

3.5 Submission of Applications

- 3.5.1** Submission of applications pursuant to these Regulations shall be by any method specified in MGL Chapter 41 Sections 81O, 81S, 81T, or 81U as appropriate. All applications and all accompanying materials shall be the property of the Town of

Reading and one copy of all materials submitted shall be retained by the Department of Community Development, and one reproducible copy of Preliminary Plans and Definitive Plans shall be retained by the Engineering Division of the Department of Public Works.

3.5.1.1 Submission of Plans Believed Not to Require Approval

The applicant shall submit:

- a** The original of materials specified in Section 4.0 hereof, in an appropriately sized envelope marked on the outside with the name of the applicant and the address of the subject property and marked "original"; the mylar or linen original drawings of the plan may be rolled and attached to this envelope;
- b** A fully completed Application Form (Form A);
- c** Three full sets of copies of all such materials including drawings, each set in a separate envelope marked on the outside with the name of the applicant and the address of the subject property;
- d** A certified check payable to the Town of Reading equal to the application fee as set forth in Section 3.6. hereof.

3.5.1.2 Submission of Preliminary and Definitive Plans

The applicant shall submit:

- a** The original of materials specified, as appropriate, in Section 5.0 or 6.0 hereof, including a fully completed Application for Subdivision Approval (Form B), in an appropriately sized envelope marked on the outside with the name of the applicant and the proposed name of the subdivision and marked "original"; the set of mylar or linen original drawings may be rolled and attached to this envelope;
- b** Sixteen full sets of copies of all such materials including drawings, each set in a separate envelope marked on the outside with the name of the applicant and the proposed name of the subdivision and marked as follows:

one each to:

Department of Public Works--Engineering
 Tree Warden
 Municipal Light Department
 Fire Department
 Police Department
 Historical Commission
 Conservation Commission
 Town Clerk
 Community Development Department

two each to:

Town Planner

five each to:

Community Planning and Development Commission

- c** A certified check payable to the Town of Reading equal to the applicable application fee as set forth herein; and a certified check payable to the Town of Reading equal to the applicable inspection fee as set forth in Section 3.6 hereof;
- d** A copy of the Certified Abutters List;
- e** Stamped envelopes addressed to parties identified on said Abutters List in accordance with Section 3.5.4 below;

- f A receipt from the Board of Health showing that related application has been submitted to such Board in accordance with Section 3.5.3 below.

3.5.2 Notice to Town Clerk of the Filing of an Application

Any party submitting an application to CPDC under these Regulations shall give written notice, accompanied by a copy of the application form (Form B), to the Town Clerk by delivery or by registered mail, postage prepaid, that such a plan has been submitted to CPDC. The notice shall describe the land to which the plan relates in sufficient detail for identification and shall state the date when the plan was submitted and the name, address, and day-time telephone number of the property owner, and of the party submitting the application if different from the property owner.

3.5.3 Submission to the Board of Health

In accordance with MGL Chapter 41, Section 81U the applicant shall file with the Board of Health a copy of the application concerning the subdivision. This copy is in addition to those required according to Section 3.5.1.2 hereof.

3.5.4 Certified List of Abutters

In connection with an application for approval of a Preliminary Plan or a Definitive Plan an applicant shall obtain a Certified List of Abutters by filling out a Request for Certified Abutters List (Form C) and submitting it to the Department of Community Development. Said Department shall forward the request to the Board of Assessors, who shall prepare such list and certify it and forward it to the Department of Community Development, which shall mail the list to the applicant. The applicant shall include a copy of the list in the application, together with one business-size envelope containing sufficient postage for first-class mail and addressed to each party identified on the list.

3.6 Fees

Application and Inspection Fees as described below shall be payable to the Town of Reading, by certified check only, at the time of filing of a subdivision plan pursuant to these Regulations. Any application not accompanied by the appropriate fee payment at the time of application shall be considered improper and incomplete in accordance with Section 3.7. hereof. No fees are refundable in whole or in part under any circumstances.

3.6.1 Application Fee for an Approval-Not-Required Plan

\$200.00 for plans showing adjustment of lot lines with no creation of new lots, \$200.00 for plans showing the creation of up to three lots, plus \$50.00 for each additional lot over three; plus an additional \$100.00 surcharge for either of the above Approval-Not- Required plans filed less than seven days prior to the next scheduled CPDC meeting, if endorsement is sought at such meeting.

3.6.2 Application Fee for a Preliminary Subdivision Plan

\$1,000.00 plus \$50.00 per lot shown on the plan

3.6.3 Application Fee for a Definitive Subdivision Plan

3.6.3.1 In cases where no Preliminary Subdivision Plan had been filed

\$1,500.00 plus \$250.00 per lot shown on the plan

3.6.3.2 In cases where a Preliminary Subdivision Plan had been filed

\$500.00 plus \$50.00 per lot shown on the plan

3.6.3.3

Resubmission of an amended Definitive Subdivision Plan following the withdrawal or denial of an earlier proposed Definitive Plan, or major modification to an approved Definitive Subdivision Plan: one-quarter of the original fee as specified in Section 3.6.3.1. or 3.6.3.2. as applicable

3.6.3.4 Inspection Fee, in addition to above

\$4.00 per foot measured along the centerline of the proposed roadway(s), from the centerline of intersection with an existing roadway to the back curb edge of any cul-de-sac, with a minimum of \$1000.00.

3.6.4 Review Costs

In addition to all other fees and charges specified herein, if the Commission in the course of review of an application, determines in its sole and absolute discretion that review of all or any part of a proposed project by (an) outside independent consultant(s) of the Commission's sole choosing is necessary for proper evaluation of the proposed project or its possible effects on any matter of public interest under the jurisdiction of the Subdivision Control Law, then the applicant shall provide immediately to the Town, by way of the Town Planner, (a) certified check(s) payable to such consultant(s) in an amount equal to the estimated cost of the relevant services of such consultant(s). No Building Permit or Certificate of Occupancy shall be issued for said project until all such review fees that may be so imposed have been paid in full. The applicant shall have the right of administrative appeal to the Board of Selectmen as provided in MGL Chapter 44 Section 53G.

3.6.5 Legal Advertising and Filing Costs

All expenses for legal notice advertising, abutter notification, and recording and filing of plans and documents shall be paid by the applicant. If the failure of the applicant to pay any such cost results in the nonfulfillment of any statutory notification requirement, the application shall be considered improper and incomplete in accordance with Section 3.7 hereof.

3.7 Completeness of Application

3.7.1 Before CPDC may act on an application filed pursuant to these Regulations, CPDC or the Town Planner shall first determine whether the application is complete and properly submitted. In order for an application to be considered complete and properly submitted, the provisions of the submission requirements and the plan form and contents requirements contained herein shall be fully complied with. If an application is determined not to be complete or not to be a proper submittal, it shall be denied without need of a public hearing; CPDC or the Town Planner shall send written notice to the applicant by registered mail at least seven days beforehand that CPDC will be considering such denial. The notification of any such denial or other action by CPDC shall be filed with Town Clerk within seven days following the vote by CPDC to do so.

3.7.2 If additional material as required herein or a request for a waiver is submitted after the original date of filing of the application, it shall not be considered by CPDC as part of the application nor shall it be considered as material perfecting the completeness of the application, unless it is accompanied by an Acceptance of Additional Application Material and New Submission Date form (Form D), filed with CPDC and the Town Clerk, signed by the applicant agreeing and acknowledging that the date of submission of such additional material shall supersede the original date

of filing for purposes of determining the date by which CPDC must take action and make notification thereof with respect to the application.

3.8 Waivers

In accordance with MGL Chapter 41, Section 81R, CPDC may at its discretion waive strict compliance with these Regulations in any particular case where such action is determined by CPDC to be in the public interest and not inconsistent with the intent and purpose of these Regulations or with Subdivision Control Law. A waiver may be approved only by a vote of the majority of the full membership of CPDC, which may make approval of any waiver conditional on requirements it specifies to be fulfilled by the applicant in the proposed subdivision, its vicinity, or the Town of Reading.

If an applicant desires certain requirements waived for a plan submitted pursuant to these Regulations, the request for waiver shall be submitted as part of the application as set forth in Section 3.7. The request shall cite the particular provision of these Regulations for which the waiver is requested and give justification therefor.

3.8.1 Waiver of a Submission Requirement

If an applicant has, in the application, requested a waiver of a submission requirement, and if CPDC makes a finding that the waiver would not violate State Law or local Bylaw or would not impair the ability of CPDC or other Town Boards or officials to understand the nature and impacts of the proposed plan or to process the application, then CPDC may grant the waiver. If such a finding is not made then CPDC shall not grant the waiver, and the application may be determined not to be proper or complete and may be denied on that basis.

3.8.2 Waiver of a Development Standard

An applicant may, in the original application or in writing subsequent thereto, request a waiver of a development standard contained in these Regulations. CPDC may, in its sole discretion grant, the waiver on a finding by CPDC that the waiver would be in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law and these Regulations. If such a finding is not made then CPDC shall not grant the waiver, and the application may be determined not to be proper or complete and may be denied on that basis. CPDC may require on-site or off-site improvements to be done by the applicant of cost reasonably related to the value of the waivers granted.

3.9 Consent of the Property Owner

When the applicant does not own the property shown in a plan submitted with an application pursuant to these Regulations, the applicant shall state the nature of his or her interest in the property and shall submit the written consent of the record owner by having such owner endorse the application. In cases where the record owner is not an individual (e.g. a corporation, partnership, trust, or some other similar entity), proper documents shall be submitted with the application granting the party signing authority on behalf of the ownership entity. An application made by someone other than the record owner without such endorsement shall not be considered a proper submission.

3.10 Withdrawal

An applicant may withdraw a submitted plan by filing with CPDC, the Board of Health, and the Town Clerk a written request for withdrawal on a Request to Withdraw an Application for Subdivision Approval form (Form E). If such request is filed before the date of publication of the first notice of public hearing, such request does not require CPDC approval; otherwise, the withdrawal is valid only upon approval by vote of a majority of the membership of CPDC.

3.11 Extension

An applicant or CPDC may request an extension of the statutory time limits for CPDC to take and file notification of action on the submitted application in order to provide additional time to discuss issues related to the application. The request shall be made in writing on a Request for Extension of Statutory Deadline form (Form F), and shall be effective when signed by both the applicant and the Chairman of CPDC, and shall be filed with the Town Clerk.

3.12 Rights of Others in Land Shown on a Plan

The approval of a plan by CPDC does not affect any rights which others may have in or over the land being divided or subdivided, nor does it give the applicant the right to perform work on land owned by others. CPDC assumes that any plans submitted for its consideration are correct unless evidence is presented to the contrary. The acquisition of necessary rights and the presentation of complete and accurate information to CPDC are responsibilities of the applicant, and failure to do so, including the failure or inability to obtain all necessary permits, licenses, releases, or rights may constitute reason for denial of a plan or for rescission of approval of a Definitive Plan.

3.13 Endorsement and Certification

Endorsement of Approval-Not-Required and Certification of Definitive Plans shall be by signature on the first page of the plans of the majority of the full membership of CPDC following a vote by a majority of the full membership of CPDC in favor of a motion to endorse an Approval-Not-Required Plan or to approve, with or without conditions, a Definitive Plan; the signature of the Chairman of CPDC on subsequent pages of a set of Definitive Plans shall attest to the signature of such majority on the first page thereof as an alternative to the signature on all such subsequent pages of such majority.

3.14 Public Open Spaces and Protection of Natural Features

Before approval of a Definitive Plan, the Commission may require that the Plan show a park or parks suitably located for playground or recreation purposes or for providing light and air. The park or parks shall not be unreasonable in area in relation to the land being subdivided and the prospective uses of such land. The Commission may by appropriate endorsement on the Plan require that no building be erected upon such park or parks for a period of not more than three years from the date of Definitive Plan approval without its approval. This land shall be made available for acquisition by the Town with just compensation to the owner thereof. The failure of the Town to make such an acquisition within such three years shall free the owner from this requirement.

The Commission may also require that the Plan make accommodation for or provide access to existing or potential greenways, bikeways, open space, Town Forest, Town Conservation land and natural areas, identifiable in accordance with criteria established in the Town of Reading's Master Plan or Open Space and Recreation Plan.

Due regard shall be shown for all natural features, such as large trees, water courses, scenic points, historic spots, and similar community assets, which, if preserved, will add attractiveness and value to the property.

3.15 Off-Site Mitigation

- 3.15.1** It shall be the responsibility of an applicant who has received subdivision approval under these Regulations to properly repair or remedy any damage done to, or debris or other materials deposited on properties or ways within or outside of the subdivision, by any party performing work within the subdivision. CPDC

may hold an appropriate bond amount against the fulfillment of this responsibility.

- 3.15.2** If CPDC finds in reviewing a proposed subdivision plan that the proposed subdivision creates or aggravates adverse impacts on abutting or nearby properties, public or private ways or other facilities of the Town of Reading, then the CPDC as a condition of approval of any such plan may require the applicant to take such actions as are necessary to mitigate the creation or aggravation of such adverse impacts. The conditions or requirements imposed by CPDC shall be proportional to the nature and extent of the impacts caused by the proposed development. If the CPDC finds that the proposed subdivision cannot be serviced by the public or private ways or other facilities of the Town of Reading in a manner so as to insure that the purposes of the Subdivision Control Law and of these Regulations are met, then the CPDC shall require that reasonable and appropriate improvements be made to the public or private ways or other facilities so as to insure compliance of such subdivision with the Subdivision Control Law and these Regulations. Such improvements shall be consistent with the requirements of Sections 7.0 and 8.0 hereof.

3.16 Blasting

If there is any blasting needed in any development approved in accordance with these Regulations, the applicant shall be responsible for implementing the following program:

- a** The party conducting the blasting shall have a certificate of competence from the Commonwealth of Massachusetts and shall have requisite insurance and blasting, public liability insurance as required by 527 CMR 13.00 effective March 1, 1996 and as may be amended from time to time.
- b** The party conducting the blasting shall obtain a permit from the Fire Chief and shall file with the Fire Chief a statutorily required bond with sureties, as required by MGL Chapter 148 Section 10A, 527 CMR 1.04, and MGL Chapter 148 Section 19.
- c** A pre-blast survey shall be conducted of all improvements on properties any portion of which lie within 500 feet of the blast location.
- d** At a minimum all provisions of 527 CMR: Board of Fire Prevention Regulations, 13.00 Explosives, shall be fully adhered to.

3.17 Accuracy of Plans

Applicants are hereby notified that all details, including but not limited to site grading or the preservation of trees indicated as to be saved or preserved, shown on any approved Definitive Subdivision Plan are binding on the applicant for full and faithful implementation.

3.18 Continuance of Obligation

Applicants are hereby notified that CPDC shall hold the applicant, or the applicant's heirs, successors, or assigns in the entirety of the subdivision, solely responsible for the complete, proper, legal, and workmanlike compliance with these Regulations, with all terms and conditions of approval of the applicant's Definitive Subdivision Plans, and with all other applicable laws, Bylaw, and regulations. This responsibility shall cease upon the issuance by the CPDC of a Certificate of Completion (Form O) for the subdivision.