

ARTICLE 9 - INSPECTIONS AND ENFORCEMENT

9.1 Inspection of Required Improvements.

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

1. Notify the code enforcement officer in writing of the time when (s)he proposes to commence construction of such improvements, so that the municipal officers can arrange for inspections to assure that all municipal specifications, requirements, and conditions of approval are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board.

2. Deposit with the municipal officers a check for the amount of 2% of the estimated costs of the required

Inspections of required improvements and enforcement of violations may be the weakest link in the chain of development review and construction. The review authority may adopt and administer the strictest or most concise standards, but if no one is making sure that the plans are built as approved, it may be all for naught. This article spells out recommended procedures for making sure that subdivisions are constructed in accordance with the plans which have been approved.

The municipal staff person who has been assigned the responsibility to coordinate the inspections for a project should be contacted. If this person is not the code enforcement officer (town manager, public works director, town planner), this individual should be mentioned here rather than the code enforcement officer. This section should not be interpreted to imply that it is the code enforcement officer who is responsible for making the inspections, only that the CEO is the contact person or inspections coordinator. The improvements which should be inspected on a regular basis during the construction process include the road construction, installation of sewer and water pipes, storm water management structures and facilities, and erosion and sedimentation control measures.

It is important that the review authority, in cooperation with the municipal officers, code enforcement officer, road commissioner, or public works director, designate an inspecting official, who should be qualified to read the plans and determine whether they are being followed. This designated inspector should be required to work with the code enforcement officer, who may or may not attend inspections. While the code enforcement officer may not be qualified to conduct these inspections, it is the only the code enforcement officer who holds enforcement authority under the regulations and state statute. This enforcement authority may not be transferred to a non-certified individual (30-A M.R.S.A., §4451).

In many of Maine's smaller towns, retaining a consulting engineering firm to conduct the inspections may yield the best result. It is recommended that inspection of the street and storm water management system be conducted by professional engineers in addition to the public works director or road commissioner. Most likely any sewer and water line installation will be inspected by personnel from the appropriate district, department or company. Depending in which county the municipality is located, assistance from the county soil and water conservation district may be available for the inspection of storm water management and erosion and sedimentation control measures. If the soil and water conservation district is available and is to be utilized by the municipality, they should be properly referenced in this section.

Section 9.1.A.2 provides the funds to reimburse the municipality for the costs of the inspections. Similar to the recommendations regarding review fees, this section sets up a procedure to assure that funds are available to pay the full costs of inspection, yet does not charge every subdivider for the costs of a particularly difficult or complex development

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improvements to pay for the costs of inspection. If upon satisfactory completion of construction and cleanup there are funds remaining, the surplus shall be refunded to the subdivider or builder as appropriate. If the inspection account shall be drawn down by 90%, the subdivider or builder shall deposit an additional 1% of the estimated costs of the required improvements.

- B. If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, the inspecting official shall so report in writing to the municipal officers, Board, and the subdivider and builder. The municipal officers shall take any steps necessary to assure compliance with the approved plans.
- C. If at any time it appears necessary or desirable to modify the required improvements before or during the construction of the required improvements, the inspecting official is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The inspecting official shall issue any approval under this section in writing and shall transmit a copy of the approval to the Board. Revised plans shall be filed with the Board. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade

project, by providing that funds not used in the inspection process are returned.

The inspector needs to make periodic inspections, and upon finding any potential problems, needs to notify the appropriate municipal officials (inspections coordinator, code enforcement officer, and the reviewing authority). Written notification should be sent to the subdivider and builder by the code enforcement officer including a description of the problems or noncompliance found, the provisions of the regulations or plan approval violated, the steps which must be taken to correct them, and a time frame for taking corrective action. If a written request to take corrective action does not produce the necessary results, the municipality has various legal procedures available to it to enforce the terms of the approval. For a detailed description of enforcement procedures, interested readers are directed to the training materials published by the State Planning Office as part of its Code Enforcement Officer Certification Program.

Once construction has commenced, there will be times that minor changes such as the vertical alignment of a street or the details of a storm water management structure, are necessary due to site conditions which were not apparent during the planning of the subdivision. The *Model* in Section 9.1.C, authorizes the inspector to approve such minor changes within certain limits without the necessity of bringing the revisions before the review authority. The inspector may not authorize any change in a lot line depicted on the plan. To avoid potential controversy in the future regarding compliance with the approved plans, the inspector's approval must be in writing, and revised plans must be filed with the review authority.

by more than 1%, etc., the subdivider shall obtain permission from the Board to modify the plans in accordance with Article 8.

D. At the close of each summer construction season the Town shall, at the expense of the subdivider, have the site inspected by a qualified individual. By October 1 of each year during which construction was done on the site, the inspector shall submit a report to the Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate. The report shall also include a discussion and recommendations on any problems which were encountered.

E. Prior to the sale of any lot, the subdivider shall provide the Board with a letter from a professional land surveyor, stating that all monumentation shown on the plan has been installed.

F. Upon completion of street construction and prior to a vote by the municipal officers to submit a proposed public way to a town meeting, a written certification signed by a professional engineer shall be submitted to the municipal officers at the expense of the applicant, certifying that the proposed public way meets or exceeds the design and construction requirements of these regulations. If there are any underground utilities, the servicing utility shall certify in

Construction of roads and other major earth moving activity typically ceases in the late fall as the ground begins to freeze. This is the time to make sure that proper erosion and sedimentation control has been put in place to take the site through the winter and the early spring snow melt and run off. If the municipality has made adequate provision for regular inspections of erosion and sedimentation control measures, this paragraph may not be necessary. However, most municipalities have not made adequate provisions, and therefore Section 9.1.D has been included in the *Model*. Inclusion of Section 9.1.D should help ensure that erosion and sedimentation control measures are inspected at least at this critical juncture, if not on a regular basis during the construction project.

The date referenced in the second sentence of Section 9.1.D may need to be changed depending upon location within the State. Late September is generally the last that fall planting of permanent seeding is recommended in southern Maine. The cut-off date varies from county to county and is referenced in the Best Management Practices Manual. Check with your county Soil and Water Conservation District for advice on the proper timing. If the site is not stable by the end of September additional effort and expense will be necessary to provide the necessary temporary seeding and erosion control to carry the site through the winter.

Title 30-A M.R.S.A., §4406, sub-§2 requires that at least one permanent marker be set at one lot corner of a lot prior to its sale. The *Model* requires that all lot corners have suitable monumentation. This section ensures that the monumentation shown on the plan is installed after approval.

The municipality must be assured that the street(s) has been constructed properly prior to considering acceptance as public ways. If your municipality has a council form of government, the first sentence should be changed accordingly. If there are sewer or water lines in the right-of-way, or if there is underground electric, telephone, or cable television, the municipality should be assured by the proper authority that the underground installation is satisfactory prior to accepting a proposed public way. If insufficiencies are discovered after acceptance by the municipality, it may be up to the municipality, rather than the subdivider or contractor, to correct the deficiencies.

writing that they have been installed in a manner acceptable to the utility. As built plans shall be submitted to the municipal officers.

- G. The subdivider shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of the improvements by the municipality or control is placed with a lot owners' association.

9.2 Violations and Enforcement.

- A. No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Board in accordance with these regulations.
- B. A person shall not convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.
- C. A person shall not sell, lease or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.
- D. 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.
- E. Development of a subdivision without Board

Until such time as the municipality accepts a proposed public way or until a lot owners association is active, the subdivider is responsible for the maintenance of streets. Maine law does not allow a municipality to maintain or plow private roads.

The prohibitions in paragraphs A through E are taken from the statute (Title 30-A M.R.S.A., §4406, sub-§1).

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approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a plan approved as provided in these regulations and recorded in the Registry of Deeds.

- F. 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.
- G. Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of Title 30-A M.R.S.A., §4452.

This provision was included in the *Model* to ensure that residents of a subdivision will have properly constructed streets prior to their purchase or occupancy of a lot in the subdivision.

Title 30-A M.R.S.A., §4452 in part provides for a minimum fine of \$100, a maximum fine of \$2,500, a requirement for the judge to consider the economic gain from the violation in setting the fine, higher fines if there are past convictions in the past two years, and the award of attorney's fees and court costs to the municipality if it is the prevailing party.