

# Rochester Subdivision Bylaw

Adopted November 22, 2010

Written with assistance from the Two Rivers-Ottawaquechee Regional  
Commission.

Funded in part by a Municipal Planning Grant from the VT Department of  
Community Planning and Revitalization.



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## **1. Authority and Purpose**

### **1.1 Title & Authorization**

These Regulations shall be known as the Town of Rochester Subdivision Regulations. Subdivision of land and its subsequent development shall be subject to these Regulations in accordance with the authority provided by the Vermont Planning and Development Act [24 VSA, Ch. 117] (hereinafter, the “Act”) as presently in effect or hereinafter from time to time amended.

### **1.2 Applicability**

The Rochester Subdivision Regulations shall apply to all land within the town of Rochester, Vermont.

No land development, improvements, additions, buildings, structures, sales or change of use may be undertaken on any lot, tract, or parcel of land subject to these Regulations until said subdivision has received final plan approval, and a subdivision permit and a plat have been filed.

### **1.3 Effective Date**

These Regulations shall take effect 21 days after adoption by the Selectboard, following public hearings by the Selectboard pursuant to 24 VSA Ch. 117 sec. 4442. Adoption of these Regulations replaces the previously existing Subdivision Regulations in their entirety.

### **1.4 Extent of Regulations**

Subdivision of land whether by sale, gift, lease, mortgage foreclosure, court-ordered petition, or other instrument, must be approved by the Rochester Planning Commission before any construction begins, land title is transferred, or a plat is filed in the Town Land Records.

As defined by these Regulations, a subdivision is created when any single lot, tract, or parcel of land is divided into two or more lots, tracts, or parcels of land.

For the purposes of these Regulations, a public road, or railroad, running through a property shall not constitute a legal division of land in the absence of a permit issued pursuant to these regulations.

## 1.5 Exemptions

The following are not subdivisions for the purposes of these Regulations and therefore do not require a subdivision permit:

- Annexations that result in the combination of any existing adjacent parcels into a single parcel for non-commercial use;
- Agricultural leases; and
- A minor boundary line adjustment between two adjacent lots involving no change in the number or use of lots, and resulting in a change of less than one acre of land of any involved lot. Lot line adjustments may not result in the creation of a lot that does not meet the minimum lot size in the zoning district in which it is located.

## 1.6 Purpose

The Rochester Planning Commission shall authorize the creation of lots in accordance with these Subdivision Regulations. Through the use of these Regulations, the Planning Commission will seek to implement the Rochester Town Plan, focusing on the following Plan objectives:

- To provide for the orderly growth of the Town of Rochester while protecting its unique setting, environmental integrity and scenic beauty.
- To protect the quality of the White River and West Branch.
- To encourage the maintenance of our agricultural and forest lands.

These Regulations are hereby adopted to assure that development conforms to the policies set forth in the Rochester Town Plan. The Rochester Planning Commission shall refer to the goals, objectives, policies and data contained in the Town Plan when making discretionary decisions.

It is the intent of these Regulations to accommodate the subdivision of land and its subsequent use in an orderly manner, without causing undue burden to the Town, while preserving, to the extent possible, the rural character of the village of Rochester and the surrounding environment.

## 1.7 Relationship to Other Permits

These regulations apply only to the subdivision of land, not to land development, therefore the applicant needs to be aware that other permits may be needed before a subdivision plat can be filed in town records and/or before development may begin. Some of the permits that may be required include:

- All development within the Town of Rochester requires a Building and Zoning Permit unless specifically exempted by the Rochester Zoning Bylaw.
- An Act 250 permit may be required for a subdivision. Consult with the Vermont Agency of Natural Resources in Springfield, Vermont.
- Water and wastewater permits must be obtained from the Agency of Natural Resources, or the required deed notice filed, before local subdivision plats may be filed. When a deed notice is used instead of a wastewater permit, then the deed notice shall also be printed in no less than 10 point font on the plat itself.
- A stormwater construction permit must be obtained from the Agency of Natural Resources before any construction disturbing more than one acre of land is initiated, and an operational stormwater permit is required for industrial or commercial uses and uses that create more than one acre of impervious surface.
- A permit for driveway construction is required for any new or modified access onto a public road. This permit is issued by the Selectboard for town highways and the Vermont Agency of Transportation for state roads. This permit must be in place, and in accord with the approved subdivision, before a plat may be filed in town records.

## 2. Subdivision Application Process

### 2.1 Overview

1. Sketch Plan Phase: Pre-application Meeting with the Planning Commission. Optional, but recommended.
2. Preliminary Plan Approval: This meeting is an officially warned hearing and is the substantive review stage, in which the project can be modified as needed, abutters may voice any concerns and any unresolved questions are answered. The Planning Commission may choose to approve the final plat during the same meeting if it is agreed that the applicant has met all the conditions in the preliminary approval.
3. Within forty-five (45) days after the public hearing: If the Planning Commission is unable to make a decision immediately after the Preliminary Plan Approval hearing, action shall be taken by the PC within 45 days to approve, disapprove or approve with conditions the final plat.
4. Administrative permit: AO issues permit (if granted by PC) within 7 days.
5. Signing of Approved Plat: The authorized member of the PC checks the mylar against the permit as issued and signs the plat provided that all conditions have been met by the applicant.
6. Plat Recording: Within one hundred and eighty (180) days after receiving administrative permit from AO, the applicant files a signed mylar with Town Clerk.

### 2.2 Sketch Plan

Potential applicants for subdivisions are strongly encouraged to meet with the Zoning Administrator (or duly appointed representative) and Planning Commission when beginning to consider their projects in order to avoid misunderstandings and to ensure a smooth application process once formal review is started.

The Sketch Plan Meeting is an opportunity to discuss the overall description of the project, familiarize the applicant with the regulations, and answer basic questions of procedure. The discussion shall be conducted at a regular monthly meeting held by the Planning Commission. **No written findings, conclusions or decision shall be provided to the applicant and any comments by the PC, the applicant and interested parties are non-binding.**

Applicants shall bring a copy of the Rochester Parcel Map (tax map) with the proposed location of the subdivision indicated as well as any additional maps, a drawing of the proposed subdivision and other relevant materials.

## **2.3 Formal Application and Preliminary Plan Approval**

Preliminary Plan Approval is the major review stage for subdivisions. Prior to the Planning Commission's hearing on Preliminary Plan Approval, the applicant shall submit the following, along with the appropriate fee, to the Town Clerk for the Planning Commission's consideration at the Hearing for Preliminary Approval:

1. A completed subdivision application form, in duplicate, which may be obtained from the Town Clerk;
2. A location map showing the proposed subdivision relative to abutting properties;
3. Names and mailing addresses of all abutting property owners ( available in the Town Office), including properties across roads.;
4. A copy of the Rochester Parcel Map (tax map) with the proposed location of the subdivision indicated;
5. A draft survey plat drawn to a scale adequate for showing the subdivision boundary with lot lines and lot size, dimensions, and abutters' names (affixed to the appropriate property). The map shall include streams, ponds, wetlands existing or proposed leach fields, existing or proposed wells, existing buildings, existing utilities , existing and proposed accesses, and existing and proposed roads and rights-of-way;
6. Description of the proposed water supply. If source is an existing community water supply, evidence of the right to use such system and the adequacy of such a system to meet water supply requirements shall be shown. All design criteria shall be in accordance with the applicable State and local health regulations;
7. Description of the proposed sewage systems. If onsite sewage disposal is proposed, then a registered professional engineer's or certified site technician's report and plans prepared in conformance with the State regulations shall be submitted. If a community sewage disposal system is to be used, evidence of the right to use such a system and a registered professional engineer's statement of the adequacy of the system to handle the additional sewage shall be submitted;
8. A description of any proposed covenants, and/or deed restrictions which are intended to cover all or part of the subdivision;
9. A description of the homeowners association or other forms of management organization if one is proposed;
10. Written statement outlining approximate dates by which all improvements shall be completed;

11. In the event of granting of easements, and/or development rights to the Town of Rochester, a written acknowledgment of the subdivider's responsibility for maintenance of easement areas until such land has been legally accepted by the Town;
12. The Planning Commission may require that the survey show contour lines at an interval not greater than five feet; grading plans showing any areas of cut and fill; stormwater drainage plan, which shall indicate the methods for collecting and discharging drainage, as well as methods for temporary and permanent erosion control; proposed lighting and signage, if any; covenant or easement language detailing the maintenance responsibilities for any common areas or improvements, any articles of incorporation if needed to create legal entities, and other existing and proposed facilities also be located on the plat;
13. Any other relevant information requested in writing by the Planning Commission following the pre-application meeting.

The Administrative Officer will return incomplete applications. If the application for Preliminary Plan Approval is determined to be complete, a site visit may be scheduled with the Administrative Officer within 15 days, if it is deemed necessary. Testimony is not to be taken at the site visit, but rather this is the time to clarify any items in the application or to mark on the ground items shown in application materials. Following the site visit (if held), a public hearing shall be scheduled within 30 days.

The Planning Commission shall hold a Hearing as per V.S.A. Title 24, Chapter 117, §4464. At the Hearing the Planning Commission shall take testimony as to whether the project meets the purposes of this Bylaw and each relevant standard (see section 3), and may make specific written recommendations for changes necessary for such compliance. If additional information is needed, the applicant shall have up to 60 days to supply such, which if not provided shall be grounds for denying the application. Anyone seeking interested party status must participate in this hearing (this may be done in writing) to retain any appeal status.

When the PC is satisfied that all relevant issues have been discussed and addressed sufficiently and is ready to decide on Preliminary Plan or Final Plat Approval, it shall close the hearing prior to any decision, and may then deliberate and deny the application if it clearly will not be permissible, or approve the preliminary plan with such conditions as it deems appropriate. In the event that all conditions required by the PC have been met at the Preliminary Plan Approval phase, the PC may choose to move immediately to the Final Plan approval phase without another hearing.

At the time the PC grants Preliminary Plan Approval, it may require the subdivision to be divided into two or more phases to insure conformity with the Town Plan and may impose such conditions upon the filing of the application for final plat approval for each phase as it deems necessary to assure the orderly development of the plat and to avoid overburdening Town facilities and services.

If, in the opinion of the Planning Commission, the applicant's subdivision request meets all of the requirements of a Final Plat, it may combine the Preliminary Approval Meeting

with the Final Plan Approval meeting. However, if the PC requires more time to deliberate or needs further information from the applicant, it may choose to hold an additional meeting.

## **2.4 Final Plan Approval**

Unless the Planning Commission chooses to combine Final Plan Approval with the Preliminary Approval, within six months of the Preliminary Plan Approval, the applicant shall submit a Final Plan for approval to the Planning Commission materially conforming to the layout and information shown on the Preliminary Plan, with any modifications required by the Commission. If the applicant fails to do so, the application shall be void.

The Commission shall hold a public hearing on the Final Plan, with notice as required, and shall, within 45 days from the adjournment of the final hearing, approve the Final Plan if it meets the requirements of the Preliminary Plan Approval and has, or is conditioned to have, any necessary federal, state and/or local permits. Copies of the hearing decision shall be promptly sent by certified mail to the applicant, and sent by first class mail to every person with party status at the hearing.

Failure to approve or deny the Final Plan within such 45 day period shall be deemed approval on the 46th day. In the event of such failure to act, the applicant must obtain certification from the Administrator documenting the Commission's failure to act within the specified period of time.

The Commission in its approval may require a performance bond or other surety as provided for under section 3.4.2.

## **2.5 Subdivision Permit**

Within seven days, following approval of the final plat, the Administrator shall issue a subdivision permit for the actions as described in the approval. Copies of the permit shall be supplied to the Town Listers and posted by the Town Clerk as prescribed in section 4449 of the Act, as presently in effect or hereinafter from time to time amended.

## **2.6 Signing of Approved Final Plat**

The plat for recording must be an 18" x 24" Mylar copy of the final approved plan, and must not differ in any way from the plat approved at the final public hearing. Prior to filing and recording, but after the appeal period has expired, the plat must be reviewed for compliance with the Final Plan Approval, and signed by a duly authorized representative of the Planning Commission. The authorized member(s) of the Planning Commission may not sign the final Mylar plat unless the applicant has provided all required items of approval, such as a bond or surety, a written agreement with the Selectboard, easement(s) or covenant(s), the receipt of additional permits, etc.

Any changes, erasures, modifications or revisions made to any final Mylar plat after it has been approved and signed by the Commission shall render the subdivision approval null and void.

## **2.7 Filing of Approved Plan/Effect of Failure to File within 180 Days**

Within 180 days following the date of approval of a subdivision, the applicant must submit the final signed Mylar plat to the Town Clerk for filing in the land records of the Town of Rochester. Filing of the plat shall be in accordance with the provisions of the Act as presently enacted and as hereinafter from time to time amended. The plat to be recorded shall be in compliance with state law, 27 VSA, Chapter 17. Filing fees shall be paid directly to the Town Clerk. Filing of the approved plat, any denials, notices of violation, and other matters of record shall be in accordance with the provisions of the Act as presently enacted and as hereinafter from time to time amended.

If an accurate Mylar plat is not filed within 180 days following approval of the subdivision, the subdivision approval shall be rendered null and void. It is the responsibility of the applicant to present the Mylar plat in a timely manner so as not to render the approval void.

### **3. Subdivision Standards**

#### **3.1 Major & Minor Subdivisions**

The scale and intensity of a subdivision can have a distinct impact on town services, rural character and the community as a whole. Recognizing this, Rochester has two types of subdivisions, Major and Minor. A Minor Subdivision is generally a simpler application process, with less detail required. A Major Subdivision may, at the discretion of the Planning Commission, require more detailed information to allow it to make a well-informed decision about the permit application.

##### **3.1.1 Minor Subdivisions**

Subdivisions that create no more than four lots within five-year period, do not require any new public roads or the extension of municipal facilities, are considered minor subdivisions. Applications for minor subdivisions generally require a less extensive permitting process because they are assumed to have a lower impact on the character of the town.

##### **3.1.2 Major Subdivisions**

Subdivisions that create more than four lots within a five-year period, or require any new public roads, or the extension of municipal facilities, are considered major subdivisions. Applications for major subdivisions may require more detail than minor subdivisions because they often have a more pronounced impact on the character of the town.

#### **3.2 Waivers**

The Planning Commission may waive or vary the provisions of any application or review procedures, submittal and development requirements, that it finds are not in the interest of public health, safety and general welfare, and are not required by the Act.

The request for a waiver shall be made by the applicant, and it shall be the responsibility of the applicant to provide sufficient information to justify the waiver and to enable the Planning Commission to reach a decision. In such a case, the Board may move to waive certain requirements and approve the project with appropriate conditions.

In granting waivers, the Board shall do so at the preliminary approval stage and require such conditions to substantially secure the objectives of the requirements varied or waived. Such waivers and their justification shall be in writing and included in the

permit file.

### **3.3 General Standards for Subdivisions**

The Planning Commission shall authorize the creation of lots and improvements on those lots in accordance with the following planning standards. Through the use of these standards, the PC will seek to implement the Town Plan. The Town Plan is designed to reinforce two (2) principal factors: the historical, rural character of Rochester and the natural beauty of its settings. Accordingly, the PC shall consider the Town's special features, landscape patterns, natural resources, and the relationship of land use and road access in rendering its decisions.

The following subdivision standards, **unless otherwise noted**, shall apply to Major and Minor Subdivisions.

#### **3.3.1 Energy Conservation and Environmental Design**

Applicants will be encouraged to maximize efficiency in their building orientation, selection of materials, landscaping (such as the reduction of need for watering or chemical fertilizers).

#### **3.3.2 Character of the Land and Site Preservation**

Subdivisions shall be designed in reasonable conformity with existing topography to minimize grading, to reduce cuts and fills, and to retain, insofar as reasonable, natural contours, land cover, and soil. Projects involving major disturbance to existing topography must show that there is no feasible alternative, and the Planning Commission may require a program of landscaping, soil stabilization and the establishment of appropriate, permanent vegetative cover following excavation or grading. All land to be subdivided shall be, in the judgment of the Planning Commission, of such a character that it can be used for the intended purposes without danger to public health or safety, to the environment, or to critical resources as identified in the Town Plan.

#### **3.3.3 Emergency Services**

Subdivisions shall be designed to ensure adequate provision of facilities necessary for adequate fire protection. Access drives shall be designed to safely accommodate emergency vehicles. Design of such drives or similar facilities shall be done in consultation with the Rochester Fire Department.

On major subdivisions, the Planning Commission may require the provision of storage ponds and dry hydrants necessary for adequate fire protection. Such facilities shall be designed in consultation with the Rochester Fire Department.

### **3.3.4 Water Supply and Wastewater Disposal**

Where creation of lots is intended for development requiring on-site sewage systems or potable water, state permits will be required as a condition, and prior to the filing, of any final plat approval. For lots without designed systems and intended to have no buildings, the required deed notice, as defined by the Vermont Environmental Protection Rules, shall be a condition of final plat approval.

### **3.3.5 General Road Standards for Subdivisions**

All new, or extensions of, private roads, whether or not intended to be taken over by the Town, and new private access rights-of-way, shall:

1. Preserve existing public access through the property to adjoining properties or uses when in the Town's interest;
2. Have a right-of-way of at least 30 feet; and
3. Shall meet the requirements of the Rochester Fire Department with regard to emergency vehicle access.

### **3.3.6 Road Maintenance**

The maintenance of all roads not designated as Class 3 Town Highways or higher shall be the responsibility of the applicant.

### **3.3.7 Public Acceptance of Roads and Open Spaces**

Nothing in these Regulations shall be construed to constitute the acceptance by the municipality of any road, easement, utilities, park, recreation area, or other open space shown on the Final Subdivision Plan. The PC may require the filing of a written agreement between the applicant and the Selectboard covering future deed and title, dedication and provisions for the cost of grading, development, equipment and maintenance of any such improvements. The PC may require the filing of a written agreement between the applicant and the Selectboard waiving any existing or future claim by the applicant and/or his/her heirs, successors and assignees regarding the Town's obligation to accept any road or other improvement as a Town facility as shown on the Final Subdivision Plan and providing for the future grading, development, equipment,

repair, and maintenance of any such road or other improvement by the applicant and/or his/her heirs, successors and assignees.

### **3.3.8 Revision of Approved Plan**

No changes, modifications, or revisions that alter the conditions attached to an Administrative Permit shall be made unless the plan is first resubmitted to the PC and the PC approves such modifications after public hearing, if a hearing is required.

In the event that such final subdivision plat is recorded without complying with this requirement, the plan and all approvals shall be considered null and void.

### **3.3.9 Compliance with other Bylaws or Ordinances**

Nothing in these Regulations shall be so construed as to supersede the conditions and criteria for permit approval set forth in this or other bylaws or ordinances in effect. This includes, but is not limited to, conditional use criteria and Planned Unit Development requirements set forth in the Rochester Zoning Bylaw, and local and state water /sewer requirements.

## **3.4 Specific Subdivision Standards for Major Subdivisions**

Notwithstanding specific entries in section 3.3 and related sub-sections that apply to major subdivisions, the following additional standards may apply.

### **3.4.1 Conservation of Natural and Cultural Resources**

The design of the subdivision shall conserve, to the extent reasonable, existing resources, including streams, forest and meadowland, primary agricultural soils, historic structures or sites, scenic resources, wildlife habitats, wetlands, aquifers, and other natural or cultural resources. Specifically, the following areas shall be treated as follows:

#### **3.4.1.1 Scenic Resources**

Subdivisions visible from scenic public highways (as outlined in the Rochester Town Plan) shall be designed to ensure that the subdivision and resulting proposed structures or site alterations, including grading, filling, removal of trees, stone walls or contributing landscape features are consistent with the scenic quality of the road and roadside areas to minimize any adverse effects on views or vistas afforded from the scenic road. Subdivisions shall be designed so that location of any subsequent utilities maintains and protects the character of scenic areas (as indicated in the Rochester Town plan).

#### **3.4.1.2 Historic Structures/Sites**

Subdivision involving buildings or sites of historic significance shall be designed to retain or enhance the unique characteristics of the historic structures or sites. The work shall not unnecessarily destroy or result in removal of such historic resources.

#### **3.4.1.3 Prime Agricultural Soils and Pastureland**

Subdivision of prime agricultural soils and pasturelands shall be permitted only where the PC finds that the subdivision:

- retains the maximum possible soils/pastureland for agricultural use through such means as clustering under PUD provisions, reduction in allowable density, sale or donation of development rights;
- maximizes the use of the least productive land and the protection of primary agricultural soils; and
- does not conflict with existing or potentially viable agricultural uses in the area.

#### **3.4.1.4 Forest Resources**

Conservation of productive forestland and the economic viability of the forest industry are matters of public good. Subdivisions involving tracts of forest resources over 10 acres may be approved on determination that it has been planned to retain its forestry potential by providing for reasonable lot sizes and numbers, the use of cluster planning concepts, and economical layout of roads, utilities, or similar investments.

#### **3.4.1.5 Natural Heritage Areas**

Any subdivision proposed on lands containing a Natural Heritage Area designated by the State of Vermont shall be required to avoid impacting the area in a manner that would harm it unless no other reasonable use is feasible.

#### **3.4.1.6 Conservation of Open Space**

Subdivisions in the Agricultural Residential and Conservation Residential districts will be required to maintain at least 80% of the total acreage in contiguous (but not necessarily single ownership) and undeveloped acreage.

#### **3.4.1.7 Deeryard**

Subdivision immediately within or adjacent to a deeryard identified on State Deer Wintering Area Maps shall be designed, sited, and undertaken in a manner compatible with the continued viability of the deeryard. Subdivision within a deeryard boundary shall be permitted only where the Planning Commission makes the following findings:

- The parcel to be subdivided includes no land that is practical for subdivision except that which is deeryard.

- The subdivision can be designed and undertaken in a manner that minimizes the impact of the subdivision on the continued viability of the deeryard.
- Proposals for subdivision of a lot involving or adjacent to an identified deeryard shall be based upon the applicant's consultation with representatives of Vermont Department of Fish and Wildlife and shall provide evidence of such consultation.
- Where subdivision takes place within a deeryard, or includes part of or all of a deeryard in the land base for the subdivision or the determination of its density, the remainder of the deeryard owned by the applicant shall be managed in a manner compatible with the continued viability of the deeryard. This may include the preparation and implementation of a forest management plan approved by the Vermont Fish and Wildlife.

In the event that an applicant believes that the State Deeryard Wintering Area Maps are inaccurate, the applicant may (at his/her own expense) hire a professional to properly determine the location of the deer wintering areas in relation to the proposed subdivision.

### **3.4.2 Power and Telephone**

The PC may require the installation of underground power and telephone lines wherever it is appropriate to maintain and protect the visual character of an area or to maintain property values of adjacent property. A diagram showing proposed location of utility lines shall be submitted with the subdivision application.

### **3.4.3 Drainage and Erosion Control**

Subdivisions shall be designed so as not to cause unreasonable soil erosion, storm water run-off, or a reduction in the capacity of the land to hold water so that a dangerous condition might result. The PC may require the applicant to obtain drainage and erosion control plans designed by a professional engineer. The site shall be planned to minimize the use of pavement, make use of retention ponds and berms, and employ phased construction to reduce runoff and erosion. Use of innovative permeable materials is encouraged.

The Planning Commission may require the phasing of construction to reduce the amount of land disturbed by construction at any one time, and may stipulate deadlines for installation of erosion control or soil stabilization measures.

The Planning Commission may require the applicant to obtain determination of the effect of the subdivision on the existing downstream drainage capacity outside of the area of the subdivision. Where the PC anticipates that the increased runoff will overload the capacity of the downstream system, it may require the applicant to delay construction until the capacities are adequate, and may require the applicant to perform the capacity improvements deemed necessary.

### **3.4.4 Traffic Management Study**

All subdivisions shall be designed to manage traffic in an orderly and safe manner. Where in the judgment of the PC a proposed major subdivision presents a potential for significant traffic impact on Town or State highways, village centers or historic areas adjunct to the subdivision, a traffic study may be required. The purpose of the study shall be to quantify the traffic impacts resulting from the subdivision and to identify necessary and appropriate mitigating measures. When warranted, the applicant shall fund the study. The PC and the applicant shall jointly select of the firm or individual preparing the study.

Such studies include the following information:

1. A description of the general location of the project.
2. A statement of existing traffic conditions and projected traffic conditions in five (5) years.
3. A statement comparing the operating Level of Service of the roadway(s) and/or intersection(s) in the Town with and without the proposed project(s) at the opening date of the project and in five (5) years.
4. A statement of recommendations outlining any adverse traffic impact of a proposed subdivision and the necessary improvements to provide an acceptable operating Level of Service.

Based upon a review of the study, the Planning Commission shall set appropriate conditions to avoid or mitigate any traffic congestion or safety problems associated with the proposed subdivision.

### **3.4.5 Pedestrian Access**

The PC may require a right-of-way to facilitate pedestrian circulation within the subdivision.

### **3.4.6 Disclosure of Subsequent Development Plans**

Whenever an applicant submits a proposal for development on only a portion of contiguous parcel, the PC may require a general indication of the intended uses of the remaining portion of land. Such an indication should include access, type of use, intensity of use, and phasing.

### **3.4.7 Completion Date**

Each approval for Final Subdivision Plan shall contain a time limit within which all improvements shall be completed not to exceed three (3) years unless extended by the PC.

### **3.4.8 Performance Bond Requirements**

The Planning Commission may require from the applicant, for the benefit of the Town, a performance bond in an amount sufficient to cover the full cost of constructing any public or private improvement that the PC may require in approving the project; such performance bond to be submitted prior to Final Subdivision Plan approval.

Security that the project shall be completed as approved may be required in the form of:

1. A surety bond, issued by an insurance company or surety bond broker authorized to do business in Vermont to be filed with the Selectboard in a form and amount satisfactory to it, or
2. A letter of credit, cash, escrow account or savings bank book properly endorsed to the Town in the amount to be determined by the Selectboard, or
3. A performance bond from the developer or contractor.

The performance guarantee shall not be released until the Planning Commission has certified completion of the improvements in substantial accordance with the approved Final Subdivision Plan. The performance bond shall run for a term to be fixed by the PC, but in no case for a longer term than three (3) years. However, the term of such a bond may, with the consent of the owner, be extended for an additional period not to exceed three (3) years.

If any required improvements have not been installed or maintained as provided within the term of such performance bond, such bond shall be forfeited to the municipality and upon receipt of the proceeds thereof, the municipality shall install or maintain such improvements as are covered by such performance bond.

The PC may also require surety covering the maintenance of said improvements for a period of two (2) years after acceptance by the Town; said surety to be equal to but not less than 10 percent (10 %) of the estimated cost of those improvements.

### **3.4.9 Legal Data**

Where applicable to a specific major subdivision, the following may be required prior to approval of the Final Subdivision Plan:

1. An agreement to convey to the Town land and/or Development Rights to be used for roads, open space and other public purposes;
2. An agreement to maintain roads, parks, recreation areas and other improvements in the future and to waive any claim regarding the Town's obligation to accept said improvements as Town facilities;
3. Descriptions of easements and rights of way over other property to remain in private ownership; and
4. Description of easements to drain stormwater onto or across other property.

## **4. Administration, Enforcement and Appeals**

### **4.1 Administrator**

As provided in Section 4448 of the Act, there is hereby established the position of an Administrator, and acting Administrator in his/her absence, to provide applications, take applications, and otherwise fulfill the duties and responsibilities of that position as set forth in the Act and in these Regulations.

### **4.2 Planning Commission**

As provided in section 4321-25 and 4460 of the Act, the Planning Commission shall act as the municipal panel to review and approve subdivisions.

### **4.3 Notice of Public Hearings**

At least one warned public hearing shall be required for subdivision review and Administrative Officer appeals. An additional public hearing may be required for final plat approval. Notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:

1. Publication of a notice by the Administrative Officer in a newspaper of general circulation in the Town of the date, time, place, and purpose of the hearing; a description of the proposed project; where additional information may be obtained; and that participation in the hearing is a prerequisite to the right to take any subsequent appeal.
2. Posting of the same information by the Administrative Officer in three or more public places within the municipality, including at least the Town Office.
3. Posting of the same information on a form provided by the town within view from the public right of way most nearly adjacent to the property for which an application is made. Posting on private property outside the right-of way requires landowner permission.
4. Mailing or hand delivery by the applicant of a copy of the notice of hearing, (which will be provided by the town), by first class mail or hand delivery to owners of all properties adjoining the property subject to development, without regard to any public right-of-way. The applicant must provide a signed sworn certificate of service at the hearing, or return receipts if they choose to use certified mail.
5. Written notification to any neighboring town's clerk if the proposed subdivision is within 500 feet of that town.

If additional hearings are needed for additional information, the first hearing may be recessed to a later date and time specified at the first hearing without requiring new notice. If the first hearing is closed and any additional hearings are needed, the notice requirements above apply.

Any decision shall be sent by certified mail to the applicant and appellant (in matters on appeal). The decision shall also be mailed to interested parties in accordance with current Vermont statutes.

#### **4.4 Decisions**

Any action or decision of the Planning Commission shall be taken by the concurrence of a majority of the members of the PC. In accordance with the Act [§4464(b)], the Planning Commission shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46th day. In addition:

All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken under Section 4.5.

In rendering a decision in favor of the applicant, the Planning Commission may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the municipal plan currently in effect. This may include, as a condition of approval:

1. the submission of a three-year performance bond, escrow account, or other form or surety acceptable to the Selectboard, which may be extended for an additional three-year period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project; and/or
2. a requirement that no Subdivision Permit be issued for an approved subdivision until required improvements have been satisfactorily installed in accordance with the conditions of approval.

All decisions of the Planning Commission shall be sent by certified mail, within the required 45-day period, to the applicant or the appellant on matters of appeal. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and Clerk as part of the public record of the municipality.

## **4.5 Issuance of a Subdivision Permit**

Once the Planning Commission has issued its decision and any or all necessary conditions have been met by the applicant, the Administrative Officer shall issue a subdivision permit, which shall take effect after the 15-day appeal period has expired

## **4.6 Appeals**

### **4.6.1 Interested Persons**

The definition of an interested person under the Act [§4465(b)] includes the following:

1. a person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a Bylaw, who alleges that the Bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case;
2. the Town of Rochester or any adjoining municipality;
3. a person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or Bylaw of that municipality;
4. any ten (10) voters or real property owners within the municipality who, by signed petition to the Planning Commission, allege that any relief requested by a person under this section, if granted, will not be in compliance with the policies, purposes or terms of the plan or regulations of the municipality; and
5. any department or administrative subdivision of the state owning property or any interest therein within the municipality or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

### **4.6.2 Appeals of Decisions by the Administrative Officer**

Any interested person may appeal any decision or act taken by the Administrative Officer by filing a notice of appeal with the secretary of the Planning Commission or with the Clerk of the municipality. If the appeal is made with respect to any decision or act of the Administrative Officer, such notice of appeal must be filed within fifteen (15) days of the date of such decision or act, and a copy of the notice of appeal shall be filed with the Administrative Officer.

A notice of appeal filed under this section shall be in writing and include the following information, in accordance with the Act [§4466]:

1. the name and address of the appellant,
2. a brief description of the property with respect to which the appeal is taken,
3. a reference to applicable provisions of these regulations,
4. the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations, and
5. the alleged grounds why such relief is believed proper under the circumstances.

#### **4.6.3 Appeal Process**

The Planning Commission shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act [§4468]. The PC shall give public notice of the hearing under Section 4.3, and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.

The PC may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant [§4470].

In accordance with the Act [§4468], all appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. Any interested person (see 4.6.1) or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the PC from time to time, provided that the date and place adjourned hearing shall be announced at the hearing.

A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing, as required under the Act [§4464(b)]. The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and the Municipal Clerk as part of the public records of the municipality, in accordance with Section 4.4. Failure of the PC to issue a decision within this 45 day period shall be deemed approval and shall be effective on the 46th day.

#### **4.6.4 Appeals of Planning Commission Decisions to Environmental Court**

An interested person who has participated in a proceeding before the Planning Commission may appeal a decision to the Vermont Environmental Court in accordance with current Vermont statutes. Participation in a proceeding shall consist of offering, through oral or written testimony, evidence or statement of concern related to the subject

of the proceeding. In the event that a notice of appeal is properly filed, any permit, approval or action shall not take effect until final adjudication of said appeal.

## **4.7 Violations and Enforcement**

The commencement or continuation of any land development that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in accordance with the Act [§§4451, 4452]. Each day that a violation continues shall constitute a separate offense. The Administrative Officer shall institute, in the name of the Town of Rochester, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the municipality.

### **4.7.1 Notice of Violations**

No action may be brought under this section unless the alleged offender has had at least seven (7) days' warning notice by certified mail that a violation exists, as required under the Act [§4451]. The notice of violation also shall be recorded in the land records of the municipality under Section 5.7. The notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven-day notice period, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.

### **4.7.2 Limitations on Enforcement**

An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality under Section 5.7.

## 5. Definitions

**Access** - Subdivided property must have direct access onto a town or state road, or onto a private road or right-of-way that provides entry to and egress from a town road or state highway. Any access by private road or right-of-way must be constructed according to the Town of Rochester Highway Policy. No landlocked lots may be created.

**Act** -The Vermont Planning and Development Act, 24 VSA Ch. 117, as presently in effect or hereinafter from time to time amended.

**Annexation** -The combining of any number of adjacent lots in their entirety into a single lot.

**Applicant** -The owner of land proposed for subdivision, or his or her representative. Any party with a legal interest in the property may apply in cooperation with the owner.

**Building** - An enclosed structure with walls and a roof for occupation or use.

**Certificate of Service** - A document which includes the names and addresses of interested parties stating the date and manner in which the parties were served (given) a document.

**Covenant** - A binding agreement or contract between two parties.

**Deed Notice** - A non-enforceable, purely informational document filed in public land records that alerts anyone searching the records to important information about the property.

**Easement** - The authorization by a property owner for the right of specific use of a designated part of the property by another party or entity.

**Land Development** – as defined in V.S.A. Title 24, Chapter 117, §4303, Land Development means the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.

**Lot** - A portion of a parcel that is separated by a property line and has a separate deed; land designated as a lot on a plat approved by the Rochester Planning Commission under these Regulations, and duly recorded in the Land Records of the Town.

**Map** - A scaled drawing of features on the land with such features accurately located.

**Mylar** - A plastic medium, transparent or opaque, which is required for the final plat, to be filed in the land records of the Town within 180 days of Final Plan Approval.

**Natural Heritage Area** - Those areas identified by the VT Fish & Wildlife Department as containing significant nongame wildlife (vertebrates and invertebrates), native plants, and natural communities, which require protection or conservation.

**Open Space** - Land not occupied by structures, buildings, roads, rights-of-way, parking lots, or other manmade encumbrances; land reserved for recreation, including hunting, fishing, forestry, agriculture, and tourism.

**Parcel** - Any contiguous land owned or controlled by the same person or legal entity, regardless of whether acquired at different times or through separate conveyances.

**Performance Bond** - A form of surety that guarantees a subdivision will be developed and maintained as permitted, which, if need be, is used by the Town to construct and maintain such improvements in the subdivision without cost to the town.

**Plat** - A map of a parcel of land, showing boundaries of lots, roads, or other features, drawn to scale. For subdivision approval, the plat must be a survey prepared by a licensed land surveyor and submitted for recording in the municipal land records of the Town of Rochester.

**Private Road** - A road with ownership retained by the property owner or an association of landowners.

**Shall** - The use of this verb indicates mandatory action or requirement.

**Shared Access** - An access onto a public or private road, where the access will serve as the sole access serving lots within a subdivision.

**Site Visit** - On-site inspection by the Administrative Officer and/or members of the Planning Commission of the property proposed to be subdivided in order to ensure a clear understanding of site conditions for review.

**Subdivider** - A person, partnership, firm, corporation, association, or other legal entity proposing to divide property for the purpose of sale, lease, or other development; the term includes any applicant for approval of the subdivision of land.

**Subdivision** - The division of any lot or parcel into two or more lots, parcels, or interests, for the purposes, whether immediate or not, of sale, lease, or development. The term includes amended subdivisions or re-subdivisions. For the purposes of these Regulations, the following are not considered subdivisions:

- annexations that result in the combination of any existing adjacent parcels into a single parcel for non-commercial use;

- agricultural leases;
- a minor boundary line adjustment between two adjacent lots involving no change in the number or use of lots, and resulting in a change of less than an acre of land of any involved lot.

**Survey Map** - A plat of a land parcel to be subdivided, prepared by a licensed land surveyor, and required as part of a subdivision application.

**Town Plan** - The duly adopted comprehensive plan for the town of Rochester, as developed by the Planning Commission and approved by the Selectboard.

