

SUBDIVISION ORDINANCE
OF THE TOWN OF SOUTHWEST HARBOR

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SECTION I. AUTHORITY, ADMINISTRATION AND ADMINISTRATIVE PROCEDURES

A. Authority

1. This Ordinance shall be known and may be cited as “**Subdivision Ordinance of the Town of Southwest Harbor.**”
2. The standards in this Ordinance have been prepared in accordance with the provisions of Title 30 – A MRSA, Sections 4401-4407.

B. Administration

1. The Planning Board of the Town of Southwest Harbor, hereinafter called the Board, shall administer this Ordinance. **No building or plumbing permit** shall be issued by the Town Officers or Code Enforcement Officer for any use or development within the scope of this Ordinance until an application required by this Ordinance has been reviewed and approved by the Board and any conditions attached to the approval fulfilled.
2. The provisions of this Ordinance have been prepared in accordance with Title 30-A MRSA Section 4401-4407 and shall pertain to all land and buildings within the boundaries of the Town of Southwest Harbor proposed for subdivision.
 - a. Subdivision means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971.
 - b. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise.
 - c. The term “**subdivision**” also includes:
 - i) the division of a new structure or structures on a tract or parcel of land, each into 3 or more dwelling units within a 5-year period.
 - ii) the construction or placement of 3 or more dwelling units on a single tract or parcel of land; and
 - iii) the division of an existing structure or structures previously used for commercial or industrial use, each into 3 or more dwelling units within a 5-year period.
 - d. In determining whether a tract or a parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots, and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot. The first and second dividings are deemed to occur simultaneously and to create three lots

when, as a result of the splitting off of a legal interest in a portion of the tract or parcel, there are left remaining two non-contiguous portions of the tract or parcel, whether or not any legal interest in those non-contiguous portions is split off. However, no subdivision is created when:

- i) both such divisions are accomplished by a sub-divider who has retained one of the lots for the sub-divider's own use as a single family residence or for open space. As defined in Title 36, SECTION 1102, for a period of at least 5 years before The 2nd dividing occurs; or
 - ii) the division of the tract or parcel is otherwise exempt under this subchapter.
- e. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made, are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The Town reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.
 - f. A lot of 40 or more acres shall not be counted as a lot, except when the lot or parcel from which it was divided is located entirely or partially within any shoreland areas as defined in Title 38, Section 435 (Mandatory Shoreland Zoning effective January 1, 1989), or the Town's Land Use Ordinance.
 - g. A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a give to a municipality or by the transfer of any interest in land to the owner of land abutting that land does not create a lot or lots for the purposes of this definition unless the intent of the transferor in any transfer or gift within this paragraph is to avoid the objectives of this section. If the real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 5 years to another person not related to the donor of the real estate by blood, marriage or adoption, then that exempt division creates a lot or lots for the purposes of this subsection.
 - h. The division of a tract or parcel of land into 3 or more lots and upon each of which lot is permanent dwelling structures (either primary or seasonal) do exist is not a subdivision if these permanent dwelling structures have legally existed since before September 23, 1971.
 - i. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.
 - j. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the Town reviewing authority determines

that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.

C. Administrative Procedure

1. The Town shall conduct a multi-stage review procedure of one application:
 - a. workshop
 - b. preliminary plan with a completed application; and
 - c. final plan
2. Applications for approval shall be submitted in writing to the Board, on forms provided by it. For projects that are subject to the Maine Site Location of Development Law, the Board will accept the application filed by the applicant for the State Site Location permit, in lieu of the form provided by the Board. The Board may require the submissions of whatever additional information is necessary to determine compliance with the provisions of this Ordinance.
3. Applications for approval under this ordinance must include evidence that all appropriate local, State, and Federal Agencies have been requested to determine if additional permits must be sought from them. Final approval will be given conditionally upon receipt of these permits if they are required.
4. Applicants shall request to be placed on the Board's agenda at least two weeks in advance of a regularly scheduled meeting by contacting the Town. Applicants who attend a meeting but who are not on the Board's agenda may be heard but only after all agenda items have been completed, and then only if a majority of the Board so votes.
5. On all matters concerning subdivision review, the Board shall maintain a permanent record of all its meetings, proceedings and correspondence.
6. Joint meetings between Town Planning Boards are required if any portion of a subdivision crosses Town boundaries.
7. Any costs incurred by the Town in its effort to interpret information submitted for the approval of a subdivision shall be borne by the applicant.

D. Amendments to the Ordinance

1. This Ordinance may be amended by the legislative body of the Town of Southwest Harbor.
2. A public hearing shall be held prior to the adoption of any amendment. Notice of the hearing shall be provided at least seven (7) days in advance of the hearing.

SECTION II. PURPOSES

A. The purposes of the Ordinance are:

1. to assure the comfort, convenience, safety, health and welfare of the people of the Town of Southwest Harbor.
2. to protect the environment; and
3. to promote the development of an economically sound and stable community.

B. The Planning Board shall consider the following criteria and before granting approval shall make findings of fact that the provisions of this Ordinance have been met and that the **proposed subdivision meets the following review criteria of Title 30-A, MRSA, Section 4404.**

1. **POLLUTION:** will not result in undue water or air pollution; In making this determination, the Board shall at least consider:
 - a. the elevation of the land above sea level and its relation to the flood plains;
 - b. the nature of soils and sub-soils and their ability to adequately support waste disposal;
 - c. the slope of the land and effect on effluents;
 - d. the availability of streams for disposal of effluents; and
 - e. the applicable health and water resources rules and regulations.
2. **WATER:** has sufficient water available for the reasonably foreseeable needs of the subdivision;
3. **GROUND WATER:** will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
4. **EROSION:** will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
5. **STORM WATER:** will provide adequate storm water management;
6. **SEWAGE PROPOSAL:** will provide for adequate sewage waste disposal;
7. **SOILD WASTE DISPOSAL:** will provide for adequate solid and sewage waste disposal;
8. **TRAFFIC:** will not cause unreasonable public road congestion or unsafe conditions with respect to use of the public roads existing or proposed;
9. **AESTHETIC, CULTURAL AND NATURAL VALUES:** will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites,

significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife, or the Town, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

10. **SURFACE WATER:** will not adversely affect the quality of that body of water or unreasonable affect the shoreline of that body of water whenever the proposed subdivision is situated on whole or in part, within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river.
11. **CONFORMITY WITH LOCAL ORDINANCES AND PLANS:** is in conformance with the Southwest Harbor Land Use Ordinance and the Southwest Harbor Comprehensive Plan;
12. **FLOOD WATERS:** will determine if the subdivision is in a flood hazard area (if it is, the proposed plan must include a condition of plat approval requiring that all principal structures within the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100 year flood elevation).
13. **FRESHWATER WETLANDS, RIVERS, STREAMS OR BROOKS:** all potential freshwater wetlands regardless of their size and all rivers, streams and brooks within or abutting the subdivision shall be identified on maps submitted as part of the application; and
14. **FINANCIAL AND TECHNICAL CAPACITY:** must have adequate financial capacity to meet the above criteria of this Ordinance.

SECTION III. PREAPPLICATION WORKSHOP

A. Purpose

The purpose of the pre-application meeting and on-site inspection is for the applicant to present general information regarding the proposed subdivision to the Board and receive the Board's comments prior to the expenditure of substantial sums of money on surveying , soils identification, and engineering by the applicant.

B. Procedure

1. The applicant shall present a sketch plan and make a verbal presentation regarding the site and the proposed subdivision.
2. The date and time of the on-site inspection shall be scheduled.

C. Submission

The Pre-application Sketch Plan, which may be a free-hand penciled sketch, shall show, in simple sketch form, the proposed layout of streets, lots, buildings and other features in relation to existing conditions. The sketch plan should:

1. be supplemented with general information to describe or outline the existing conditions of the site and the proposed development;
2. be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located;
3. be accompanied by a copy of a portion of the USGS Southwest Harbor Quadrangle, Bartlett Island Quadrangle, and Bass Harbor, Maine – Hancock Co. 7.5 Minute Series topographic map showing the outline of the proposed Subdivision. (The majority of the USGS maps have a contour interval of 6 meters, approximately 20 feet).

D. On-Site Inspection and Contour Interval

Within thirty (30) days of the Pre-application Meeting, at least two members of the Board shall hold an on-site inspection of the property. The Board shall then determine and inform the applicant in writing if they require a more precise contour interval than on the USGS maps for the formal application. The applicant shall place "flagging" at the centerline of any proposed streets, and at the approximate intersections of the street centerline and lot corners, prior to the on-site inspection. The Board shall not conduct on-site inspections when there is snow on the ground.

E. Rights not Vested

The workshop of the pre-application sketch plan and the on-site inspection shall not cause the plan to be a pending application under the protection of Title 1, MRSA, Section 302. This will occur at the time of the acceptance of the completed application.

SECTION VI. PRELIMINARY PLAN FOR SUBDIVISION APPROVAL

1. Within six months of a workshop, the sub-divider shall submit an application for approval with a preliminary plan based upon the sketch plan, plus any recommendations made by the Board.
2. All applications for preliminary plan approval for a subdivision shall be accompanied by an application fee of \$25 per lot or dwelling unit payable by check to the Town. A processing fee of \$40 shall be required to cover the cost of advertising and postal notification for public hearings. The Planning Board reserves the right to obtain an independent evaluation of a proposed development, to assist them in making necessary findings of fact. If the Planning Board deems such a study necessary, it will request a reasonable additional sum from the applicant to defray the cost of such study or studies. Any funds not utilized for consultant studies will be returned to the developer.
3. Upon receiving the application, the Town shall issue a dated receipt to the applicant and shall notify by mail all abutting property owners of the proposed subdivision, specifying the location of the proposed subdivision and a general description of the project.
4. Within 30 days from the dated receipt, the Planning board shall hold a meeting to determine if the application is complete. The Town shall notify the sub-divider in writing either that the application is a complete application, or, if the application is incomplete, the specific additional material needed to make a complete application.
5. After the Planning Board has determined that a complete application has been filed, it shall have 30 days within which to call a public hearing. The Town shall notify the sub-divider of the date, time and place of the public hearing, and cause this information to be published in a newspaper of general circulation in the Town, at least two (2) times, the date of the first publication to be at least 7 days prior to the hearing, and similarly notify the abutters to the subdivision by mail.
6. The sub-divider, or his duly authorized representative, shall attend the meeting of the Board to discuss the application.
7. The Board shall, within 30 days of a public hearing, or within another time limit as may be otherwise mutually agreed to by the Board and the sub-divider, make findings of fact on the application, and approve, approve with conditions, or deny the application based on the preliminary plan. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.
8. When approval to a preliminary plan is granted, the Board must state the conditions of such approval, if any with respect to:
 - a. the specific changes which it will require in the final plan;
 - b. the character and extent of the required improvements for which waivers may have been requested and which in the Board's opinion may be waived without jeopardy to the public health, safety, and general welfare; and

- c. the construction items for which cost estimates and performance guarantees will be required as prerequisite to the approval of the final plan.
9. Approval of a preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design of the preliminary plan as a guide to the preparation of the final plan. The final plan shall be submitted for approval of the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval, if any. Prior to the approval of the final plan, the board may required additional changes as a result of the further study of the sub-division or as a result of new information received.

B. Submission

1. **Location Map:** The preliminary plan shall be accompanied by allocation map adequate to show the relationship of the proposed subdivision to the adjacent properties. This map shall show:
 - a. any existing subdivisions in the proximity of the proposed subdivision;
 - b. location and names of any existing and proposed streets;
 - c. any boundaries and designations of zoning districts; and
 - d. an outline of the proposed subdivision and any remaining portion of the owner's property if the preliminary plan submitted covers only a portion of the owner's entire contiguous holding.
2. **Other Required Permits:** The preliminary plan application shall contain an advisory opinion from the appropriate Federal, State and Local agencies as to the application of their rules to this subdivision application.
3. **Preliminary Plan:** The preliminary plan shall be submitted in two copies of one or more maps or drawings which may be printed or reproduced on paper, with all dimensions shown in feet or decimals of a foot. The preliminary plan shall be drawn to scale of not more than 100' to the inch. The Board reserves the right to request such scale as it deems appropriate to the application. In addition, eight copies of the plan(s) reduced to a size of 8 ½ by 11 or 11 x 17 inches shall be submitted to the Board.

The following information shall either be shown on the preliminary plan or accompany the application for preliminary approval:

- a. proposed name of the subdivision, or identifying title; the name of the Town; and the Assessor's Map and Lot numbers;
- b. verification of right, title, or interest in the property;

- c. a standard boundary survey of the tract, giving complete descriptive data by bearings and distances, made and certified by a registered land surveyor. (The corners of the tract shall be located on the ground and marked by monuments);
- d. a copy of the most recently recorded deed for the parcel. A copy of all covenants or deed restrictions, easements, rights-of way, or other encumbrances currently affecting the property.
- e. a copy of any covenants or deed restrictions intended to cover all or part of the lots in the subdivision;
- f. the date the plan was prepared, north arrow, graphic map scale, names and addresses of the owner(s) of record, sub-divider, and individual or company who prepared the plan, and names of adjoining property owners.
- g. the number of acres within the proposed subdivision, location of property lines, existing buildings, water courses, vegetative cover type, and other essential existing physical features.
- h. the proposed lot lines with approximate dimensions and lot areas;
- i. the location, names and present widths of existing and proposed streets, easements, parks and other open spaces on or adjacent to the subdivision;
- j. the width and location of any roads or public improvements shown upon the official map and the Comprehensive Plan, if any within the subdivision;
- k. the parcels of land proposed to be dedicated to public use and the conditions of such dedication;
- l. the location of any open space to be preserved and a description of proposed ownership, improvements and its management;
- m. the names and addresses of the record owner, sub-divider, and individual or company who prepared the plan and owners of record of adjacent property, including any property directly across an existing public street from the subdivision;
- n. the zone in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision, noting particularly any Shoreland Zoning boundaries;
- o. the boundaries of any flood hazard areas in the 100-year flood elevation delineated on the plan if any portion of the subdivision is in the flood-hazard area.

- p. contour lines at the interval specified by the Board showing elevations in relation to Mean Sea Level (NGVD) shall be required for subdivisions near bodies of water.
- q. indication of the type of sewage disposal to be used within the subdivision;
 - i) connection to the public sewer: a letter shall be submitted from the Town indicating that there is adequate capacity within the Town's system to transport and treat the sewage;
 - ii) subsurface wastewater disposal: test pit analysis, prepared by a Licensed Site Evaluator, shall be provided for each proposed lot in the subdivision. The analysis shall include: lot number, test pit number, soil profile/condition (from Table 6-1 of the Plumbing Code), depth of pit, depth to seasonal high groundwater table, depth to restrictive layer, and depth to bedrock. A map showing the location of all test pits dug on the site shall be submitted.
 - iii) centralized or shared subsurface sewage disposal system: prepared by a licensed site evaluator for design flows less than 2000 gallons/day and prepared by a professional engineer if the design flow is greater than 2000 gallons/day. The Board may require that the applicant seek approval from the Department of Human Services. A map showing the location(s) of the system and legal documentation showing the necessary easements or covenants shall be submitted.
- r. indication of the type of water supply to be used within the subdivision:
 - i) public water supply: a letter shall be submitted from the Southwest Harbor Water Department indicating that there is adequate supply and pressure for the subdivision and approving the plans for extensions where necessary.
 - ii) evidence of adequate ground water supply and quality may be requested by the Board and this shall be submitted by a well driller of a hydro-geologist familiar with the area (this may include the request for a phosphate concentration impact analysis; if the proposed subdivision is within the watershed of a lake, stream, or coastal wetland, the phosphate concentration impact on the ground water must be determined);
- s. a copy of that portion of the State soil survey covering the subdivision including a legend and the soil interpretation sheet for the soils involved. (When the survey shows soils which are generally unsuitable for the uses proposed, the Board may require the submittal of a highly intensity soils survey by a registered soil scientist indicating the suitability of soil conditions for those uses);

- t. A storm water management plan shall be provided that is designed for maximum lot coverage allowed in the zone or to some lesser lot coverage percentage that the applicant stipulates will not be exceeded plus the additional impervious areas created for roads..
- u. the location and size of existing and proposed sewers, subsurface sewage systems, water mains, wells, culverts, utilities, and drainage ways on or adjacent to the property to be subdivided;
- v. a determination must be made whenever a subdivision is situated, in whole or in part, within 250' of any wetland, great pond or river, or within their watershed, that the proposed subdivision will not adversely affect the quality or unreasonably affect the shoreline of any body of water;
- w. a map identifying all freshwater wetlands regardless of size, rivers, streams, and /or brooks within or abutting the proposed subdivision (reference may be made to the Southwest Harbor Wetlands and Soil Maps);
- x. an estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours; (for subdivisions involving 40 or more parking spaces or projected to generate more than 400 vehicle trips per day, a traffic impact analysis, prepared by a registered professional engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets. Trip generation rates used shall be the mean value reported in Table 3 of "Development and Application of Trip Generation Rates", Kellerco, Inc., published by the Federal Highway Administration, January 1989); and
- y. a statement of adequate financial capacity demonstrating the financial ability of the sub-divider to complete the project.

SECTION V. FINAL PLAN FOR SUBDIVISION APPROVAL

A. Procedure

1. Within six months after the approval of the completed application submitted with the preliminary plan, the sub-divider shall file with the Town the application for approval with the final plan of the project. This plan shall approximate the layout shown on the preliminary plan plus any recommendations made by the Board.
2. An additional processing fee of \$40 shall be required to cover the costs of advertising and postal notification for the public hearing.
3. Upon receiving the application with the final plan, the Town shall issue a dated receipt to the applicant.
4. Within 30 days from the dated receipt, the Planning Board shall hold a meeting to determine if the submission requirements for Final Plan have been met, and if not, what specific information is still needed. The Town shall notify the sub-divider in writing either that the application with the Final Plan as submitted has met the requirements, or if not, the specific materials needed to do so.
5. Within 30 days after the issuance of the dated notice sent to the sub-divider by certified mail, the Town shall notify the sub-divider of the date, time and place of the public hearing and cause this information to be published twice in a newspaper of general circulation in the Town, the date of the publication to be at least 7 days prior to the hearing, and similarly notify the abutters to the subdivision by certified mail.

When a subdivision is located within 500 feet of a Town boundary, the Board shall notify the Clerk and the Planning Board of the adjacent Town involved, at least ten days prior to the hearing.

6. The Board shall notify the Road Foreman, School Officials, Police Chief, and Fire Chief of the proposed subdivision, the number of dwelling units proposed, the length of roadways, and the size and construction characteristics of any multi-family, commercial or industrial buildings. The Board shall request that these officials comment upon the adequacy of their department's existing capital facilities to service the proposed subdivision.
7. Before the Board grants approval of the application with the final plan, the sub-divider shall meet the performance guarantee requirements contained in Section X.
8. The Board, within 30 days from the public hearing, shall make findings of fact, and conclusions relative to the standards contained in Title 30 – A, MRSA, Section 440-4407 (or as amended and in this Ordinance). If the Board finds that all standards of the Statute and this Ordinance have been met, they shall approve the application with the final plan. If the Board finds that any of the standards of the Statute or this Ordinance have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the

subdivision. The reasons for any conditions shall be stated in the records of the Board.

B. Submission

1. **Location Map:** As required under preliminary plan application.
2. **Final Plan:** As required under preliminary plan application. In addition:
 - a. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of 2 inches outside the border line on the left side for binding and a one inch margin outside the border along the remaining sides.
 - b. Space shall be reserved on the plan for endorsement by the Board.
 - c. The plan must bear the seal of a professional land surveyor or other authorized design professional. If the plan is prepared by or under the responsible charge of a professional land surveyor, the plan shall include the signature as well as the seal of that surveyor. Note: the Registry of Deeds is unable to accept a plan for recording unless it is embossed with the seal of an architect, professional engineer or registered land surveyor.
 - d. Two reproducible, stable based transparent originals, one to be recorded at the Registry of Deeds, the other to be filed at the Town Offices, and three reproducible copies of the plan shall be submitted.
4. The application with the final plan submitted for approval shall include all of the information required under preliminary plan approval plus any recommendations made by the Board at that time and the following information:
 - a. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established. The length of all straight lines, the deflection angles radii, length of curves and central angles of curves, tangent distances and tangent bearings for each street shall be included.
 - b. A soil erosion and sedimentation control plan, prepared in accordance with the performance standards contained in the Land Use Ordinance. The Board may require that this plan be prepared by a qualified engineer.

C. Approval of the Application with the Final Plan

1. No plan shall be approved by the Board as long as the sub-divider is in violation of the provisions on a previously approved plan.

2. Upon findings of fact and determination as stated in the above paragraph A.9. and upon voting to approve the subdivision, the Board shall sign the final plans and specify any conditions for approval in writing on the plan. The Board shall specify in writing its findings of fact and reasons for any conditions of approval or denial. One paper copy of the signed plan shall be retained by the Board as part of its permanent records, one copy shall be forwarded to the Tax Assessor, and two shall be forwarded to the applicant (one of these plus the transparent original to be recorded by the applicant in the registry).
3. Any subdivision not recorded in the Registry of Deeds, within ninety days of the date upon which the plan is approved and signed by the Board shall become null and void.
4. The approval by the Board of a subdivision shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement, or other open space shown on such plan. When a park, playground or other recreation area shall have been shown on the plan to be dedicated to the Town, approval of the plan shall not constitute an acceptance by the Town of such areas. The Board shall require the plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the Town Officers covering future deed and title, dedication, and provision for the cost of grading, development, equipment and maintenance of any such dedicated area.
5. Failure to commence substantial construction of the subdivision within 5 years of the date of approval and signing of the final plan shall render the plan null and void. Upon determining that a subdivision's approval has expired under this paragraph, the Board shall have a notice placed in the Registry of Deeds to that effect.

SECTION VI. REVISIONS TO APPROVED PLANS

A. Procedure

An applicant for a revision to a previously approved plan shall, at least 14 days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. The procedures for preliminary plan approval shall be followed.

B. Submissions

The applicant shall submit a copy of the approval plan, as well as two copies of the proposed revisions to the Town. Eight copies of the proposed revisions reduced to a size of 8 ½ by 11 inches or 11 by 17 inches shall be submitted to the Board. The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the provisions of this Ordinance.

C. Scope of Review

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed. The Board's decision shall be accompanied by findings of fact based on the review criteria.

D. Recording

A subdivision plan presented for recording to the Registry of Deeds which is a revision to an existing plan shall cause the registry to:

1. indicate on the index for the original plan that it has been superseded by another plan and reference the book and page on which the new plan is recorded; and
2. ensure that the book and page on which the original plan is recorded is referenced on the new plan.

E. Re-subdivisions

All re-subdivisions within ten years from the date of approval must go before the Planning Board as a revision to the subdivision.

SECTION VII. ENFORCEMENT

A. Inspection of Required Improvements

1. If a variance is granted and considered a condition of the final subdivision approval it must be recorded at the Registry of Deeds and attached to the deed within 90 days of its granting.
2. Any person who develops a subdivision in a manner other than as depicted on the final approved subdivision plan shall be subject to penalties and fines in accordance with SECTION VII – B of this Ordinance.
3. At least 5 days prior to commencing each major phase of construction of required improvements (see SECTION VIII.A.), the sub-divider or builder shall notify the Code Enforcement Officer (CEO) in writing of the time when he proposes to commence construction of such improvements, so that all Town specifications and requirements shall be met during the construction stages and to assure the satisfactory completion of improvements and utilities required by the Board.
4. If the CEO 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 sub-divider, he shall so report in writing to the Town and the sub-divider shall obtain permission to modify the plans from the Board.
5. If at any time before or during the construction of the required improvements, it appears to be necessary or desirable to modify them, revised plans shall be filed with the Town and the sub-divider shall obtain permission to modify the plans from the Board.
6. By December 1st of each year during which construction was done on the site, the Town shall have the site inspected by the Code Enforcement officer. The CEO 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 to do the job they were designed for. The report shall also include a discussion and recommendations on any problems which were encountered. If the Board so determines that the services of a professional registered engineer are required to assess the stated problems, the expense shall be borne by the sub-divider.
7. Upon completion of street construction and prior to a vote by the Town Officers to submit a proposed Town way to a Town Meeting, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Town Officers at the expense of the applicant, certifying that the proposed Town way meets or exceeds the design and construction requirements of the Southwest Harbor Road Ordinance. If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility.

8. Prior to the sale of any lot, the sub-divider shall install all monumentation for that lot as shown on the plan.

B. Violations and Enforcement

1. No plan of a division of land within the Town 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 this Ordinance.
2. No person, firm, corporation or other legal entity may convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.
3. Any person, firm corporation or other legal entity who conveys any land in a subdivision which has not been approved as required by these regulations shall be punished by a fine of not less than \$100, and not more than \$2,500 for each such conveyance, offering or agreement. The Town may institute proceedings to enjoin the violation of this section, and may collect attorney's fees and court costs if it is the prevailing party.
4. No utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Board.
5. Development of a subdivision without Board approval shall be a violation of the law. Development includes grading or construction of roads, grading of land or logs, or construction of buildings which required a final plan approved as provided in these regulations and recorded in the Registry of Deeds.

SECTION VIII. GENERAL STANDARDS

In reviewing applications for a subdivision, the Board shall consider the following general standards and make findings that each has been met prior to the approval of the final plan. In all instances the burden of proof shall be upon the applicant and the Board reserves the right to require additional information.

A. Required Improvements

The following improvements are required for all subdivisions unless waived by the Board in accordance with provisions of these regulations.

1. Central Water Supply

if a central water supply system is provided by the sub-divider, the location and protection of the source, and the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144 A.C.M.R. 231: Maine Department of Human Services, Water Division).

2. Surface Drainage

The storm water management plan submitted in accordance with Section IX.B. shall be installed.

3. Subsurface Sewage Disposal

The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine licensed site evaluator in full compliance with the requirements of the state of Maine Subsurface Wastewater Disposal Rules. The test log shall include: lot number, test pit number, soil profile/condition (from Table 6-1 of the Plumbing Code), depth of pit, depth of seasonal high groundwater table, depth to restrictive layer, and depth to bedrock. In addition, on lots in which the limiting factor has been identified, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.

4. Monuments

Permanent monuments shall be set at or within 50' of all lot corners and street intersections on the interior or exterior boundaries of the subdivision. Additional monuments shall be set such that no interior, exterior or highway boundary segment exceeds 750' between monuments. The final plan shall indicate the location and character of all monuments. Monuments shall be iron pins or pipes of not less than $\frac{3}{4}$ " in diameter and may have "surveyor's caps", stone blocks with metal plates, or Federal Government specification monuments.

B. Impact on Ground Water

1. A ground water assessment by a qualified professional shall contain at least the following information:
 - a. a map showing the basic soils types;
 - b. projections of the subdivision's impact on ground water phosphate concentrations for subdivisions within the watershed of a lake;
 - c. a map showing the location of any subsurface wastewater disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision.

C. Land Features

1. Topsoil shall be considered part of the subdivision and shall not be removed from the site.
2. Except for normal thinning, landscaping and cutting trees to provide access to direct sunlight, existing vegetation shall be left intact to prevent soil erosion and to minimize storm water runoff.
3. To prevent soil erosion in shoreline areas, a buffer strip of vegetation shall be preserved within a strip of land extending 75' inland from the normal high-water line of a water body or upland edge of a wetland. The standards are specified in the Southwest Harbor Lane Use Ordinance in **SECTION VII. PERFORMANCE STANDARDS**, Paragraph B, page 30.

D. Access Control and Traffic Impacts

1. **General:** Provisions shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to safeguard against hazards to traffic and pedestrians in existing roads and within the subdivision, to avoid traffic congestion on any road and to provide safe and convenient circulation on public roads and within the subdivision.
 - a. The vehicular access to the subdivision shall be arranged to avoid traffic use of existing residential roads wherever possible.
 - b. Where a lot has frontage on two or more roads, the access to the lot shall be provided across the frontage where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.
 - c. The roads giving access to the subdivision and neighboring roads which can be expected to carry traffic to and from the subdivision shall have adequate traffic carrying capacity or be suitable improved by the sub-divider to

accommodate the amount and types of traffic generated by the proposed subdivision.

2. **Subdivision access design for subdivisions entering into arterial roads:**

When the access to a subdivision is a road, the road design and construction **standards of Article IX** shall be met. Where there is a conflict between the standards in this section and the standards of Article IX, the stricter or more stringent shall apply.

- a. **General:** Access design shall be based on the estimated volume using the access classification defined below.

Low volume access: <25 vehicles/day

Medium volume access: between low and high

High volume access: >400 vehicles/hour at peak volume

- b. **Sight distances:** Accesses shall be designed in profile and grading and located to provide the required sight distance measured in each direction. The required sight distances are listed below for various posted speed limits.

(Sight distances shall be measured from the driver's seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the curb line or edge of shoulder, with the height of the eye 3 ½ feet, to the top of an object 4 ½ feet above the pavement).

- i) **Two land roads:** 10' for each mile/hour of posted speed limit shall be maintained or provided;
- ii) **Vertical alignment:** accesses shall be flat enough to prevent the dragging of any vehicle undercarriage. Low volume accesses shall slope upward or downward from the gutter line on a straight line of 2% or less for at least 25 feet followed by a slope of no greater than 10% for the next 50'. The maximum grade at any point over the entire length shall not exceed 10: Medium and high volume accesses should slope upward or downward from the gutter line on a straight slope of 2% or less for at least 25'. Following this landing area, the steepest grade on the access shall not exceed 8%.

3. **Construction materials/paving:**

- a. All accesses entering a curbed road shall be curbed with materials matching the road curbing. Sloped curbing is required around all raised channelization islands or medians.
- b. All accesses shall be paved with bituminous concrete pavement within the road right-of-way. All commercial accesses regardless of access volume shall be paved with bituminous concrete pavement within 30 feet of the road right-of-way,

E. Retention of Open Spaces and Natural or Historic Features

1. The Board may require the reservation of up to ten percent of the area of the subdivision as open space in order to provide for the recreational needs of the occupants of the subdivision or to maintain the scenic or natural beauty of the area. In determining the need for open space the board shall consider the proximity of the subdivision to neighboring open space or recreation facilities; the needs identified in the Town Comprehensive Plan for open space or recreation facilities in the areas surrounding the subdivision; the type of development and the demographic characteristics of potential residents in the subdivision; and the density or lot sizes of the development.
2. The Board may require that the development plans include a landscape plan that will show the replacement of trees and vegetation, graded contours, streams and the preservation of scenic historic or environmentally significant areas.
3. If the proposed subdivision contains any identified historical or archeological sites, or any areas identified in the Comprehensive Plan or by the Maine Critical Areas Program as rare and irreplaceable natural areas, these areas shall be suitably protected by appropriate covenants and management plans.
4. Any public rights of access to the shoreline, of a water body shall be maintained by means of easements or right-of-way, or should be included in the open space, with provisions made for continued public access.

F. Conformance with the Comprehensive Plan, Other Plans, Codes and Ordinances

All proposed subdivisions shall be in conformity with the Comprehensive Plan or policy statement of the Town, and with the provisions of all pertinent state and local codes and ordinances.

G. Construction in Flood Hazard Areas

When any part of a subdivision is located in special flood hazard area as identified by the Federal Emergency Management Agency (FEMA), the plan shall indicate that all principal structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation. Such a restriction shall be included in the deed to any lot which is included or partially included in the flood hazard area. A permit must be obtained under the Southwest Harbor Flood Hazard Ordinance before any construction on these areas can begin.

SECTION IX. ROAD AND STORM DRAINAGE DESIGN AND CONSTRUCTION STANDARDS

A. General Requirements

1. The Board shall not approve any subdivision plan which has a road or roads which are intended for Town acceptance unless the proposed roads and the storm water management systems are designed in accordance with the Road Ordinance of the Town of Southwest Harbor. Approval of the final plan by the Board shall not be deemed to constitute or be evidence of acceptance by the Town of any road or easement.
2. The sub-divider shall submit to the Board, as part of the final plan, detailed construction drawings as specified in the Road Ordinance for roads which are proposed to be accepted by the Town. They shall submit construction information for roads in the subdivision which are to remain private roads based on the standards in Section IX.B.
3. Where the sub-divider proposes improvements with existing Town Ways, the proposed design and construction details shall be approved in writing by the Town's Road Foreman or the Maine Department of Transportation, as appropriate.
4. Upon receipt of plans for a proposed Town Way, the Board shall forward one copy to the Town Officer and one to the Town Road Foreman for review and comments. Plans for roads which are not proposed to be accepted by the Town shall be sent to the Town Planner for review and comment.
5. Where the subdivision roads are to remain private roads, the following words shall appear on the recorded plan.

"All roads in this subdivision shall remain private roads to be maintained by the developer, or the lot owners and shall not be accepted or maintained by the Town."

B. Private Road (or Right-of-Way) Standards

(see Land Use Ordinance for Road Standards)

1. **Design Standards:**

<u>Description</u>	<u>Requirements</u>
Minimum right-of-way	12' 24' or 30'
Minimum vehicular way	9' for the 12' & 24' ROW 20' for the 30' ROW
Minimum grade	0.5%
Maximum grade	10%
Minimum tangent between curves of reverse alignment	100'
Minimum angle of street intersection	60°
Maximum grade at intersection (within	

50' of intersection)	3%
Minimum sight distance	150'

*A 24' minimum vehicular way is required if more than 15% of the total traffic generated by any commercial and/or industrial use are vehicles or combination of vehicles of gross weight of more than 12,000 pounds. The way must meet the Road Construction specifications in B.S.

2. **Construction Standards:**

<u>Road Materials</u>	<u>Minimum Requirements</u>
Aggregate Sub-base	12'
Crushed aggregate base course	3"

C. Storm Water Management Design Standards

1. Adequate provisions shall be made for disposal of all storm water generated within the subdivision and any drained ground water through a management system of swales, culverts, under drains and storm drains. The storm water management system shall be designed to conduct storm water flows to existing watercourses or storm drains.
 - a. Where a subdivision is traversed by a stream, river or surface water drainage way, or where the Board feels that surface water runoff to be created by the subdivision should be controlled, there shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water within the subdivision and over the other properties. The Board may request that the storm water management systems be designed by a registered professional engineer.
 - b. Drainage easements of the storm water management systems shall be designed according to the Road Ordinance, section IX and X. When the subdivision discharges directly to the sea, peak discharge may be increased from predevelopment levels provided downstream drainage structures are suitably sized.
 - c. All components of the storm water management systems shall be designed according to the Road Ordinance, Sections IX and X. When the subdivision discharges directly to the sea, peak discharge may be increased from predevelopment levels provided downstream drainage structures are suitably sized.
2. Outlets shall be stabilized against soil erosion by stone riprap or other suitable materials to reduce storm water velocity. Whenever the storm drainage system is not within the right-of-way of a public way, perpetual easements shall be provided to the Town allowing maintenance and improvement of the system.
3. The storm drainage shall not overload existing storm drainage systems downstream from the subdivision. The sub-divider shall be responsible for financing any

improvements to existing drainage systems required to handle the increased storm flow.

D. Additional Improvements and Requirements

1. **Erosion Control.** The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction and cleanup stages.
2. **Cleanup.** Following road construction, the developer or contractor shall conduct a thorough cleanup of stumps and other debris from the entire street right-of-way. If onsite disposal of the stumps and debris is proposed, the site shall be indicated on the Plan, and be suitably covered with fill and topsoil, limed, fertilized and seeded.

E. Certification of Construction

“As Built” plans shall be submitted to the Town Officers. Upon completion of road construction and prior to a vote by the Town Officers to submit a proposed public way to the legislative body, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Town Officers at the expense of the applicant, certifying that the proposed way meets or exceeds the design and construction requirements of the Road Ordinance and these regulations.

SECTION X. PERFORMANCE GUARANTEES

A. Types of Guarantees

With submittal of the application for final plan approval, the sub-divider shall provide one of the following performance guarantees for an amount required to cover the total construction costs of all covered improvements, taking into account the time span of the construction schedule.

1. either a certified check payable to the Town or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account;
2. a performance bond payable to the Town issued by a surety company, approved by the Board of Selectmen and the Town Manager, or;
3. an irrevocable letter of credit from a financial institution, establishing funding for the construction of the subdivision, from which the Town may draw if construction is inadequate. This credit must be approved by the Board of Selectmen and the Town Manager.

The conditions and amount of the performance guarantee shall be determined by the board with the advice of the Town Officers and/or Town Attorney.

B. Contents of Guarantees

The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspection of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the developer will be in default and the Town shall have access to the funds to finish construction.

C. Escrow Account

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the Town, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the sub-divider, the Town shall be named as owner, and the consent of the Town shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the sub-divider unless the Town has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the sub-divider and the amount withdrawn to complete the required improvements.

D. Performance Bond

A performance bond shall detail the conditions of the bond, the method for release of the bond, or portions of the bond to the sub-divider, and the procedures for collection by the Town. The bond documents shall specifically reference the subdivision for which approval is sought.

E. Letter of Credit

An irrevocable letter of credit from a bank or other lending institution 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.

F. Release of Guarantee

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 Code Enforcement Officer 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.

G. Default

If, upon inspection, the Code Enforcement officer finds 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 Board and the sub-divider or builder. The Town Officers shall take any steps necessary to preserve the Town's rights.

SECTION XI. WAIVERS

- A. Where the Board makes written findings of fact that there are special circumstances of a particular site proposed to be subdivided, it may waive portions of the submission requirements, the standards, the requirements or the performance guarantees unless otherwise indicated in the regulations, to permit a more practical and economical development, provided the public health, safety and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the LUO, the Comprehensive Plan, or the provisions of this Ordinance and provided the criteria of the State Subdivision Law are met.
- B. In granting waivers to any of these regulations in accordance with the above, the Board shall require such conditions as will assure the objectives of these regulations are met.
- C. When the Board grants a waiver to any of the standards of these regulations, the final plan shall indicate the waivers granted and the date on which they were granted.

SECTION XII. APPEALS

An aggrieved party may appeal any decision of the Board under these regulations of the Board of Appeals within 30 days.

SECTION XIII. DEFINITIONS

In general, words and terms used in this Ordinance shall have their customary dictionary meanings. More specifically, any word or term defined in the Southwest Harbor Land Use Ordinance shall have the definition contained in that Ordinance, unless defined differently below; other words and terms used herein are defined as follows:

Complete Application – An application shall be considered complete upon submission of the required fee and all information required by these regulations for a preliminary plan. The Board shall issue a receipt to the applicant upon its determination that an application is complete.

Comprehensive Plan – Any part or element of the overall plan or policy for development of the Town as defined in Title 30- A MRSA Section 4502.

Contiguous Lots – Lots which adjoin at any line or point, or are separated at any point by a body of water less than 15' wide.

Covered Improvements – Public improvements (roads, sidewalks, sewer, water), storm water control and erosion control.

Densely-Developed Area – Any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.

Driveway – A vehicular way within a lot.

Dwelling Unit – Any part of a structure which, through sale or lease, is intended for human habitation. For example: a dwelling unit includes a single-family dwelling, each unit of a multi-family dwelling, a condominium unit, and a time-share unit.

Final Plan – The final drawings on which the applicant's plan of subdivision is presented to the Board for approval and which, if approved, may be recorded at the Registry of Deeds.

Freshwater Wetlands – Freshwater swamps, marshes, bogs and similar areas which are inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances to support, a prevalence of wetland vegetation typically adapted for life in saturated soil. They are not considered part of a great pond, coastal wetland, river, stream or brook.

High Intensity Soil Survey – a map prepared by a certified soil scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to point identifying the following textural classification and the depth to seasonal high water table or bedrock at that point. Single soil test pits and their evaluation for suitability for subsurface wastewater disposal systems shall not be considered to constitute high intensity soil surveys.

New Structure – Includes any structure for which construction began on or after September 23, 1088. The area included in the expansion of an existing structure is deemed to be a new structure for the purpose of this subchapter.

NGVD – National Geodetic Vertical Datum

Official Submittal Date – The date upon which the Board issues a receipt indicating a complete application has been submitted.

Person – Includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual.

Preliminary Subdivision Plan – The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Board for its consideration.

Principal Structure – Any structure in which the main use of the premises occurs.

Recording Plan – An original of the Final Plan, suitable for recording at the Registry of Deeds and which need show on it information relevant to the transfer of an interest in the property, and which does not show other information presented on the plan such as sewer and water line locations and sizes, culverts and building lines.

Re-subdivision – Any division of an existing subdivision or any change in the plan for an approved subdivision which effects the lot lines, including land transactions by the sub-divider not indicated on the approved plan.

Right-of-Way – A legal right of passage over another person's ground or the area over which a right-of-way exists.

Road – A vehicular way giving access to one or more lots.

Streams, Brooks – A channel between banks including the floodway and associated flood plain wetlands where the channel is created by the action of the surface water and characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of top soil containing water-borne deposits on exposed soil, parent material or bedrock.

Structure – (see SWH LUO and New Structure defined above)

Substantial – Expansion by more than 30% measured as a percentage of estimated total cost.

Tract, or Parcel of Land – All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road.