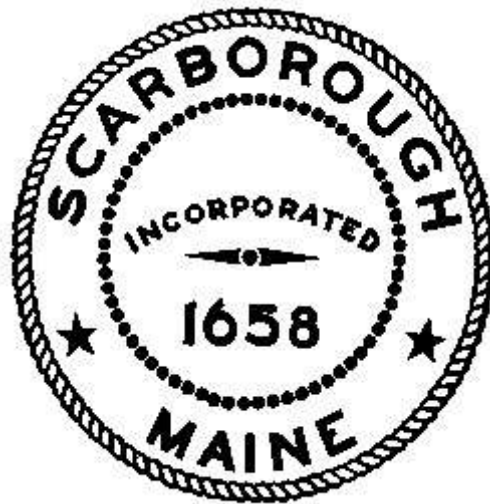


**CHAPTER 406**

**TOWN OF SCARBOROUGH**

**SUBDIVISION ORDINANCE**



**ENACTED AUGUST 18, 1971**  
**EFFECTIVE SEPTEMBER 17, 1971**  
**AMENDED APRIL 8, 1976**  
**AMENDED APRIL 14, 1982**  
**AMENDED MAY 18, 1988**  
**AMENDED FEBRUARY 2, 1994**  
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**CHAPTER 406**  
**SUBDIVISION ORDINANCE**  
**TOWN OF SCARBOROUGH, MAINE**

**SECTION 1. TITLE**

This ordinance shall be known and may be cited as the “Scarborough Subdivision Ordinance.” It is adopted under the authority of 30-A M.R.S.A. § 4403(2) and 30-A M.R.S.A. § 3001.

**SECTION 2. PREAMBLE**

This ordinance regulates the subdivision of land within the Town of Scarborough; defines subdivision; requires the approval of any subdivision by the Planning Board of the Town of Scarborough before any work may be commenced, and establishes procedures therefore; states the contents required for preliminary and final subdivision plans; establishes minimum standards for subdivision design and construction; and prescribes penalties for the violation of its provisions.

**SECTION 3. DEFINITIONS**

For the purposes of this ordinance, certain terms used herein are defined below. Terms not defined in this Ordinance have the same meaning as in 30-A M.R.S.A. § 4401, as amended from time to time.

**AFFILIATE OF THE SUBDIVIDER:**

Any person or entity which (a) is a direct or indirect corporate parent or subsidiary of the subdivider, (b) is a spouse, parent or child of the subdivider, or (c) directly or indirectly (i) owns or controls the subdivider, (ii) is owned or controlled by the subdivider or (iii) is under common ownership or control with the subdivider. For purposes of this definition, control shall mean the power to direct the management or policies of such entity, whether through ownership of voting shares, by contract or otherwise.

**DEFAULT:**

A subdivider is in default of the performance guarantee provided under section 9 of this Ordinance if the required improvements have not been completed within the time limits established under section 9 or if any of the required improvements which have been constructed fail to comply with the plans and specifications submitted with the subdivision application.

**LOT:**

A parcel of land in single ownership occupied or capable of being occupied by one building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by the Zoning Ordinance of the Town of Scarborough.

**PRIVATE STREET:**

Any way that meets the design and construction standards of the Town of Scarborough Street Acceptance Ordinance but which is not dedicated for acceptance by the Town and which is intended to remain privately owned.

**REPRODUCIBLE MEDIUM:**

A material and format acceptable for recording in the Cumberland County Registry of Deeds and approved by the Town Planner.

**STREET:**

A public way which affords the principal means of access to abutting properties, or a proposed way that is intended to be accepted by the Town as a public way in accordance with the Street Acceptance Ordinance, or a private street as defined in this ordinance.

**SUBDIVIDER:**

An individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity, or agent thereof, that undertakes the activities governed by this ordinance. The term "subdivider" is intended to include the term "developer" and "builder."

**WETLANDS:**

For the purpose of this ordinance the term "wetlands" encompasses both freshwater and coastal wetlands.

**SECTION 4. PURPOSE, AND INTERPRETATION, AND REVIEW CRITERIA**

The purposes of this ordinance are to promote the development of an economically stable and sound community; to provide safe and adequate streets, utilities and other services to new land development; to provide convenient and safe traffic circulation and access; to assure generally the development of areas in a manner consistent with any comprehensive plan for the Town of Scarborough; to clarify the approval criteria of the state Subdivision Law, found in Title 30-A M.R.S.A. § 4404, to protect the environment and conserve the natural and cultural resources identified in the Scarborough Comprehensive Plan as important to the community; to minimize the potential impacts from new subdivisions on neighboring properties and on the town; and to provide uniform procedures and standards for observance by the Planning Board and Subdividers. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements for the protection of public health, safety and welfare. To this end, in evaluating any proposed subdivision of land within the Town of Scarborough, Maine the Planning Board shall determine that such subdivision will meet the design standards set forth in this Ordinance, will comply with all other pertinent State and Local codes and ordinances, and will comply with the following review criteria:

- A. The proposed subdivision will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;
- B. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;
- C. The proposed subdivision will not cause an unreasonable burden on an existing water supply if one is to be utilized;

- D. The proposed subdivision 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;
- E. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;
- F. The proposed subdivision will provide for adequate sewage waste disposal;
- G. The proposed subdivision will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;
- H. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
- I. The proposed subdivision is in conformance with this Subdivision Ordinance, the Scarborough Comprehensive Plan, the Scarborough Zoning Ordinance, the Scarborough Shoreland Zoning Ordinance (if applicable), the Scarborough Site Plan Review Ordinance (if applicable) and all applicable State and Local codes and regulations; in making this determination, the Planning Board may interpret the Comprehensive Plan and applicable local ordinances, codes and regulations;
- J. The subdivider has adequate financial and technical capacity to meet the standards of this Ordinance;
- K. Whenever situated in whole or in part, within 250 feet of any pond, lake, stream, river, wetland or tidal waters, the proposed subdivision will not adversely affect the quality of such body of water or wetland or unreasonably affect the shoreline of such body of water or wetland;
- L. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;
- M. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant, the Planning Board shall determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;
- N. All wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any

mapping of wetlands may be done with the help of the local soil and water conservation district;

- O. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in Title 38 M.R.S.A., section 480-B, subsection 9;
- P. The proposed subdivision will provide for adequate storm water management;
- Q. If any lots in the proposed subdivision have shore frontage on a river, stream, brook or coastal wetland as these features are defined in Title 38 M.R.S.A., section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;
- R. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

## **SECTION 5. ADMINISTRATION**

5:1 The Planning Board of the Town of Scarborough, hereinafter called the Board, shall administer this ordinance.

5:2 Whenever any subdivision is proposed or before any contract for the sale or offer to sell such subdivision or any part thereof shall have been negotiated, or before any permit for the erection of any structure within such subdivision shall be granted, or before any utility installations, ditching, grading, construction of roads, grading of land or lots shall be done on any subdivision, the subdividing owner or his authorized agent shall apply formally to the Board for approval of a Final Plan of such subdivision, which plan shall be in conformance with all of the requirements, design standards and specifications set forth in this ordinance, and shall record an attested copy of the Final Plan so approved and so endorsed in the Cumberland County Registry of Deeds.

5:3 When an application for subdivision approval is received and accepted by the Town Planner, the Planner shall give a dated receipt to the applicant and shall notify by mail all property owners within 500 feet of the proposed subdivision, and the clerk and the planning boards of municipalities that abut or include any portion of the subdivision, specifying the location of the proposed subdivision and including a general description of the project. The Town Planner shall also notify by mail a public drinking water supplier if the subdivision is within its source water protection area. The Town Planner shall not accept the application if the subdivider or an affiliate of the subdivider is in default on any performance guarantee on any other development within the Town or is in arrears on any fees owed to the Town of Scarborough in connection with any other development within the Town. When the Town Planner has accepted the application and determines that thirteen (13) copies of all material apparently required to constitute the application have been submitted, he shall promptly so advise the Planning Board and schedule consideration of the application for its next following meeting. He shall promptly notify the applicant of the time and place for such meeting, and he shall transmit to each Planning Board member a copy of the application material. He shall advise the Board of his comments and recommendations regarding additional information which might be useful to the Board, other

permits or approvals which the subdivision might require, and the apparent timetable for Planning Board action.

5:4 As to any intended subdivision of land, the subdivider shall prepare and formally submit to the Board both a Preliminary Plan for study, and modification where required, and a Final Plan. The Final Plan shall not be prepared until the subdivider has received from the Board written notice that a majority of the Board has approved the Preliminary Plan of such subdivision.

5:5 The Director of Public Works and the Engineer shall make reports to the Planning Board with respect to the adequacy of the design standards and specifications of the proposed street or private street, including the need for street lighting and storm drains. Said report must be submitted before any approval is granted. The Planning Board may also engage the services of one or more professional consultants to conduct peer review of the materials submitted by the subdivider, the costs of which shall be paid by the subdivider as provided in Section 11 of this Ordinance.

5:6 Prior to submission of the subdivision application and the Preliminary Plan, an applicant may choose to present a sketch plan for review by the Planning Board at a pre-application meeting. At such meeting, the Planning Board and the applicant may discuss the lot layout, road design and other features of the proposed plan, as well as the format, procedures and process for reviewing the subdivision. Any such pre-application meeting shall be scheduled by the Town Planner once the Town Planner has determined that the applicant has submitted sufficient information for the Planning Board to consider, including a sketch plan containing the following information:

- (1) Subdivision name, boundaries, acreages, tax map and lot numbers, magnetic and grid north point, date and graphic scale.
- (2) Location Plan – A location plan of the subdivision, at a scale of 1000-2000 feet to the inch, showing right of way lines of all proposed streets in the subdivision and their location in relation to existing streets and readily identifiable as to locus on the Scarborough Zoning Map.
- (3) Name and address of record owner, subdivider, and engineer, surveyor, firm, or individual who prepared the plan.
- (4) Existing and proposed lines of streets, ways, easements, lots and any public or common areas within the subdivision.
- (5) Location, name, and present width of each street and public or private way bounding or within 500 feet of the subdivision.
- (6) Approximate locations of existing buildings and site features such as wooded areas, wetlands, and water bodies within or adjacent to the proposed subdivision.

A plan considered by the Planning Board in pre-application meeting is not considered a complete or pending application and creates no vested rights. Submittal of the pre-application sketch plan and review of the pre-application sketch plan by the Planning Board shall not be considered to create a pending proceeding under 1 M.R.S.A. § 302.

## **SECTION 6. GENERAL REQUIREMENTS**

6:1 Any proposed subdivision shall be in conformity with any Comprehensive Plan of the Town of Scarborough and with the provisions of all pertinent State and Local codes and ordinances.

6:2 Land designed for public use may not be subdivided for any other purpose.

6:3 Any proposed subdivision shall be reviewed by the Board with respect to its effect upon existing community services and facilities including schools and recreational areas. The Board shall consider open space for future community facilities and may withhold approval of final plans pending such designation.

6:4 any proposed subdivision shall be so designed that every lot has access to a street.

6:5 Any natural drainageways and their easements shall be utilized so that no flooding will occur and all storm water can be disposed of properly.

6:6 The Board may require that a proposed subdivision design conserve such features as trees, streams, topography, and other natural assets.

6:7 Street trees, esplanades and open spaces may be required at the discretion of the Board. When such improvements are required they shall be incorporated in the Final Plan.

6.8 Any historic or archeological resource that has been identified by the Maine State Historic Preservation Office, the Town's adopted Comprehensive Plan, or Section VII.H. Historic Preservation Provisions of the Town of Scarborough Zoning Ordinance should be preserved and incorporated into the subdivision plan in a manner that retains its historic or archeological value if feasible. If an identified resource will be removed or will be altered in a manner that diminishes its historic or archeological value, the burden is on the applicant to demonstrate that options for preserving the resource have been explored. The Planning Board, Planning Department, and the applicant may consult the State Historic Preservation Office, the Scarborough Historical Society, or similar organizations with the mission of historic and archeological preservation on options for preserving the resource. If the resource will be removed, the applicant must demonstrate that reasonable efforts have been made to preserve the resource value or relocate it to another location. [Amended 03/18/2015]

6.9 Within the Town's designated growth areas as depicted in the current version of the Comprehensive Plan, the Town of Scarborough's Planning Board has municipal capacity to review subdivisions that otherwise would require review by the Maine Department of Environmental Protection under the Site Location of Development Law. This authority has been provided for under 38 M.R.S.A. Section 488 (19). Municipal capacity shall only apply to subdivisions that are located wholly within the Town of Scarborough and wholly within a designated growth area. All other subdivisions that meet or exceed the thresholds for Site Location of Development Law shall be reviewed by the Maine Department of Environmental Protection accordingly. Municipal capacity within the Town's growth areas shall apply to both new subdivisions and modifications to past subdivisions that may have existing Site Location of Development approvals.



In addition to meeting the standards and requirements of this Ordinance, the Scarborough Zoning Ordinance, and any other applicable local ordinances, subdivisions that include fifteen (15) or more lots on thirty (30) or more acres shall also be submitted and reviewed by the State of Maine regarding significant wildlife and fisheries habitat and natural resources and significant historic and archeological resources as follows:

- (a) The Maine Department of Inland Fisheries and Wildlife shall be provided with a complete site plan application and shall have the ability to review and provide advisory comments on the site plans' impact on any significant wildlife habitat, aquatic habitat, fisheries habitat, or wildlife travel corridor. The Planning Board shall not issue a final decision on a site plan application until it receives comments from the Maine Department of Inland Fisheries and Wildlife or thirty (30) days from the submission of the application to the department, whichever comes first.
- (b) The Maine Historic Preservation Commission shall be provided with a complete site plan application and shall have the ability to review and provide advisory comments on the presence of any significant historic or archeological resources that may exist on the site. The Planning Board shall not issue a final decision on a site plan application until it receives comments from the Maine Historic Preservation Commission or thirty (30) days from the submission of the application to the department, whichever comes first.

## **SECTION 7. PRELIMINARY PLAN REQUIREMENTS AND PROCEDURES**

7:1 A request for approval of a subdivision shall be made to the Board in writing and shall be accompanied by a Preliminary Plan, that shall be drawn at a scale between 20 and 100 feet to the inch. The Preliminary Plan shall be accompanied by a location map showing the relationship of the proposed subdivision to adjacent properties and public access and drawn at no smaller scale than 500 feet to the inch.

7:2 When practical, a standard sized sheet 24" x 36" shall be used for all plans and shall contain the following information:

- (a) Name of Subdivision, owner(s), engineer(s), and surveyor(s).
- (b) Graphic scale, date and grid point.
- (c) Existing Zoning.
- (d) Ownership and location of abutting properties.
- (e) Name, location, width, profile, cross-section, radius of curves, angles or change in direction and center line, length of all existing and/or proposed public or private streets, other public ways, building lines and easements in the subdivision. All street names shown for proposed streets located in a subdivision shall be checked against local records to assure that none are duplicates of existing street names or so similar as to cause confusion.
- (f) Type, location, profile and cross-section of all existing and/or proposed surface water drainage.
- (g) Location of all existing and/or proposed utilities - water, gas, electricity or other.

- (h) Location of all existing and/or proposed sanitary sewers showing size, profile, and cross-section; or description, plan, location, if other means of sewage disposal with evidence of the nature of soils and subsoils and their ability to adequately support sewage waste disposal as required by the Scarborough Plumbing Ordinance and the Maine State Plumbing Code, Part II, and that the land is suitable for subsurface sewage disposal systems.
- (i) Topography at two (2) foot contour intervals, unless otherwise prescribed by the Planning Board and Town Engineer. In addition, the location of existing natural or manmade features and soils conditions influencing the layout of the proposed subdivision shall be shown.
- (j) Lot lines and approximate dimensions.
- (k) Proposed uses of property.
- (l) Proposed public areas, if any.
- (m) Location and boundaries of wetlands.
- (n) 100-year flood elevations.
- (o) Any requested waivers from the standards of this Ordinance.
- (p) The location and description of all historic and archeological resources on the parcel as identified by the Maine State Historic Preservation Office, the Town's adopted Comprehensive Plan, or Section VII.H. Historic Preservation Provisions of the Town of Scarborough Zoning Ordinance together with a narrative describing how these resources can be preserved and incorporated into the subdivision plan. If an identified resource will be removed, altered, or not included as part of the subdivision plan, a statement shall be provided as to why the resource cannot be preserved and the options considered but rejected for including it as part of the plan. [Amended 03/18/2015]

7:3 In addition to the Preliminary Plan, the Board may require the subdivider or others to undertake studies where deemed necessary or desirable to protect the public convenience, safety, health and welfare.

7:4 An application for approval of a Preliminary Plan shall be considered at a regular meeting of the Board within 30 days of receipt of such application. The Board shall, after such consideration and within 30 days of receipt of an application and Preliminary Plan, issue a written statement informing the subdivider or his authorized agent of approval, disapproval or conditional approval or of any changes required prior to the submission of the Final Plan.

7:5 No final plan shall be approved by the Board unless submitted by the subdivider or his authorized agent within 12 months from the issuance of Preliminary Approval.

**SECTION 8. FINAL PLAN REQUIREMENTS AND PROCEDURES [Amended 08/20/2008]**

8:1 A request for Final Approval of a subdivision shall be made to the Board in writing and shall be accompanied by a Final Plan of such subdivision legibly drawn in black ink on a permanent reproducible medium. The Plan shall be drawn at such scale as may be prescribed by the Board as being adequate to show all details clearly.

8:2 The Plan shall be presented on one or more sheets of standard 24" x 36" size and shall contain the following information:

- (a) All the information required for the Preliminary Plan and amendments thereto requested by the Planning Board.
- (b) Existing and final proposed lines of streets, ways, lots, easements for utilities and/or drainage and public areas within the subdivision.
- (c) Sufficient data to determine the exact location, direction, and length of every street line, easement, lot lines and boundary line and to reproduce these lines upon the ground.
- (d) Location of all permanent monuments existing and/or proposed wherever in the opinion of the Board, such monuments are necessary to properly determine the location on the ground.
- (e) Lot and map numbers and letters in accordance with the prevailing policy on existing tax maps.
- (f) Designation of the location, size, planting and landscaping of such parks, esplanades or other open spaces as may be proposed or prescribed.
- (g) The seal(s) and/or appropriate stamps of the Professional Land Surveyors and, Professional Engineers, responsible for the preparation of the subdivision proposals.
- (h) Any waivers from the standards of this Ordinance.

8:3 The Final Plan shall be accompanied by certification from authorized local public officials and/or agencies that the design of sewer and drainage facilities, streets and utilities in the proposed subdivision conform to the requirements of all pertinent State and Local codes and ordinances. The cost of certification and/or inspection shall be borne by the subdivider.

8:4 The Board shall consider a Final Plan at a regular meeting within thirty days of submission of such Final Plan.

8:5 The Board shall determine by vote whether to approve the Final Plan, approve the Final Plan with conditions or deny approval of the final plan. The Board's vote shall constitute the Board's decision and order on the subdivision application. The approval of a Final Plan shall be attested on the original plan on reproducible medium and three copies by the signatures of a legal majority of the members of the Board. Signing of the Final Plan may ~~be deferred to a meeting occur~~ subsequent to approval of the Plan, ~~but no later than 30 days after the Board's vote and does not require a meeting of the Board~~. In addition, the subdivider shall provide a copy of the recording plan in digital format in compliance with the current specifications for placement in the Town's GIS database which is based on the Maine State Grid. Specifications are on file with the Town Planning Office.

8:6 A Final Plan on reproducible medium shall be retained by the Board. The subdivider shall record the approved Final Plan with the Cumberland County Registry of Deeds within ninety days after the date on which the Board vote to approve the subdivisions. The Town Planner shall not release the attested final plan on reproducible medium to the subdivider for recording until the subdivider has provided the performance guarantee required by section 9 of this Ordinance, and all fees required under section 11 of this Ordinance. In addition, the Town Planner shall not release the attested final plan on reproducible medium for recording if the subdivider or an

affiliate of the subdivider is in default on any performance guarantee on any other development within the Town or is in arrears on any fees owed to the Town of Scarborough in connection with any other development within the Town.

## **SECTION 9. PERFORMANCE GUARANTEES**

9:1 In order to insure completion of all improvements required by the Town of Scarborough, Maine the subdivider shall furnish to the Town Treasurer a performance guarantee prior to the recording of the Final Plan. Said performance guarantee may be in the form of cash, certified check payable to the Town of Scarborough, or an irrevocable letter of credit in a form and from an issuer acceptable to the Town Treasurer. In determining the acceptability of the issuer, the Town Treasurer may rely on any published information available concerning the issuer's financial condition and projected financial condition during the term of the letter of credit. The determination of the Town Treasurer on the acceptability of the issuer is final and not appealable. The amount of such performance guarantee (the "Stated Amount") shall be approved by the Board and the Town Treasurer, and shall be in an amount at least equal to the total cost of furnishing, installing, connecting and completing all of the street grading, paving, storm drainage and utilities or other improvements specified and shall be conditioned on the completion of all such specified improvements within 30-months of the date the Performance Guarantee is furnished. The performance guarantee may allow for, but shall not require, periodic reductions of the State Amount as portions of the specified improvements are determined by the Town Engineer to be complete, provided that each such reduction shall be limited to 85 percent of the cost of the improvements for which the reduction is allowed. In no event shall the performance guarantee be reduced to less than 15 percent of the Stated Amount until all the specified improvements have been completed and inspected and all fees due under Section 11 below or pursuant to any conditions of approval have been paid in full.

9:2 The Board may grant one or more extensions of up to exceed 12 months beyond the guaranteed performance period when the subdivider can demonstrate, to the satisfaction of the Board good cause for such extension; provided, however, that the performance guarantee shall remain in full force and effect during any such extension period and that the total duration of the original performance guarantee and any extensions granted under this Section 9.2 shall not exceed five years from the date on which the original performance guarantee was furnished. The Planning Board may not grant an extension if the subdivider or an affiliate of the subdivider is in default on any performance guarantee on any other development within the Town or is in arrears on any fees owed to the Town of Scarborough in connection with any other development within the Town.

9:3 Before a subdivider may be released from any obligation required by his guarantee of performance, the Board shall require certification from the various departments and agencies concerned to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards, State and Local codes and ordinances.

9:4 At the time of approval of the final plan, the Planning Board may approve the construction of the subdivision in specifically identified phases and allow the subdivider to furnish separate performance guarantees for each phase prior to commencement of construction of each phase,

provided that the performance guarantee furnished for any individual phase must secure the construction of all required improvements within such phase plus any improvements located in other phases which are necessary in order for the phase being constructed to comply with the requirements of this Ordinance should subsequent phases not be constructed. The time limits of sections 9:1 and 9:2 shall apply separately to each phase. In addition, the time limits of section 9:1 and 9:2 may be modified for a phased subdivision pursuant to a contract zoning agreement approved by the Scarborough Town Council under the Scarborough Zoning Ordinance.

## **SECTION 10. STREET INFRASTRUCTURE DESIGN STANDARDS**

10:1 The design of streets shall provide for proper continuation of streets from adjacent subdivisions and built-up areas and proper projection of streets into adjacent unsubdivided and open land.

10:2 All public streets constructed after December 4, 2003 shall comply with the appropriate design standards and specifications set forth in the Street Acceptance Ordinance of the Town of Scarborough, Maine.

10:3 If access to the street or streets within the subdivision is from an existing private street which does not meet such design standards and specifications, the subdivider shall cause such existing road to be brought into compliance with such standards and specification.

10:4 When considering private street proposals the Planning Board shall require that the developer clearly identify the party responsible for maintenance of the private street. A note shall be placed on the final plan and incorporated into each deed stating that the proposed street is not dedicated for acceptance by the Town.

## **SECTION 11. FEES**

a. Prior to the submission of a preliminary plan the subdivider shall pay to the Town Treasurer an application fee. Said fee shall be non-refundable and shall be computed as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council. For subdivisions involving attached single-family dwellings, multi-family dwellings or condominiums, the fee shall be calculated by the number of units rather than the number of lots.

b. Prior to the release of the Final Plan to the subdivider for recording, the subdivider shall pay to the Town Treasurer a Peer Review and Construction Inspection fee. Said fee shall be non-refundable and shall be computed and paid as follows:

1. The amount of the fee shall be determined by the Town Engineer, and shall include the actual costs incurred by the Town to engage consultants to undertake peer review of the subdivider's submissions plus the estimated cost to the Town of retaining the services of a qualified construction monitor under the employ of a licensed professional engineer to observe and monitor all construction of required improvements. In fixing the amount, the Town Engineer may consider the complexity of the improvements, the overall cost of the subdivision, the anticipated construction schedule, and any other factors relevant to estimating the cost of monitoring.

2. If, upon completion of the required improvements, the actual cost of monitoring and inspection exceeds the amount paid at the time of submission of the final plan, the subdivider shall pay the additional amount to the Town Treasurer before the subdivider shall be released from his obligations under the Performance Guarantee provided under Section 9 of this Ordinance, such additional amount being deemed a required improvement under the Performance Guarantee. If, upon completion of the required improvements, the actual cost of monitoring and inspection is less than the amount paid at the time of submission of the final plan, the Town shall return the unused portion to the subdivider.

## **SECTION 12. VALIDITY AND CONFLICT OF ORDINANCES**

12:1 In the event that any section, subsection or any portion of this Ordinance shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection, or other portion of this Ordinance.

12:2 In the event that any provision of this ordinance is in conflict with any provision of any other federal, state or local statute, ordinance or regulation, the provision which establishes the most stringent requirement shall prevail.

## **SECTION 13. WAIVERS**

### **13:1 Waivers of Submission Requirements Authorized.**

Where the Planning Board determines there are special circumstances relating to a particular parcel proposed to be subdivided, it may waive portions of the submission requirements, except any submission requirements as to which the Ordinance specifically prohibits waiver. For a waiver to be granted, the applicant must demonstrate in writing that the Planning Board can evaluate the proposed subdivision under the standards of 30-A M.R.S.A. §4404 and of this Ordinance without the information contained in the submissions for which the applicant requests a waiver.

### **13:2 Waivers of Standards Authorized.**

Where the Planning Board makes written findings of fact that, due to special circumstances of a particular parcel proposed to be subdivided, compliance with certain of the standards of 30-A M.R.S.A. §4404 or of this Ordinance is not required, the Board may waive such requirement of standard, subject to appropriate conditions, provided the waivers do not have the effect of nullifying the intent and purpose of the Scarborough Comprehensive Plan, the Zoning Ordinance, or this Ordinance, and provided that the public health, safety, and welfare will not be compromised by the waiver.

### **13:3 Conditions.**

Waivers may only be granted in accordance with Sections 13:1 and 13:2. When granted waivers the Board may set conditions so that the purposes of these regulations are met.

**13:4 Waivers to be Shown on the Recording Plan.**

When the Planning Board grants a waiver from any of the improvements required by the Ordinance or from any of the standards of 30-A M.R.S.A. §4404 or of this Ordinance, the reproducible medium to be recorded at the Registry of Deeds shall indicate the waivers granted and the dates on which they were granted.

**SECTION 14. EFFECTIVE DATE**

This ordinance shall take effect and be in force from and after the date of its official adoption by the Town of Scarborough.