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## ARTICLE 6. SUBDIVISION REVIEW

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### Section 6.1 Applicability

(A) Whenever any subdivision of land is proposed, the subdivider or authorized agent shall apply for and secure approval of such proposed subdivision in accordance with the procedures set forth in these regulations prior to:

- (1) commencing any construction, land development or land clearing (excluding forestry or agricultural activities);
- (2) the issuance of any permit for any land development involving land to be subdivided;
- (3) the sale or lease of any subdivided portion of a property; and/or
- (4) filing a subdivision plat in the land records of the town.

Such approval shall be granted by the Zoning Administrator or the Planning Commission in accordance with the procedures and standards set forth below.

(B) **Exemptions.** The following are specifically exempted from subdivision review under this article:

- (1) parcels leased for agricultural or forestry purposes where no permanent roads or structures are established,
- (2) rights-of-way or easements which do not result in the subdivision of land, and
- (3) boundary adjustments between existing parcels which do not create new or nonconforming lots.

(C) **Classification of Minor and Major Subdivisions.** For the purposes of these regulations, the following two categories of subdivisions are established:

(1) **Minor subdivisions**, to be reviewed by the Zoning Administrator under Section 6.2 include:

- a. the subdivision of land, or the resubdivision of a previously subdivided parcel, which results in the creation of a total of three or fewer lots within any five year period.
- b. an amendment to an approved subdivision which does not substantially alter the subdivision, nor result in the creation of a major subdivision; and/or
- c. the creation of a lot which does not meet minimum frontage or access requirements, which is subject to approval under Section 3.2.

(2) **Major subdivisions**, to be reviewed by the Planning Commission under Section 6.2 include:

- a. the subdivision of land, or the resubdivision of a previously subdivided parcel (e.g., a minor subdivision) which results in the creation of a total of four or more lots within any five year period and/or involves the construction of a new road; and/or
- b. an amendment to an approved subdivision which substantially alters the subdivision or conditions of approval, or which results in the creation of a major subdivision or a new road;
- c. a planned residential development (PRD).

(D) **Coordination with Planned Residential Development Review.** Applications for planned residential developments (PRDs) or planned unit developments (PUDs) shall be reviewed concurrently by the Planning Commission as subdivisions in accordance with Section 6.2 and under Section 5.7.

### Section 6.2 Subdivision Review

(A) **Subdivision Approval Requirement.** The Zoning Administrator or Planning Commission shall review all subdivisions in accordance with the Act [§4418] and these regulations.

(B) **Waiver Authority.** Pursuant to the Act [§4418] the Zoning Administrator or Planning Commission may waive application requirements as specified in Table 6.1, or subdivision standards under Section 6.3 which, in their judgment:

- (1) are not requisite in the interest of public health, safety, and general welfare;
- (2) are inappropriate due to the inadequacy or lack of connecting facilities adjacent to or in proximity to the subdivision; or
- (3) would unnecessarily add to the cost of an affordable housing development as defined in Appendix 1, Section 2; or
- (4) the applicant is seeking a deferral under subsection 6.2(F)(5).

The request for a waiver shall be submitted in writing by the applicant with the subdivision application. It shall be the responsibility of the applicant to provide sufficient information to justify the waiver or variance, and enable the Zoning Administrator or Commission to reach a decision. In granting waivers, the Zoning Administrator or Commission may require such conditions that will, in its judgment, substantially meet the objectives of the requirements so waived or varied. No such waiver may be granted if it would have the effect of nullifying the intent and purpose of these regulations or other municipal ordinances or regulations currently in effect.

(C) **Application Requirements.** An application for subdivision approval, including applicable fees, shall be made on forms provided by and filed with the Zoning Administrator. .

(D) **Sketch Plan Review.** Prior to the submission of an application for a major subdivision review, the applicant may submit a sketch plan to the Zoning Administrator for consideration by the Planning Commission at a regularly scheduled Commission meeting.

- (1) **Purpose.** The purpose of sketch plan review is to acquaint the Planning Commission with the proposed subdivision at an early stage in the design process, prior to the applicant incurring significant expense.
- (2) **Submission Requirements.** One original and two copies of the sketch plan, to include information specified in Table 6.1, should be submitted to the Planning Commission at least 15 days prior to a regularly scheduled commission meeting.
- (3) **Effect.** The Planning Commission may offer comments and recommendations at the meeting or, within 30 days of the date of the meeting, provide comments and recommendations to the applicant in writing. Such comments are advisory and as such shall not constitute an appealable decision or action of the Planning Commission, and shall not be binding on subsequent major subdivision review.

(E) **Minor Subdivision Review.** The application for minor subdivision review shall include one original of the information for subdivision plan approval specified in Table 6.1, and any required fees. The application must also include, in writing, any requested waivers to be considered under subsection (B) and the reasons for such waivers. The Zoning Administrator shall consider the application in accordance with his or her review for a zoning permit without the need for a public hearing, but may in his or her judgment forward any application to the Planning Commission for its review following a public hearing.

(F) **Major Subdivision Review.** The application for major subdivision review shall include one original and six copies of the information for subdivision plan approval specified in Table 6.1, and any required

fees. The application must also include, in writing, any requested waivers to be considered under subsection (B) and the reasons for such waivers. The Planning Commission shall consider the application in accordance with the following:

- (1) **Public Hearing.** As required by the Act [§4464], upon submission of a complete application the Commission shall schedule a public hearing on the application, warned in accordance with subsection 4.8 and the Act [§4464(a)]. In the event that the subdivision is located within 500 feet of a municipal boundary, copies of the hearing notice also shall be sent, at least 15 days prior to the hearing date, to the regional planning commission and to the clerk of an adjacent municipality. After the hearing is convened the Planning Commission may continue the hearing as needed to request and allow for the submission of additional information or studies to determine conformance with these regulations.
  - (2) **Final Approval.** The Commission shall act to approve, approve with conditions, or deny an application for subdivision approval within 45 days of adjournment of the final public hearing; and shall issue a written decision. The written decision shall include a statement of the factual bases on which the Commission made its conclusions, a statement of those conclusions, any conditions, and shall specify the period of time within the decision may be appealed to the Environmental Court. Failure to act within the 45 day period shall be deemed approval. The decision shall be mailed, via certified mail, to the applicant within the 45 day period. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing, and a copy of the decision shall be recorded in accordance with subsection 4.8(D).
  - (3) **Performance Bonding.** For any subdivision that includes the construction of roads or other physical improvements, the Planning Commission may require the subdivider to post a performance bond or other comparable surety to ensure completion of the improvements in accordance with approved specifications. In accordance with the Act [§4464], the term of a performance bond shall be fixed by the Planning Commission for a period not to exceed three years, unless with the consent of the owner it is extended for an additional period not to exceed three years. If any required improvements have not been installed or maintained as provided, the bond shall be forfeited to the municipality which shall then use the proceeds to install and maintain covered improvements.
  - (4) **Effect.** Approval of the Planning Commission of a subdivision shall not be construed to constitute acceptance by the town of any street, easement, utility, park, recreation area or other open space shown on the final plat. Such acceptance may be accomplished only by an act of the Middlesex Selectboard, in accordance with state law for the laying out of public rights-of-way.
  - (5) **Deferral of Subdivision Standard(s).** The Zoning Administrator may, at the request of the applicant under subsection 6.2(B), defer review of a proposed minor subdivision's compliance with the standards set forth in Section 6.4 in the event the proposed subdivision involves the creation of a lot(s) that is solely intended for forestry, agriculture or other use not involving land development. Both the Zoning Administrator's decision and the plat recorded in the Town Land records shall clearly indicate the intended use of the lot(s), and shall require that any change in the use of the deferred lot be approved by the Planning Commission only upon a determination that the proposed use and associated development complies with the standards set forth in Section 6.4. All lots, however, shall meet the minimum lot size for the district in which the parcel is located, including any density requirement related to the creation of new lots set forth in subsection 6.4(D).
- (G) **Recording & Amendment Requirements.**

- (1) In accordance with the Act [§4463], within 180 days of the date of receipt of final subdivision approval under Subsection (F)(2), the subdivider shall file three copies of plan and final plat (one Mylar, two paper), signed by an authorized representative of the Planning Commission, for recording in the land records of the town in conformance with the requirements of 27 V.S.A. Chapter 17. The Approval of subdivision plats not filed within 180 days shall expire. The Zoning Administrator may, however, grant one 90 day extension for plat filing in the event the applicant documents that other required local and/or state permits are still pending.
- (2) Subdivisions within the Rural Residential District and Conservation District shall include a notation on the final plat recorded in the town land records specifying the maximum allowable density before and after subdivision, and indicating which lot or lots carry the right of further subdivision and which lots cannot be further subdivided, as determined and limited by Table 2.5 and 2.6 and subsection 6.4(D).
- (3) The municipality shall meet all recording requirements for subdivision approvals as specified for municipal land use permits under Section 4.8.
- (4) No changes, modifications, or other revisions that alter the final plat or the conditions attached to subdivision approval shall be made unless the proposed revisions are first submitted for review by the Planning Commission under Section 6.2 as a subdivision amendment. In the event that revisions are recorded without complying with this requirement, the revisions shall constitute a violation of these regulations, and be considered null and void.

### Section 6.3 Application of Subdivision Standards

(A) The Zoning Administrator and Planning Commission shall evaluate subdivisions under the standards set forth in this article. The Zoning Administrator and the Commission, to assist in evaluation, may require:

- (1) For major subdivisions only:
  - a. an independent technical review of the proposed subdivision under one or more standards, prepared by a qualified professional and paid for by the subdivider; provided such technical review is commensurate with the scale and scope of the proposed subdivision, and
  - b. the phasing of development, and/or additional measures to avoid or mitigate any adverse impacts likely to result from the proposed subdivision.

### Section 6.4 General Standards [applying to both Minor and Major Subdivisions]

(A) **Middlesex Town Plan & Regulations.** Subdivisions shall conform to the *Middlesex Town Plan*, other provisions of these regulations, capital budget and programs, and all other municipal regulations, ordinances and regulations in effect at the time of application.

(B) **District Settlement Patterns.** A subdivision shall be designed to achieve the purpose, objectives and desired settlement patterns of the zoning district(s) in which it is located, as defined in Article 2. To the extent feasible, new subdivisions of land shall:

- (1) maintain and extend desired settlement patterns, as defined in Article 2 and the *Middlesex Town Plan*, including lot areas and configurations, building locations, and road networks; and
- (2) maintain contiguous tracts of open land with adjoining parcels.

**(C) Density & Lot Size in the Rural Residential and Conservation Districts.** The subdivision of parcels in the Rural Residential or Conservation District shall be subject to the density and lot size provisions set forth in Table 2.5 and Table 2.6, respectively, and the following requirements:

- (1) Applications for sketch plan review and final plat approval involving parcels located within the Rural Residential and/or Conservation District shall include a notation specifying the maximum allowable density before and after subdivision, and shall indicate which lot or lots carry the right of further subdivision and which lots cannot be further subdivided, as determined and limited by Table 2.5 or 2.6.
- (2) The Planning Commission shall maintain a master list of all subdivided parcels, in addition to the Town's land records, indicating the total density allowed for the pre-existing parcel at the time of subdivision and the total density associated with each subdivided lot after subdivision.

**(D) Lot Layout.** Lot layouts shall:

- (1) be consistent with the suitability of land for development, as defined under Subsection (A);
- (2) conform to desired district settlement patterns, as required under Subsection (B);
- (3) meet zoning district minimum lot size and density requirements under Article 2, except as modified for planned residential developments under Section 5.7;
- (4) conform to lot and yard requirements under Section 3.7;
- (5) avoid irregularly shaped lots (e.g., with curves, jogs, dog-legs, etc.), unless warranted due to topographic constraints, or to minimize the fragmentation of natural, scenic or cultural features; and
- (6) avoid elongated "spaghetti lots," by ensuring that the maximum length of a lot is not greater than four times its width as measured at the lot's narrowest point.

**(E) Survey Monuments.** The locations of all proposed permanent surveying monuments and corner markers, as required under the Rules of the Board of Land Surveyors, shall be identified on the final subdivision plat.

**(F) Wastewater Systems.** All subdivisions within Middlesex requiring individual and/or community (clustered) systems, shall be designed in accordance with applicable state and municipal regulations. Sewage disposal areas may be required to be identified on the final plat.

### **Section 6.5 General Regulations [to apply only to Major Subdivisions]**

**(A) Stormwater Management & Erosion Control.** Subdivisions shall incorporate temporary and permanent stormwater management and erosion control practices appropriate for the type and density of proposed development.

**(B) Landscaping & Screening.** Subdivisions shall, to the extent feasible, preserve or maintain trees, ground cover, or other vegetation, to:

- (1) preserve tree lines, wooded areas of particular natural or aesthetic value to the site, or critical wildlife habitat areas;
- (2) provide vegetated buffers between developed and undeveloped portions of the site to protect water quality, or other natural or scenic features;
- (3) provide screening to increase privacy, reduce noise or glare, or establish a barrier between incompatible land uses;

**Section 6.6 Roads & Access [to apply only to Major Subdivisions]**

(A) **Access.** Access to the subdivision and to individual lots shall be provided in accordance with the requirements of Section 3.2. All access onto town highways shall be subject to the approval of the Middlesex Selectboard, or for state routes, the Vermont Agency of Transportation. Such approval shall be required prior to final subdivision plan approval. To better manage traffic flow and safety, to avoid congestion, and to preserve the capacity of local roads, the Planning Commission may also:

- (1) limit the number of access points onto public highways;
- (2) require shared access, driveways, and/or roads to serve multiple lots;
- (3) require access from secondary roads, if a proposed subdivision has frontage on both primary and secondary roads;
- (4) require rights-of-way for future road extensions to connect to adjoining parcels; and/or
- (5) prohibit the creation of reserved strips adjacent to a proposed road which would deny access from adjacent properties.

**Section 6.7 Facilities & Utilities [to apply only to Major Subdivisions]**

(A) **Public Facilities.** The Planning Commission shall find that the proposed subdivision does not create an undue burden on existing and planned public facilities. The Planning Commission may consult with appropriate municipal and school officials to determine whether adequate capacity exists to serve the subdivision. The Planning Commission also may require a fiscal impact analysis, to be paid for by the subdivider, commensurate with the scope and scale of the proposed subdivision, and/or the phasing of development in accordance with a duly adopted municipal or school capital budget and program.

**Section 6.8 Legal Requirements [to apply only to Major Subdivisions]**

(A) Land reserved for the protection of significant natural, cultural or scenic features, or other open space areas, may be held in common, or in separate ownership from contiguous parcels. Such land may be dedicated, either in fee or through a conservation easement approved by the Planning Commission, to the municipality, an owners' association comprised of all present or future owners of subdivided lots, and/or a nonprofit conservation organization. At minimum, land designated for protection shall be indicated with appropriate notation on the final subdivision plat.

(B) The subdivider shall provide documentation and assurances that all required improvements, associated rights-of-way and easements, and other common lands or facilities will be adequately maintained either by the subdivider, an owners' association, or through other legal means acceptable to the Planning Commission. Such documentation, as approved by the Planning Commission, shall be filed in the Middlesex land records.

**TABLE 6.1 SUBDIVISION APPLICATION REQUIREMENTS**

<b>(A) Application information [for all applications for sketch plan review]</b>
Application Form [1 copy]
Application Fee
Name, address of applicant [landowner and/or subdivider]
General description of proposed development plans, including: number and size of lots, intended use, general timing of development
Waiver request, in writing [optional]
Names, addresses of all adjoining property owners
One copy of a sketch plan, drawn on paper at an appropriate scale, to accurately depict: <ul style="list-style-type: none"> <li>• Scale, Date, North Arrow, Legend;</li> <li>• Project boundaries and property lines;</li> <li>• Existing and proposed lot lines, dimensions;</li> <li>• Adjoining land uses, roads and drainage;</li> <li>• Zoning district designations and boundaries; and</li> <li>• A general indication of the location of natural and physical features located on the site, including buildings; roads, driveways and parking areas; fences and walls; watercourses; wetlands; areas of slope in excess of 25%; and a general indication of land cover, including forested areas and land in agricultural production.</li> </ul>
<b>(B) Plan/Plat Mapping Requirements [for all applications for major subdivision final plat approval]</b>
Application Fee [to be set by Selectboard]
Application Form [1 copy]
Name, address of applicant [landowner and/or subdivider]
General description of proposed development plans, including: number and size of lots, intended use, general timing of development
Waiver request, in writing [optional]
A survey, drawn on mylar at scale of not less than 1"=100', and two paper copies, to include: <ul style="list-style-type: none"> <li>• Scale, Date, North Arrow, Legend;</li> <li>• Preparer Information, Certifications</li> <li>• Project boundaries and property lines;</li> <li>• Existing and proposed lot lines, dimensions;</li> <li>• Adjoining land uses, roads and drainage;</li> <li>• Zoning district designations and boundaries; and</li> <li>• An indication of the location of natural and physical features located on the site, including buildings; roads, driveways and parking areas; fences and walls; watercourses; wetlands; areas of slope in excess of 25%; and a general indication of land cover, including forested areas and land in agricultural production;</li> <li>• Existing and proposed roads, paths, common or shared parking areas, associated rights-of- way or easements;</li> </ul> Proposed utilities, water and wastewater systems.
Monument locations

Site location map showing proposed subdivision in relation to major roads, drainage ways, and adjoining properties
Statement of compliance with town plan and applicable local regulations
Engineering reports (water and wastewater systems)
Proposed covenants and/or deed restrictions, off-site easements (e.g., for water, wastewater, access), and/or proposed homeowner or tenant association or agreements (if any)
All information required for applications for minor subdivisions approval set forth in subsection (B), above
Existing and proposed elevations, contour lines within 50 feet of any proposed excavation/grading
Road profiles; road, intersection and parking area geometry and construction schematics
Proposed conservation buffer and/or open space easement areas
Proposed phasing schedule
Proposed performance bond or surety
<b>(C) Additional information. As may be required by the Planning Commission for applications for major subdivision plat approval</b>
Stormwater and erosion control plan
Grading plan (showing proposed areas of cut and fill)
Open space management plan
Site reclamation plan (for subdivisions involving extraction)
Traffic impact analysis (current and proposed traffic volumes, capacities, levels of service, proposed improvements)
Fiscal impact analysis (analysis of fiscal costs and benefits to the town)
Historic or archeological assessment
Environmental impact assessment (analysis of potential environmental impacts, proposed mitigation measures)