

Wording for proposed changes to the Performance Guaranty 7.2.1 (current wording in green, proposed in red):

7.2 Performance Guaranty: The subdivision developer shall meet the following requirements:

7.2.1 Form: Certified Check made payable to the Town of Lyman. These funds will be deposited into an interest bearing escrow account in the name of the Town for this project. No permits shall be issued, or construction or site work begun, until funds are deposited into the escrow account.

Suggested change:

At the Town's discretion, the performance guarantee shall be a Certified Check payable to the Town of Lyman and deposited into an interest-bearing escrow account in the name of the Town for this project, a Performance Bond running to the Town, or an irrevocable Letter of Credit in a form and from an issuer acceptable to the Town Treasurer. No permits shall be issued, or construction or site work begun, until the performance guaranty has been fully approved by the Town Treasurer.

7.2.2 Amount: Equal to 150% of the total cost of construction of all "required improvements". The total cost of all required improvements will be based on a construction cost "Schedule of Values" provided by the developer for review and approval by the Planning Board.

7.2.3 Required Improvements: For the purpose of this section "required improvements" shall mean all site preparation, including but not limited to any public and private roads, all drainage structures and ditches, all erosion control measures, all common or public utilities and all required landscaping.

7.2.4 Schedule of Values: A construction cost breakdown of the various items of work in sufficient detail for the inspecting engineer or agent to determine the value of work completed and work remaining when the developer requests reductions in the amount of the performance guaranty. The Schedule of Values may be determined by the developer, the developer's engineer or a general contractor and will be reviewed and possibly modified by the Town's agent and the request of the Planning Board. As a minimum the Schedule of Values should address:

- * Mobilization;
- * Clearing & Grubbing;
- * Erosion & Sediment Control;
- * Stripping & Stockpiling Topsoil;
- * Excavation/fill to sub grade;
- * Rock Excavation;
- * Stormwater Management Facilities;
- * Community Water System;
- * Community Sanitary Sewer System;

- * Underground or Overhead Utilities (Power, Telephone, CATV);
- * Aggregate sub base; Aggregate base;
- * Riprap;
- * Fire Tank (or pond & dry hydrant);
- * Hot Bituminous Pavement - base course;
- * Curb;
- * Hot Bituminous Pavement - surface course;
- * Sidewalks;
- * Striping;
- * Street lights;
- * Loam, seed, mulch & maintenance until grass is established;
- * Monuments;
- * Cleanup;
- * Off-site improvements as applicable, and
- * (Cluster development only) Restoration or development as playfields of storage and stockpile areas in the open space area(s) of the cluster development.

7.2.5 Timing: Submit the Schedule of Values with the final plan for review prior to approval. Submit the performance guaranty within 45 days of approval and receive written authorization to proceed by the Municipal Officers prior to beginning work on the site. No Permits shall be issued, or construction or site work begun, until funds are deposited into the escrow account.

7.2.6 Escrow Reduction Requests: Periodically, but no more than twice monthly, the developer may request reductions in the amount of the escrow account. The request shall be made to the Code Enforcement Officer (CEO) in writing and identify those items in the schedule of values for which reductions or partial reductions are requested. Prior to submission, if requested by the developer, or upon receipt of the request, the CEO or the Town's agent will visit the site to ascertain that the work for which the reduction is requested has been completed and render an opinion of the value of remaining work. The amount of the reduction will be based on retaining 150% of value of remaining work in the escrow account versus the value of work completed. The Town will not reduce the escrow account for materials stored on site and not incorporated into the work.

7.2.7 Modifications to required improvements: If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Town's agent that unforeseen conditions make it necessary or preferable to modify the location or design of any required improvement, the Town's agent may, upon approval of the CEO, authorize modifications, provided these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver of substantial or substantial alteration of the function of any improvements required by the Planning Board. The Town's agent shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Selectmen and the Planning Board. If modifications made under this section

alter the approved subdivision plan by causing property lines or easements to be relocated, the plan shall be revised or become null and void in accordance with Article 7, Section 7.7.1 To ensure compliance with this section, one-third (33-1/3%) of the performance guaranty escrow account will be retained by the Town until a revised subdivision plan is reviewed and approved by the Planning Board.

7.2.8 Default: If, upon inspection, the Town's agent finds that any of the required improvements have not been constructed in accordance with the approved plans and specifications the agent shall so report in writing to the CEO, Selectmen, Planning Board and Developer. The Selectmen shall take any steps necessary to preserve the Town's rights under the performance guaranty. No subsequent plan for another project submitted to the Planning Board by a developer who is in default on a previously approved plan shall be approved until the default is corrected.

7.2.9 Maintenance: The Developer shall maintain all improvements and provide snow removal on streets and sidewalks until a homeowners association assumes responsibility or the Town accepts the road and stormwater management facilities.

7.2.10 Release: The performance guaranty shall not be completely released by the Selectmen until the Town's agent has completed a final inspection of the project and submitted a written report stating that all required improvements have been completed in accordance with the approved plans and specifications.