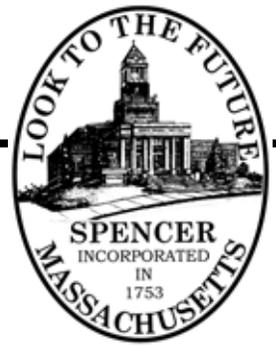


Subdivision Regulations Town of Spencer

Adopted April 3, 2007

Development & Inspectional Services
Memorial Town Hall
157 Main Street
Spencer, MA 01562

508-885-7500 ext. 180



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Adopted by the Spencer Planning Board under
MGL Ch. 41, Sec. 81-K to 81-GG inclusive,
a.k.a. the Subdivision Control Law.

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Article 1. General Provisions

Section 1. Purpose

“The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and town in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. The powers of a planning board and a board of appeal under the subdivision control law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel, for lessening congestions in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for insuring compliance with the applicable zoning ordinances or by-laws; for securing adequate provision for water, sewerage, drainage and other requirements where necessary in a subdivision; and for co-coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions. It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the recommendations of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R. such portions of the rules and regulations as is deemed advisable.” (MGL Ch. 41 § 81-M) In addition, one of the purposes of these subdivision regulations is to implement the will of the citizens of Spencer as embodied in the Master Plan.

Section 2. Authority, Adoption, and Amendment

Under the authority vested in the Planning Board of the Town of Spencer by Section 81-Q of Chapter 41 of the General Laws, said Board hereby adopts these regulations governing the subdivision of land in the Town of Spencer. For matters not covered by these regulations, reference is made to MGL Ch. 41 § 81-K to 81-GG, inclusive. The Planning Board may from time to time amend these regulations after a public hearing, as provided in MGL Ch. 41 § 81-Q.

Section 3. Applicability

No person shall make a subdivision within the meaning of the Subdivision Control Law of any land within the Town, or proceed with the improvement or sale of lots in a subdivision, or the construction of ways, or the installation of municipal services therein, unless and until a Definitive Plan of such subdivision has been submitted and approved by the Planning Board as hereinafter provided.

Section 4. Severability

If any part or portions of these rules and regulations should be adjudicated as invalid,

the adjudication shall apply only to the material so adjudged, and the remaining rules and regulations shall be deemed valid and of full force and effect. (MGL Ch. 41 § 81GG).

Section 5. Homeowners Association

Whenever required by the Planning Board, a Homeowners Association shall be created for the purposes of preserving property values by maintaining the aesthetic qualities of the subdivision, providing permanent maintenance of those portions of the stormwater management system that are not located within the public rights-of-way, providing temporary maintenance of all infrastructure prior to public acceptance of the streets, providing permanent maintenance and costs for street lighting, and such other purposes as would benefit the subdivision. The Homeowners Association Bylaws will not supersede any local bylaw or regulations, but they can be more stringent than local bylaws or regulations. The Town of Spencer has no responsibility or jurisdiction for enforcement of any Homeowner Association Bylaw.

Section 6. Definitions:

ANR PLAN: A plan which shows a subdivision or boundary line adjustment or perimeter plan which is not required to comply with the subdivision control law and does not require approval by the Planning Board under the subdivision control law (thus referred to as “Approval Not Required” plan), as provided for in M.G.L Chapter 41, Section 81P. ANR plans must be endorsed by the Planning Board under the provisions of Article 2 of these subdivision regulations.

DEFINITIVE SUBDIVISION PLAN: a final plan or set of plans showing the final proposed survey lines for new lots, streets, easements, and all other features of a subdivision, and including final engineered plans drawn to illustrate the design of all proposed streets, drainage facilities, and all other features of a subdivision. Article 2 sets forth the information required to be included on or accompanying a definitive plan.

LOT: An area of land with definite boundaries in one ownership which is used or is available for use as the site of one or more buildings (i.e. a buildable lot).

MASSGIS: The Commonwealth of Massachusetts’ Office of Geographic and Environmental Information and is part of the Executive Office of Environmental Affairs. This office provides data for the Commonwealth in digital format and is used for planning purposes for communities and for preliminary designs for individual properties. The website for MassGIS is <http://www.mass.gov/mgis>.

PARCEL: An area of land with definite boundaries which may or may not be available for use as the site of one or more buildings (i.e. a non-buildable parcel or a buildable lot).

PRELIMINARY PLAN: a sketch plan of a proposed subdivision or re-subdivision of land, typically prepared before detailed engineering design is done, for the purpose of discussion to determine if modifications would improve the design. Article 2, Section

2 sets forth the information required to be included on or accompanying a preliminary plan.

SKETCH PLAN: a plan drawn with rough lines to illustrate in general terms the approximate locations for boundaries, streets, open spaces, and other elements of a development, for the purpose of conveying the conceptual idea.

STREET: a way which provides the principal means of access to abutting properties. For the purposes of determining whether a street meets the criteria for consideration of a plan for ANR endorsement, one of the following must be true:

- 1) a public way or a way which the Town Clerk certifies is maintained and used as a public way, or
- 2) a way shown on a plan approved in accordance with the subdivision control law or
- 3) a way in existence as of September 25, 1963 that in the opinion of the planning board has sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting or served by the street, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

STREET, MAJOR (arterial): A street which, in the opinion of the Planning Board, is being used or will be used as a thoroughfare across or between different portions of the Town or which will otherwise carry a heavy volume of traffic. An example in Spencer is Route 31.

STREET, SECONDARY (collector): A street intercepting one or more minor streets and which, in the opinion of the Planning Board, is used or will be used to carry a substantial volume of traffic from such minor street(s) to a major street or community facility. An example in Spencer is Paxton Road.

STREET, MINOR (local): A street which is designed for use by small volumes of local residential traffic and is characterized by low traffic speeds; such streets are intended to provide direct access to homes and to link local traffic with secondary or major streets. An example in Spencer is Summit Street; nearly all new subdivision streets fit this category.

SUBDIVISION: the division of a tract of land into two or more lots, including re-subdivision. When appropriate to the context, the term shall relate to the process of subdivision or the land subdivided. Conveyances or other instruments adding to or taking away from, or changing the size and shape of lots in such manner as not to leave any lot so affected without the required frontage, or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.

Section 1. Approval Not Required (ANR) Plans

- A. Description of an ANR Plan: An ANR plan is one which does not require approval under the Subdivision Control Law (MGL Ch 41 § 81P). Such plans may be divisions of land such that each parcel contains the minimum frontage required under the Spencer Zoning Bylaw where the frontage is on an existing street as defined in Article 1 of these subdivision regulations. Where no frontage is specified in the Zoning Bylaw, each parcel must have a minimum of 20 feet frontage.

- B. Plan Requirements: An ANR plan shall be prepared by a land surveyor registered in the Commonwealth of Massachusetts and shall be clearly and legibly drawn to the requirements of the Recording Rules adopted by the Registry of Deeds in Massachusetts. If multiple sheets are used, they shall be accompanied by an index sheet showing the entire plan. An ANR plan shall contain the following information:
 - 1. Total frontage and area of each lot shown on the plan, including any “remaining land” area, and including the net useable area of each resulting lot. In cases where a parcel is being subdivided from a large parcel, a copy of the Assessor’s map may be used to show the location, approximate boundaries, frontage, and area of the “remaining land”.
 - 2. Existing and proposed boundaries shall be shown with lines of different thickness or types (e.g. solid vs. dashed) to clearly illustrate the purpose of the plan.
 - 3. Location and approximate area of wetlands as shown on the most recent DEP Wetlands map from MassGIS, to prove compliance with Section 5.3.9 of the Spencer Zoning Bylaw (minimum net useable area; must have 15,000 sf non-wetland if relying on individual septic, or 5,000 sf if on public sewer).
 - 4. Sufficient data to determine the location, direction and length of every street and way line, lot line and boundary line, and monuments or references necessary to establish these lines on the ground.
 - 5. Location of all existing structures on all lots affected by the ANR, showing setback dimensions for front, side and rear (note that for setbacks that are clearly well above the minimum required by the Spencer Zoning Bylaw, an approximate distance may be used, but shall be so noted on the plan).
 - 6. Square foot coverage of existing structures (for use in determining compliance with building coverage requirements).
 - 7. Where practical, boundary lines of contiguous and adjacent land and the names of the owners thereof, as determined from the most recent tax list.

2.1.B – ANR

8. Location, names, present widths, and status of public and private ways abutting the property.
9. A note indicating the specific purpose of the plan including a description of the proposed changes to the parcels or lots.
10. Locus map, north point, date and scale.
11. Zoning classification and location of any Zoning District Boundaries that may lie within the locus of the plan.
12. Notice of any decisions by the Planning Board and the Zoning Board of Appeals, including, but not limited to, variances and special permits regarding the land or any buildings thereon.
13. Suitable space to record the endorsement of the Board that Approval is Not Required and the signatures of the members of the Board or their designee.
14. A note on the plan indicating that any parcel being created that does not conform to the Spencer Zoning Bylaw is not a buildable lot.
15. Name of the record owner, name of the registered land surveyor, and the Worcester Registry of Deeds book and page reference of conveyance to record owner.
16. Town of Spencer Assessors Map and Parcel numbers.

C. Approval Process:

1. Any Person who wishes to cause to be recorded in the Registry of Deeds, or to be filed with the Land Court a plan of land may submit to the Planning Board the mylar for said plan, three (3) prints thereof, the filing fee, and the application form, accompanied by the necessary evidence to show that the plan does not require approval under the subdivision control law.
2. Applications shall be submitted to the Office of Development & Inspectional Services. The application and plan will be reviewed by the Office, including by the Wetland/Soil Specialist, and when determined to be complete shall be taken to the Town Clerk for stamping for the purpose of commencing the official timeframe for action by the Planning Board. Applicants with incomplete applications will be notified by ODIS within 2 days of receipt of the application with incorrect or missing items, whereupon the process will be put on hold until a modified plan is submitted. The application will be listed on the next available agenda of the Board for consideration, in compliance with the deadline schedule established by the Board.

3. Once endorsed, the applicant will be notified to pick up the mylar and he/she shall be responsible for having it recorded at the Worcester District Registry of Deeds.
4. For purposes of maintenance of Town records, including tax maps kept by the Assessors Office, an electronic copy in compliance with Level III of the current version of the MassGIS Standard for Digital Plan Submission to Municipalities (available at the Office of Development & Inspectional Services or at www.mass.gov/mgis) shall be filed within 14 days of endorsement of the plan, if the plan was produced in CAD or other electronic format. The Planning Board may waive this requirement or allow a submission in compliance with Level I of the Standard upon written request which must include a statement as to the reasons electronic submission is not possible. For Level III submissions, the coordinate system to be used shall be the Massachusetts Coordinate System, North American Datum 1983, with units of US Survey Feet, and the vertical datum shall be the North American Vertical Datum 1988.

Section 2. Preliminary Subdivision Plans

- A. General/Purpose: A Preliminary Plan of a subdivision should be submitted by the owner or developer to the Planning Board for discussion and approval. The purpose of the preliminary plan is to have the opportunity to discuss a proposed subdivision prior to the preparation of engineering plans for the roads, drainage, and other infrastructure involved. A preliminary plan is required for all non-residential subdivisions, and is optional for residential subdivisions. In either case, if a preliminary plan is submitted, the following shall apply.
- B. Plan Requirements: The Preliminary Plan shall be drawn at a suitable scale but not less than 1" = 200' and seven prints shall be filed at the Office of Development & Inspectional Services. Said plan shall be identified as a Preliminary Plan and show all the information described below so as to form a clear basis for discussion of any issues and for preparation of the Definitive Plan.
 1. the subdivision name, boundaries, north point, date, scale, legend and title Preliminary Plan;
 2. the names of the record owner and the applicant
 3. the name of the designer, engineer or surveyor (if any);
 4. the names of all abutters, as determined from the most recent tax list;
 5. the approximate location of the existing and proposed lines of streets, ways, easements and any public areas within the subdivision;
 6. the approximate location of the proposed system of drainage including adjacent existing waterways;
 7. the approximate boundary lines of proposed lots with approximate areas and dimensions;
 8. the names, approximate location and widths of adjacent streets;
 9. the topography of the land from USGS topographical maps, which can be

2.2.B – Preliminary Plans

- obtained at the MassGIS website, or from other sources as agreed to or specified by the Planning Board;
10. the approximate location of wetlands as shown on DEP Wetlands maps from MassGIS;
 11. the soil types as identified by the US Natural Resource Conservation Service (formerly the Soil Conservation Service).
- C. Waiver Request. Any request for waivers from the design standards of these Subdivision Regulations (Article 3) must be submitted in a letter signed by the applicant or his representative with the preliminary plan application. For each waiver requested, a statement must be included giving the reason the waiver is needed and the ramifications of not obtaining the waiver on the design and functionality of the subdivision. The Planning Board should consider the impact on public policy for each waiver request it considers. See Article 3, § 1.B.
- D. Approval Process.
1. Scheduling. When an application is received for a preliminary plan review, the request will be placed on the next available Planning Board meeting agenda, in compliance with the deadline schedule established by the Board. This is not a public hearing and no notification will be sent to abutters or published in the newspaper.
 2. Review by staff. The preliminary plan will be reviewed by the Health Agent, the Wetland/Soil Specialist, the Superintendent of Utilities & Facilities, the Police Department, and the Fire Department, and any comments they have will be transmitted to the Planning Board prior to or at the scheduled meeting. Failure of these entities to submit comments shall be deemed “no comment” by them.
 3. Waiver requests. For preliminary plans that involve waiver requests, the Planning Board shall include in their minutes and the applicant’s file a record of any specific conditions the Board will require of the applicant for the requested waiver(s) to be granted.
 4. Action. The Planning Board may give a preliminary plan its approval, with or without modification, but such approval does not constitute approval of a subdivision. If the Planning Board disapproves a preliminary plan, the reasons for such disapproval shall be included in the decision in sufficient detail to allow the applicant to prepare a new plan (either preliminary or definitive) which addresses the deficiencies noted by the Board.
- E. Expiration. There is no expiration of the preliminary plan, but the Planning Board may reconsider any agreed upon waiver requests if the definitive plan is not filed within one year of the approval date of the preliminary plan.

Section 3. Definitive Subdivision Plans

- A. Pre-application Consultation: Any applicant may, at any time, request a meeting with the Town Planner and/or other professional staff of the Town to discuss an owner’s ideas for development of a property. No plans are required for such meetings, but simple sketches (which can be hand drawn) can be useful

for communicating ideas. The purpose of pre-application consultations are to freely explore with staff general approaches to development and potential problems or opportunities of the site or neighborhood.

- B. Pre-application Submission Review: In order to avoid costly delays in the formal application review process, applicants may request a pre-application submission review prior to submission of the final application. This is an extra step in the process and allows the applicant to be notified of deficiencies in the plan in regards to submission requirements (not deficiencies in design or noncompliance with standards). One set of the fully engineered plans should be submitted to ODIS; they will be reviewed by the town planner and other appropriate staff and a letter will be prepared and sent to the applicant within 14 days with notification of any deficiencies. There is no charge for this service and this does not start the official timeframe for action by the Planning Board as provided in MGL Ch 41 § 81U.
- C. Application: Any person who desires approval of a definitive plan of a subdivision shall submit to the Planning Board the following, with the drawings consolidated onto a single sheet or on separate sheets into a single set. Applications are due in accordance with the deadline scheduled established by the Planning Board.
1. Ten (10) prints of the definitive plan, black line on white background, on sheets measuring 24" x 36", and seven (7) reduced prints on sheets measuring 11" x 17". The original drawing of the definitive plan (mylar) will only be needed if and when signing of the plan takes place, and should not be submitted with the initial application.
 2. A properly executed application form as provided by the Office of Development & Inspectional Services.
 3. An abutter's list certified by the Assessor's Office.
 4. Payment of the application fee (contact ODIS for amount).
 5. Payment of an application review fee for engineering review services (contact ODIS for amount).
 6. A statement signed by the property owner authorizing the Board or its authorized representatives to enter upon the property for site visits, as may be necessary.
 7. Impact studies are required for proposals creating 25 dwelling units or more, to cover impacts to the municipal sewer system (if connection is proposed), the municipal water system (if connection is proposed), the fire department, the local rescue squad, the police department, the school department, the municipal parks and recreation facilities, the utilities & facilities department (for road and infrastructure maintenance)

2.3.C — Definitive Plans

and a traffic impact study. For smaller developments, a traffic impact study may be required at the discretion of the Planning Board to address specific issues raised by a particular development and its location within the road network.

8. Draft of the Homeowners Association documents, if a Homeowners Association is required or otherwise formed.
9. Filing with Town Clerk: It is the applicant's responsibility to file notice of submission with the Town Clerk's Office, either by delivery or by registered or certified mail. The notice shall include two copies of the application form and one 11" x 17" copy of the definitive plan (survey sheets only). The Town Clerk's Office will stamp the appropriate block on the application form and shall forward one copy (of the application form only) to the Office of Development & Inspectional Services. This will start the timeframe as provided in MGL Ch 41 § 81U; however, if defects in the completeness of the application are found during the subsequent review, it will be the applicant's responsibility to correct such defects in a timely manner, and/or grant extensions, so as to avoid a denial in the event the timeframe for action is close to expiring.

D. Contents of Definitive Plan:

1. Subdivision name, north point, scale, date, legend, and space for recording revision dates.
2. Name and address of record owner, developer, engineer, and surveyor.
3. Stamp, signature, and date signed for the surveyor and engineer and any other registered professional engaged in the design of the subdivision.
4. Suitable space to record the action of the Planning Board and the signatures of the members of the Planning Board (or officially authorized person who will endorse the plan). This signature block shall include the language: "This plan is approved along with the Certificate of Decision, which is recorded at Book _____, Page _____ at the Worcester District Registry of Deeds." This signature block shall also include space for recording the date of approval and the date of endorsement.
5. Suitable space to record the Town Clerk's certification that the statutory twenty day appeal period has expired with no appeals having been filed, or in the event an appeal has been filed, that the case has been finalized by the appropriate court and the approval stands.
6. Suitable space to record a notation of the Registry of Deeds reference (book & page) for the Performance Guarantee (covenant or monetary surety).

7. Locus plan at a scale of 1" to 1,000', showing the existing streets and zoning districts within the area, and the location and general layout of the proposed subdivision.
8. Names of abutters as they appear in the most recent tax list, shown on their property. This includes property owners across a street or stream.
9. Lines of existing and proposed streets, ways, lots and boundaries, easements, and public or common areas within the subdivision, including data sufficient to determine their location, direction and length, as well as to establish these lines on the ground. For easements, specify the purpose and/or owner of the easement.
10. Location of all permanent monuments properly identified as to whether existing or proposed, and what type (granite, concrete, iron, drill hole, etc.).
11. The area of each lot, parcel, and easement in square feet.
12. The lot number for each lot, shown enclosed in a circle.
13. Location, names, widths of pavement and widths of rights-of-way of existing streets bounding or which will provide direct access to the subdivision, and designation of ownership (public or private).
14. Location, widths, and purposes of any easements, rights-of-way, or other agreements of any kind that the property owner holds on any portion of any abutting property.
15. Location of zoning district boundaries if such boundaries fall within the subdivision.
16. Location of the Base Flood elevation if it falls within the subdivision or within 100' of the perimeter of the subdivision.
17. Location of the Aquifer Protection District (Zone 2) if it falls within the subdivision or within 100' of the perimeter of the subdivision.
18. Location of protected resource areas, e.g. wetlands, streams, banks, riverfront areas, lands subject to flooding, and waterbodies as defined by the Wetlands Protection Act and as delineated for filing with the Conservation Commission, unless no individual lots or any construction is proposed within 100 feet of the boundary of the protected resource area in which case the location as depicted on DEP wetlands maps available on MassGIS will suffice.
19. Existing and proposed topography at a two foot contour interval.

2.3.D — Definitive Plans

20. Soil types as identified by the US Natural Resource Conservation Service (formerly the Soil Conservation Service), and more specific data available from test pit or percolation test sites, if available.
21. Spot ground water levels where known (e.g. at test pit, percolation test sites if available, and/or test well locations.)
22. The street plan and profile, drawn at a horizontal scale of 1" = 40' and vertical scale of 1" = 8', or such other scales acceptable to the Planning Board, which shall include:
 - a. The plan shall show bearings and distances, radii and arcs, central angle and tangent distances on all curves with stationing on the center line. All non-tangent arcs shall be defined.
 - b. The profile shall show the existing ground on the center line in a solid black line, the existing right side in a short dash line, and the existing left side in a long dash line; the proposed grade shall be shown in a heavy black line with the elevation shown at each twenty-five foot station, with the rate of grade indicated.
 - c. The grade of all streets intersecting the proposed streets shall be shown for at least one hundred feet (100') along each side of the intersection of street center line.
 - d. The proposed drainage, catch basins, manholes, pipes and any other drainage facilities shall be shown on both plan and profile.
 - e. The proposed sewage collection system, including pipes, connecting wyes, laterals to the edge of the street right-of-way, chimneys, manholes, lift station (if applicable) and other related appurtenances shall be shown on both plans and profile.
 - f. Existing and proposed sidewalks, bikeways and walkways shall be shown with widths and grade elevations, and any necessary drainage.
 - g. Locations of existing and proposed street lights as well as proposed street light specifications.
23. Existing and proposed drainage (in accordance with Article 3 of these regulations) including drainage areas inside the subdivision, areas outside the subdivision which drain into it, and the route for all existing and proposed drainage discharging from the subdivision or to the primary receiving water course, other body of water, or Town of Spencer roadway or drainage system. Cross sections of each drainage ditch or pond shall also be included.
24. Drainage calculations certified by the Massachusetts licensed engineer who

prepared them, which shall include design criteria, drainage area and other information sufficient for the Board to verify the adequacy of any proposed drain, drain field, culvert, catch basin, detention or retention basin, other storm water management facility, or bridge, and to verify compliance with applicable local, state and federal regulations, including but not limited to MA DEP Stormwater Policy.

25. An operation and maintenance plan for the stormwater drainage system which includes a schedule of maintenance tasks and identifies the entities responsible and mechanism for funding (in most cases the Homeowners Association).
26. Proposed layout of the water supply and sewage disposal systems, if any, designed in accordance with the rules and regulations of the appropriate authority.
27. Where the owner or applicant also owns or controls adjacent tracts of land that can be further subdivided, a conceptual plan shall be submitted to illustrate potential future development, including any connection to the subdivision under review.
28. When multiple sheets are used, an index sheet at a scale of 1" = 400'.
29. Three-dimensional renderings shall be provided to illustrate the proposed development for any subdivision with 100 or more housing units, or when requested by the Planning Board to enhance the understanding of the Board, the abutters, and the general public as to how the proposed development will fit into the landscape.

E. Approval Process:

1. Reviews. Prior to the Planning Board taking action on a definitive plan, the following shall review the plans and shall report to the Planning Board through the Office of Development & Inspectional Services (ODIS) with their comments, and if appropriate, recommendations:
 - a. Board of Health/Health Agent. In accordance with MGL Ch 41 Sec 81U, the Board of Health or its agent shall review the definitive plan and submit a written report to the Planning Board indicating its approval or disapproval in relation to matters in its jurisdiction. The Board of Health may approve the plan, which shall not be construed to mean compliance with Title V requirements for each lot, or they may disapprove the plan based on findings that specific areas shown on the plan cannot be used for building sites without injury to the public health. In cases of disapproval, the report shall clearly state what actions, if any, could be taken to alleviate such conditions. The report from the Board of Health may include recommendations for modifications to the plan to improve the design as it relates to their

2.3.E — Definitive Plans, Approval

areas of jurisdiction. Failure of the Board of Health to submit its report to the Planning Board within 45 days of receipt of the plan shall be deemed approval by the Board of Health. Any report submitted to the Planning Board shall also be sent to the applicant by the Board of Health or Health Agent.

- b. **Reviewing Engineer.** The Planning Board may secure the services of an independent professional engineer (or engineering firm) to review the definitive plan, at the applicant's expense. The Director of ODIS will secure said services and will submit the definitive plan to the reviewing engineer as soon as is practical after its submission. In order to improve efficiencies in the review process, the Planning Board reserves the right to schedule the public hearing such that the reviewing engineer has had an opportunity to submit his/her report, provided the hearing is begun early enough to allow sufficient time for action by the Board in accordance with MGL Ch 41 § 81U. In most cases the hearing will be scheduled within six weeks of receipt of the application.
- c. **Town Staff.** The ODIS will submit a copy of the definitive plan to the Superintendent of Utilities & Facilities, the Superintendent of Sewer Department, the Fire Chief, the Police Chief, the Wetland/Soil Specialist, and any other appropriate municipal departments for review of matters relative to their respective jurisdiction. A written report of comments and recommendations may be submitted to the ODIS prior to the start of the public hearing, the anticipated date of which shall be stated when the plan is submitted to the departments. Whenever separate approvals will be required beyond the definitive plan for the construction of the subdivision infrastructure or for individual structures within the subdivision (including homes), the report to the Planning Board should indicate what approvals are required and the appropriate timeframe for submitting applications for said approvals to the appropriate department.

2. Public Hearing

- a. Before approval or disapproval of the definitive plan or an amendment to a definitive plan is given, a public hearing shall be held by the Planning Board. The hearing is open to the public and the purpose is to receive a presentation by the applicant or his/her agent, who shall also be prepared to answer any questions of the Board, and to allow the public to comment on and ask questions about the proposal.
- b. Notice of the public hearing shall be given to the general public by the Planning Board (via ODIS) by publication of the notice in a newspaper of general circulation in the Town of Spencer once in each of two consecutive weeks, with the first notice published at least 14 days prior to the hearing (not counting the day of the hearing).

- c. Notice of the public hearing shall be given to the applicant and abutters by the Planning Board (via ODIS) by mailing a copy of the published notice via certified mail at least 7 days prior to the hearing. Abutters shall include the owners of any property abutting the subdivision, including those properties across a street or stream, as appearing in the most recent tax list.

3. Action

- a. Timeliness. For any Definitive Subdivision Plan which was previously filed as a Preliminary Plan, the Planning Board must take final action on the definitive plan within 90 days of the submission of the plan (as certified by the Town Clerk, see § 3.C.7). For any Definitive Subdivision Plan which was not previously filed as a Preliminary Plan, that timeframe is extended to 135 days. In either case, the applicant and Planning Board may extend the timeframe by mutual agreement, and in such cases the Planning Board shall file said extensions with the Town Clerk's office. For the purposes of these regulations, "final action" shall include filing the Certificate of Decision with the Town Clerk.
- b. Withdrawal of application. The applicant may, at any time and for any reason, withdraw his/her application from consideration by the Planning Board by submitting a letter signed by the applicant and the property owner to the Board. If the withdrawal is due to voting quorum issues with the Board, there shall be no penalty in timeframe for resubmission of the application, and the application fees shall automatically be waived with the exception of the cost for re-notification of the public and abutters. If the withdrawal is voluntary and is not due to any issues with Planning Board quorums, the application cannot be resubmitted unless significant alterations in the design are made which address comments made by the Board within six months of withdrawal, and the application fee shall be paid in full with the resubmission.
- c. Decision. The Planning Board may approve, approve with modifications, or disapprove the Definitive Subdivision Plan submitted. In the case of disapproval, the Planning Board shall state in detail the specific elements of the plan that do not conform to these Subdivision Rules & Regulations, and shall rescind such disapproval and approve such plans when they are amended to comply with said regulations. Criteria for action by the Board shall be the following:
 - 1) Completeness and technical adequacy of all submissions;
 - 2) Determination that development at this location, without mitigation, does not entail unwarranted hazard to safety, health and convenience of the future residents of the development or of others because of possible natural disasters, traffic hazard, or

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- 3) Conformity with the requirements of these Regulations;
 - 4) Conformity with all applicable zoning requirements; and
 - 5) Consistency with the purposes of the Subdivision Control Law (MGL Ch 41).
- d. Certificate of Decision. Following such action, the Board will file a certification of its action with the Town Clerk and will send notice of its action by certified mail to the applicant at the address stated in the application. The Certificate of Decision will include any waivers granted by the Board and any conditions of approval. In the case of disapproval, the Certificate of Decision will specify the reasons for the disapproval, including the specific standards or regulations which the submitted definitive plan is not in compliance with, in order that the applicant may modify the plan and submit a new application.
- e. Endorsement. Following the 20 day appeal period as required in MGL Ch 41 § 81V, provided a performance guarantee has been duly executed (see Section 3.E.4 below), a majority of the Planning Board or their duly authorized designee shall endorse the original Definitive Subdivision Plan (mylars, entire set). At the same time, the Town Clerk shall certify that no appeal has been taken within the 20 day appeal period, or, in the event that an appeal was taken, that the court has submitted the appropriate notification to the Town Clerk as to the disposition of the appeal, and that disposition resulted in the approval of the Definitive Subdivision Plan.
- f. Record copy. Within 14 days of endorsement of the plan, the applicant shall submit copies of the entire set of the endorsed plan to the Office of Development & Inspectional Services as follows:
- 1) for developments that do not have municipal sewer, five copies, to be distributed to the Planning Board file, the Assessors, Utilities & Facilities, Conservation Commission, and the Fire Department.
 - 2) for developments that are connected to municipal sewer, six copies, to be distributed to the Sewer Department in addition to the four departments listed above.
- g. Electronic copy. For purposes of maintenance of Town records, including tax maps kept by the Assessors Office, an electronic copy of the survey plan only in compliance with Level III of the current version of the MassGIS Standard for Digital Plan Submission to Municipalities (available at the Office of Development & Inspectional Services or at www.mass.gov/mgis) shall be filed within 14 days of endorsement of the plan. The Planning Board may waive this requirement or allow a submission in compliance with Level I of the Standard upon written request which must include a statement as to the reasons electronic

submission is not possible. For Level III submissions, the coordinate system to be used shall be the Massachusetts Coordinate System, North American Datum 1983, with units of US Survey Feet, and the vertical datum shall be the North American Vertical Datum 1988.

- h. Recording of plan. The applicant is responsible for recording the Definitive Subdivision Plan, the Certificate of Decision, and the Performance Guarantee at the Worcester District Registry of Deeds. No work may begin on the subdivision until the plan is so recorded, and proof of filing is submitted to the Office of Development & Inspectional Services. If the plan is not recorded within six months of endorsement, the applicant is responsible for obtaining the necessary paperwork from the Town Clerk to certify that no modifications were made to the plan since endorsement.
 - i. Neither approval nor endorsement of the Definitive Plan constitutes the laying out or acceptance by the Town of streets within the subdivision. Streets become public ways only by adoption of an appropriate warrant article by Town Meeting (see Article 2, Section 3.F.7 of these regulations).
 - j. Timeframe for construction.
 - 1) Failure to commence the construction of the roads and infrastructure within eighteen months of the date of endorsement shall be grounds for the Planning Board to vote to rescind approval, as provided in MGL Ch 41 § 81W.
 - 2) Failure to complete the construction of the road and infrastructure within three years of the date of endorsement shall be grounds for the Planning Board to vote to rescind approval and/or use any method provided by the performance guarantee (s) to complete the construction, as provided in MGL Ch 41 § 81W.
 - 3) The Planning Board may grant extensions to either of these deadlines for good cause, in one year increments, for a period not to exceed three years.
 - 4) In the event the Planning Board rescinds an approval, such action shall be recorded at the Worcester District Registry of Deeds in accordance with MGL Ch 41 § 81W.
4. Performance Guarantee.
- a. In order to ensure that all streets and other infrastructure that are approved in a definitive plan are constructed and installed in accordance with the approval and the subdivision regulations, the construction and installation of said streets and other infrastructure shall be secured by one or more of the following methods:
 - 1) Surety: By a proper performance bond or a deposit of money or negotiable securities in an amount determined by the Planning

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Board to be sufficient to cover the cost of such construction and installation. Such bond or security shall be approved by Town Counsel, and shall specify that the improvements shall be completed within three (3) years of the date of the surety.

- 2) Covenant: By a covenant, executed and duly recorded by the owner of record, running with the land, whereby said streets and infrastructure to serve any lot shall be constructed before such lot may be built upon or conveyed other than by mortgage deed as provided by MGL Ch 41 § 81U.
 - 3) Lending Agreement: By a three-party agreement between the Town of Spencer, the developer, and the developer's lending institution, as provided for in MGL Ch 41 § 81U.
- b. Calculation of amount of Guarantee. The amount of any monetary surety shall be approved by the Planning Board and shall include, but not be limited to:
 - 1) The estimated cost of construction, as proposed by the applicant and agreed upon or revised by the Superintendent of Utilities & Facilities or the Planning Board's reviewing engineer;
 - 2) engineering fees, contingencies, and an inflation factor;
 - 3) a supervision and construction management fee; and
 - 4) the cost for preparation of an as-built survey in accordance with Section 3.F.6 of these regulations.
 - c. Any monetary surety shall be reviewed and re-calculated whenever a request is made for a reduction in the surety or for an extension of the approval or construction timeframe.
 - d. Failure of Performance. Any such bond may be enforced and any such deposit may be applied by the Board for the benefit of the Town, as provided in MGL Ch 41 § 81Y, upon failure of the performance for which any such bond or deposit was given to the extent of the reasonable cost to the Town of completing such construction and installation.
 - e. Final release of performance guarantee. Upon completion of all construction, including the top course of pavement, the applicant may request a release of the performance guarantee.
 - 1) Application. The applicant shall send by registered or certified mail to the Town Clerk and the Board a written statement that the construction of ways and the installation of municipal services and other improvements has been completed in accordance with the requirements of these Subdivision Regulations and the approved definitive plan, such statement to contain the address of the applicant.
 - 2) Inspection. Upon receipt of the request, the Director ODIS will request an inspection of the subdivision by the inspecting engineer and by the Wetland/Soil Specialist, and the request will be placed on the agenda for the next available Planning Board meeting.

- 3) Release. After reviewing the inspecting engineers report and any report submitted by the Wetland/Soil Specialist, if the Board determines that the construction, installation and improvements have been completed to its satisfaction, it shall release the interest of the Town in such surety and return it to the person who furnished the same, or release the covenant by appropriate instrument, which may be recorded. However, a sum in an amount to be established by the Board, but in no event less than the lesser of a) ten percent of the market value as determined by the Planning Board of the subdivided land or b) the amount currently held as surety for the development shall be held by the Town for the maintenance and repair of streets, ways, municipal services and other improvements in the event the developer/owner(s) fail to maintain said improvements, including snow removal, for a minimum of eighteen (18) months after completion of construction or until the streets and ways are accepted by the Town as public ways, whichever comes first, after which date the Town shall return the remainder of the sums thus retained to the person or persons who furnished same.
- 4) Notice of non-compliance. If the Board determines that said construction, installation or improvements have not been completed, it shall specify in a notice sent by registered or certified mail to the applicant and to the Town Clerk, the details wherein said construction or installation fails to comply with the requirements of these Regulations. The applicant shall be responsible for any action necessary to address the failures, and shall re-notify the Board under this same procedure when those actions are completed.
- 5) Time frame for action. If the Board fails to prepare and mail a notice of non-compliance within 45 days after receipt of the initial request from the applicant by the Town Clerk, all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned and any such covenant shall become void. In the event that said 45 day period expires without such specification, or without the release and return of the bond or return of the deposit or release of the Covenant as aforesaid, the Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

F. Construction Process:

1. Pre-construction meeting. One month prior to the anticipated start of construction (including tree clearing), the developer shall request a pre-construction meeting to be coordinated by the Office of Development & Inspectional Services. An “Anticipated Schedule of Construction” shall be submitted at this meeting. All applicable Town departments will be present and any issues with regard to the construction of the roads and infrastructure will be discussed.

2.3.F — Definitive Plans, Construction

2. Requirements prior to commencing construction. The following shall be completed prior to start of construction (including tree clearing):
 - a. Wash Rack. A tire wash rack shall be installed at the entrance to the new street from any existing street to strip mud from the tires of any vehicles exiting the site. This tire wash rack shall be a minimum of 75 feet in length and 24 feet in width, and shall be constructed of 2" to 3" coarse aggregate at least 6" thick, with geotextile to stabilize the foundation. Alternative designs must be submitted at or prior to the pre-construction meeting and shall be approved by the Superintendent of Utilities & Facilities and the Director of Development & Inspectional Services.
 - b. Development sign. The developer must post a 24"x36" weather resistant sign at the entrance of the subdivision which states the name of the project, the hours of operation, the phone number of the developer, and the phone numbers of the Spencer Police Department and the Office of Development & Inspectional Services.
 - c. Permitted construction times. No construction activity which may cause noise, vibrations, glare, dust, debris, or other detrimental impact to abutting property owners shall be permitted earlier than 7:00 am Monday through Friday or earlier than 9:00 am Saturday, or later than 5:00 pm on any day, or anytime on Sunday or holidays as celebrated by the Town.
 - d. Debris and trash. The site shall be kept reasonably clear of construction debris and trash, and said debris and trash shall be removed periodically from the site. Debris or trash which becomes a nuisance to abutters shall be removed by the developer immediately upon notification by the Town or its representative.
 - e. Stockpiling. Materials shall only be stockpiled in the locations as shown on the plans and approved by the Wetland/Soil Specialist or the Conservation Commission, and shall be screened from the view of existing homes on any abutting property to the extent practicable. All stockpiles shall be removed upon completion of the infrastructure and prior to release of any surety.
 - f. Other permits. All other required approvals and/or permits must be obtained prior to commencing construction, including local, state, or federal permits.
3. Inspections.
 - a. Inspection checklist. A copy of the inspection checklist which lists the required inspections for the construction of the infrastructure in the subdivision will be given to the developer at the pre-construction

meeting. The inspection checklist will be kept on file with the inspecting engineer (typically the Planning Board's reviewing engineer) and will be filled in by the inspecting engineer.

- b. Requests for inspections. The developer is responsible for contacting the inspecting engineer a minimum of three working days prior to requested inspections, and for maintaining communication with the engineer to ensure an efficient construction process. The developer is responsible for paying the costs incurred for all inspections and site visits by the inspecting engineer, thus it is to his advantage to ensure proper communication to avoid unnecessary visits or delays due to missed inspections.
- c. Fees. Prior to the start of construction (typically at the pre-construction meeting) the developer shall submit a check in the amount of \$5,000 made payable to the Town of Spencer to the Office of Development & Inspectional Services to pay the cost of the engineer's inspections. This money will be deposited into a special account for that subdivision, and when depleted to \$2,500 a request for additional funds will be made unless the Director of ODIS determines the project is near completion and the remaining funds are adequate to cover the remaining inspections, including final inspections for bond release and for road acceptance. Upon completion of the subdivision (final release of any sureties) any remaining balance will be refunded to the developer. In the event the account is depleted prior to completion of all required inspections, the inspecting engineer will discontinue inspections until the account is replenished.
- d. Failed inspections. If any deficiencies in construction are found by the inspecting engineer, the developer shall be notified in writing of the deficiencies and the required corrective measures within two working days, as well as verbally in person or by phone as soon after the inspection as possible. A copy of the written notice shall be submitted to ODIS and any other applicable Town department.
- e. Failure to receive inspection. If any required inspection is not performed due to negligence of any kind on the part of the developer (including but not limited to failure to notify the inspecting engineer in a timely fashion or continuation of work prior to a scheduled inspection), the Director of ODIS or the Superintendent of Utilities & Facilities, with the advice of the inspecting engineer, reserve the right to require that the un-inspected work be uncovered and inspected, or if feasible, that a third party testing company perform appropriate tests to determine the adequacy of the work prior to continuation of construction. Subdivision streets and related infrastructure that do not pass all required inspections will not be recommended for acceptance at Town Meeting until all deficiencies are corrected.

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- f. Inspection schedule. The following inspections are required:
 - 1) construction stakeout of roads and lots
 - 2) installation of erosion control measures (this does not replace any required Conservation Commission inspections)
 - 3) after land clearing and grubbing
 - 4) sewer installation (this does not replace any inspections required by the Sewer Commission, although if arranged in advance a single inspection may satisfy both needs)
 - 5) water installation (this does not replace any inspections required by the Water Commission, although if arranged in advance a single inspection may satisfy both needs)
 - 6) utility installations (electric, cable, telephone, gas, street lights; this inspection will be made at the discretion of the inspecting engineer)
 - 7) drainage system installation (may require more than one inspection depending on construction sequence; coordination with the Wetland/Soil Specialist is required where any protected resources areas are involved)
 - 8) roadway:
 - a) subgrade excavation and compaction
 - b) gravel base and compaction
 - c) curbing installation
 - d) sidewalks
 - e) proof rolling for pavement
 - f) base course installation
 - g) top course installation
 - h) guardrail, wall installation (if applicable)
 - 9) loam, seed, and fertilizer installation, or other stabilization methods where appropriate or where required by the Wetland/Soil Specialist or Conservation Commission
 - 10) street tree planting
 - 11) street sign installation
 - 12) monumentation for streets and lots
 - 13) final clean-up of the site
4. Damage. Any damage to existing public or private streets caused by the construction of the subdivision shall be repaired and paid for by the developer. The developer is responsible for documenting before and after conditions of these roads as proof for determining damage caused by their construction. Final release of any sureties shall not be made until any damage to local streets caused by the construction of the subdivision are repaired and pass inspection by the inspecting engineer and/or the Superintendent of Utilities & Facilities.
5. Responsibility for maintenance. The owner of the property or, once all lots have been built upon or sold, the owners of the lots within the subdivision, are responsible for all maintenance of the roads, including snow removal and sanding of streets, until such time as the Town Meeting accepts the

roads as public ways. Furthermore, the owner of the property is responsible for all maintenance of the stormwater drainage infrastructure and snow removal of sidewalks until such time as control is transferred to the Homeowners Association (or the Town in the absence of a Homeowners Association).

6. As-built survey. Upon completion of the roads and infrastructure and prior to final release of any covenant and/or surety, the developer shall submit four copies of an as-built survey to the Planning Board. The as-built survey shall show the boundary lines of the rights-of-way and lots within the subdivision, the location of the streets, the names of the streets, sidewalks, drainage structures, underground utilities (including sewer, water, stormwater, electric, telephone, cable television, and gas), fire cisterns, signage, street lights, and street trees. The as-built survey shall be prepared and stamped by a land surveyor or professional engineer licensed in Massachusetts, and shall include a statement that all improvements have been constructed to meet the requirements of the approved definitive subdivision plan and the Subdivision Rules & Regulations for the Town of Spencer. In addition, an electronic copy in compliance with Level III of the current version of the MassGIS Standard for Digital Plan Submission to Municipalities (available at the Office of Development & Inspectional Services or at www.mass.gov/mgis) shall be filed along with the paper copies. The Planning Board may waive this requirement or allow a submission in compliance with Level I of the Standard upon written request which must include a statement as to the reasons electronic submission is not possible. For Level III submissions, the coordinate system to be used shall be the Massachusetts Coordinate System, North American Datum 1983, with units of US Survey Feet, and the vertical datum shall be the North American Vertical Datum 1988.
7. Final disposition.
 - a. Timing. For subdivisions that have been approved to have the streets become public ways, the developer may request in writing seven months in advance of a Town Meeting that the streets be accepted as public ways. Such request shall not be made until the roads (complete with top course) and other infrastructure have survived one full year.
 - b. Required documents. A survey plan showing the boundaries of the streets (edge of pavement), all rights-of-way proposed to become public property, and all easements (including the beneficiary of the easement and its purpose) must be submitted along with the written request, and shall be submitted to the Office of Development & Inspectional Services.
 - c. Inspections. Upon receipt of the request, the Director of ODIS will request a final inspection of the subdivision by the inspecting engineer and applicable Town officials (e.g. Superintendent of Utilities &

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Facilities, Superintendent of the Sewer Department, and the Tree Warden), said inspections to be completed within 14 days of the Director's request.

- d. Deficiencies. Upon receipt of the inspecting engineer's report and any other reports, the Director shall notify the developer as to whether any deficiencies were found or not. If deficiencies were found, the developer is responsible for any action necessary to correct them and shall notify the Director when they are complete.
 - e. Planning Board action. If no deficiencies are found, or upon notification and follow-up inspections that deficiencies have been corrected, the request will be placed on the next available Planning Board agenda for their review and recommendation to the SelectBoard and Town Meeting. If or when no deficiencies exist and the approved subdivision plan specified the roads would be public ways, the Planning Board shall recommend to the SelectBoard and Town Meeting that the road be accepted as a public way.
 - f. Costs. The developer is responsible for the costs associated with this process, as well as any legal and recording costs associated with the transfer of title to the Town of Spencer.
8. Relationship to other permits.
- a. Building permits shall not be issued until the roadway construction has passed inspections to the base course level, the stormwater drainage system has been installed and passed inspections, and any required fire hydrants or cisterns have been installed and passed inspections. In the event that a covenant exists as the performance guarantee, the developer shall request release of all or a portion of the lots from the covenant prior to applying for building permits; at the same time the Planning Board shall provide written notification to the Building Inspector that building permits can be issued on the specified lots.
 - b. Occupancy permits shall not be issued until the remaining items on the inspection checklist have been completed, with the exception of the top course of pavement, which may be delayed until the construction of all or a majority of the homes are built, to avoid excessive wear on the roadway. However, in no case shall the top course installation be delayed more than five years after the base course was installed, and a request for inspection of the base course must be made within one month prior to the installation of the top course, and any damage or deficiencies in the base course as identified by the inspecting engineer must be corrected prior to installation of the top course.
 - c. Other permits, whether local, state, or federal, must be obtained and complied with separate from this process.

Section 4. Open Space Residential Development (OSRD) Plans

- A. Relationship to Zoning: These regulations are for the review and approval of OSRD proposals which are submitted in compliance with and under the authority of Section 4.8.2 of the Spencer Zoning Bylaw.
- B. Review Procedures: Applicants for all OSRD proposals must submit a preliminary plan in accordance with Section 2 of these subdivision regulations, except where the information required is conflicting with the following, where the following shall take precedence.
 - 1. Information Required:
 - a. A base map showing the approximate location on the property of the following, using readily available data or maps from the Town and/or from MassGIS:
 - 1) natural resources (including but not limited to wetlands, streams, waterbodies, open fields, wildlife areas, steep slopes, soil types, and forests);
 - 2) cultural resources (including but not limited to archeological resources or historical resources, including stone walls and old stone foundations).
 - b. A locus map showing the location of the property in relation to surrounding:
 - 1) infrastructure (streets, sewer, water, and natural gas),
 - 2) natural resources (including but not limited to wetlands, streams, waterbodies, open fields, wildlife areas, and forests)
 - 3) zoning districts; and
 - 4) existing land use.
 - c. A yield sketch (non-engineered) of a conventional single family subdivision design for the tract, illustrating a lot and road layout for the purpose of determining the base number of dwelling units for the OSRD. This layout must be realistic and must illustrate lots that are in compliance with the Zoning Bylaw, but does not have to illustrate roads in compliance with the length limits of these Subdivision Regulations. The yield sketch shall be shown as an overlay on the base map, and shall be based on that information. Wetlands delineation under the Wetlands Protection Act is not required for this purpose, but if it has already been done should be used.
 - d. A concept plan of the proposed OSRD layout showing the approximate location on the property of:
 - 1) areas earmarked for development, with approximate locations and configurations of proposed roads and lots (if any) indicated;
 - 2) areas earmarked for recreational purposes, including trails and connections to existing trails;

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- 3) areas earmarked for agricultural use, labeled with the type of use anticipated (hay fields, grazing, crops, etc.).
 - e. a narrative describing the existing conditions of the property and the proposed development design to assist the reviewer in understanding the concept plan and the reasoning behind the proposed design.
 - f. a general statement relating the applicant’s expectations for phasing the development or otherwise addressing anticipated potential impacts to the Town (including but not limited to traffic, sewer, water, fire, police, municipal parks and recreation, and school impacts).
2. The Planning Board shall consider the above information in determining whether the application meets the criteria listed in the OSRD intent section (§ 4.8.2.A) of the Spencer Zoning Bylaw. The Planning Board may approve the preliminary plan as submitted or with modifications, or may disapprove it. In the case of disapproval, the Board shall state in writing the specific reasons for disapproval; in such cases the applicant must file a revised preliminary plan for the OSRD prior to filing a definitive plan under OSRD.
3. Phasing. An approved preliminary plan for an OSRD proposed to be constructed in phases shall serve as the approved “blueprint” for the definitive plan submissions.
 - a. The applicant may choose to submit a definitive plan for each phase separately. The definitive plan for the second and subsequent phases shall be submitted within six months of completion of the preceding phase, unless a time extension not to exceed one year is granted by the Planning Board. For the purpose of this paragraph, completion shall mean that the housing units have been built and at least 90 percent are available for occupancy.
 - b. In the event a definitive plan for the second or subsequent phases is not submitted within this time frame, the approved preliminary plan will automatically become null and void, and any future development on the site will require a new application. In such cases, future development proposals must take into consideration the parent parcel (original OSRD tract), the number of units originally approved, the number of units obtainable under the regulations in effect at the time of application for development of said unbuilt phases, and the number of units built in any other phases of the original OSRD.
 - c. The definitive plan for the first phase shall include all infrastructure elements for the entire project that, due to topography or other site conditions, must be constructed up front, such as stormwater drainage, sewer lines, and the like. All other infrastructure (e.g. roads) should be designed and engineered at the time of definitive

plan application for that phase. The purpose of this is to allow cost savings in the engineering work required for a definitive plan when an OSRD subdivision will be constructed in phases, but to ensure that any elements needed for occupancy of the first phase are in place and functional with the first phase, even if they are located in the second or later phases - as may be the case with stormwater drainage.

3. The applicant shall submit a definitive subdivision plan as provided in Section 3 of these subdivision regulations.
- C. Design Standards: (Refer to Article 3, § 7 of these Subdivision Regulations)
- In order to further the purposes set forth in § 4.8.2.A of the Spencer Zoning Bylaw, OSRD proposals may be approved with modifications to the design standards in Article 3 of these subdivision regulations (e.g. roadways can be longer and narrower, sidewalks can be replaced with “off street” pathways, etc.). A request for such waivers shall be made with the application for the preliminary plan, and can either be specific to individual standards or can be a blanket request. The applicant shall submit sufficient information on the designs proposed for construction to allow the Planning Board to make a decision on the waiver request. In making their decision, the Board shall take into consideration the advantages and disadvantages of the proposed construction design on the provision of public safety and on the aesthetics, functionality, and energy efficiency of the OSRD project itself, as well as whether the streets are proposed to become public ways or remain private.

Section 1. General

- A. Compliance Required. All required improvements shall be installed or constructed in accordance with the approved definitive subdivision plan and certificate of decision, and the applicable provisions of these Subdivision Regulations. In the event that a subdivision approval conflicts with these Subdivision Regulations, the approval shall take precedence.
- B. Waivers. Strict compliance with the requirements of these regulations may be waived when, in the judgment of the Planning Board, such action is in the public interest and is not inconsistent with these Subdivision Regulations or the Subdivision Control Law (MGL Ch 41 § 81K-81GG). Waivers shall be requested at the time of Preliminary Plan application, although, pursuant to MGL Ch 41 § 81R waivers granted shall be set forth in the Certificate of Decision of the definitive subdivision approval.
- C. Design Guidelines. Any subdivision plan should follow to the extent practicable the Spencer Planning Board's design guidelines in effect at the time of application.

Section 2. Relation to Natural Features

- A. Natural Features. Due regard shall be shown for all natural features, such as large trees, water courses, wetlands, scenic points, historic spots, and similar community assets, which, if preserved, will add attractiveness and value to the subdivision. Any comments or recommendations of the Wetland/Soil Specialist and/or of the Conservation Commission shall be taken into consideration by the Planning Board in regard to preservation or protection of such natural resources. Note that these comments do not replace in any fashion any requirements for filing with the Conservation Commission under the Wetlands Protection Act or the Spencer Wetland Protection Bylaw.
- B. Topography. Existing topography shall be preserved insofar as is practical in the development of the land. In no case shall alterations to the existing topography be permitted that will have a detrimental impact on abutting properties or will alter topography on abutting properties without the express written consent of the abutting land owner, and in such cases a permanent easement shall be obtained from the abutting land owner.

Section 3. Lots

- A. Relation to Zoning. Lots for building purposes shall be in compliance with the Spencer Zoning Bylaw.
- B. Non-buildable parcels. Parcels reserved for and permanently protected as open space or recreational lands are not required to meet the frontage, area, or width requirements of the zoning bylaw, but shall be clearly marked on the definitive subdivision plan as "non-buildable parcels".

3.3.C

- C. Reserved areas. Land areas reserved for future development (“remaining land”) shall comply with the minimum lot requirements of the zoning bylaw, including frontage and width, even if future plans are to construct new roads to service the future development.

Section 4. Recreational Areas

- A. Requirement. The Planning Board may, in proper cases, require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air.
- B. Size. Said park or parks shall not be unreasonable in area in relation to the land being subdivided and to the prospective uses of such land. In no case shall a park be less than one acre in size, and for subdivisions of greater than 20 dwelling units, two acres, plus one acre for each additional 20 dwelling units over 40 (or fraction thereof).
- C. Location, access. Said park or parks shall be located in the subdivision in such a manner as to afford, in the opinion of the Planning Board, adequate access to all residents of the subdivision, and if to be dedicated for public use, to all residents of the town. If appropriate, off-street parking shall be provided, as well as low level lighting to provide a safe and secure area after dark. The Planning Board may limit the hours of operation to minimize nuisance conditions.
- D. Time period. The plan shall include appropriate endorsement stating that no building may be erected upon such park or parks without its approval for a period of three (3) years, within which time the Town, the Homeowners Association, or some other appropriate body may purchase said park for the purpose of establishing the park as permanent recreational or open space. In such cases, the deed for that parcel shall contain a permanent prohibition on building any dwellings or other non-recreational structures on the parcel.

Section 5. Infrastructure

- A. Utilities
 - 1. Municipal water and sewer. Where a subdivision is located adjacent to, or within a reasonable distance from the existing municipal water and/or sewer system, the Board may require connection thereto. In such cases, the developer shall provide water and/or sewer connections for each dwelling unit within the subdivision in addition to the main lines which connect to the municipal system, with service connections extending into each lot a minimum of ten feet (10’). The water and sewer systems shall be designed in accordance with the regulations of the Water and Sewer Commissions and/or of the Utilities and Facilities Department, and furthermore shall be designed to allow future connections to adjacent lands, where practicable.

Conversely, subdivisions that propose to connect to the sewer system when that system is not located within a reasonable distance may be required to provide on-site sewage disposal rather than connection to the public system.

2. Wells and septic systems. Where municipal water and/or sewer are not available, each lot within the subdivision shall be serviced by an alternate means of water supply and sewage disposal, in compliance with Title V. As stipulated in § 3.E.1 of these subdivision regulations, the Health Agent or Board of Health shall review the subdivision plan insofar as is practical given the preliminary stage for review of individual septic plans. (Septic or well permits for individual lots are not required prior to definitive plan approval.)
3. Fire protection. All subdivisions shall comply with the most recent version of the Town of Spencer Fire and Emergency Services *Fire Prevention and Protection Regulations for Subdivisions*.
4. Other utilities. All other utilities, including but not limited to electric, telephone, cable television, and gas, shall be designed and installed in accordance with the regulations and standards of the applicable utility company. All such utilities shall be located underground, unless proven to the satisfaction of the Planning Board that placement underground is impractical and excessively expensive.

B. Streets & Sidewalks

1. Location and Alignment:
 - a. All streets in the subdivision shall be designed so that, in the opinion of the Planning Board, they will provide safe vehicular travel. Due consideration shall also be given to the attractiveness of the street layout in order to obtain the maximum livability and amenity of the subdivision.
 - b. Provision satisfactory to the Planning Board shall be made for the proper projection of streets, or for access to adjoining property which is not yet subdivided, unless said land is permanently protected from development.
 - c. New streets proposed to be constructed off an existing private street are only permitted if the new street is to remain private (i.e. the Town will not accept such streets as public ways). The Planning Board may require that private streets used for access to a new street be upgraded to provide safe and adequate access to the new street, at the expense of the applicant for the new subdivision. An applicant may propose that any private streets upon which access is needed for the new subdivision will be upgraded to the minimum standards set forth in these Subdivision Regulations at his own cost and with written

3.5.B — Street Design

permission of the owners of the private street, and if done, both the existing private street and the new street may be considered by the Town for acceptance as public ways.

- d. Reserve strips prohibiting access to streets or adjoining property shall not be permitted, except where, in the opinion of the Planning Board, such strips are in the public interest.
- e. Street jogs with centerline offsets of less than 125 feet should be avoided.
- f. The minimum centerline radii of curved streets shall be 100 feet. Greater radii may be required for principal streets.
- g. Streets shall be laid out so as to intersect as nearly as possible at right angles. No street shall intersect any other street at less than 60 degrees.
- h. Street lines and property lines at street intersections shall be rounded with a corner having a radius of not less than 20 feet, except where an intersection is less than 80 degrees, in which case a smaller radius may be approved.
- i. Concrete sidewalks at least 5 feet wide shall be provided on one side of the street for subdivisions containing 25 housing units or less, and on both sides of the street for subdivisions containing 26 housing units or more, and along the side of existing streets bounding the subdivision (on the subdivided property). Depending on the location of the subdivision and the potential for pedestrian hazards, the Planning Board may require sidewalks on both sides of the street in more congested sections of a subdivision. Sidewalks at cul-de-sacs shall be located along the entire circumference of the cul-de-sac, terminating at the junction of the cul-de-sac with the street (on one side).
- j. The minimum width of street rights-of-way shall be fifty (50) feet. Greater widths may be allowed or required when deemed appropriate by the Planning Board based on the street design, projected traffic volumes, or unique circumstances of the site.

2. Engineering and Construction Standards

- a. Street grades shall be a minimum of 0.7%, and shall be a maximum of 6.0% for major streets, 9% for secondary streets, and 12.0% for minor streets. Grades of cul-de-sac turnarounds shall be a maximum of 5%. Driveway grades shall be a maximum of 15%.
- b. Adequate sight distances for the design speed of the street shall be ensured for both vertical (grade) changes and horizontal (curves) changes in the roadway.

- c. A leveling area no less than 50 feet in length with a maximum grade of 2.0% shall be provided at intersections where the grade of the new street exceeds 5%, regardless of whether the slope is upwards or downwards into the intersecting street.
- d. Street width.
 - 1) Minor streets shall have a width of 24 feet.
 - 2) Secondary streets shall have a width of 26 feet.
 - 3) Major streets shall have a width of 30 feet.
- e. Dead end streets.
 - 1¹⁾ In conventional single family subdivisions in the Rural Residential district, the maximum length of a dead end street (measured to the far edge of the right-of-way) is 2,000 feet for any minor street providing access to a maximum of 15 lots, however, an emergency access must be provided which will be owned and maintained (including snow removal) by a Homeowners Association and the emergency access is reviewed, approved and inspected annually by the Spencer Fire Department for both design and construction.
 - 2¹⁾ In all other conventional subdivisions, the maximum length of a dead end street is 1,000 feet for any street providing access to a maximum of 15 dwelling units, or 750 feet for any street providing access to more than 15 dwelling units.
 - 3) Dead end streets shall be provided at the closed end with a circular turnaround having an outside roadway diameter of at least 100 feet, and a property line diameter of at least 120 feet.
 - 4) Circular turnarounds may provide a landscaped island in the center, subject to review and approval of the Board. The applicant shall submit a Landscape Plan for the central portion of turnaround. The island shall be designed to allow for proper emergency vehicle and snowplow access, and must be approved by the Spencer Fire Department and the Utilities & Facilities Department.
 - 5) Alternative turn around designs, such as hammerheads, may be approved by the Planning Board when they are designed to avoid ledge or other site constraints, and provide access to no more than two single family lots. Any such alternate design must be reviewed and approved by the Spencer Fire Department and the Utilities & Facilities Department for both design and construction.
 - 6) When a cul-de-sac or alternative turnaround is required as a temporary measure when street construction is phased, it shall be located within easements which are duly recorded on the adjacent lots. Said easements shall terminate upon the extension of the street.

1: Taken together, the intent of items 1 and 2 is to require an emergency access in a subdivision in the RR district only when the dead-end street is greater than 1,000'.

3.5.B — Roadway Construction

f. Roadway construction.

- 1) The entire area of each street or way shall be cleared of all stumps, brush, roots, boulders and like material and all trees not intended for preservation.
- 2) Within each street, the full length and width of the roadway (including shoulders) shall be excavated or filled, as necessary, to a sub-grade parallel to the finished grade herein specified. If the soil is soft or yielding, or contains rocks or boulders, clay, sand pockets, peat or other material detrimental to the sub-grade, such material shall be removed and replaced with suitable well compacted material.
- 3) All storm drains, culverts, manholes, water and sewer mains, shut-off valves, and other appurtenances shall be installed, and such installations together with the roadway sub-grade, shall be inspected prior to any backfilling of trenches, covering of structures, or further roadway construction.
- 4) Roadways shall be constructed with the centerline coinciding with the centerline of the street right-of-way, unless a minor variance is specifically approved by the Board.
- 5) Roadways shall be provided with a foundation consisting of at least twelve (12) inches of clean bank gravel, rolled and compacted to a centerline grade as shown on the profile. Gravel shall be spread in two equal courses, each of which shall be rolled true to line and grade. Where shoulders are to be constructed the width of the second course shall be reduced by the width to be occupied by the shoulders. Any depressions that appear during and after the rolling shall be filled with gravel and rerolled until the surface is true and even.
- 6) The completed gravel foundation shall be covered for the full width of the roadway with a 2.5 inch base course and a 1.5 inch top course of "Type I" bituminous concrete. Wherever necessary, a "Cape Cod" berm will be installed.

C. Stormwater Drainage

1. The stormwater drainage system shall be designed and constructed to:
 - a. Permit unimpeded flow of all natural water courses;
 - b. Ensure adequate drainage of all low points along streets;
 - c. Intercept excessive ground water in the subsoil along the streets; and
 - d. Intercept storm water runoff along new streets at intervals reasonably related to the extent and grade of the area drained.

2. Stormwater drainage systems shall be designed and constructed such that there is no increase in the volume or the peak rate of stormwater runoff from the subdivision, and shall be designed in accordance with any Town of Spencer Stormwater Bylaw in effect at the time of application. The Planning Board may accept design in accordance with the MA DEP Stormwater Management Standards (a.k.a. the MA Stormwater Policy) as compliance with this requirement.
3. Low Impact Development techniques should be considered as an alternative to the common catch basin/retention basin design, and are encouraged in all subdivisions to the extent practicable. The Planning Board may require information to prove that low impact development techniques are not feasible on the site.
4. Lots shall be graded in a manner to prevent excessive amounts of stormwater drainage from flowing onto abutting property or adjacent lots within the subdivision, or into the stormwater management system, unless the system is designed (and if existing, modified) to accommodate that runoff. For the purposes of this paragraph, "excessive" shall mean quantities of runoff that cause one or more of the following to occur:
 - a. adverse impact on a septic system causing failure
 - b. creation of wetland conditions in the soil
 - c. flooding during minor or moderate rain events
 - d. erosion of soil
 - e. deposition of sediments
5. Easements of at least 15 feet in width and properly graded to keep runoff within the easement shall be provided across lots where needed to convey stormwater runoff from a point outside the lot to another point outside the lot (e.g. from an adjacent lot to a wetland).
6. No untreated stormwater shall be discharged to any drainage system owned by the Town of Spencer or to any resource area subject to protection under the Wetlands Protection Act (MGL Ch. 131 § 40).

Section 6. Miscellaneous

- A. Street names. The developer shall submit a request for street names that includes the preferred name and two alternate names for each street in the subdivision. The Fire and Police Departments shall recommend to the Planning Board which of the names is the most preferable to avoid conflicts with existing street names, in light of public safety concerns. Only the final approved street names shall be shown on the final (mylar) subdivision plan.
- B. Street lighting. To enhance safety, there shall be one street light installed at each intersection with existing streets. The Planning Board may, on a case by case basis dependent on the volume of traffic, topography, roadway geometry, and other site characteristics require additional lights at intersections within

the subdivision to enhance safety. Street lights shall be owned, maintained, and operated by the Homeowners Association. Street lights shall be cut-off fixtures and shall not cause glare or excessive lighting onto private property.

- C. Street trees. To enhance the aesthetics of the subdivision and provide wildlife habitat and shade, a minimum of two trees per lot for subdivisions in the VR and SR districts and three trees per lot for subdivisions in the RR district shall be planted within the right-of-way. These trees shall be planted a reasonable distance apart and do not have to be equidistant from each other; variation in spacing can add to the visual interest and may be necessitated by underground utilities or other elements of the subdivision infrastructure. Where trees will be planted under above ground power lines or other cables, species shall be chosen which do not grow tall enough to interfere with those lines or cables. Recommended species lists can be obtained from the Wetland/Soil Specialist and/or the Tree Warden.
- D. Earth removal. Unless necessitated by topographical and engineering constraints, and approved in advance by the Planning Board, earth material may not be removed from the site.
- E. Monumentation.
 - a. Monuments shall be installed at all street intersections, at all points of change in direction or curvature of streets, at all lot corners, and at such other points where, in the opinion of the Board, permanent monuments are necessary.
 - b. Monuments at all street lines shall be at least 4" x 4" reinforced concrete or granite posts three feet six inches (3' 6") in length with a drill hole in the center at the top, and must be set flush with the finished grade. Where exposed ledge prevents the installation of such monuments, the Board may approve use of a drill hole and iron pipe for those specific locations only.
 - c. Monuments at all other locations (e.g. rear lot corners) shall be iron pipe or drill hole.
 - d. No permanent monuments shall be installed until all construction which could destroy or disturb the monuments is completed.
- F. Clean-up. Prior to a request for final inspection of the subdivision, the developer shall remove all construction materials, equipment, and other debris, clean all storage areas including removal of fencing, re-grade all construction material stockpiles, loam and seed all exposed areas, and remove all sediments from the roadway and drainage system (catch basins, and retention basins as needed).

Section 7. OSRD Standards. The following standards shall apply to all OSRD proposals in addition to those above which are not contradictory. In cases where the following contradicts standards listed above, those listed here shall take precedence.

- A. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. Any grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.
- B. Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks, and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject parcel.
- C. Proposed buildings should be related harmoniously to the terrain and the uses, scale, and architectures of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings. Proposed buildings should be related to their surroundings.
- D. All open space (landscaped and usable) should be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.
- E. The removal or disruption of historically significant uses, structures, or architectural elements shall be avoided insofar as practicable, whether these exist on the site or on adjacent properties. The Planning Board shall consult with the Historical Commission in the determination of historical significance of any such elements.
- F. Walkways and bicycle paths shall be provided to link residences with parking areas, recreation facilities (including parkland and open space) and adjacent land uses where appropriate. Appropriate crosswalks and road signage shall be provided where pathways or sidewalks cross over streets. The Planning Board may require the construction of sidewalks off site where projected pedestrian usage is high and where such construction is feasible through working with other landowners.
- G. To enhance the aesthetics of the development and provide wildlife habitat and shade, a minimum of three trees per dwelling unit shall be planted within the road rights-of-way wherever existing woodlands or individual trees are not retained. A variety of species can be planted, and is encouraged to add visual interest as well as to provide species diversity, thus protecting against massive disease or insect infestation. Recommended species lists may be obtained from

3.7 — OSRD Design

the Wetland/Soil Specialist or the Tree Warden. These trees shall be planted on both sides of the street and a reasonable distance apart; they do not have to be equidistant from each other as variation in spacing can add to the visual interest and may be necessitated by underground utilities or other elements of the subdivision infrastructure. Where trees will be planted under above ground power lines or other cables, species shall be chosen which do not grow tall enough to interfere with those lines or cables (note that § 5.A.4. requires utilities to be located underground unless significant impediments exist).

- H. To enhance the visual quality of the entrance to the subdivision, the Planning Board may require additional landscaping at the entrance. The Board shall take into consideration the scenic character of the area, existing views, vegetation, and land uses in making such a determination.
- I. For any OSRD project that includes affordable housing units, those units shall be constructed in an equal percentage in all phases. When the number of affordable units is lower than the number of phases, the affordable housing units shall be constructed in the initial phases. Said affordable units shall be dispersed throughout the development and not segregated from the market rate units. In addition, said affordable units shall be designed to appear similar to the market rate units.