

Chapter 117

SUBDIVISION OF LAND

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[HISTORY: Adopted by the Planning Board of the Town of Newbury 1-9-1961, as amended through 5-4-2016. Other amendments noted where applicable.]

GENERAL REFERENCES

Earth removal — See Ch. 60.
 Historic Preservation — See Ch. 65.
 Stormwater Management and Illicit Discharge and
 Erosion Control — See Ch. 87.
 Streets, Sidewalks and Commons — See Ch. 88.

Zoning — See Ch. 97.
 Open Space Residential Development — See Ch. 112.
 Sewers — See Ch. 114.
 Stormwater Regulations — See Ch. 116.
 Water systems and supply — See Ch. 120.

ARTICLE I**General Provisions****§ 117-1. Purpose.**

The Rules and Regulations Governing the Subdivision of Land, Town of Newbury, Massachusetts (the "Regulations"), have been enacted for the purpose of protecting the safety,

convenience and welfare of the inhabitants of the Town of Newbury by regulating the laying out and construction of ways in subdivisions which provide access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions within subdivisions, and, in appropriate cases, by making adequate provisions for parks and open areas therein. The powers of the Planning Board under these Regulations and the Subdivision Control Law (G.L. c. 41, §§ 81K to 81GG, inclusive) 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 congestion 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 ensuring compliance with the applicable provisions of the Town of Newbury's Zoning By-Law; for securing adequate provision for water, sewerage, drainage, utility services, fire, police, street lighting, and other municipal equipment and services and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the Town and with the ways in neighboring subdivisions.

§ 117-2. Authority.

Under the authority vested in the Planning Board of the Town of Newbury by G.L. c. 41 § 81Q as amended from time to time, said Board hereby adopts these Rules and Regulations Governing the Subdivision of Land in the Town of Newbury. The Planning Board shall administer the Regulations and have all of the powers assigned to it under G.L. c. 41, §§ 81K to 81GG, inclusive (the "Subdivision Control Law").

§ 117-3. (Reserved)

§ 117-4. Definitions.

For purposes of these regulations, the terms and words defined in the Subdivision Control Law shall have the meaning given therein, unless a contrary intention clearly appears in these definitions. The following other terms and words are defined as follows:

- A. Applicant: Person, including owner, agent or assigns of the owner, applying for approval of a plan of a subdivision or endorsement of a plan believed not to require approval.
- B. Base Flood Elevation: The base flood elevation shall be the level of the 100 year flood as designated on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM), current edition.
- C. Board: The Town of Newbury Planning Board. A quorum for a meeting of the Board is three members. Action by the Board requires a simple majority vote of those present at a meeting except where specified otherwise in the General Laws.
- D. Certified List of Abutters: List of property owners certified by the Assessor's Office as having the necessary proximity to the proposed subdivision in conformance with Massachusetts General Laws.

- E. Country Drainage: Stormwater drainage off roads into roadside swales, rather than into catch basins, pipes and manholes.
- F. Easement: A right in land required by a public authority, or other person(s), entity, or entities to use or control property of others for a utility or other purpose.
- G. Frontage: The length of the line dividing a lot from the right-of-way of the street on which it bounds, measured continuously from the intersection of one side lot line to the intersection of the other side lot line of the same lot. For a corner lot, frontage shall be measured to the midpoint of the arc of the corner curve; either street may be used to determine the frontage.
- H. Gravel: Gravel is defined as a mixture of stone and sand, of even gradation, free of organic matter, trash or any other deleterious material, whose primary purpose is to serve, when compacted, as a roadway base course. Gravel may be processed or naturally-occurring, but may not consist of crushed or recycled Portland Cement concrete.

Gravel shall conform to following gradation, tested in conformance with ASTM C-136:

Sieve Size	% Passing
3 inch	100
1 1/2 inch	70-100
1/4 inch	50-85
#4	30-60
#200	0-10

- I. Lot: An area of land in one ownership with definitive boundaries ascertainable from a recorded deed or recorded plan.
- J. Planning Board Agent: A consultant employed by the Planning Board who is professionally qualified to review subdivision applications for conformance with the Town's By-Laws and Regulations and with good engineering practice, and/or to inspect the infrastructure construction for conformance with the approved definitive plan and with these Rules and Regulations.
- K. Professional Engineer or Professional Land Surveyor: Individuals registered to practice as such in the Commonwealth of Massachusetts.
- L. Roadway: That portion of the way, right-of-way or street layout which has been prepared and constructed for vehicular traffic.
- M. Streets:
 - (1) Collector: A street which, in the opinion of the 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.

- (2) Cul-de-sac, Dead End or Non-through: A street or street system which has only one means of ingress and egress to a through street.
- (3) Minor: A street which, in the opinion of the Board, is being used or will be used primarily to provide access to abutting lots and which is designed to discourage its use by through traffic.
- (4) Non-through street: A street that comes off a through street and loops back upon itself at a point on its edge of right-of-way with geometry as described in § 117-23D below. A non-through street has only one means of egress to a through street.
- (5) Paper: Any way or right-of-way shown on a recorded plan or sketch but which has not been constructed or otherwise prepared for vehicular traffic.
- (6) Subcollector: A street intercepting one or more minor streets and which, in the opinion of the Board, is used or will be used to carry a substantial volume of traffic from minor street(s) to a major street or community facility, and normally including the principal entrance street of a large subdivision, or group of subdivisions, and any principal circulation streets within such subdivisions.
- (7) Through street: A street that has a connection to at least two existing streets, or two connections to an existing street.

N. Subdivision:

- (1) The division of a tract of land into two or more lots, which shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or to the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the Subdivision Control Law if, at the time when it is made, every lot within the tract so divided has frontage on:
 - (a) A public way or a way which the Town Clerk certifies is maintained and used as a public way; or
 - (b) A way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law; or
 - (c) A way in existence when the Subdivision Control Law became effective in Newbury (December 14, 1966), having, in the opinion of the Planning Board, 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 thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.
- (2) Such frontage shall be of at least such distance as is then required by zoning or other by-law of the Town of Newbury for erection of a building on such lot.
- (3) Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, 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 Newbury (December 14, 1966) into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.

- O. Way or Right-of-Way: The full strip of land designated as a street consisting of the roadway, utility routes and any planting strips and sidewalks.

§ 117-5. Right to make a subdivision.

No person shall make a subdivision, within the meaning of the Subdivision Control Law, of any land within the Town, or proceed with the improvements or sale of lots in a subdivision, or the construction of ways, or the installation of municipal services therein, unless and until a plan has been endorsed "Planning Board Approval Not Required" or a Definitive Plan of such subdivision has been submitted to and approved and endorsed by the Board and recorded at the Southern Essex District Registry of Deeds.

§ 117-6. One dwelling on any lot.

Not more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision, or elsewhere in the Town, except where specifically allowed by the Town of Newbury Zoning By-Law, without the consent of the Board, and such consent may be made conditional upon the providing of adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision.

§ 117-7. Water supply and sewage disposal.

The following requirements must be met for Planning Board approval of a subdivision plan:

- A. Written approval from the Byfield Water District or the Newburyport Water Department, as applicable, for the connection of the subdivision to its public water supply system and for distribution therefrom; OR

A written statement from a local well-drilling company regarding the probability that a well at reasonable depth and with a yield satisfactory to the Newbury Board of Health can be drilled on each lot.

- B. Each proposed lot has a passing percolation test and two acceptable test pits, performed and observed by an approved soil evaluator, as defined by the State Environmental Code, Title 5 (310 CMR 15.000) and witnessed by the Newbury Health Agent. This report shall be stamped by the approved soil evaluator.

§ 117-8. Waivers.

The Board may waive strict compliance with any of these Regulations if it deems it in the public interest and if written record is kept of such waivers, and the reasons for them.

§ 117-9. Compliance with Zoning By-Law required.

The Planning Board shall not approve or modify and approve any Subdivision plan of land unless all buildings, structures, and lots shown on said plan comply with the Zoning By-Law of the Town of Newbury or unless a variance from the terms thereof has been granted by the Board of Appeals.

§ 117-10. Accessibility requirements.

- A. The subdivision design shall comply with all applicable provisions of the Americans with Disabilities Act of 1991 Accessibility Guidelines and with the Massachusetts Architectural Access Board Rules and Regulations (521 CMR), both as amended from time to time.
- B. A statement must be made on the endorsement sheet of the submitted drawings that the subdivision design is in conformance with the above-stated Federal Accessibility Guidelines and State Rules and Regulations.

ARTICLE II**Approval Under Subdivision Control Not Required****§ 117-11. Submission.**

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 and who believes that the subject plan does not require approval under the Subdivision Control Law, shall:

- A. File with the Board at a regularly scheduled meeting an application in the form appended hereto marked Form A accompanied by the necessary evidence to show that the plan does not require approval;
- B. File, by delivery or registered mail, postage prepaid, a notice with the Town Clerk stating the date of submission for such determination and accompanied by a copy of said application and plan. If the notice is given by delivery, the Town Clerk shall, if requested, give a written receipt therefor;
- C. Submit an original drawing of the plan, in the form hereinafter set forth, and four contact prints thereof; and
- D. Submit a filing fee in accordance with the Planning Board fee schedule.

§ 117-12. Form and contents of the plan.

The plan shall be legibly drawn in accordance with the rules and regulations of the Registry of Deeds or Land Court Manual of Instructions, as amended, and shall bear the original seal

and signature of the Professional Land Surveyor preparing the plan. The plan shall contain the following information:

- A. A title block, identifying the location of the land shown, the name and address of the owner(s) of record, date and scale of the plan, and the name and address of the firm or individual preparing the plan;
- B. Identification of the plan by name of the owner(s) of record, the names of abutters, and location of the land in question. Location to be shown by means of an inset Locus, measuring a minimum of 2" by 2", using a scale of 2,000':1, or other reasonable scale;
- C. The statement "Approval under the Subdivision Control Law Not Required" and sufficient space for the date and endorsement of the Board, together with a notation, below the signature block, that "The Planning Board's endorsement of the plan as not requiring approval under the Subdivision Control Law does not give lots or parcels any standing under the Zoning of the Town of Newbury nor any standing or determination under Title 5";
- D. Zoning classification(s) and location of any Zoning District boundaries which may lie with the locus of the plan;
- E. Sufficient data to determine location, width, direction and length of every roadway and street line, lot line and boundary line and to establish these lines on the ground, with length of frontage, areas of lots and lot numbers and street addresses. Information shall also include the status (private or public) and widths of pavement and right-of-way of all streets and ways shown on the plan;
- F. Frontage and area of any remaining adjoining land owned by the Applicant;
- G. The entire land area in which the division takes place, including all parcels affected by an increase or decrease in frontage, lot width, and area, which also includes the remaining land, if any, owned by the Applicant;
- H. Reference to any prior decisions and/or conditions by the Zoning Board of Appeals, Board of Selectmen and/or Planning Board including, but not limited to, variances, special permits, or exceptions regarding the land or any structures thereon;
- I. Location of all known existing structures, both above and below ground, including but not limited to, buildings, wells, septic systems, cisterns, and cesspools, systems on the lot(s) or parcels including all required setback dimensions;
- J. References to all deeds and plans of record used to establish the property lines of the lot(s) or parcels and of the streets, ways and easements shown on the plan, including deed references to abutting lots;
- K. A north arrow clearly marked and identified as to whether it is magnetic or true north or referenced to a record plan and so stated;
- L. Evidence that each lot on the plan, or altered by it, meets one of the following criteria:
 - (1) Has all the frontage owned by the Applicant and not by way of an easement in part or in whole required under zoning on:
 - (a) A public way; or

- (b) A way which the Town Clerk certifies is maintained and used as a public way; or
 - (c) A way shown on a plan previously approved and endorsed by the Planning Board in accordance with the subdivision control law; or **[Amended 6-2-2004]**
 - (d) A way existing before December 14, 1966 which the Board finds adequate for the way's proposed use; or
 - (e) A way shown on a plan of a subdivision registered in the Land Court prior to December 14, 1966; or
- (2) Is clearly marked on the plan to be joined to and made a part of an adjacent lot.
 - (3) Contains a building which existed prior to December 14, 1966; or
 - (4) Constitutes an existing parcel with no new lot divisions.
- M. Representation of any geographic features on the ground that might restrict or prohibit access to a lot, or might affect its viability as a building lot, including, but not limited to, existing rights-of-way and easements, water courses, wetlands, streams, brooks, waterbodies, Areas of Critical Environmental Concern (ACEC), and grades over 15%; and
- N. Location of vehicular access to the lot, which must be across the lot's required lot frontage.

§ 117-13. Determination of frontage.

In determining whether each and every lot shown on the plan has adequate frontage, the Board will determine first whether the lot directly abuts a public or private way and second, whether the lot has direct, practical access from the abutting way.

§ 117-14. Determination of adequacy of way.

In determining whether an existing way is adequate to qualify a plan as not constituting a subdivision, the Board may consider the following conditions, among others:

- A. Is the right-of-way adequate (at least 40 feet wide) and of reasonable vertical and horizontal alignment;
- B. Does the existing horizontal and vertical alignment of the roadway provide safe visibility;
- C. Does the roadway have 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 thereon or served thereby (is the traveled way at least 18 feet in width, with at least 8 inches depth of gravel and with adequate provisions for drainage); and

- D. If the road could ever serve four (4) or more dwellings and/or lots, is it surfaced with bituminous concrete or have provisions been made for such surfacing without cost to the Town?

§ 117-15. Endorsement.

If the Board finds that the plan does not require approval under the Subdivision Control Law, it shall forthwith, without a public hearing, endorse the plan under the words "Approval under the Subdivision Control Law Not Required." Such endorsement shall not be withheld unless such plan shows a subdivision requiring approval under the Subdivision Control Law. The Board may add to such endorsement a statement of the reason approval is not required. The plan will be returned to the Applicant and the Board shall notify the Town Clerk of its action. If the Board determines that the plan does require approval under the Subdivision Control Law, it shall within 21 (twenty-one) days of submission of said plan give written notice of its determination to the Applicant and return the plan. The Board shall also notify the Town Clerk in writing of its action. If the Board fails to act upon a plan submitted under this section within 21 (twenty-one) days after its submission, it shall be deemed to have found that approval under the Subdivision Control Law is not required. In such circumstance, the Town Clerk shall issue a written statement certifying that that due to the failure of the Planning Board to act on the plan within the requisite 21 (twenty-one) days, the Planning Board shall be deemed to have determined that approval under the Subdivision Control Law is not required.

ARTICLE III

Procedures for the Submission and Approval of Plans

§ 117-16. General.

It is required that the Applicant first read the Regulations carefully and thoroughly and then meet informally with the Board and/or its representative with a sketch plan of the area of a proposed subdivision in order to obtain information about the subdivision requirements for the area. Any uncertainties about the Regulations should be raised during this initial consultation. Informal discussions with other Town officials would prove helpful at this point; these would include at a minimum the Director of Public Works, the Health Agent, the Conservation Agent, the Principal Assessor, and the Board of Fire Engineers.

§ 117-17. Preliminary Plan.

A Preliminary Plan of a residential subdivision may be, and of a nonresidential subdivision shall be, filed for submission by the Applicant with the Planning Board and with the Board of Health, for discussion and approval, modification, or disapproval by each Board. The submission of a Preliminary Plan will enable the Applicant, the Board, other municipal agencies and owners of property abutting the subdivision to discuss and clarify the problems of such subdivision before a Definitive Plan is prepared. Therefore, it is strongly recommended that the Preliminary Plan be filed in every case.

- A. Submission: Any person who desires approval of a Preliminary Plan for the subdivision of land shall:

- (1) File with the Planning Board, at a regularly scheduled meeting, and with the Board of Health, an application in the form appended hereto marked Form B¹ and obtain acceptance of said application;
 - (2) Submit a preliminary draft of an Environmental Analysis including a soils map in accordance with the provisions of § 117-18C. It is understood that most issues can be discussed only qualitatively at this stage of design;
 - (3) Submit an original Preliminary Plan, in the form hereinafter set forth, and ten contact prints thereof to the Planning Board and two contact prints thereof to the Board of Health; and one set, of electronic files thereof in PDF format;
 - (4) File by delivery or by registered or certified mail, postage prepaid, a written notice with the Town Clerk accompanied by a copy of the completed application. If notice is given by delivery, the Town Clerk will, if requested, give a written receipt therefore; and
 - (5) Submit, with the Preliminary Subdivision application, an application fee in the form of a check or money order, payable to the Town of Newbury, in accordance with the Town of Newbury Planning Board fee schedule. The Applicant shall be responsible for additional costs incurred relating to the preliminary subdivision plan. These costs shall include, but not be limited to: legal advertising, notification of abutters by registered and/or certified mail and any review fees for technical consultants' review of the plans.
- B. Form and contents of a Preliminary Plan: The Preliminary Plan shall be drawn on a reproducible transparency at a suitable scale and shall contain the following information:
- (1) Proposed subdivision name or identifying title, boundaries, north point, date, scale, legend and title "Preliminary Plan," and block for approval;
 - (2) Names and addresses of Record Owner(s), Applicant(s), and Engineer, Surveyor or other designer of the preliminary layout, with professional stamp;
 - (3) Names and location of all abutters as they appear on the most recent tax list, as certified by the Newbury Assessor's Office;
 - (4) Existing or proposed lines of streets, sidewalks, ways, lots, easements and public or common areas within the subdivision in a general manner;
 - (5) Names, approximate location and widths of streets adjacent to the subdivision;
 - (6) Approximate boundary lines of all proposed lots or divisions of land, with their approximate areas and dimensions. Lots shall be numbered in sequence;
 - (7) Proposed system of drainage, and all natural water and drainage systems on the site, including, but not limited to the approximate location of all swamp, salt marsh, and wetlands, water bodies, vernal pools, perennial and intermittent streams, open drains and ditches, natural or manmade, and flowage rights, public and private, adjacent to or within the proposed subdivision, in a general manner;

1. Editor's Note: Form B is on file and available in the Town offices.

- (8) Zoning classification(s) and location of any Zoning District Boundaries, including overlay zoning such as flood plain or wetlands, which may lie within the subdivision;
 - (9) The existing and proposed topography of the land at 2 ft. contour intervals;
 - (10) The volume of earth to be removed, if applicable, or a statement that no earth is to be removed from the subdivision in conjunction with construction;
 - (11) The existing tree line and the area(s) of trees to be removed;
 - (12) The location, boundary lines, area and dimensions of all wetlands (as defined in G.L., Chapter 131, Section 40, as amended) situated on each lot within the subdivision; and
 - (13) Boundaries of the 100 year flood plain according to the latest FIRM maps and of the Great Marsh Area of Critical Environmental Concern (ACEC).
- C. Review of the Preliminary Plan: Upon acceptance of a Preliminary Plan application, the Planning Board shall post one set of Preliminary Plans in the Town Hall for public review and shall forward one set of Preliminary Plans to the Conservation Commission, the Highway Department, the Board of Fire Engineers, and the applicable Water District Commission. Within 30 (thirty) days of receipt of the Preliminary Plan, each agency shall report its findings and recommendations to the Planning Board. If a department does not respond within this period of time, it will be presumed that it has no objection to the Plan.
- D. Approval, Modification or Disapproval: As soon as practicable after accepting the submission, the Planning Board and the Board of Health will study the Preliminary Plan and discuss it with the Applicant. Within 45 (forty-five) days of submission the Planning Board shall approve the Preliminary Plan with or without modifications suggested by it or agreed upon by the Applicant, or shall disapprove the Preliminary Plan, stating in detail the reasons for such disapproval. The Planning Board shall send notice of its action to the Town Clerk and, by certified mail, to the Applicant. Approval of the Planning Board does not constitute approval of a Subdivision, but does facilitate the procedure in securing approval of a Definitive Plan. No Register of Deeds shall record a Preliminary Plan.

§ 117-18. Definitive Plan.

- A. Submission: Any person who desires approval of a Definitive Plan for a subdivision of land shall:
- (1) File with the Planning Board, at its regular meeting, and with the Board of Health, an application in the form appended hereto marked Form C² and obtain acceptance of said application;
 - (2) Submit an original Definitive Plan, in the form hereinafter set forth, with twelve (12) contact prints and one set of PDF files thereof to the Planning Board and

2. Editor's Note: Form C is on file and available in the Town offices.

two contact prints thereof to the Board of Health. The Definitive Plan shall be prepared by a Professional Civil Engineer and Professional Land Surveyor, and each separate plan sheet shall bear the appropriate seal and signature of the Professional Civil Engineer and Professional Land Surveyor who prepared the Plan sheet.

- (3) Submit an Environmental Analysis, in accordance with the provisions of Subsection § 117-18C below.
 - (4) Submit documentation regarding adequate water supply as required by Subsection § 117-7 above.
 - (5) Submit, with the Definitive Subdivision application, by check or money order payable to the Town of Newbury, an application fee in accordance with the Town of Newbury Planning Board fee schedule. The Applicant shall be responsible for additional costs incurred relating to the definitive subdivision plan. These costs shall include, but not be limited to: legal advertising, notification of abutters by registered and/or certified mail and all review fees for technical consultants' review of the plans;
 - (6) Submit a list, certified by the Assessor's Office, of all owners of land abutting the land included in the Subdivision Plan as they appear on the most recent tax list, including property owners on the opposite side of any street or water body abutting the subdivision ;
 - (7) Submit a list of requested waivers, with justification thereof;
 - (8) Submit a proposed schedule for prosecution of the work, including permitting, infrastructure construction, and construction of homes on individual lots;
 - (9) Submit a proposed form of Performance Guarantee in accordance with § 117-18H below;
 - (10) File by delivery or by registered or certified mail, postage prepaid, a written notice meeting the requirements of G.L. c.41, Sec. 81T, with the Town Clerk, accompanied by a copy of the completed application. If notice is given by delivery, the Town Clerk will, if requested, give a written receipt thereof.
- B. Form and contents of a Definitive Plan: The Definitive Plan shall be prepared in permanent ink upon mylar. The sheet size shall be 24 x 36 inches and the drawing shall be at a scale of one inch equals forty feet (1:40) or such other scale as the Board may approve. Where a plan requires multiple sheets, the plan shall be accompanied by an index sheet that shows the proposed layout of the entire subdivision and lists the title of each subsequent sheet. The sheets shall be numbered consecutively in the lower right hand corner, and a small scale key plan shall be shown on each sheet showing the entire subdivision and denoting the location within the subdivision of the portion shown on the larger scale plan. Match lines shall be provided. A glossary of terms and symbols that explains the terms and symbols used in the plan set shall be provided on the title sheet. The Definitive Plan shall contain, at a minimum, the following information:
- (1) A title block on each plan sheet that sets forth the following:

- (a) The name of the proposed subdivision;
 - (b) The date of the plan and each revision date;
 - (c) The scale of the plan;
 - (d) The name and address of the subdivision Applicant;
 - (e) The name and address of each owner of record;
 - (f) The name and address and telephone number and seal and signature of the Professional Civil Engineer and Professional Land Surveyor who prepared the plan;
 - (g) A north arrow;
 - (h) NAVD88 bench marks;
 - (i) The name of the plan sheet; and
 - (j) The number of the plan sheet.
- (2) Adequate space above the title block for the Planning Board's endorsement and the Town Clerk's certification, with spaces for annotating the date of approval and endorsement and certification.
 - (3) A locus map on the title sheet at a scale not greater than one (1) inch equals one thousand (1,000) feet showing the streets in the immediate vicinity.
 - (4) Assessor's Map and Lot reference information for the parcel(s) to be subdivided and for all abutting parcels.
 - (5) Name and location of all abutters as they appear on the most recent tax list, including names of owners of land separated from the subdivision only by a street or water body.
 - (6) The Zoning Classification and dimensional requirements and location of any Zoning District boundaries within the locus, including overlay zoning. If required by the Board, the plan shall show the setbacks, side yards and rear yards for each lot together with a potential house site, well location and an area which the Board of Health may deem suitable, based on soils examination and test pits, for a sewage disposal system for such lot. The Board will require this information for subdivisions located in areas with relatively high percentages of areas in ledge or wetlands.
 - (7) Location, names, and present widths and grades of existing public and private ways bounding, approaching, or within reasonable proximity of the subdivision, with location of existing water, electrical, cable, gas, and telephone lines, fire hydrants, drainage facilities, and other utilities and infrastructure.
 - (8) Lines of proposed streets, ways, and easements and location, dimensions, and area of all proposed lots and public or common areas within the subdivision, including sidewalks, drainage, and open space. Lot numbers shall be shown and enclosed in a circle.

- (9) Proposed street names, which shall not be final until they have been approved by the Board.
- (10) Location of proposed water, electrical, cable, gas, and telephone lines, fire hydrants, drainage facilities, and other utilities and infrastructure.
- (11) Sufficient data to determine the location, direction, width, and length of every existing and proposed street and way line, lot line, boundary line, and easement shown on the plan so as to establish these lines on the ground. Closure information shall be provided to indicate all street corners with a relative error of closure of property line traverse that shall be less than 1 part in 12,000. All monuments referenced in the closure calculations shall be indicated on the plan. A closure certification shall appear on the surveyor's drawing and be signed and stamped by the surveyor. A copy of traverse notes shall be furnished to the Planning Board upon request. The center line of the proposed street(s), easement(s), and major boundaries of the subdivision shall be staked out on the ground prior to application and shown on the Definitive Plan. If staking of road center lines is not feasible due to forest or brush cover, center lines may be located approximately by flagging, so that the Board and other interested parties can adequately identify their route.
- (12) Acreage, including total upland areas on the subject property and total wetland areas on the subject property and within 100 feet of each lot line.
- (13) Location of all existing major site features, including, but not limited to: stone walls; fences; buildings on the property and all buildings within 100 feet of the property limits; all trees over six (6) inches in diameter at 4' 0" above the ground to be saved within the proposed right of way; rock ridges and outcroppings; bodies of water; natural waterways; the limits of all wetlands and buffer zones on and within 100 feet of the subdivision; all streams, including perennial and intermittent streams located on the property and within 200 feet of the subdivision; flood plains located on the property and within 200 feet of the subdivision; boundary of the Great Marsh ACEC located on the property and within 200 feet of the subdivision; and all existing culverts and drains on the property and within 200 feet of the subdivision.
- (14) Existing and proposed topography at two-foot contour intervals and, in differentiating symbols, the location of the 100-year flood zone, as shown on FEMA's Flood Insurance Rate Map (FIRM) in effect at the time of the application, if encountered in or within 200 feet of the subdivision, with the Base Flood Elevation, and the location of the Great Marsh ACEC if encountered in or within 200 feet of the subdivision. Elevations shall be shown in relation to NAVD 1988.
- (15) Existing and proposed stormwater drainage systems and easements pertinent thereto, 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 to the primary receiving water course or other body of water. Design and calculations shall be in accordance with the Town of Newbury Stormwater Management, Illicit Discharge, and Erosion

Control Rules and Regulations. Cross sections of each drainage ditch or pond shall be included.

- (16) Size and location of existing and proposed wells, water supply mains and their appurtenances, hydrants, sewer pipes and their appurtenances and sewage disposal systems, curbs and curb dimensions.
- (17) Location of all permanent monuments, properly identified as to whether existing or proposed.
- (18) Evidence that the Applicant is pursuing wetlands permits (as required) in a parallel permitting process.
- (19) The volume of earth to be removed, if applicable, or a statement that no earth is to be removed from the subdivision in conjunction with construction.
- (20) Location of historic features or landmarks and wildlife habitats and corridors.
- (21) Street plan profile and section: A Profile Plan at a horizontal scale of 40 feet to the inch and vertical scale of four feet to the inch showing:
 - (a) Existing grades along the center and both side lines of the street.
 - (b) Proposed finished center line grades with elevations at every 50-foot station, location of vertical curves and gradients of even grades and tangents of vertical curves.
 - (c) The size and location of existing and proposed water mains, sewer lines, storm drains and their appurtenances within and adjacent to the subdivision, on the profile.
 - (d) The location and elevation of the starting bench mark and at least one other bench mark. All elevations shall refer to NAVD 1988.
 - (e) Typical sections of roadways showing widths and grades of street lines, roadway pavement, sidewalks, grass strips and side slopes, location and size of water, sewer, drain, and gas lines. The depth of roadway pavement, sidewalks, base courses and all underground utilities.

C. Environmental Analysis: An Environmental Analysis shall be prepared by an interdisciplinary team headed by a land planner, registered landscape architect, or similar professional approved by the Board. The team shall also include a qualified environmental biologist and a qualified soils scientist.

- (1) A set of plans at uniform scale shall be submitted, encompassing the entire subdivision on a single sheet not larger than the Definitive Plan. An electronic version of the plans in PDF format shall also be submitted. The plans shall show the following:
 - (a) The same data as on the Definitive Plan, reproduced as a clear acetate or mylar overlay;

- (b) Topography at two-foot contour intervals, with graphic drainage analysis; indication of annual high water mark, known high water mark, location of existing structures including fences and walls;
 - (c) Vegetative cover analysis including identification of general cover type (wooded, cropland, brush, wetland, etc.), location of all major tree groupings, plus other outstanding trees or other botanical features, important wildlife habitats, and identification of areas not to be disturbed by construction;
 - (d) Soil types, based on the U.S.D.A. Soil Conservation Service Soils Study, of the Town of Newbury, approximate ground water level, location and results of percolation tests or other subsurface examinations;
 - (e) Visual analysis, including analysis of scenic vistas, and locations of visual prominence;
 - (f) Location of surface water bodies, wetlands, aquifer or recharge areas for existing or potential drinking water supplies.
 - (g) The Board may waive the Environmental Analysis requirement on subdivisions of 5 lots or less.
- (2) A narrative statement shall be submitted, documenting the following, with references to the above plans:
- (a) Impact upon surface water quality and level;
 - (b) Impact upon groundwater quality and level;
 - (c) Effects on important wildlife habitats, outstanding botanical features, scenic or historic sites or buildings;
 - (d) Capability of soils, vegetative cover and proposed erosion control measures to support proposed development without erosion, silting or other instability. This statement shall be a required part of the Definitive Plan whether or not the Board waives the balance of the Environmental Analysis requirements;
 - (e) Relationship to G.L. c. 131 §§ 40 (Land Bordering Waters) and 40A (Inland Wetlands), and c. 130, § 105 (Coastal Wetlands).
 - (f) Anticipated traffic flow and impact of the proposed subdivision on the roadway(s) giving access to the subdivision; and
 - (g) The estimated number of inhabitants of the subdivision and the effect of the project on public services such as water, sewer, schools, police, fire and waste disposal.
- (3) Hydrological/Drainage calculations as required by the Rules and Regulations, Town of Newbury Stormwater Management, Illicit Discharge and Erosion Control.

D. (Reserved)

E. Review procedure.

- (1) Board of Health: The Board of Health shall, within 45 days after the definitive subdivision plan is filed, report to the Planning Board in writing its approval or disapproval of the plan, as required by MGL c.41, § 81U. In the event of disapproval, this report shall make specific findings as to which, if any, areas shown on the plan cannot be used for building sites without injury to the public health, and shall include the reasons for such findings, and, where possible, shall make recommendations for the adjustments thereof. Failure of the Board of Health to report shall be deemed approval by such Board. If sufficient information is not available for the Board of Health to provide such findings, this should be so stated. When the definitive plan shows that no public or community sewer is to be installed to serve any lot thereon, approval by the Board of Health shall not be treated as, nor deemed to be approval of a permit for the construction and use on any lot of an individual sewage system; and approval of a definitive plan for a subdivision by a Board of Health shall not be treated as, nor deemed to be, an application for a permit to construct or use an individual sewage system on any lot contained therein.
- (2) Other agencies: Upon acceptance of a Definitive Plan application, the Board shall forward one set of the Definitive Plan to the Conservation Commission, Highway Department, Board of Fire Engineers and the applicable Water District Commissioners. Each agency shall review the Plan to assess the Plan's compliance with the design standards herein and shall submit findings and recommendations to the Board in writing, within 45 days.
- (3) The Planning Board may require the Applicant to design and make improvements to roads, utilities, or other services or facilities outside of the planned subdivision if they help to mitigate or lessen the impacts of the development or improve safety or services in the area.

F. Public hearing.

- (1) Before approval, modification or disapproval of the Definitive Plan is given, a public hearing shall be held by the Board. The hearing is open to the public so that the Applicant may appear in his or her own behalf or be represented by an authorized agent; the Applicant or his or her agent shall be prepared to present the plans for the proposed subdivision and answer questions so that the Chairperson may allow all those in favor and in opposition to speak and ask questions, etc.
- (2) Notice of the time and place of such hearing shall be given by the Board at the expense of the Applicant by advertisement in a newspaper of general circulation in the Town of Newbury, once in each of two successive weeks, the first publication being not less than 14 (fourteen) days before the day of the hearing. A copy of said notice shall be mailed to the Applicant and to all abutters. Responsibility for this mailing shall rest with the Applicant. The Applicant shall provide the Planning Board with evidence that the mailing has been sent.

G. Approval, modification or disapproval:

- (1) The Planning Board shall approve, modify and approve, or disapprove with reason, the definitive plan and shall file with the Town Clerk a certificate of such action within the following time periods after the definitive plan submission is accepted.
 - (a) If a preliminary plan was submitted and acted upon: 90 days.
 - (b) If a preliminary plan was not submitted (residential subdivision only): 135 days.
 - (2) Failure of the Planning Board either to take final action or to file with the Town Clerk a certificate of such action regarding the definitive plan within the required time, or such further time as may be agreed upon at the written request of the Applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the Planning Board with the Town Clerk.
 - (3) The Planning Board shall send notice of its action by certified or registered mail, postage prepaid, to the Applicant at the address stated on the application. Any interested party wishing a brief summary of the Board's action should submit a written request thereof, with the name and address of the person to whom the summary should be sent.
 - (4) If the Conservation Commission finds that the Wetlands Protection Act is applicable, the Planning Board may make its final approval of the plan contingent on Conservation Commission approval.
- H. Performance guarantee: Before endorsement of its approval of the plan, the Planning Board will require that the construction of ways and the installation of municipal services be secured in accordance with the Rules and Regulations of the Board by one, or in part by one and in part by another, of the following methods, which method or combination of methods may be selected and from time to time varied by the Applicant:
- (1) By a proper performance bond in the form appended hereto marked Form F1 (Surety Agreement for a Bond) or a deposit of money in the form appended hereto marked Form F2 (Agreement to Secure Performance by a Deposit of Money) or F3 (Agreement to Secure Performance by a Bank Passbook) or negotiable securities in the form appended hereto marked Form F4 (Agreement to Secure Performance by a Deposit of Negotiable Securities),³ in an amount determined by the Board to be sufficient to cover the cost of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan. The Planning Board shall require that the Applicant specify the time within which such construction shall be completed and each bond or deposit shall be contingent upon the timeframe agreed upon. Each bond filed shall be approved as to form, manner of execution and sureties by the Town Counsel and all deposit agreements shall be approved as to form and manner of execution by the Board.

3. Editor's Note: Said forms are on file and available in the Town offices.

- (2) By a covenant in the form appended hereto marked Form D (Restrictive Covenant),⁴ executed and duly recorded by the owner of record and noted on the plans, running with the land, whereby such ways and services shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed.
- (3) By delivery to the Planning Board of an agreement in the form appended hereto marked Form F5 (Tripartite Agreement)⁵ executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the Applicant by the lender, which agreement shall be executed by the Applicant and the lender and shall provide for the retention by the lender of funds sufficient in the opinion of the Planning Board and otherwise due the Applicant, to secure the construction of ways and the installation of municipal services. Said agreement shall also provide for a schedule of disbursements which may be made to the Applicant upon completion of various stages of the work, and shall further provide that in the event the work is not complete within the time agreed to by the Applicant and the Planning Board, any funds remaining undisbursed shall be available for completion.

The amount of the performance guarantee shall be determined by an estimate submitted by the Applicant and approved or modified by the Planning Board and its Agent. Any covenant given under the preceding paragraph and any condition required by the Board of Health shall be either inscribed on the plan or contained in a separate document, referred to on the plan.

- I. Endorsement: Approval, if granted, shall be endorsed on the original drawing of the Definitive Plan by the Board but not until the statutory twenty-day appeal period has elapsed following the filing of the certificate of the action of the Board with the Town Clerk and said Clerk has notified the Board that no appeal has been filed.
- J. Copies of documents:
 - (1) Following plan approval, endorsement, and recording, the Applicant shall provide the Board with one mylar reproducible and five prints of the Definitive Plan and one copy of final covenants and restrictions, noting book, page number, and date of recording for each; and one mylar reproducible and five prints of the Street Plan and Profiles.
 - (2) Digital Data Submission Requirements:
 - (a) Prior to final approval by the Planning Board, the Applicant shall submit two (2) digital copies of the approved version of the Definitive Plan on two Compact Disks or DVD media to the Planning Board for review and approval. An alternative medium for the submission of this data may be requested by the Applicant and agreed to by the Planning Board prior to approval or endorsement. Acceptable file formats include: AutoCAD*.dwg, AutoCAD*.dxf, ArcView*.shp, ArcInfo*.E00, or other GIS compatible file format. The files must be identical to the printed plan and contain all

4. Editor's Note: Form D is on file and available in the Town offices.

5. Editor's Note: Form F5 is on file and available in the Town offices.

factual information included on the written plan. The submission will be forwarded to the Regional Planning Commission (Merrimack Valley Planning Commission). The RPC shall review the submission and within 10 business days shall notify the Planning Board that the submission does or does not comply with the requirements set forth herein. Upon project completion a digital submission of the record drawings conforming to the above requirements is required for final release of the performance bond associated with any project.

- (b) All digital mapping data must be delivered in the Massachusetts State Plane Coordinate system with a horizontal datum of NAD83, units of U.S. survey feet, and a vertical datum of NAVD 88. Each plan must include a minimum of one survey-derived (bearings and distances listed) reference to a permanent in-ground feature such as a catch basin, manhole, stone bound, municipal benchmark, or other readily identifiable marker. The permanent in-ground feature should appear on the plan in its as-built location and include sufficient bearings and distances to be able to locate the feature relative to the property parcel(s). The latitude and longitude of the in-ground feature must be provided with survey grade accuracy (generally accepted to be accuracy of plus or minus one foot). Where possible, all bearing and distances should be adjusted for true north OR the Applicant shall provide a listing of the number of degrees, minutes, and seconds of deviation between true north and magnetic north.
- (c) Each feature type must be organized in the CAD or GIS data structure as a separate layer. These may include, but are not limited to, separate layers for: parcel boundaries, dimensions, buildings, roads, road centerlines, surface water, wetlands. Multiple features represented in a single CAD layer or GIS file will not be accepted. Any features submitted in the electronic plan must be represented in their entirety in an individual layer. All data shall be topologically clean, meaning that polygons are closed (no overshoots or undershoots) and lines connect at nodes. Features that naturally connect, such as driveways to roads, must connect seamlessly. All text in AutoCAD files will appear on top of other features and will be in separate annotation layer. Features under text should not be erased or "broken" in order to make the text clearer.
- (d) Documentation of the data format must be provided with a description of the CAD layers and list of the types of features placed in each layer. Submission of multiple files must also include a list of the files and a description of their content.
- (e) The data submitted must include documentation on the method used to gather the data, the name of the person(s) responsible for preparing the data, contact information, an estimation of the horizontal and vertical accuracy, and the date of data capture. Also included must be: date of submission; street address of submitted plan; map and lot of submitted plan; name of owner of record; and name of Applicant.

- (f) All digital files shall be high quality, free from any and all defects and viruses, and labeled as to their contents.
 - (g) A letter from the Planning Board verifying receipt of the digital files and compliance with Planning Board standards shall be submitted to the Applicant within five business days of receipt of review letter from the RPC. Failure to submit such digital files to the Planning Board and to obtain a compliance letter may be cause for the Planning Board to rescind approval or not to endorse said plan.
- K. Layout and acceptance of streets and of ways: The approval of a Definitive Plan does not constitute the laying out or acceptance by the Town of streets shown on the plan. All streets and ways, drainage systems and utilities shall remain the responsibility of the owner until the same are accepted by the Town of Newbury. Prior to acceptance by the Town of Newbury of any such street, the owner shall secure approval of the improvements by the Board together with the full and complete release of any performance guarantees.
 - (1) The Applicant will be responsible for maintaining and plowing the roads in order to ensure access of emergency equipment up until the time that the road may be accepted by the town. In the event that the town assumes this responsibility, the Applicant may be billed for the cost of said maintenance and plowing.
- L. Release of performance guarantee.
 - (1) Upon completion of improvements required by this regulation, and upon payment for inspection by the Planning Board's agent in accordance with the provisions of § 117-45, the Applicant may request either partial or full release of his bond, deposit or covenant by sending a statement of completion and request for release by registered or certified mail to the Planning Board and to the Town Clerk (Note: See "Form E Certificate of Performance" for lot releases⁶). Release will be granted only following written approval by the Planning Board Agent and any other town officials concerned with the work performed. Copies of release from covenants or agreements regarding building or use and occupancy permits shall be sent by the Planning Board to the Building Commissioner.
 - (2) Partial release. The Board may grant partial release from such security for partial completion of improvements, and payment of any outstanding invoices for inspection by the Planning Board's Agent, provided that the completed portion provides a reasonable system for circulation and utilities pending completion of the rest, and provided that appropriate arrangements have been made for completion. No partial release shall be made until the Applicant submits a written estimate of cost to complete the work and said estimate has been approved by the Planning Board and the Planning Board's Agent.
 - (3) Security. The Board may release the Applicant from the covenant upon receipt of an agreement executed by the Applicant and by the holder of a first mortgage on the premises providing for retention of funds and their availability to the Town upon default (see c. 41, GL., § 81U, Paragraph 11).

6. Editor's Note: Form E is on file and available in the Town offices.

- (4) The Board shall in all cases retain security in an amount equal to at least 20% of the total cost of improvements until the integrity of road pavement and drainage has been verified following a full winter in place, and an amount equal to at least 5% of the total cost until trees and other vegetation have been established, and the fee has been conveyed to the Town or three years have elapsed since completion of the improvements.
 - (5) Refusal of release. If the Planning Board determines that said construction or installation has not been completed, it shall specify in a notice sent by registered mail to the Applicant and to the Town Clerk the details wherein said construction and installation fails to comply with the requirements of this regulation.
- M. Record Drawings: Upon completion of construction, and before release of the full performance guarantee, the Applicant shall have prepared and submitted Record Plans at the same scale as the street plans, which shall indicate the actual location of all of the following:
- (1) Street lines;
 - (2) Roadway edges;
 - (3) Path locations;
 - (4) Permanent monuments;
 - (5) Location and inverts of the required utilities and drainage;
 - (6) Locations of any other underground utilities, such as electricity, telephone lines, and street lighting. The accuracy of such Record Plans shall be stamped by a Professional Land Surveyor or Professional Engineer retained by the Applicant, and approved by the Planning Board's Agent. Note that interim record drawings are required in conformance with § 117-57.

ARTICLE IV Design Standards

§ 117-19. General.

It is the intent of these standards to provide a sound basis for the design of new subdivisions which will add value and character to the Town. All streets in a subdivision shall be designed so that, in the opinion of the Board, they will provide convenient and safe vehicular, bicycle and pedestrian travel. In planning the project, the Applicant shall give due consideration to the natural resources and characteristics of the site, including its topographic and geological conditions, to the convenience and safety of the public, and to the attractiveness of the proposed streets and site design. Streets shall be designed to preserve and enhance the character of the surrounding community.

§ 117-20. Design purposes.

- A. Design shall emphasize, to the extent possible:

- (1) The natural features of the landscape;
- (2) Landscaping that is consistent with the existing features found in (1) above;
- (3) Maintenance within the subdivision of runoff and vegetative cover equivalent to conditions before development;
- (4) Stormwater runoff and collection in conformance with current Low Impact Development standards, as promulgated by the Massachusetts Department of Environmental Protection and the Federal Environment Protection Agency.

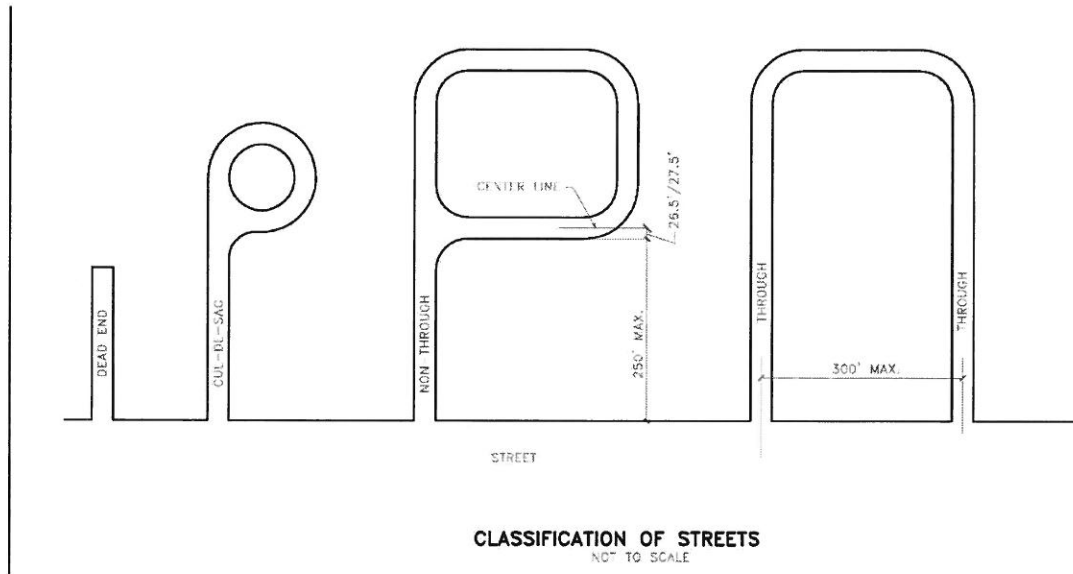
B. Design and Construction shall minimize, to the extent possible, the following:

- (1) Volume of cut and fill;
- (2) Area over which existing vegetation will be disturbed, especially if within 100 feet of a watercourse, wetland, or water body, including, but not limited to, lakes, ponds, and vernal pools or in areas having a slope of more than 15%;
- (3) Number of trees removed having a diameter over six (6) inches as measured at 4' 0" above the ground, both within the right-of-way and on the proposed lots;
- (4) Extent of alteration or relocation of any watercourse, wetland, or water body, including vernal pools;
- (5) Size of paved areas (including streets) except as necessary for safety and convenience, especially in aquifer and recharge areas;

§ 117-21. Street location and alignment.

- A. All streets shall be designed so they will connect in a logical fashion with existing streets, provide for the convenient and safe movement of pedestrian, bicycle, and vehicular traffic and allow for the proper projection of streets for access to adjoining property which is not yet subdivided.
- B. Street jogs with centerline offsets of less than 125 feet shall not be allowed.
- C. 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.
- D. Property lines at street intersections shall be rounded or cut back to provide for a property line radius of not less than 30 feet.

§ 117-22. Classification of streets.



§ 117-23. General layout and dimensions.

	Minimum Sight Distances					Minimum Center-Line Radius (ft)
	Minimum Width of R-O-W (ft)	Minimum Width of Roadway (ft)	Horizontal (ft)	Vertical (ft)	Maximum Length (ft)	
Minor						
Dead End	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Cul-de-Sac	53	22	200	100	500	100
Non-through	53	22	200	100	see above	200
Through	53	22	200	100	n/a	200
Subcollector						
Through only	53	22	500	350	n/a	200
Collector						
Through only	55	24	800	450	n/a	400

- A. The Board may in the case of residential streets authorize a reduction of the minimum roadway width and/or an increase in roadway length. Such reduction or extension shall only be authorized if the Board finds it is in the public interest and that the design of the overall subdivision will significantly enhance the character of the neighborhood and preserve to a greater extent the historical and natural features of the site. Approval of such reductions or exceptions if based in part on limiting the number of lots upon which buildings can be constructed shall be endorsed on the plan to which they relate or set forth in a separate instrument attached thereto and recorded therewith. The Board shall maintain in its files a written explanation of the reduction or extension together with the reasons for its approval.

- B. Cul-de-sac streets shall be provided with a turnaround having an outside sideline diameter of at least 165 feet, an outside roadway diameter of at least 140 feet, a pavement width of 25 feet and a center island. Streets with a center island of less than one acre shall be classified as cul-de-sacs. Streets with a center island of one or more acres shall be classified as non-through streets.
- C. Length of cul-de-sac streets shall be measured from the sideline of its intersection with a through street along the centerline of the cul-de-sac street to the rear-most point of the sideline of the turnaround.
- D. Length of non-through streets shall be measured from the sideline of its intersection with a through street along the centerline of the non-through street to the point on such centerline where the non-through street centerline returns to intersect itself. The distance from this point to the sideline of the through street shall be no more than 307 feet.
- E. Grades of all streets shall be a reasonable minimum, but not less than one percent nor more than eight percent.
- F. A proposed through street shall have at least 300' between its two new intersections which open onto an existing street, in cases where the proposed street has both its openings on one existing street, measured centerline to centerline.

§ 117-24. Typical cross section.

See the Typical Cross Section Diagram at the end of this chapter.

§ 117-25. Easements.

- A. Easements across lots or centered on rear or side lot lines for utilities or for pedestrian access shall be provided where necessary and shall be at least twenty feet wide. Size of easements for stormwater BMPs, fire protection, water tanks, and other Town facilities shall be as required.
- B. Where a subdivision is traversed by a watercourse, drainage way, channel or stream, the Board may require that there be provided a stormwater easement or drainage right-of-way of adequate width to conform substantially to the lines of such watercourse. The boundaries of said easement shall be no closer than five feet from the high water line, drainage way, channel or stream, and shall provide for construction or other necessary purposes.
- C. Where a street is projected, or the Board requires provision for access to adjoining property, an easement for all roadway purposes shall be granted.

§ 117-26. Public area and open space.

Before the approval of a Definitive Plan, the Board may, in appropriate circumstances in its sole discretion, require the Plan to show a park or parks suitably located for playgrounds or recreational purposes or for providing light and air as it may so determine. The park or parks shall not be unreasonable in area in relation to the land being subdivided and to the

prospective uses of such land. Each area set aside for one of the stated purposes shall be of suitable area, dimensions, topography and natural setting for the character of such use. The area or areas shall be so located as to serve adequately all parts of the subdivision as approved by the Board. The Board may require that the area or areas reserved shall be located and laid out so as to be used in conjunction with similar areas of adjoining subdivisions or of probable subdivisions. If so determined, the Board shall by appropriate endorsement on the Plan require that no building may be erected on such park or parks for a period of not more than three years without its approval. The area or areas shall be made available for purchase by the Town. Failure by the Town to purchase said area(s) within three years from the date of acceptance of the subdivision's roads and utilities by the Town shall free the Owner from these restrictions.

§ 117-27. Flood Plain.

There shall be no roadway construction within the 100-year flood plain as depicted on FEMA's Flood Insurance Rate Map (FIRM) in effect at the time the Definitive Subdivision Plan is submitted to the Planning Board. All construction shall be in conformance with the flood hazard provisions of the Town of Newbury Zoning By-Law, and shall:

- A. Be consistent with the need to minimize flood damage;
- B. Provide for all public utilities and facilities such as sewer, gas, electrical, communications and water systems to be located and constructed to minimize or eliminate flood damage;
- C. Provide drainage systems in conformance with the Massachusetts DEP Stormwater Handbook and the Town of Newbury Stormwater Management, Illicit Discharge and Erosion Control Rules and Regulations and adequate to reduce exposure to flood hazards; and
- D. Be in compliance with G.L. c. 131 (Wetlands Protection Act).

§ 117-28. Wetlands.

The Definitive Plan shall be in conformance with G.L. c. 131 (Wetlands Protection Act). Where the provisions of G.L. c. 131 apply to a project, the Applicant will be required to hold parallel design discussions with the Conservation Commission and the Planning Board. The Planning Board may condition its approval of a Definitive Plan upon the issuance of an "Order of Conditions" by the Newbury Conservation Commission.

§ 117-29. Subdivision signs.

Permanent signs identifying the subdivision by name may be allowed at the discretion of the Planning Board and shall conform to the requirements of Newbury's Zoning By-Law.

§ 117-30. Preservation of stone walls.

Stone walls throughout the property shall be preserved or, where preservation is not possible, restored in kind. The definitive plan shall include a designation of any stone walls or portions thereof to be removed, relocated, or restored.

§ 117-31. Fire protection.

In all areas which are not served by either the Newburyport Water Department or the Byfield Water District, or which, in the opinion of the Fire Chief, do not have adequate water supply and pressure for fighting a fire, the following applies:

- A. The Applicant shall install 20,000 gallon underground water storage tanks along subdivision roadways at a maximum spacing of 700 feet. The tanks shall be installed and maintained in accordance with NFPA standards, and the design shall meet the approval of the Town of Newbury Board of Fire Engineers. The Applicant shall provide funds to the Town in an amount sufficient to provide income adequate to fund maintenance of the tanks by the Town. Should the road in question remain private and not become a Town road, an easement for access, use, and maintenance shall be granted to the Town.

ARTICLE V**Specifications for Construction****§ 117-32. General.**

- A. The Applicant shall install all of the improvements itemized herein unless waived in writing by the Board. All work done in accordance with these specifications shall be subject to the inspection of the Planning Board and the Planning Board's Agent.
- B. No aforementioned bond or covenant shall be released until full approval in writing of all work done is received by the Planning Board from its Agent. Such approval shall be in a form mutually satisfactory to the Planning Board and the Board's Agent and shall, at a minimum, cover those matters set forth in § 117-46 below.
- C. Any removal of earth from the site shall be in conformance with the Town of Newbury Earth Removal By-Law, Chapter 60. No loam, gravel or other earth materials of any kind shall be removed from its original position in any subdivision until such time as the performance guarantee has been submitted, accepted and approved by the Board. No removal of loam from the development shall be made until a six-inch thickness of compacted loam shall have been placed throughout the entire area of all lots and on the planting strips along the roadway. Only such areas designated as roadways, driveways, building sites and areas requiring filling may be excavated for construction purposes. Should it come to the Planning Board's attention that soil has been removed from the site, approval of the Subdivision will be revoked until remedial measures are taken and the final result approved by the Planning Board.

§ 117-33. Streets and roadways.

Unless otherwise specified herein, all construction shall be performed in accordance with the most recently amended "Standard Specifications for Highways and Bridges" of the Massachusetts Department of Transportation.

- A. Clearing and grubbing: Existing trees within the area of the right-of-way may be selected for preservation of aesthetic or other values by the Planning Board provided they shall be over six (6) inches in diameter at 4' 0" above the ground and shall be located at least five feet from the edge of the finished roadway pavement. No trees shall be removed until said selection is made. Such trees to be preserved shall be protected from bruises and other abuses continuously throughout the construction of the subdivision in a manner satisfactory to the Planning Board. The developer shall give the Board twenty-one days' notice to allow the Board to select the trees to be saved. The entire area of each right-of-way shall then be cleared of all stumps, brush, roots, boulders, and like material and all trees not intended for preservation.
- B. Excavation and subgrade preparation: All topsoil and other yielding material shall be removed for the full length and width of the paved roadway and from under the sidewalk location when sidewalks are required regardless of whether or not the finished grade is above the existing grade. With the roadway at the subgrade level, all pipes and underground services shall be laid. Backfill will be with clean, granular material, and shall be compacted in six-inch lifts with equipment satisfactory to the Planning Board's Agent. All roadway fills will be constructed of earth free of stumps, brush, trash, organic material or other deleterious materials. Fill material shall be placed in six-inch maximum lifts. The moisture content shall be kept at optimum by means of water trucks (if dry) or blading the material (if wet). The road fills shall be compacted with rollers satisfactory to the Planning Board's Agent to 95% maximum density in conformance with ASTM Standard D1557. Written evidence of satisfactory test results shall be given to the Planning Board by the Applicant. Tests shall be performed by a licensed testing lab, and shall be arranged and paid for by the Applicant.
- C. Gravel base and grading: After the roadway has been carefully graded to the required subgrade elevation, at least 12 inches of base gravel shall be spread and rolled with a roller of sufficient weight to achieve 95% compaction of gravel per ASTM Standard D1557. Satisfactory compaction levels shall be confirmed by compaction tests; such tests shall be arranged and paid for by the Applicant, and results forwarded to the Board and its Agent, which tests shall be by such method and by such testing company as shall be satisfactory to the Board. The gravel shall be placed in two six-inch lifts, and rolled with a vibratory roller of at least 12 tons static weight. Gravel shall be in conformity with the gradation shown in the definition "Gravel" in Article I. When spread on the road and rolled, it shall form a stable foundation. All banks and curves must be established before the bottom course of wearing surface can be applied. The roadway crown shall have a minimum of one-quarter inch per foot of pitch.

Note: The Planning Board reserves the right to require a thickness of base course greater than 12 inches if subgrade conditions require it.

- D. Pavement or wearing surface: The wearing surfaces shall consist of a three inch thickness, after compaction, of Class 1, Type I-1 plant mixed bituminous concrete composed of materials and prepared in conformity with the "Standard Specifications for

Highways and Bridges" of the Massachusetts Department of Transportation (latest edition). It shall be spread and rolled in two courses, a two inch thick binder course and a one inch thick top course in conformity with the Specifications aforementioned. The first course shall be swept clean prior to the placement of the second course, and a tack coat must be applied to insure proper bonding of the two courses. A leveling course may be required prior to the installation of the second course. Any patches to the wearing surface shall consist of three inch thickness, after compaction, and shall be applied in the same manner as the wearing surfaces, as set forth above.

§ 117-34. Utilities.

All required utilities exclusive of transformers shall be placed underground at the time of initial construction. Required utilities may include water, sewer, storm drainage (where allowed), electricity, gas, wiring for street lights, fire alarm systems, and telephone, cable, fiber optic and other communications lines. All construction will be in accordance with the latest edition of the Massachusetts Department of Transportation "Standard Specifications for Highways and Bridges" or the specifications of the applicable utility company, unless otherwise specified by the Board. All utilities which are placed above ground, i.e. transformers, shall be placed outside the right of way so as not to interfere with the placement of the streets, roadways and/or sidewalks and the Applicant shall provide easements on lots within the subdivision for this purpose.

A. Surface water drainage: Design and construction shall be in conformance with "Rules and Regulations, Town of Newbury Stormwater Management, Illicit Discharge and Erosion Control." Drainage systems relying on gutters, catch basins, and underground piping will be allowed only where country drainage is not feasible. The "Rules and Regulations, Town of Newbury Stormwater Management, Illicit Discharge and Erosion Control" shall apply to all subdivisions, whether or not they are in the MS4 area, and whether or not the subdivision is subject to G.L. c. 131.

- (1) Pipes, culverts, and drains: Pipe for the construction of culverts and drains shall be reinforced concrete except where such culverts or drains pass under a roadway or driveway, in which case they shall be ASTM C76 Class V reinforced concrete. All pipe shall be not less than 12 inches in diameter. Pipe joints shall be carefully made so that the spigot is tightly butted to the seat of the bell and the spacing between the spigot is uniformly proportioned. The joints shall be filled with mortar in all cases. All utility trenches shall be filled with bank run gravel or clean excavated in-place materials carefully compacted in six-inch lifts, to 95% maximum density. All drains shall be laid to uniform slope and shall be carefully bedded so that the pipe is supported throughout its entire length with compacted earth.
- (2) Shoulder or so-called French drains shall be located wherever the final road excavated surface intersects the seasonal high ground water table. Such drains shall be at least three feet in depth and two feet in width and otherwise sufficient to interrupt such flow of water and divert it from flowing under such proposed street or roadway.
- (3) Catch basins: Catch basins shall have a minimum thirty-inch sump. All catch basins shall discharge into manholes. The distance between two catch basins shall

not exceed 300 feet. The Planning Board may require a lesser distance if deemed advisable by the Board because of unusual local conditions; catch basins shall be installed at all breaks in grade (low points).

- B. Water Mains: Where applicable, water pipes and related equipment, such as hydrants and main shut-off valves, shall be constructed to serve all lots on each street in accordance with the current specifications of the Newburyport Water Commission, the Old Town Water District, or the Byfield Water District. Hydrants shall be provided and placed at intervals of not more than 500 feet along each street. Backfill should be bank-run gravel or clean granular in place material compacted in six-inch lifts to 95% maximum density.
- (1) Except where necessary to cross a street, all water pipes and related equipment shall be installed on one side of the street. Where only one sidewalk is required by the Planning Board, the water pipes and related equipment shall be placed on the other side of the street. All water pipes and related equipment shall be placed away from the paved roadway and any sidewalk so as to minimize the amount of roadway cutting or sidewalk cutting required in the future for repairs by the applicable water supply agency.
 - (2) Water piping shall be class 52 cement-lined ductile iron, placed on a minimum six-inch (6") deep compacted sand bedding course. The first twelve inches (12") backfill above the pipe shall be compacted sand. All backfill shall be to 95% maximum density. Water piping shall be placed at least 10 feet (10') clear horizontally away from sewer lines. Where water lines must cross sewer lines, the water line must be placed eighteen inches (18") clear above the top of the sewer pipe.
 - (3) Water mains shall be pressure-tested and sewer and drainage lines lamped prior to the placement of the base course gravel.
- C. Sewer Mains for centralized Sewage Treatment Systems: Gravity mains shall be a minimum of eight inches (8") SDR 35 PVC. Force mains shall be schedule 40 PVC, sized to provide a minimum self-cleaning velocity. All sewer pipes shall be bedded and backfilled similar to water pipe as specified above. Manholes shall be placed at a maximum of four hundred foot intervals (400') and at every change in pipe slope and direction. Sewer mains shall be checked for alignment by "lamping." A pipe out of vertical alignment shall be removed and reinstalled. A small horizontal misalignment may be tolerated at the Planning Board's sole discretion. Sewer mains shall be air tested at 4 PSIG pressure.

§ 117-35. Sidewalks/bikeways.

Unless the Planning Board determines that pedestrian movement is otherwise provided for, sidewalks will be required along the street. Sidewalks shall have a width of not less than five feet, a gravel base of eight inches, and a two inch thick bituminous pavement. Sidewalks shall be constructed between the roadway and the right-of-way line, as close to the latter as practicable, and generally parallel with the roadway. Minor streets shall be provided with sidewalks on one side; secondary and principal streets shall be provided with sidewalks on

both sides. The inclusion of bicycle paths is encouraged. Pedestrian access other than by routes parallel to roadways may be permitted, with proper easements.

§ 117-36. Monuments.

- A. Permanent monuments shall be granite, four feet in length and four inches square, and shall be set at locations shown on the Definitive Plan. A 3/8 inch drill hole shall be placed in the top to indicate the point. The tops shall be set four-inches above the final grades of the adjoining ground. All permanent monuments shall be properly placed, backfilled and tamped with a good binding gravel and shall be adequately protected if placed before all construction is completed. Placement and location of monuments shall be done by a Professional Land Surveyor and shall be shown on the Record Drawings.
- B. Permanent monuments shall be installed at all street intersections and at all points of change in curvature of streets (at 1,000-foot intervals maximum on tangents). Iron pipes shall be installed at the front two corners of individual lots within the subdivision and at other points where, in the opinion of the Board, permanent monuments are necessary. No permanent monuments shall be installed until all construction which would destroy or disturb the monuments is completed.

§ 117-37. Granite curbing.

Curb and gutter drainage will be allowed only where country drainage is not feasible. Where required, sloped granite curbing shall be installed as edging on paved roadways, at roadway intersection roundings, and in other specific locations as determined by the Board, with inlet curbs, and transition pieces at catch basins. Sloped granite curbing shall be backed up with concrete.

§ 117-38. Street signs.

- A. The Applicant shall furnish and erect street signs at the locations shown on the Definitive Subdivision Plan to designate the name of each street in a subdivision and each intersecting street, prior to construction of any house on the street. The signs shall conform to the street sign standard used by the Town of Newbury and shall be installed under the direction of the Director of Public Works. The Planning Board shall approve the name of any new subdivision street.
- B. Streets within a subdivision that have not yet been accepted by the Town as public ways shall have conspicuously posted, by and at the expense of the Applicant, signs at intersections, acceptable to the Director of Public Works, stating "Private Way." The latter sign shall be a separate sign that is attached before the signage that sets forth the name of the way, suitable for easy removal when and if the way is accepted by the Town as a public way.

§ 117-39. Side slopes.

The area outside the pavement shall be sloped no steeper than three horizontal to one vertical (3:1) until it intersects finish grade of abutting lots, except as may be required for sidewalks,

all as shown on the typical street cross-section. All such slopes shall be loamed and seeded, as shall all grass swales. Flatter or steeper slopes may be required by the Board depending upon soil conditions. Steeper slopes may be required by the Planning Board depending upon soil conditions, especially in areas of ledge.

§ 117-40. Retaining walls.

Retaining walls or other slope stabilization construction may be required to eliminate any slopes steeper than three horizontal to one vertical other than stable rock slopes. The design, type and location of any wall or other construction shall conform to all requirements of the Massachusetts State Building Code (Latest Edition) and shall be shown in detail on the Definitive Plan Drawings.

§ 117-41. Grass strips and swales.

All grass swales, grass strips and other unpaved areas within the street right-of-way shall be covered with at least six inches of loam (depth after compaction) before seeding.

§ 117-42. Trees.

The Applicant shall make every effort to preserve the existing trees on the right-of-way and on the lots to be sold. No tree in excess of six (6) inches in diameter at 4' 0" above the ground shall be removed within a subdivision without the approval of the Planning Board. Filling and cutting of roadways shall be done in such a manner as to preserve the trees whenever possible. No fill shall be placed against the trunk of any tree to be retained.

It is recognized that it may not be practical, in most cases, to save trees within the right of way, except in cul-de-sacs. It is anticipated that when the centerline of the roadway has been staked, the Planning Board and the Subdivider's representative will walk the right-of-way and mutually agree which trees are to be saved. This may result in modification to the alignment of the roadway.

The Board shall require planting of trees when, in its opinion, existing trees are insufficient to provide an attractive setting. Trees shall be provided by the Applicant in accordance with the Definitive Plan, which shall specify the number of required trees and note the size, location, and a type of stock compatible with site conditions for each planting. At any time prior to the release of the performance guarantee pursuant to § 117-18L hereof, the Planning Board may also require that additional trees be planted when, in its opinion, such additional trees are necessary to provide an attractive setting. The Board shall approve the size, location, and type of stock for each planting.

In no case shall trees of any type with less than a three-inch caliper be planted.

ARTICLE VI

Administration and Observation of Construction**§ 117-43. Notice of start of construction.**

Notice shall be given by the Applicant in writing to the Board, with duplicate copies to the Town's Department of Public Works, Fire Chief, Building Commissioner, and Board of Health at least ten (10) days before the Applicant first commences construction, clearing, grading, or any related activities.

§ 117-44. Preconstruction meeting.

Prior to the start of construction, a coordination meeting shall be held among the Applicant, the Applicant's Engineer and Contractor, Planning Board members, the Town Planner, the Planning Board's Agent, and such other Town officials as shall be appropriate. The Contractor shall provide a proposed construction schedule at this meeting, with the stipulation that the Contractor will notify the Town Planner of any deviation in the schedule as construction progresses.

§ 117-45. Inspections.

- A. For the protection of the Town and future residents of the subdivision, inspections shall be required during construction to ensure that the infrastructure elements are constructed and installed in conformance with the approved Definitive Subdivision Plan and these Subdivision Rules and Regulations. All materials and each part of the work as required under the Regulations shall be subject to inspection. Inspection of the construction of the infrastructure of the subdivision is the responsibility of the Planning Board.
- B. Inspections will be conducted by the Planning Board's Agent. A condition of approval of the Definitive Subdivision Plan will be that the Applicant grant permission for the Planning Board members, the Planning Board's Agent, the Town Planner, the Town's Public Works Director, and other Town officials and employees as appropriate to go on the site and observe the work. Any Town representative shall be required to advise the Applicant's jobsite representative of his/her presence on the jobsite. The Applicant shall allow the Planning Board's Agent and other duly authorized representatives access to all parts of the subdivision for purposes of inspection and shall furnish them with such information and assistance as is required to allow them to make a complete and detailed inspection.
- C. Construction inspection is not expected to be full-time. The Applicant is required to provide 48 hours' notice of the start of work, or the resumption of work after a temporary cessation. The frequency, timing, and duration of inspections shall be at the sole discretion of the Planning Board and shall be that deemed necessary to ensure that construction is in conformance with the approved Definitive Subdivision Plan.
- D. The cost of inspections shall be borne by the Applicant. Prior to the Preconstruction Meeting the Town Planner shall advise the Applicant of the estimated inspection costs. Prior to the start of construction the Applicant shall deliver a check (payable to the

Town of Newbury) for the estimated amount of the inspection costs. This check will be credited to an escrow account established to fund the cost of such inspections, pursuant to G.L. c. 44, § 53G. The Town Planner will notify the Applicant if and when the escrow account needs to be replenished. No work shall proceed unless there are sufficient funds in the escrow account to pay expected invoices of the Planning Board's Agent.

- E. Any work done by the Applicant that was not observed by the Planning Board's Agent, due either to lack of notification or failure to provide sufficient funds to the escrow account, shall be subject to removal and replacement, at the sole discretion of the Planning Board.

§ 117-46. Inspections required.

Inspections shall include, but not necessarily be limited to, the following subdivision construction activities, at the specified times:

- A. Clearing and grubbing;
- B. Stripping of topsoil;
- C. Earthwork operation, including soil compaction testing as deemed necessary by the Planning Board;
- D. Installation of sewage and drainage structures;
- E. Installation of water, sewer and drainage piping — bedding, alignment and backfilling, pressure testing, and lamping of sewer lines;
- F. Installation of other underground utilities;
- G. Installation of base gravel;
- H. Installation of bituminous concrete pavement;
- I. Installation of curbing;
- J. Installation of sidewalks;
- K. Landscaping, including spreading of topsoil on lawns, and planting of trees.

§ 117-47. Inspection fee.

The inspection fee estimate will be based upon the construction schedule submitted by the Applicant. The actual cost of the inspection (to be borne by the Applicant), will be the actual billings to the Town by the Planning Board's Agent (as approved by the Planning Board). Delays in the Applicant's schedule or unacceptable work by this Applicant's contractor will tend to increase the inspection costs to the Applicant.

§ 117-48. Inspection schedule.

Inspection will not be continuous. In the interest of minimizing inspection costs, it will be the responsibility of the Applicant to keep the Planning Board's Agent advised of the day-to-day construction schedule. Frequency of inspection visits will be at the Planning Board's discretion. Failure to notify the Planning Board's Agent of an operation may mean the rejection of such construction and rebuilding at no expense to the Town of Newbury.

§ 117-49. Failure to reject defective work or materials.

Failure to reject defective work or materials at the point of installation shall not prevent later rejection of the work or materials when the defect is discovered, nor obligate the Planning Board to make final acceptance of the work or materials or subdivision.

§ 117-50. Work found to be defective.

If the work or any part thereof shall be found defective by the Planning Board at any time before the final acceptance of the entire project, the Planning Board shall give written notice thereof to the Applicant and the Applicant shall, at the Applicant's sole expense, cure such defect in a satisfactory and timely manner.

§ 117-51. Unauthorized work.

Any work done beyond the lines and grades shown on the plans, except as herein provided, shall be considered unauthorized and shall be removed at the expense of the Applicant.

§ 117-52. Field changes.

The Planning Board's Agent may agree to minor field changes and shall notify the Planning Board in writing of such changes forthwith. Examples of minor field changes would include small changes in horizontal alignment of underground utilities to avoid ledge, removal and replacement of unsuitable in situ materials, and relocation of driveway entrances. When doubt arises, the question shall be referred to the Town Planner. The Planning Board's Engineer may not agree to major field changes. A major field change shall not proceed without the prior approval of the Planning Board. The Applicant shall proceed at the Applicant's own risk to perform work in accordance with a field change that has not received the Planning Board's prior approval. In the event that a field change is determined to be major, the Applicant shall cease the relevant work and obtain the required approval and if the necessary approval is not granted, shall remove the non-approved work at the Applicant's expense. In any instance in which a proposed field change would alter the drainage calculations previously relied upon, a subdivision modification shall be sought and obtained before the change may be implemented. The Planning Board's Agent shall inspect work and materials; give direction pertaining to the work and the safety and convenience of the public; make measurements; and perform such other duties as may be designated by the Planning Board. In case of any dispute arising between the Applicant and the Planning Board's Agent as to materials furnished or the manner of performing the work, the Planning Board's Agent shall have the authority to reject the materials and to suspend that portion of the work until the question at issue can be referred to and decided by the Planning Board.

§ 117-53. Alteration of requirements.

The Planning Board's Agent is not authorized to revoke, alter, enlarge, relax, or release any substantive requirement of the Planning Board as shown on the endorsed definitive plan or required under the Regulations.

§ 117-54. Inspection before winter.

Prior to November 15, the site will be inspected and the Board will present the Applicant a list of items that need to be addressed in order to make the site safe and functional prior to winter. Following the receipt of the letter, the Applicant will have 30 days to address the items or appear before the Board.

§ 117-55. Final inspection.

The final inspection shall take place after completion of roadways, permanent benchmarks, curbing, berming, walkways, grading, seeding and cleanup and following receipt by the Planning Board of the Applicant's Professional Civil Engineer's statement that final grading and underground utilities have been constructed in accordance with the endorsed plan and all record plans have been received.

§ 117-56. Agent's report.

- A. Agent's Log: The Planning Board's Agent shall keep a log of hours spent and inspection activities accomplished. This log will be made available to the Applicant. In no case shall the Planning Board's agent act as foreperson or perform other such duties for the Applicant.
- B. Inspection Reports: Once an Applicant indicates that a stage of work has been completed, the Planning Board's Agent will review the status of the work and prepare and submit a report to the Planning Board and the Applicant and detail whether the work has been performed in accordance with the Regulations and the endorsed definitive plan or indicate the ways in which the work is not acceptable. At any time during the progress of the work, the Planning Board's Agent shall advise the Planning Board of any factors that may adversely affect the progress of the work or proper execution.
- C. Final Report: The Planning Board's Agent will submit a final report to the Board at the completion of the subdivision. Such report may be in the form appended hereto marked Form G and will be augmented by such additional information as is necessary or as the Board may require to describe any special problems or situations which may have arisen during the construction of the required improvements.
- D. The Planning Board's Agent and other responsible inspection agents shall report to the Board that the work has been performed in accordance with these Rules and Regulation and the Definitive Plan, or alternatively, shall advise the Board that the work is not acceptable with the reasons therefore.

§ 117-57. Interim record drawings.

- A. The Applicant shall supply the Planning Board and the Board's Agent with Interim Record Drawings at the same scale as the street plans, which shall be prepared by a Professional Land Surveyor or Registered Professional Engineer retained by the Applicant and approved by the Planning Board, which Record Drawings shall indicate the actual location of all of the following:
- (1) Locations of all underground utilities;
 - (2) Location of all culverts and drains, including invert elevations;
 - (3) Location of all manholes and catch basins; including rim and invert elevations;
 - (4) Location of all natural drainage courses;
 - (5) Location of all water mains, water pipes and related equipment, such as hydrants and main shut-off valves; and
 - (6) Location of any stumps, brush, roots, boulders and like material buried within the Subdivision.
 - (7) Monumentation required to reinstate property boundaries.
 - (8) All property corners.
- B. Such Record Drawings shall be delivered to the Board and the Board's Agent prior to the application of the gravel base as required by § 117-33C. Such plans shall be provided on a timely basis so as to permit the Board and the Board's Agent time to review said plans and the subdivision site prior to the application of the gravel base on the roadway.

ARTICLE VII
Special Review Fees

§ 117-58. Consultant fees.

When reviewing an application for approval of a subdivision Preliminary Plan or Definitive Plan for approval, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because of a project's impacts. The Board may require that the Applicant(s) pay, in addition to the general filing fee, a "review" fee [as defined in §§ 117-17A(5) and 117-18A(5)] for the employment of outside consultative services (provided by either a public or private entity) engaged by the Board to assist in the review of an application.

§ 117-59. Consultants authorized.

In hiring outside public or private consultants, the Board may engage engineers, planners, traffic specialists, lawyers, urban designers, hydrologists, or other appropriate professionals who can assist the Board in analyzing a project to insure compliance with all relevant laws, ordinances, bylaws and regulations.

§ 117-60. Deposit of fees; fund; expenditures.

Funds received by the Board pursuant to this article shall be deposited with the Town Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the Applicant. Failure of an Applicant to pay a review fee(s) shall be grounds for denial of the application.

§ 117-61. Use of fees; interest; excess amounts.

Review fees may only be spent for services rendered in connection with the specific project for which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project, shall be repaid to the Applicant or the Applicant's successor in interest. For the purpose of this article, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

§ 117-62. Appeals.

Any applicant may take an administrative appeal from the selection of an outside public or private consultant to the Board of Selectmen of the Town of Newbury. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection of the Planning Board shall stand.

ARTICLE VIII
Administration

§ 117-63. Enforcement.

The Board shall be the agency responsible for administration and enforcement for all matters arising hereunder.

§ 117-64. Modify, amend or rescind approval.

The Board on its own motion or on the petition of any interested party shall have the authority to modify, amend or rescind its approval of a Plan of a subdivision or to require a change in a Plan as a condition of its retaining the status of an approved plan after notice and opportunity to the applicant to be heard in accordance with G.L. c. 41 § 81-W.

§ 117-65. Separability.

If any section, paragraph, sentence, clause or provision of these Rules and Regulations shall be adjudged not valid, the adjudication shall apply only to the material so adjudged and the remainder of these Rules and Regulations shall be deemed valid and effective.

§ 117-66. Amendments.

- A. These Rules and Regulations or any portion thereof may be amended, supplemented or repealed from time to time by the Board after a public hearing on its own motion or by petition, in accordance with G.L. c. 41, § 81Q.
- B. If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to the Planning Board for approval under the Subdivision Control Law, and written notice of such submission has been given to the Town Clerk before the effective date of amendments to these rules and regulations, the land shown on such plan shall be governed by the applicable provisions of this bylaw in effect at the time of the first such submission and if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval.

§ 117-67. Forms.

On the following pages are the official forms for the administration of these regulations.⁷ The administrative content of these forms may be revised from time to time by the Board apart from § 117-66 above. Copies of the forms are available from the Board or the Town Clerk.

§ 117-68. Additional references.

- A. Code of the Town of Newbury:
 - (1) Chapter 60, Earth Removal.
 - (2) Chapter 65, Historic Preservation.
 - (3) Chapter 87, Stormwater Management and Illicit Discharge and Erosion Control.
 - (4) Chapter 88, Streets, Sidewalks, and Commons.
 - (5) Chapter 89, Street Opening Requirements.
 - (6) Chapter 97, Zoning.
 - (7) Chapter 112, Open Space Residential Development.
 - (8) Chapter 116, Stormwater Regulations.
 - (9) Chapter 120, Water Systems and Supply.

7. Editor's Note: Said forms are on file and available in the Town offices.

- B. Caring for your Septic System: A Reference Guide for Homeowners - Newbury Board of Health;
- C. 310 CMR 15.00: The State Environmental Code Regulating Septic Systems ("Title 5");
- D. M.G.L. Ch. 131, Section 40, The Wetlands Protection Act;
- E. 310 CMR 10.00: Wetlands Protection Act Regulations;
- F. FEMA Flood Insurance Rate Map (FIRM), as most recently adopted by the Town;
- G. The Massachusetts Stormwater Handbook

ARTICLE IX

Stormwater Management

[Code of the Town of Newbury, Chapter 116, Rules and Regulations Governing Stormwater Management, Illicit Discharge, and Erosion Control, as amended from time to time, is hereby incorporated into these Subdivision Rules and Regulations.]

SUBDIVISION OF LAND

117 Attachment 1

Town of Newbury

Typical Cross Section Diagram

