

Town Clerk copy of changes to PB Chapter 175 Planning Board. Public hearing and Approval on April 1, 2024

§ 175-4 Definitions and abbreviations.

The following definitions and abbreviations are used throughout these combined rules and regulations, unless otherwise specified:

BOARD

The Townsend Planning Board.

MGL

Massachusetts General Laws.

CMR

Code of Massachusetts Regulations [04-01-24]

§ 175-8 Definitions.

Unless otherwise indicated by context, the following terms shall have the indicated definitions:

53G ACCOUNT

An account set up by the Town Treasurer in accordance with the provisions of MGL c. 44, § 53G for the purpose of administering consulting fees collected according to these rules and regulations. As used in these rules and regulations, the term "53G account" will normally refer to those amounts attributable to a specific project.

ANR

Approval not required.

APPROVAL NOT REQUIRED

The process described in MGL c. 41, § 81P by which a plan may be recorded after a determination by the Planning Board that approval under the Subdivision Control Law is not required.

BUFFER ZONE

When not otherwise qualified, any required buffer around wetlands, perennial streams, wellhead zones, etc.

CMR

Code of Massachusetts Regulations [04-01-24]

HIGH GROUNDWATER

Any area within the aquifer protection or wellhead protection overlay districts where the groundwater is closer than seven feet to the surface, or any other area where the groundwater is closer than four feet to the surface.

HIGHWAY SUPERINTENDENT

Includes his designee.

LARGER SCALE

Refers to a map scale that is larger than some other map scale. For example, a scale of one inch equals 40 feet (1:40) is a larger scale than a scale of one inch equals 100 feet (1:100).

LOT

A property that conforms to the Townsend Zoning Bylaw's requirements for a structure or use or is purported, alleged, intended or proposed to conform. The use of this term by the Planning Board shall not, in and of itself, imply any finding, determination or agreement by the Planning Board that the property actually does conform.

MAIN BODY OF THE RULES

Refers to these rules and regulations for subdivision control excluding the appendices. We use this term to help clarify cross-references; it does not imply any legal distinction between the main body of the rules and those appendices that are part of the rules.

MAP SCALE

The ratio of distance on the map to the corresponding distance on land. For example, if one inch represents 40 feet, then the map scale is 1":40' or 1/40.

NONRESIDENTIAL SUBDIVISION

A subdivision any portion of which is not in a residential zoning district.

OSMD

Open space multifamily development, as defined by the applicable provisions of the Townsend Zoning Bylaw.

OSPD

Open space preservation development, as defined by the applicable provisions of the Townsend Zoning Bylaw.

PARCEL

A property that does not conform to the Townsend Zoning Bylaw's requirements for a structure or use.

[04-01-24]REGULARLY SCHEDULED MEETING

A meeting scheduled to occur on a monthly basis, generally on the same day of the week and the same week of the month. This will include rescheduled dates for such meetings (e.g. when the regularly scheduled meeting would fall on a state holiday) but does not include additional meetings scheduled as a result of extra workload or for specific purposes (even if such additional meeting occurs on the same day of the week as the regularly scheduled meeting).

RESIDENTIAL SUBDIVISION

A subdivision which is entirely contained within residential zoning districts.

SMALLER SCALE

Refers to a map scale that is smaller than some other map scale. For example, a scale of one inch equals 2,000 feet (1:2000) is a smaller scale than a scale of one inch equals 100 feet (1:100).

SUBDIVISION

The division of a tract of land into two or more lots in such manner as to require provision for one or more new ways, not in existence when the Subdivision Control Law became effective in the Town of Townsend, to furnish access for vehicular traffic to one or more of such lots, and shall include resubdivision and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided, or any other division or plan of land that is a subdivision under the Subdivision Control Law.

SUBDIVISION CONTROL LAW

MGL c. 41, §§ 81K through 81GG.

WETLAND

Any area defined as a wetland by either MGL or Townsend bylaws.

ZONING ACT

MGL c. 40A.

§ 175-9 General provisions.

- A. No person shall make a subdivision within the meaning of the Subdivision Control Law of any land within the Town or proceed with the improvement or sale of lots in a subdivision or the construction of ways or the installation of municipal services therein unless and until a definitive plan of such subdivision has been submitted to and approved by the Planning Board as hereinafter provided. No person shall divide land without complying with these regulations and first obtaining from the Planning Board approval of the definitive plan for the proposed subdivision or the endorsement "Approval Under the Subdivision Control Law Not Required" upon such plan.
- B. Employment of outside consultants.
- (1) For any application under these rules and regulations, the Board may employ an outside consultant at the expense of the applicant. Fields for which the Board may require a consultant include but are not limited to: any relevant engineering field, architects, landscape architects, soil scientists, hydrologists, environmental scientists, botanists, attorneys, professional planner, real estate appraiser or broker, licensed construction supervisors, licensed general contractors, etc.
 - (2) [04-01-24].
 - (3) The Board will normally require the fees to cover the costs of outside consultants to be deposited in advance with the Town, in accordance with the provisions of MGL c. 44, § 53G. Such fees will be deposited in a separate account, and any amounts remaining in said account after the completion of the associated project will be refunded to the applicant or successor, in accordance with these rules and said state law. When the expense of such consultants exceeds the currently available funds in the 53G account, the applicant is required to provide such additional and appropriate funds within 14 days of notification by the Board of the required amount.
 - (4) The choice of outside consultant may be appealed to the Board of Selectmen. 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 either of 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 limits 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 made by the Planning Board shall stand (but may be appealed to the courts).
 - (5) The Planning Board will normally allow 10 days between the selection of a consultant and the start of work, to give the applicant an opportunity to file such an appeal, but will begin work sooner if approval is given by the applicant. If such appeal is made, the applicant shall notify the Planning Board by certified mail immediately after filing such appeal with the Board of Selectmen. The Planning Board, at its earliest opportunity after receiving such notification, shall direct the consultant to cease work until the appeal is resolved. The applicant shall be liable for all costs due to the consultant prior to the direction to cease work.
 - (6) To the extent that services are provided by Town Counsel under a flat-rate retainer, such services will not be charged directly to the applicant. However, should circumstances require employment of outside counsel (for example, due to a conflict of interest) or otherwise be billed to the Town for a specific service related to an application, then such fees will be paid out of the 53G account or by the applicant.

This section does not preclude the charging of supplemental fees for specific legal services performed by Town Counsel, with such fees paid to the Town to offset the cost of the Town's retainer with Town Counsel.

C. Waivers.

- (1) In accordance with MGL c. 41, § 81R, the Board may waive strict compliance with these rules and regulations. Such waiver may only be granted if the Planning Board first reaches a finding that such waiver is both in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law and these rules and regulations.
- (2) It is the responsibility of the applicant to identify all waivers that are required. Except where otherwise specified, all requests for waivers must be explicit, complete, in writing and submitted at the time of application.
- (3) No waiver may be inferred from any decision by the Board unless the Board votes specifically to grant the waiver (separately from the overall decision) and such vote is recorded in the minutes of the Board.

D. Fees.

- (1) All expenses incurred by the Town for processing an application shall be borne by the applicant. Whenever any extraordinary expense occurs that is not covered by the fee structure, such items may be billed directly to the applicant.
- (2) Fees are divided into application, consulting and supplemental fees.
- (3) Application fees must accompany any application before the Board under these rules and regulations. They are intended to cover the general cost to the Town of processing the application, excluding costs covered by the more specific fees. The general costs may include indirect costs (e.g. the cost to the Assessor and Tax Collector to update their records after the granting of an ANR). Application fees are deposited into the general treasury of the Town.
- (4) Consulting fees are fees to cover the cost of outside consultants and are handled according to the provisions of Subsection **B** of this section.
- (5) Supplemental fees are fees to cover the cost to the Town of specific services, where such services may be clearly identified or quantified, and can be expected to vary depending on the project. Examples include the cost of inspections by the Town Departments, review of bonds, deeds, easements or other documents by Town Counsel, etc.[04-01-24]
- (6) If a fee paid by check or other non-cash method is returned or otherwise uncollectable, then the applicant shall be liable to the Town for all costs incurred as a result. No resubmission of the application will be accepted unless accompanied both by the fees due under the application and the additional amounts required under this section. The Planning Board may require that all future amounts due with relation to this application or related applications before the Planning Board be made by certified or cashiers check. If a fee is returned or otherwise uncollectable prior to a decision, then the application will be rejected as incomplete. If a fee is returned or otherwise uncollectable subsequent to a decision, then any approval of such application is automatically rescinded.
- (7) It is the policy of the Board to waive application and supplemental fees for applications submitted on behalf of the Town (excluding the Water Department, Regional School District or other Town agencies that are largely financially separate from the Town and any project for which revenue other than the Town's property tax or normal state aid is applicable). This is specifically because charging a fee in such cases would be accounted as an expenditure from some budgeted item and as general revenue, without

any real explicit cost to the Town.

E. Burden of proof.

- (1) The burden of proof in all matters before the Planning Board shall be on the applicant.[04-01-24]
- (2) The submissions required by the Board for any application form the basis of such proof. However, this does not imply that the burden of proof may always be met by the required submissions. Where additional information may be necessary to satisfy the burden of proof in particular situations, then such information is required, even though it may not be an explicit requirement for the application.
- (3) The burden of proof must be met by the plans and information provided at the time of application.

F. Massachusetts licenses required.

- (1) Whenever these rules require work to be performed by or under the supervision of a licensed professional, such professional must have a current license to perform such activity by the Commonwealth of Massachusetts..[04-01-24]
- (2) All insurance policies, bonds or other such instruments must be issued by a company licensed to do business in Massachusetts.

G. Public ways. The acceptance of a plan by the Planning Board does not make any street shown a public way. Existing laws of the Commonwealth of Massachusetts and bylaws of the Town must be complied with for the acceptance of any street.

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

§ 175-10 General requirements for applications.

A. Forms.

- (1) All applications must be on the most current version of the appropriate form. Required forms are found in Appendix A, Required Forms for Subdivision Control, which is a part of these rules and regulations. Applications may be rejected if they are not on the correct form.
- (2) All applications must be complete. Applications may be rejected as incomplete if they omit required information or required supplemental forms.

B. Signatures.

- (1) All applications must be signed by all property owners of all parcels involved in the application. All plans must be signed by the licensed professional who prepared them. The application forms may indicate additional signature requirements.
- (2) If a parcel is held in joint tenancy, then all tenants must sign.
- (3) If a parcel is held (either partially or fully) by a trust, partnership or corporation, then the application must be accompanied by the trust documents, partnership documents or articles of incorporation, respectively, along with such documentation that will demonstrate that the individuals signing the application have the authority to exercise control over the property.
- (4) If for some reason, such as guardianship or power of attorney, some individual is authorized to exercise control of the parcel (or share thereof) on behalf of another, then documentation showing such

guardianship or power of attorney or similar situation must be included with the application.

- (5) If an individual other than an owner of the property is to represent the applicant before the Board, then a power of attorney or similar document signed by the owner or owners must be included. This document must, at a minimum, authorize the representative to commit to paying consulting fees, to agree to conditions set by the Board and to sign agreements to extend deadlines.
- C. Fees. All applications must include the associated fees at the time of application. Applications without such fees will be returned as incomplete without further review. In particular, any other omissions or inadequacies will not necessarily be identified.
- D. Plans.
- (1) All applications must be accompanied by required plans at the time of the application. Such plans must be in the required form and contain all required data.
 - (2) The title or subdivision name shown on a plan or set of plans must exactly match that shown on the application. This title or name is used by the Planning Board as a reference and citation for the application. Inconsistencies or changes to the title create an unnecessary administrative cost to the Board.
 - (3) All plans must be 24 inches by 36 inches unless otherwise approved by the Board. Plans showing lot line changes shall also be submitted in digital image format via email to planning@townsendma.gov or on a flash drive in the standard outlined below: **[Amended 11-6-2006; 4-29-2013][04-01-24]**
 - (a) To facilitate maintenance of the Town's records and Assessor's tax maps, an electronic file (the "standard digital file") of definitive subdivisions plans and plans for which approval under the Subdivision Control Law is not required, pursuant to MGL c. 41, § 81P, shall be filed with the Planning Board at the time the original hard copy is submitted. The standard digital file shall comply with Level III of the current version of the Mass GIS "Standard for Digital Plan Submission to Municipalities" (hereafter "the standard"), available on the Internet by searching Mass.gov. The vertical datum shall be the North American Vertical Datum 1988.
 - (b) Upon written request, the Planning Board may waive the requirement for submitting the standard digital file in compliance with Level III, and may allow submission of a standard digital file that complies with Level II or, any digital image format via email to planning@townendma.gov or on a flash drive. Any request for a waiver must include a statement as to why submitting any other level or format should be allowed.
 - (4) All plans must be prepared by a licensed professional engineer and licensed land surveyor and, where appropriate, a licensed landscape architect or other professional.
 - (5) Each page of a set of plans shall have a title block in the lower right-hand corner. This must show, at a minimum, the title, the name of the subdivision (if any), the date, the scale, the names and addresses of the property owner(s), the name and address of the applicant (if different from the owner) and the names and seals of the designer, engineer and surveyor who made the plan, a page number, the total number of pages and all other information required by the applicable CMR, Registry rules or Land Court rules.
 - (6) Each page shall have the signature of the licensed professional(s) who prepared the plan. At least one page shall have the seal and signature of said professional(s) and a statement asserting that said plan was based on an actual field survey and produced in accordance with all requirements under CMR.
 - (7) Each page of a set of plans shall have a legend.

- (8) Where more than one revision of a plan has been submitted to the Board, all revised plans must have a revision history adjacent to the title block, as required by the applicable CMR, and also indicating the nature or purpose of the revision.
- (9) On all plans, any area of land that does not meet the current frontage, acreage or other dimensional zoning requirements shall be labeled a "parcel" and any area of land that meets all dimensional zoning requirements a "lot." Lots shall be assigned consecutive numbers, while parcels shall be assigned consecutive capital letters. Plans that use the term "lot" to describe areas that do not meet both the frontage and acreage requirements will be rejected.
- (10) The North American Vertical Datum of 1988 (NAVD 1988) shall be indicated and described on all plans, and at least one benchmark shall be located on site. The Planning Board may, at its discretion, waive this requirement on small or low-impact applications. **[Amended 9-27-2010]**

E. Submission of applications.

- (1) All applications must be submitted in accordance with the requirements of MGL c. 41, § 81O. Specifically, they must be submitted at a meeting of the Planning Board or by registered or certified mail.
- (2) Applications submitted at a meeting of the Planning Board will be considered received on that date. Applications submitted via registered or certified mail will be considered received on the date of receipt.
- (3) Applications may be delivered to the office of the Planning Board in person, via courier or other delivery service or via ordinary (nonregistered, noncertified) mail. Such applications will, as a courtesy to applicants, be forwarded to the Planning Board at its next regularly scheduled meeting. The effective date of receipt will be the date of that meeting. However, delivery in this manner does not comply with MGL c. 41, § 81O and is done at the applicant's risk. Neither the Town nor the Planning Board will guarantee that plans submitted in this manner will be delivered to the Planning Board.
- (4) Delivery of applications directly to the Town Clerk does not satisfy the requirements of MGL c. 41, § 81O and will not be accepted or considered as filed.
- (5) After submitting an application to the Planning Board, it is the responsibility of the applicant to comply with the requirements of MGL c. 41, § 81T by filing a notice with the Town Clerk stating the date of submission of such application. The Planning Board will provide, upon request, a receipt for applications submitted at a meeting of the Planning Board. For applications delivered by certified or registered mail, the United States Postal Service return receipt will be the evidence of date of receipt by the Planning Board. A copy of either of these shall be furnished to the Town Clerk as part of the notification required under MGL c. 41, § 81T. Notification to the Town Clerk prior to actual receipt of an application (as defined by MGL c. 41, § 81O) shall be invalid.
- (6) Acceptance of an application does not constitute a finding that the application is complete. The Planning Board retains the right to reject incomplete applications, according to the procedures described in these rules.

F. Rejection of incomplete applications.

- (1) If an application is rejected because it is incomplete, it is treated as if no application was made, except that fees will not be refunded for incomplete applications.
- (2) If an incomplete application is resubmitted within six weeks (42 days) of the date of rejection for ANR applications, or eight weeks (56 days) for subdivision applications, then it may include a request for waiver of a portion of the new fees. Such waiver will be granted solely at the discretion of the Board,

and in no case will the reapplication fee be waived to less than \$150 for ANR applications or less than \$300 for subdivision applications.[04-01-24]

§ 175-11 **Procedures for ANR applications.**

A. Request for ANR endorsement.

- (1) Any person who wishes to cause to be recorded in the Registry of Deeds or to be filed with the Land Court a plan of land and who believes that his plan does not require approval under the Subdivision Control Law may submit a request for ANR endorsement containing the following:
 - (a) The original plan conforming to the requirements of the Registry of Deeds or Land Court, as appropriate, and conforming to the requirements of the Planning Board as specified in § **175-10D** and Subsection **C** of this section.
 - (b) Seven full-size prints of the plan.
 - (c) A copy of the deed to all parcels affected by the plan.
 - (d) A completed Form ANR-1 (including all required supplemental forms).
 - (e) The required fee, as as specified in Appendix E Planning Board fee schedule.
 - (f) The necessary evidence to show that the plan does not require approval under the Subdivision Control Law. [**Amended 11-6-2006**]
- (2) This request shall be submitted to the Planning Board in accordance with all requirements of § **175-10**.
- (3) Properties shown as "remaining land" or similar notation have no special status. They shall be included in all fee calculations and shall have all required data shown.

B. Fees for ANR endorsement. All other ANR plans require an application fee as specified in Appendix E Planning Board fee schedule.[**04-01-24**]

- (1) [04-01-24]

C. Requirements for ANR plans.

- (1) All plans submitted for ANR endorsement shall show the following:
 - (a) Title.
 - (b) An arrow pointing to the North.[04-01-24]
 - (c) Date of survey.
 - (d) A locus map at a scale not greater than one inch equals 2,000 feet.
 - (e) Scale.
 - (f) Existing and proposed boundary lines. The plan shall clearly distinguish between the two.
 - (g) Areas and dimensions of all lots shown. Any lot or parcel on which there is a body of water must show three numbers: the acreage exclusive of the body of water, the acreage of the body of water and the combined acreage.
 - (h) Total frontage of each property. If any property frontage is described as a sequence of segments, then

the total frontage must be shown in addition to the length of each segment.

- (i) Zoning district of each lot and parcel, including any applicable overlay districts, and all zoning district boundaries. If all lots and parcels affected by the plan are in the same zoning district, then a single notation will suffice.
 - (j) Lot, Parcel ID number, and/or house numbers for existing properties.[04-01-24]
 - (k) Name and address of record owner.
 - (l) Name, address, seal and signature of engineer or surveyor.
 - (m) Names of all abutters as they appear in the most recent tax list, unless the applicant has knowledge of any subsequent changes.
 - (n) Existing and proposed lines of streets, ways and easements. If any easement is located so as to potentially affect access to the property, then a copy of the easement language shall be provided.[04-01-24]
 - (o) Location of all buildings or structures on the plan.[04-01-24]
 - (p) Existing contours at five-foot intervals and the location of any topographic features which might interfere with the use of the frontage for access.
 - (q) Location of all bounds, brooks, fences, guardrails, barriers or walls.
 - (r) Notice of any decisions by the Zoning Board of Appeals, including but not limited to variances regarding the land or any buildings thereon.
 - (s) The statement "Approval Under the Subdivision Control Law Not Required" and sufficient space for the signatures of all Planning Board members.
- (2) All plans shall be drawn to a scale of one inch equals 40 feet. However, it is the policy of the Board to waive this requirement, without written request, whenever the scale is increased for the purpose of allowing the entire plan to fit on one sheet and, in the opinion of the Board, there is no loss of information or clarity by such increase in scale.
 - (3) Label any area of land that does not meet the current frontage or acreage requirements a "parcel" and any area of land that meets both a "lot." Lots shall be assigned numbers, while parcels shall be assigned capital letters. Plans that use the term "lot" to describe areas that do not meet both the frontage and acreage requirements will be rejected.
 - (4) Any way known to be a private way shall be clearly labeled as such.
 - (5) No street may be labeled a "public way" or other such notation unless accompanied by such evidence, based on a review of the Town's records, that will demonstrate that the way is legally a public way. The use of the phrase "public way" on maps or plans, whether or not such plans have been filed at a Registry, does not by itself constitute adequate evidence.
 - (6) Ways used for frontage must qualify under the definitions used in the Townsend Zoning Bylaw. The applicant shall provide such evidence as may be necessary to establish this. It is the policy of the Board to waive this requirement routinely for the large number of roads known personally to the Board as being maintained by the Town. However, this does not diminish the authority of the Board to require such explicit evidence for ways not known to the Board or for which the status or condition is in doubt.

- (7) Except for perimeter plans and properties that are the recipients of a conveyance, no property unaffected by a plan shall be part of the plan.
 - (8) If any property does not have sufficient frontage, then the plan shall include one or more notations completely explaining why such property does not cause the plan to show a subdivision. The following notations are samples of notations that may, depending on circumstances, be acceptable:
 - (a) "This parcel to be conveyed to _____ and joined with Lot _____," where the recipient lot is clearly identified on the plan and the conveyance is to all of the owners of the recipient lot as shown on the plan. All parcels to be conveyed must be identified by one or more such notations.
 - (b) "This is not a subdivision under MGL c. 41, § 81L because Lots _____ each have buildings that were standing when the Subdivision Control Law went into effect in Townsend."
 - (c) "Parcel _____ is not available for building, due to _____" where the reason provided is adequate to show and guarantee that the parcel is not available for building.
 - (9) If any property lacking adequate frontage is to be labeled "not available for building" or other such similar notation, then the application must be accompanied by such deed, restrictive covenant, easement or other document that will demonstrate why the property is not available for building and cannot be made so, and the plan must clearly note such provisions.
- D. In determining access, the Planning Board will consider both the adequacy and condition of the road providing access and the feasibility of access from the frontage to the buildable portion of any lot. If a road is not yet constructed, then the adequacy of any bond or other provisions to ensure the construction of such road will be considered.[04-01-24]
- E. The Board may take the following actions on plans submitted for endorsement under this section. The deadline for reaching any of these conclusions is the deadline required by the Subdivision Control Law. **[Amended 11-6-2006]**
- (1) It may reject the application as incomplete or not in compliance with our requirements. The fee will not be refunded. If a new application for the same properties is submitted within six weeks (42 days), then the reapplication fee shall be \$100 plus \$100 for each lot or parcel increase over the original application. This reduction will only be applied once; subsequent reapplications shall pay the full fee. [04-01-24]
 - (2) If the Board determines that the plan does not require approval, it shall without a public hearing endorse on the original plan the words "Planning Board Approval Under Subdivision Control Law Not Required." Said original plan shall be returned to the applicant, and the Board shall notify the Town Clerk of its action.
 - (3) If the Board determines that the plan does require approval under the Subdivision Control Law, it shall so inform the applicant and return the original plan. The Board shall also notify the Town Clerk of its determination. The fee is not refundable in this case, nor will it be applied to any reapplication.

§ 175-12 Preliminary subdivisions.

- A. Any person, before submitting a definitive plan for approval, may submit to the Planning Board and to the Board of Health a preliminary plan. The Planning Board shall tentatively approve such preliminary plan with or without modifications suggested by it or agreed upon by the person submitting the plan or shall disapprove such preliminary plan and, in the case of disapproval, shall state its reasons therefor. Except as is otherwise expressly provided, the provisions of the Subdivision Control Law relating to a plan shall not be applicable to a preliminary plan, and no Register of Deeds shall record a preliminary plan.

- (1) The approval of a preliminary subdivision is tentative and is nonbinding upon the Planning Board. The applicant assumes all risk for changes due to new information submitted during the process for approval of the definitive subdivision, including but not limited to the possibility of turnover in membership of the Planning Board.
 - (2) Applications for approval of preliminary plans shall be submitted to the Planning Board in accordance with all requirements of § **175-10**.
 - (3) Nonresidential subdivisions require the submission of preliminary plans in accordance with this section.
 - (4) Residential subdivisions do not require the submission of preliminary plans. Applicants are strongly encouraged to set up an appointment with the Land Use Coordinator and/or Building Commissioner prior to submitting preliminary plans to determine the extent to which the Planning Board feels a preliminary plan is advisable. [04-01-24]
 - (5) The application shall contain the following:
 - (a) Three prints of a plan prepared in accordance with Subsection C of this section and a digital pdf file emailed to planning@townsendma.gov or submitted on flash drive. [04-01-24]
 - (b) An original complete application.
 - (c) Three photocopies of the complete application, together with three photo reductions of the plans reduced to 11 inches by 17 inches. A digital .pdf file of the complete application emailed to planning@townsendma.gov or submitted on a flash drive. [04-01-24]
 - (d) The required fees as specified in Appendix E Planning Board fee schedule. [04-01-24]
 - (e) Identification of all anticipated waiver requirements in writing. [04-01-24]
- B. The application fee for preliminary subdivision plans are specified in Appendix E Planning Board fee schedule . [**Amended 11-6-2006; 9-27-2010; 10-3-2022**] [04-01-24]
- (1) In addition, a separate consulting fee as specified in Appendix E Planning Board fee schedule is required for the review of the preliminary plans by a civil engineer, surveyor or other expert employed by the Planning Board. This fee shall be processed in accordance with § **175-9B**.
 - (2) Any amount remaining in the 53G account from the consulting fee will normally be retained in anticipation of a subsequent definitive plan. It will be returned only upon written request.
 - (3) When an application is rejected as incomplete or denied based on obvious flaws without detailed review by the Board and a reapplication is submitted, the Board will consider, at the Board's discretion, waiving a portion of the reapplication fee. In no event will the reapplication fee be reduced below \$300.[04-01-24]
- C. Requirements for preliminary subdivision plans.
- (1) All preliminary plans submitted for approval under this section shall show:
 - (a) The title "Preliminary Plan."
 - (b) Name of the subdivision.
 - (c) An arrow pointing to the North.[04-01-24]

- (d) Date of survey.
- (e) A locus map at a scale not greater than one inch equals 2,000 feet.
- (f) A vicinity map at a scale of one inch equals 800 feet.
- (g) Scale.
- (h) Legend.
- (i) The name(s) of the record owner(s).
- (j) The name of the applicant, if different from the record owner.
- (k) The name of the designer, engineer or surveyor.
- (l) The names of all abutters, as determined from the most recent tax list.
- (m) Existing and proposed lines of streets, ways, easements (including rights-of-way, covenants or other restrictions) and any public areas, in a general manner.
- (n) The proposed stormwater management system, including adjacent existing natural resources, in a general manner. [**Amended 4-29-2013**] The proposed total area of land disturbance and noted proposed areas of disturbance to slopes steeper than 15% is required. [04-01-24]
- (o) Existing and proposed boundary lines.
- (p) Approximate areas and dimensions of all lots shown. For the purpose of this item, "area" is "lot area" as defined in the Townsend Zoning Bylaw. To facilitate this calculation on properties containing bodies of water or other areas excluded by the Bylaw from lot area calculations, applicants are encouraged to show gross area and the area of any bodies of water, in addition to the lot area.
- (q) The names, approximate location and widths of adjacent streets.
- (r) The topography of the land in a general manner. This shall include existing walls, fences, monuments, buildings, wooded areas, outcroppings, ditches, swamps, water bodies and natural waterways.
- (s) The zoning classification of the land, including any zoning boundaries, historic districts, and overlay districts.[04-01-24]
- (2) No street may be labeled a "public way" unless accompanied by such evidence, based on a review of the Town's records, that will demonstrate that the way is legally a public way. The use of the phrase "public way" on maps or plans, whether or not such plans have been filed at a Registry, does not by itself constitute adequate evidence.
- (3) All plans shall be drawn to a scale of one inch equals 40 feet. However, it is the policy of the Planning Board to waive this requirement, without written request, whenever the scale is increased for the purpose of allowing the entire plan to fit on one sheet and, in the opinion of the Planning Board, there is no loss of information or clarity by such increase in scale. Any such waiver shall not carry over to the definitive.
- (4) Any way known to be a private way shall be clearly labeled as such.
- (5) The applicant is required to submit such additional data as will demonstrate that the definitive plans will satisfy the requirements for a definitive, where such data is in the scope of the preliminary. Specifically,

data shall include percolation test holes and deep hole observation for the lots shown on the Conventional Plan. [Amended 11-6-2006]

- (6) The applicant is strongly encouraged to submit a draft community impact statement.
 - (7) Existing and proposed utility connections. [04-01-24]
- D. Engineering review.
- (1) Upon receipt of a preliminary plan, the Planning Board may select an engineering firm as an outside consultant, for review of the plans, and forward one copy of the plans to the engineering firm. This may be done prior to any determination by the Planning Board with respect to the completeness of the application.
 - (2) The engineering review of preliminary plans will be for the purpose of determining the following:
 - (a) Based on the available data, do the technical aspects of the plans comply with the requirements of these rules and regulations?
 - (b) Are there any areas or issues of specific concern related to the purpose of these rules and regulations that should require close attention of the Planning Board?
 - (c) What design alternatives, if any, should be considered prior to submitting the definitive plans?
 - (d) What specific additional data, if any, should be required for the definitive plans? Examples of such data may be specific soil tests, traffic studies, measurements, etc. Such data shall be specific to the circumstances of the preliminary plans.
 - (e) What modifications, if any, should be made?
- E. Incomplete applications.
- (1) Incomplete applications will be rejected. The application fee will not be refunded. The consulting fee will be returned upon request, minus costs already incurred. If the applicant does not request the return of the consulting fee, the Board will assume the applicant intends to refile and apply the fee to the reapplication.
 - (2) For an application submitted by certified mail, the determination that an application is incomplete will be made no later than the first regularly scheduled meeting to occur seven or more days after receipt. For an application submitted at a meeting of the Planning Board, the determination will be made no later than the next subsequent regularly scheduled Planning Board meeting.
- F. Approval or disapproval of preliminary plans.
- (1) To the extent that can be determined from the data submitted, the plans must satisfy all design standards applicable to definitive subdivisions.
 - (2) The Board may approve the preliminary plan, with or without modifications, according to the provisions of MGL c. 41, § 81S.
 - (3) The Board may, as part of such decision, identify specific issues that must be addressed in the definitive, including specific questions to be answered as part of the community impact statement. In the case of a nonresidential subdivision, or a residential subdivision exceeding 20 lots, these requirements may include the scope of a traffic study.

§ 175-13 **Definitive subdivisions.**

A. General provisions for definitive subdivisions.

- (1) All plans, usages and other activities shall be in compliance with the Townsend Zoning Bylaw and other applicable Town bylaws and state and federal laws. No approval under these rules or the Subdivision Control Law shall imply any variance or special permit under the Townsend Zoning Bylaw, even if such variance or special permit is necessary for said approval to be useful. [04-01-24]
- (2) Where an application is dependent upon an Open Space Preservation Development (OSPD) or Open Space Multifamily Development (OSMD) special permit, then the permit must have been granted, and either the appeal period must have elapsed with no appeal or all appeals must have been resolved, and, further, all conditions of any such permit that may be met prior to construction shall have been met. Alternatively, the application shall be accompanied by the OSPD or OSMD application, in which case, the applicant shall include a written extension of the time frame for the decision by the Board to be 90 days after the close of the public hearing for the special permit.
- (3) When a definitive plan of subdivision is submitted to the Planning Board, the Board will forward a copy to the Board of Health. The Board of Health shall, within 45 days after the plan is so filed, report to the Planning Board in writing approval or disapproval of said plan, and in the event of disapproval shall make specific findings as to which, if any, of the lots shown on such plan cannot be used for building sites without injury to the public health, and include such specific findings and the reasons therefor in such report, and, where possible, shall make recommendations for the adjustment thereof. Failure to report shall be deemed approval by the Board of Health.

B. General process.

- (1) When the Board receives an application to approve a definitive plan, including fees, it will initiate the review process. (Plans received without the appropriate fees or waiver will be rejected without further review.) This means reviewing the application for completeness, scheduling the public hearing and enlisting an independent engineering firm for review. These activities occur in parallel.
- (2) The Board will review the plans for completeness, within its ability. Omissions will be reported as soon as possible and other activities suspended. Note, however, that many required items are technical in nature, and such omissions may only be found by our engineering consultant and after the site walk. Nevertheless, such applications may still be rejected as incomplete.
- (3) Once the hearing is scheduled, the Planning Board or assigned administrative staff will take responsibility for notifying abutters (using the list provided with the application) and publishing the legal notice of public hearing. [04-01-24]
- (4) Once the Board has selected an engineering consultant, the plans will be sent for review and a site visit scheduled.
- (5) The public hearing, described below, is typically a minimum of two or three sessions. Sessions are normally scheduled for one or two hours. It is common for missing information to be identified by the Board's engineering review or other results of the public hearing. It is the policy of the Board to accept such additional submissions prior to the close of the public hearing, but only if accompanied by a written extension of the time for the Board's decision. Such extension shall be for at least 90 days from the date of receipt by the Board of the submission. Submissions of new information or changed plans after the close of the public hearing shall require a new application, including a new public hearing.
- (6) After the close of the public hearing, the Board will work on its decision. It is the policy of the Board not to vote on the decision until after drafting a set of proposed conditions.

- (7) The Planning Board will normally vote on a next to last draft decision, making any necessary specific changes, and reach a decision pending proofreading. Once the Planning Board or its designee has proofread the decision, making any necessary corrections (whether grammatical, spelling or to conform to the Board's vote), Board Members or their designee will endorse and file said decision with the Town Clerk, with copies sent to the applicant. The abutters will receive notice of decision, either a summary or complete copies, depending on circumstances. [04-01-24]
- (8) The Board will wait until the appeals period has expired without appeal(s) or until any appeals have been exhausted before, if appropriate, endorsing any plans. The applicant must provide a performance guaranty and meet other conditions, described below, before the Board will endorse the plans. [04-01-24]
- (9) It is common for the engineering review or public hearing to identify missing or inadequate technical information.
- (10) The above process is a general outline. In practice, there is significant variation.

C. Applications.

- (1) All applications must be submitted according to the provisions of § **175-10**. [**Amended 4-29-2013**]
 - (a) In the absence of an existing stormwater permit for the project, a stormwater management application and all associated documents shall be filed in conjunction with a definitive subdivision approval application and the decision shall be conditioned upon the issuance of a stormwater permit.
 - (b) Strict adherence to Chapter **85** of the Townsend General Bylaws, National Pollutant Discharge Elimination System (NPDES) Phase II Stormwater Management, and its associated regulations shall be required.[04-01-24]
 - (2) Complete applications comprise the original signed application form, a certified list of abutters, the fees, the plans and the required submissions. All applications must be complete at the time of submission. The original of the plans shall be required at the time of endorsement.
 - (3) The burden of proof is on the applicant to demonstrate, based solely on the information submitted as part of the application, that the proposed subdivision satisfies these rules and regulations.
 - (4) Errors, misrepresentations, omissions or misleading information, whether substantive, or deliberative, shall be grounds for denial of any subdivision and revocation of any approved subdivision. [04-01-24]
- [04-01-24]
- (6) Applicants are required to furnish any information known to them or their agents that could reasonably be expected to influence the Planning Board's decision, whether such data is explicitly required by these rules and regulations, and whether such data is favorable or unfavorable.
 - (7) [04-01-24].
 - (8) The application shall accurately describe the property as of the date of filing, and no activity shall be allowed on the property that would have the effect of invalidating or changing the data presented in the plans.
 - (9) When the application has been the subject of a preliminary plan and the Board's decision on the preliminary plan included suggested modifications, then the application for the definitive subdivision approval must address those modifications specified in the decision, either by implementing or providing a narrative explaining why they were not implemented. If the preliminary plan decision

identifies additional information to be submitted with the definitive plan, then such information must be provided.[04-01-24]

D. Fees. [**Amended 11-6-2006; 9-27-2010**]

- (1) The application fee for a definitive subdivision is \$1,800 and \$600 per lot. [**Amended 10-3-2022**]
- (2) In addition to the application fee, the application must include a consulting fee in the amount of \$10,000. This amount shall be reduced by any amount remaining in any existing consulting fee account established under MGL c. 44 § 53G and § **175-9B**, associated with this property as of the date of submission, adjusted for any outstanding bills payable. The consulting fee will be handled according to the provisions of § **175-9B**. At a minimum, the fee will be used for the review of the submitted plans by a consultant with a written response to the Board, a site walk by the engineering consultant and attendance by the consultant at one or more Board meetings, including the public hearing.
- (3) The stormwater management application fee, as outlined in the Planning Board Rules and Regulations, § **175-27**. [**Added 1-28-2013**]

E. Plans.

- (1) Plans submitted as part of the definitive subdivision application shall conform to the requirements of § **175-10D**.
- (2) The original plans must be on media suitable for filing at the appropriate registry.
- (3) Six print copies of the original plans are required. [**Amended 11-6-2006**] One digital copy of the original plans is required. [04-01-24]

F. Required submissions.

- (1) Six print copies of the required submissions shall be required. Each copy shall be bound as a single volume, and accompanied by one digital copy. . [**Amended 4-29-2013**][**04-01-24**]
- (2) [04-01-24]
- (3) Copies of oversized documents such as deeds may be photo reduced only if the resulting copy is clearly legible. Otherwise, such documents must be full scale, accurately and clearly split over multiple pages to fit on paper 8 1/2 inches by 11 inches.
- (4) [04-01-24]
- (5) [**04-01-24**]

G. Public hearing.

- (1) The purpose of the public hearing is to give the abutters, the community and other interested parties the opportunity to provide feedback to the Board with regard to the proposed subdivision.
- (2) The Board, upon receipt of a complete application, shall set a date for the required public hearing. Notice of the public hearing shall be given at least 14 days prior thereto by advertisement in a newspaper of general circulation in the Town once in each of two consecutive weeks and by mailing a copy of such advertisement to all owners of property abutting on such land included in the plot, as appearing on the most recent certified list of abutters, and such others as may be specified by the Planning Board. Such notices shall be sent by registered or certified mail, return receipt requested, at least 10 days prior to the public hearing.[04-01-24]

- (3) .[04-01-24]
- (4) [04-01-24]
- (5) [04-01-24].
- (6) The applicant will be given a reasonable opportunity to rebut statements made at the public hearing and to respond to the comments of the Planning Board's consultant. However, changes to the plans or submission of new technical data will not be allowed unless accompanied by a written extension of time for the Planning Board's decisions. Such extension will normally be equivalent to treating the date of receipt of such plans or data as the date of receipt of the application.[04-01-24]
- (7) The report of the Board of Health may be received or acknowledged during the public hearing. The applicant is entitled to procedural due process before the Board of Health and may request a hearing from the Board of Health at the time of application.

H. Approval and endorsement.

- (1) After the public hearing, the Planning Board will decide whether to approve, modify and approve, or disapprove the application, in accordance with the requirements of the Subdivision Control Law MGL, Chapter 41, Section 81M through 81GG, as applicable. The Board may make modifications and may impose reasonable requirements and conditions in a written decision signed by a majority of the Planning Board, or by the Planning Board's designee.[04-01-24]
- (2) The Planning Board may require as a condition of approval that all ways, utilities, drainage systems and other municipal services be completed within two years or other such reasonable timeperiod.[04-01-2024]
- (3) Final approval, if granted, shall be endorsed on the original drawing of the definitive plan by the signatures of a majority of the Planning Board, or by the Planning Board's designee but not until the statutory appeal period has elapsed following the filing of such approval with the Town Clerk and the Clerk has notified the Board that no appeal has been filed or, if an appeal has been filed, after the entry of the final decree of the court sustaining the approval of such plan.[04-01-24]
- (4) The plans submitted for final approval shall make reference to the written decision of the Planning Board identifying the conditions and requirements of such approval.
- (5) Prior to endorsing the final approval, such supplemental fees required for inspections, any additions to the 53G account and any amounts required to guarantee maintenance shall be submitted by the applicant. Such submissions shall be by separate certified or cashier's checks. The applicant shall submit a revised inspection schedule to facilitate identifying such sums.[04-01-24]
- (6) Prior to endorsing the final approval, the applicant shall provide an updated inspection plan. This shall be used to calculate the required supplemental and consulting fees related to inspections, subject to correction by the Board. For inspections performed under these rules by the Highway Superintendent or other Town official, the supplemental fee per inspection as required in Appendix E Planning Board fee schedule, unless the details of such inspection justify a higher amount. Should additional inspections be required, the applicant shall pay the additional fees prior to the inspections. For inspections by an outside consultant, an appropriate sum based upon the fee charged by said consultant and the inspection schedule, multiplied by 1.2 to account for contingencies, shall be deposited in the 53G account.[04-01-24]
- (7) Prior to endorsing the final approval, such performance guaranties as may be required under these rules shall be established.

(8) Approval of the definitive plan does not constitute the laying out or acceptance of any way within a subdivision as a public way, nor does it imply any obligation on the part of the Town to do so in the future.[04-01-24]

I. Maintenance of improvements.

(1) For the purpose of protecting the safety, convenience and welfare of the Town's inhabitants, for the provision of adequate access to all of the lots in a subdivision and of ways that will be safe and convenient for travel, for reducing the danger of life and limb in the operation of motor vehicles and for securing safety in the case of fire, flood, panic and other emergencies, under the authority of MGL c. 41, § 81M, as amended, the applicant or his successor shall provide for the proper maintenance and repair of improvements unless and until the Town votes to accept such improvements provided that the Town has and shall have no obligation to do so. Such improvements include the roadways themselves, sidewalks, lighting, and other electric fixtures and appurtenances, gas, telephone, water and sewer, grass and other plantings and fences not within any subdivision lot. Such maintenance shall include snow removal beginning from the time of occupancy of an individual owner or tenant other than the developer.[04-01-24]

(2) [04-01-24]

(3) The Board may require that such maintenance be guaranteed through a deposit of monies. Such deposit will only be released upon acceptance of the corresponding ways as Town ways and the verification of the integrity of the pavement and properly functioning stormwater management system following a full winter of use, December 1 to March 31. **[Amended 4-29-2013]**

(4) The project shall adhere to the submitted and recorded Operation & Maintenance (O & M) Plan for stormwater management structures, as outlined in the Stormwater Management Rules and Regulations section entitled "Operation and Maintenance Plan." **[Added 4-29-2013]**

J. Building permits. Prior to the issuance of any building permits by the Building Inspector for any subdivision lot created under these rules and regulations, the following conditions shall be met: the construction of roads or ways shown on the subdivision plan shall be completed at least through the binder pavement coat, including fill; completion of all stormwater management structures, and installation of curbing (if applicable). No building permit may be issued for properties secured by covenant under § **175-19I** until such property has been released by the Board. **[Amended 4-29-2013]**

K. Filing of plans in the Registry or Land Court. Approval of all subdivisions is subject to the condition that, unless an appeal has been taken from such approval as provided by statute, the applicant will record the subdivision plan in the County Registry of Deeds or the Registry District Office of the Land Court within six months from the date of its approval and certify to the Planning Board, in writing, within six months from the date of approval that said plan has been recorded and filed with the Registry of Deeds or the Registry District of the Land Court giving the date, plan, book and page number or certificate number.

L. Status reports.

(1) During construction, the Board will require periodic status reports. These may be in writing or in person, at the discretion of the Board. They will normally be required quarterly, but the Board may require them more frequently for particularly sensitive sites, complex construction, or other reasons.

(2) [04-01-24]

(3) Unexpected events that imply additional, unanticipated work to comply with the subdivision conditions are grounds for requiring an increase in the performance guaranty. This includes but is not limited to

natural occurrences, erroneous work by subcontractors, unforeseen conditions, unapproved removal of topsoil or other materials, work outside the defined areas, etc.