

# MEMORANDUM

**To:** Nathan Poore, Town Manager  
Amanda L. Stearns, AICP, Community Development Director

**From:** Theo Holtwijk, Director of Long-Range Planning

**Date:** August 11, 2008

**Re:** Development Review Financing & Administration

This memo contains the summary results of a review, requested by the Town Manager, of the current system of development review financing and administration and recommendations for its improvement by Community Development staff. Staff examined the following fees and is making these recommendations:

TYPE OF FEE	CURRENT	PROPOSED	COMMENT
<b>SITE PLAN PEER REVIEW FEE</b>  <i>This fee is used to pay for review of a project by an outside consultant for compliance with such matters as general site plan standards, Route One and Village Center design guidelines, landscaping, and traffic. Peer reviews are mandated in the West Falmouth Crossing Master Planned Development District.</i>	The Town charges \$50 per 1,000 sf of gross floor area. If a peer review costs more than this initial charge, the Town passes on those additional costs. If there are funds remaining from the initial charge, the Town refunds the applicant.	<ul style="list-style-type: none"> <li>▪ Increase initial deposit amount from \$50 currently to \$200 per 1,000 sf gross floor area.</li> <li>▪ Add 10% over net peer review costs to cover cost of administrative expenses.</li> <li>▪ Add a waiver option for small projects to obtain erosion + sediment control + stormwater approval from Cumberland County.</li> </ul>	The majority of recent projects paid more than, or sometimes significantly more than, the initial charge. This situation leads to additional administrative work that the Town has to do to collect these funds. Increasing the initial deposit will not increase or decrease the ultimate peer review cost to a developer, but will reduce Town expense to collect funds.
<b>SUBDIVISION PEER REVIEW FEE</b>  <i>This fee is used to pay for review of a project by an outside consultant for compliance with subdivision and zoning ordinance standards.</i>	The Town charges \$100 per lot. If a peer review costs more than this initial charge, the Town passes on those additional costs. If there are funds remaining from the initial charge, the Town refunds the applicant.	<ul style="list-style-type: none"> <li>▪ Add 10% to net peer review costs to cover cost of administrative expenses.</li> <li>▪ Add a waiver option for small projects to obtain erosion + sediment control + stormwater approval from Cumberland County.</li> </ul>	This amount has typically been sufficient.

TYPE OF FEE	CURRENT	PROPOSED	COMMENT
<p><b>SITE PLAN INSPECTION FEE</b></p> <p><i>This fee is used to defray costs of inspections of site improvements to make sure they are in compliance with approved site plans.</i></p>	<p>The Town charges an inspection fee that is determined by 1 to 3% of the value of site improvements plus a variable base fee. Deposited funds not used for Town inspections are being returned to the developer as opposed to those for subdivision inspections</p>	<ul style="list-style-type: none"> <li>▪ Reduce this fee to 1% of site construction cost, not including buildings, for all site plans.</li> <li>▪ Revise this to be a flat fee without refund, similar to subdivision inspection fees.</li> <li>▪ Inspections would focus on those elements most important to ensure compliance with the approved plan.</li> <li>▪ Add 10% to net inspection costs to cover cost of administrative expenses.</li> </ul>	<p>Although funds have been deposited for this purpose, some past site plan projects did not receive an as detailed an inspection as may be expected. A deposit of up to 3% of the value of site improvements is more than what the Town needs. Recent DEP laws require a post-construction inspection of stormwater facilities by municipalities for certain projects, which will add to this expense. The current method is inconsistent compared to how subdivision inspection fees are handled. 1% is expected to cover the Town's expenses.</p>
<p><b>SUBDIVISION INSPECTION FEE</b></p> <p><i>This fee is used to defray costs of inspections of construction of public as well as private roads.</i></p>	<p>Inspection costs are 3% of the cost of required improvements and utilities. Deposited funds from this account that have not been used by the completion of the project are retained by the Town. A 15% administrative cost is added.</p>	<ul style="list-style-type: none"> <li>▪ Reduce to add 10% to net inspection costs to cover cost of administrative expenses.</li> </ul>	<p>Generally this amount has been sufficient to cover the Town's costs. Recent DEP laws require a post-construction inspection of stormwater facilities by municipalities for certain projects, which will add to this expense.</p>

TYPE OF FEE	CURRENT	PROPOSED	COMMENT
<p><b>PLANT MAINTENANCE ESCROW</b></p> <p><i>This fee is used, in case of developer default, to replace plant material if it dies.</i></p>	<p>In the case of approved site plans only, the Town requires that 10% of the value of all plants to be installed is guaranteed for a period of three years.</p>	<ul style="list-style-type: none"> <li>▪ Delete this escrow requirement.</li> </ul>	<p>It is not known if the Town ever used this account to make such improvements on private property. Even without this escrow, developers have a responsibility to maintain their properties to stay in compliance with approved site plans. It is standard for the nursery industry to guarantee installations for 12 months. On top of that, the Town has a site plan inspection obligation.</p>
<p><b>SITE PLAN PERFORMANCE GUARANTEE</b></p> <p><i>This fee is a guarantee that, in case of developer default, all site plan improvements will be completed.</i></p>	<p>The Ordinance requires a 100% performance guarantee for approved site plans for all site work.</p>	<ul style="list-style-type: none"> <li>▪ Require all site plan applicants to post a guarantee to cover the cost of erosion and sedimentation control measures and stormwater management improvements.</li> <li>▪ In addition, maintain the ability to require on case-by-case basis a 100% guarantee of any incomplete site improvements before a certificate of occupancy is issued (along with specific completion date for the applicant).</li> </ul>	<p>No performance guarantees have been put in place for past site plan applicants. The reason for this may be that all site infrastructure remains privately owned and that the Town was less concerned with these type of projects. Staff believes that certain aspects of an approved site plan do require a guarantee, such as stormwater management facilities and erosion and sedimentation control measures.</p>

TYPE OF FEE	CURRENT	PROPOSED	COMMENT
<b>SUBDIVISION PERFORMANCE GUARANTEE</b>  <i>This fee is a guarantee, in case of developer default, that all public and private improvements intended for public use will be completed.</i>	The Town requires developers to provide a construction guarantee in a 100% amount of all improvements intended for public use, be it public roads or private roads. This guarantee is typically gradually reduced during the construction process as key improvements have been made to the satisfaction of the Town's inspector.	No change is proposed.	It is not known if the Town ever has had to use a guarantee to finish an incomplete project for a developer.
<b>STREET DEFECT BOND</b>  <i>This bond is used for repairing any minor public subdivision road defects that may occur or reveal themselves within two years of its posting.</i>	The charge is \$5,000 plus \$1 per linear foot of roadway. The bond does expire and gets returned after two years.	No change is proposed.	This bond has not been used by the Town. It is the responsibility of Public Works Department.
<b>PRIVATE WAY INSPECTION FEE</b>  <i>This fee is used to defray costs of inspections of construction of private ways</i>	Currently the Town charges \$300 for an inspection of a private way that serves a single lot and 3% of improvement costs for private ways that serve multiple lots. There is no return of excess funds to the applicant.	No change is proposed.	The practice has been that inspection fee expenses sometime exceed revenue, particularly if multiple visits by staff are required.

For your convenience, we have also attached the adopted 2007-2008 Adopted Fee Schedule and listed the proposed changes in bold and underline.

We have also attached the full working report that staff used in its deliberations.

This completes our review as requested. We are happy to answer any questions that you may have.

Thank you.

**Town of Falmouth**  
**2007-2008 Adopted Fee Schedule**  
**Land Use Permits**  
Adopted by Town Council on August 27, 2007

	Fee	Amount (in \$s)	unit	Additional fee		Increment
		base/per unit fee		%	Dollar Amt	
1	<b><u>Conditional Zoning fee</u></b>	500				
2	<b><u>Phosphorus control permit</u></b>	100				
3	<b><u>Signs</u></b>					
	20 sf or over	50	sign (in addition to site review fees)			
4	<b><u>Private Way</u></b>	200	lot			
5	<b><u>Residential growth permit</u></b>	100				
6	<b><u>Subdivision</u></b>					
	preapplication submittal	250				
	minor or major preliminary subdivision	600	first three lots		100	additional lot
	final	notice fee only				
	review escrow account	100	lot			
	amendment	250	revision			
	re-approval	250	with no changes			
7	<b><u>ZBA application</u></b>					
	admin appeal	100				
	comm, manu, private club cond use	250				
	multiplex or congregate care	20	unit			
8	<b><u>Site Plan review</u></b>					
	pre-application	250				
	any development	500			50	1,000 ft of building gross feet or portion thereof
	amendment	250				
	re-approval	250	with no changes			

	Fee	Amount (in \$s)	unit	Additional fee		Increment
		Base/per unit fee		%	Dollar Amt	
	review escrow (bldgs over 2000 sf)				(50) <b>200</b>	<b>1,000 sf</b>
9	<b><u>Private Way inspections</u></b>					
	private way, single lot	300				
	Private way, multiple lot			3		improvement costs
10	<b><u>Site plan inspections by project cost</u></b>					
	<b><u>All projects</u></b>			<b>1</b>		
	(< \$200,000 value			3)		
	(\$200,000 - \$1,000,000	6,000		2)		
	(> \$1,000,000	22,000		1)		
11	<b><u>Subdivision inspections</u></b>					
				3		improvement costs
12	<b><u>Personal wireless service facility</u></b>	500				
14	<b><u>Shoreland Permit</u></b>	100				
14	<b><u>Publication and notice fee*</u></b>	75				
	<b><u>NOTES:</u></b>					
	* Publication and notice fees apply to all submittals to the Planning Board and Zoning Board of Appeals					
	This includes the initial submittal for the following:					
	1. sketch plan and preapplication meeting					
	2. private way					
	3. site plan					
	4. preliminary subdivision					
	5. final subdivision					
	6. administrative action					
	7. shoreland permit					
	8. sign permit					

**Town of Falmouth**  
**Development Review Financing & Administration**  
Draft: April 14, 2008 TH, Rev. August 11, 2008

## **Preface**

Along with recent personnel changes in the Community Development Department, the Town Manager requested a review of the current system of development review financing and administration and recommendations for its improvement.

This topic has the key involvement of three departments: Finance, Public Works, and Community Development. The following team contributed to this report: Ethan Croce, Randy Davis, Al Farris, Tony Hayes, Theo Holtwijk, John McNaughton, Nathan Poore, Jay Reynolds, Amanda Stearns, and Skip Varney.

For the sake of this report, “fees” include all Town charges as well as escrows and performance guarantees. “Development review” includes the permit approval process with the Planning Board and site construction process that follows. Application fees, building permit fees and work, including plumbing and electrical permits, have not been reviewed.

Besides examining systemic issues, this effort provides, as a side benefit, a status report on the processing and completion of recent development projects and their financing.

## **Introduction**

Two types of development reviews have been looked at in detail: site plan and subdivision. A project could qualify for both, such as the Ridgewood Estates condominium project. Various steps are involved in gaining approval for development projects and assuring the Town that they will be constructed according to those approvals. The Town also reviews private way applications.

Appendix A lays out the review process for each development type, the fees involved with each step, the corresponding ordinance reference, and whether the Town returns any funds upon completion.

This report examines the following fees:

1. Site Plan Peer Review
2. Subdivision Peer Review
3. Site Plan Inspections
4. Subdivision Inspections
5. Plant Maintenance Escrow
6. Site Plan Performance Guarantee
7. Subdivision Performance Guarantee
8. Street Defect Bond
9. Private Way Inspections

For each fee, four key questions were addressed:

1. How is the Town’s *administration* of these fees conducted?
2. Should the *fees* the Town charges be adjusted?
3. Who should *perform* the work for which the Town charges development fees?

4. Are there recommendations for the Town Manager? (Some of these may involve ordinance amendments and Council action.)

At this time Randy Davis, John McNaughton, Jay Reynolds, Tony Hayes, and Ethan Croce each keeps track of projects and corresponding fees through their own system and exchange information on an as-needed basis.

Any fee schedule amendment needs to pass the “rational nexus” test that is required by law in order to determine whether a fee is reasonably related to the service performed, so as not to be considered an illegal “tax”.

### **Site Plan Peer Review**

This fee is typically used to pay for review of a project by an outside consultant for compliance with such matters as general site plan standards, Route One and Village Center design guidelines, landscaping, and traffic. Peer reviews are mandated in the West Falmouth Crossing Master Planned Development District. The Planning Board makes a specific decision to request a peer review and the scope of that review. In practice the Planning Board has required peer review of every project that is covered by one of the three sets of design guidelines. Currently, staff offers the option to initiate peer review during the first scoping meeting with the applicant..

The peer review service has in the past been performed by Tom Emery, Gary Fogg, Terry DeWan, Robert Howe, and others. The peer review is over and above the review of in-house staff on other aspects of the plan. It is the intent that (some of) the review time of Tony Hayes and Theo Holtwijk (and before of Jay Reynolds) will be charged to this fee, while review time by other Town staff (Ethan Croce, Amanda Stearns) will not. Since last fall, Tony Hayes has been performing peer engineering review and inspection services. Previously that work was covered by the Public Works Department and Pinkham & Greer. Pinkham & Greer is currently completing the projects that it had been reviewing: Ridgewood Estates, Stone Ridge and Clearwater Drive. The administration of peer review fees is burdensome. The site inspection fees – discussed below - are those that “cover” engineering review and inspections. Staff has not raised the issue of cost accounting staff hours and having those reimbursed through review fees. If one staff member’s review time is counted, one could argue that all staff review time should be accounted and billed somehow

Financial information was available for seven recent site plan projects. The Town charges \$50 per 1,000 sf of gross floor area. If a peer review costs more than this initial charge, the Town passes on those additional costs. If there are funds remaining from the initial charge, the Town refunds the applicant.

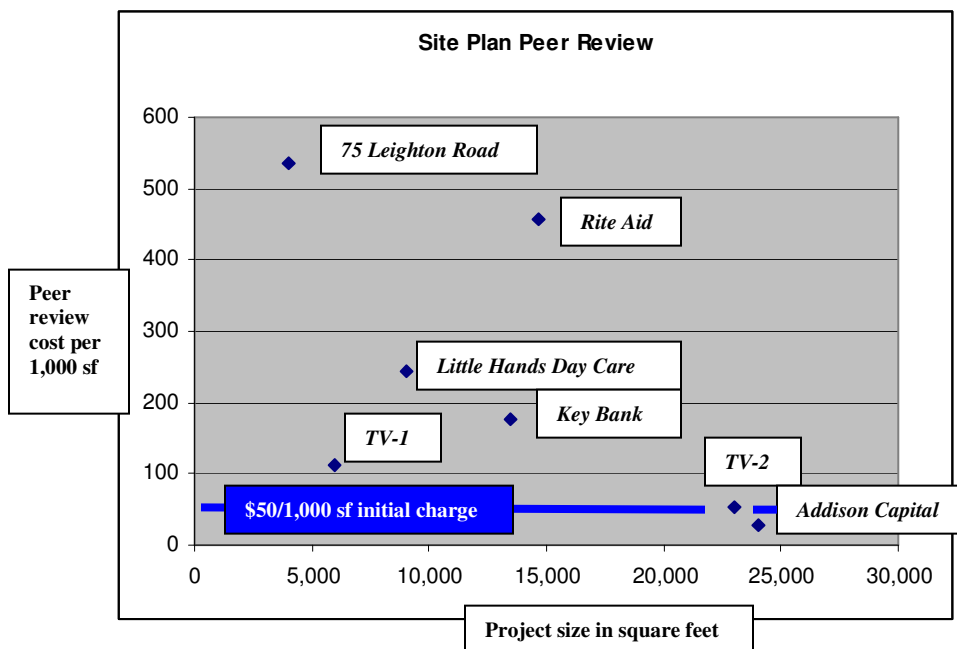
The 7 projects ranged from 4,000 to 24,000 sf, with initial deposits ranging from \$200 to \$1200. Actual costs of these reviews, however, ranged from \$682 to \$6,678. Five of the seven projects paid more than, or sometimes significantly more than, the initial charge. Each of them had their own circumstances that led to these charges.

<b>Project Name</b>	<b>Project Size</b>	<b>Initial Peer Review Charge</b>	<b>Total peer review cost</b>	<b>Peer review cost per 1,000 sf</b>
<i>Key Bank</i>	13,500 sf	\$ 677	\$ 2,415	\$ 178
<i>Addison Capital/office buildings (Lucas</i>	24,000 sf	\$ 1,200	\$ 706	\$29



<i>Tree)</i>				
<i>TV1/Tidewater Village</i>	6,000 sf	\$ 300	\$ 682	\$113
<i>Rite Aid</i>	14,673 sf	\$ 733	\$ 6,678	\$ 458
<i>Little Hands Day Care</i>	9,000 sf	\$ 450	\$ 2,208	\$245
<i>TV2/Tidewater Village</i>	23,000 sf	\$ 1,150	\$ 1,242	\$54
<i>75 Leighton Road</i>	4,000 sf	\$ 200	\$ 2,143	535

Graphically, the size of a project (horizontal axis) was related to the actual peer review cost per 1,000 sf (vertical axis). The blue bar represents the \$50/1,000 sf initial Town charge. Two projects are at or below that level. The other five are above it. The two largest projects had the lowest square foot peer review cost and the smallest project had the largest square foot peer review cost. However, the other projects do not fall necessarily in that trend. Each project has its own circumstances, although much of the peer review cost has been attributed to the fact that these projects required special Design Guideline review.



Several other projects that surfaced on a separate tracking chart also had peer review charges.

<b>Project</b>	<b>Balance amount</b>	<b>Charges</b>	<b>Remaining balance</b>	<b>Status</b>
<i>Ridgewood estates/Trails</i>	5,200	2,973	2,226	Although this project has already received PB approval, a new peer review task was created at the request of the developer: laying out and clearing trails. This work is currently ongoing.
<i>TV-4</i>	400	52	347	
<i>Oceanview/Whipple Farm</i>	4,200			
<i>380 Associates</i>	4,448	804	3,644	
<i>Tidewater LLC</i>	7,625	3,819	3,806	
<i>Ray/Robin Hobby Center</i>	3,699			
<i>Shaw's</i>	62,661	2,291	60,369	The amount of this charge would indicate that this is not a peer review, but perhaps a building permit or site inspection fee?
<i>MMC</i>	3,216	1,413	1,802	

## **Issues**

### Administration:

1. A single system to track the status of all development projects and their fees would eliminate duplication of data entry and would allow the list to be complete. Currently the Finance Office and Planning Office share a spreadsheet and Public Works has a tracking system of its own. The same project may appear in various places. It is also somewhat unclear if all projects in the past were treated in a consistent manner.
2. Certain outdated projects still appear on the Town's books and could potentially be removed.
3. The Town automatically charges a peer review fee for applications over 2,000 sf, regardless if the PB actually requests such a review. The PB does seem to request them with regularity and the Design Guidelines have been the focus of most recent peer reviews. The PB and staff have come to depend upon the reviews.
4. Besides collecting the initial charge, the Town has needed to collect additional funds from a developer on most projects upon the Planning Board (PB) review. This typically is made a condition of approval prior to signing the approved plan. This could be a problem

for the Town if a developer withdraws a project and peer review invoices (which the Town has already paid) are not being reimbursed. It is easier for the Town to refund money than collect it.

Fee amount:

1. As peer review is typically results in studies or reports that staff does not have qualifications to prepare such as a traffic impact, design guidelines, environmental impact, etc., the fee amounts are not expected to decrease.
2. Raising the \$50/1,000 sf level may make sense as most projects were above that. A base level of \$100 to \$200 per 1000 sf would capture the actual cost of most projects up front. It is not a critical issue as the Town does collect at the end of the review process, if it does not do so up front. The end cost of a peer review remains unchanged.
3. Changing to lump sum amount for all projects would make for a simpler system, but the scope and cost for projects range so much that it would not be a fair for applicants with small projects or those that require less peer review time.
4. Not refunding funds left over in an account is another option. Based on the current fee level this would not occur often, but would not be an incentive for projects that require little review time. Likewise, not refunding money also implies that the Town would not collect on projects that cost more than was collected. It seems that could be costly for the Town. It also would not be in keeping with charging only for the service actually performed.

Performance:

1. Review of past peer review reports shows that they have been very detailed and have not shielded away from taking potentially controversial stands on projects. This raises several questions: Are they potentially going beyond what the Town can regulate according to its ordinance? Are they objective? Do they shield Town staff (appropriately or not) from taking controversial positions? Does the PB, through placing conditions requiring satisfactory revision of a plan by the peer reviewer, delegate its work appropriately? Should some of the peer review work be part of the regular review work of Town staff?
2. Undoubtedly, outside peer review work has allowed the Town staff to save time and focus on other work that was required (such as long range planning), while still allowing for very detailed comments to be made on proposed projects. A separation of short-term development review work from long-term planning work may be preferred.
3. If peer review is to be done mostly in-house, is it then truly "peer" review. What portion of the regular staff review should be charged back to the applicant? Where does one draw the line? Perhaps the review work of *all* staff should be accounted for. Ideally, that would be covered by the application fee. In that case, all work done by an outside consultant could still be covered by the peer review fee and a clear distinction is allowed to remain.
4. As peer review is charged at actual cost, it is not a potential "profit center" for the Town and one could argue: nor should it be.

Recommendations:

1. Consider increasing the initial peer review charge from \$50/1,000 sf to \$200/1,000 sf. This would not affect the total peer review cost, but would reduce the potential financial exposure for the Town and modestly reduce its administrative burden.
2. Retain the current system of peer review to outside consultants, where appropriate.
3. Articulate in writing what portion the Town includes in its regular review and what portion of the review will be subject to the peer review charge.
4. Develop a time tracking system for any work by Town staff that is to be charged.

## Subdivision Peer Review

This fee is used to pay for review of a project by an outside consultant for compliance with subdivision and zoning ordinance standards.

This service has been performed by Tom Emery, Gary Fogg, Terry DeWan, Robert Gillespie, Casey & Godfrey, and others.

The peer review is over and above the review of in-house staff on other aspects of the plan. It is the intent that some the review time of Jay Reynolds, Tony Hayes and Theo Holtwijk will be charged to this fee, while review time by other Town staff (Ethan Croce, Amanda Stearns) will not.

Financial information was available for seven recent projects. The Town charges \$100 per lot. If a peer review costs more than this initial charge, the Town passes on those additional costs. If there are funds remaining from the initial charge, the Town refunds the applicant.

The 7 projects ranged from 6 to 75 lots (or units in the case of condominium projects), with initial deposits ranging from \$600 to \$7,700 <sup>1</sup>. Actual costs of these reviews ranged from \$175 to \$6,950.

Project Name	Project Size	Initial Peer Review Charge	Total peer review cost	Peer review cost per lot/unit
<i>Ridgewood Estates</i>	75 units	\$ 7,700	\$ 6,432	\$ 83
<i>Cleaves Farm</i>	15 lots	\$ 1,500	\$ 651	\$ 41
<i>Forside Arbors - Phase 2</i>	10 lots	\$ 1,000	\$ 175	\$ 17
<i>Farm Gate</i>	6 lots	\$ 600	\$ 587	\$ 97
<i>Stone Ridge Farm</i>	24 lots	\$ 2,400	\$ 1,135	\$ 47
<i>Trolley Farm</i>	9 lots	\$ 900	\$ 1,127	\$ 125
<i>Hundred Acre Woods</i>	19 lots	\$ 1,700 <sup>2</sup>	\$ 6,950	\$ 365

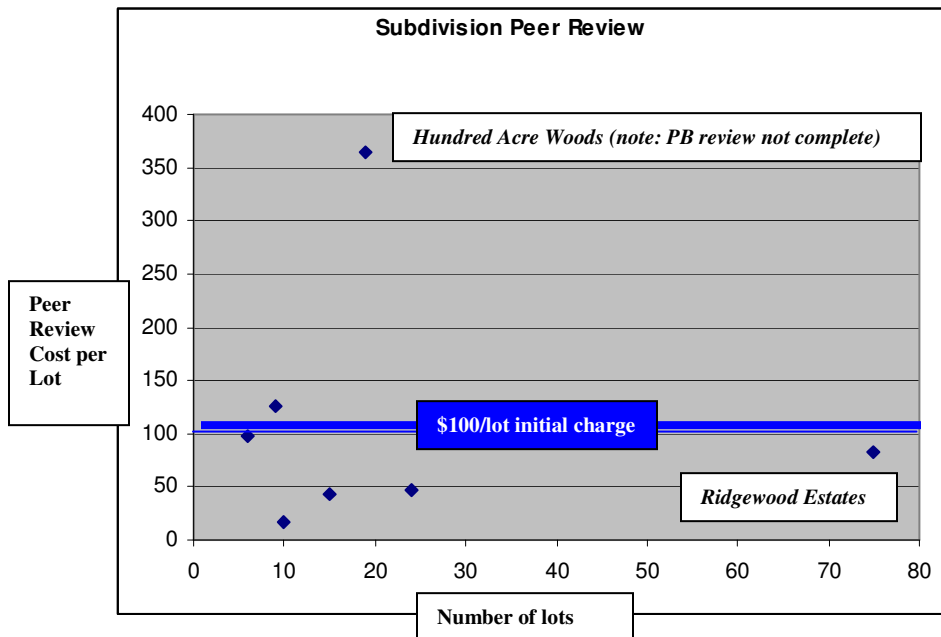
One of the seven projects – Hundred Acre Woods - has paid significantly more than the initial charge and is also the only project on the list that has not yet received final PB approval. One of the issues may be for that that this is the first project to go through Resource Conservation Zoning Overlay (RCZO) District review.

Graphically, subdivision size (horizontal axis) was related to the actual peer review cost per lot or unit (vertical axis). The blue bar represents the \$100 per lot or unit initial Town charge. Most all of the projects are at or below that level. As noted above, Hundred Acre Woods is the one obvious exception. It may be that the new RCZO review is a key contributor to the cost in that case.

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<sup>1</sup> The Ridgewood Estates project was originally proposed for 77 units.

<sup>2</sup> Hundred Acre Woods was originally proposed as a 17 lot project.



## Issues

### Administration:

1. The same issue of a single tracking system applies here to reduce any duplicate entries.

### Fee:

1. The current charge of \$100 per lot or unit appears to be adequate.
2. Changing to a lump sum system does not make sense as the scope of the projects range greatly.
3. It is expected that once the PB, staff, and applicants gain more experience with RCZO review the actual cost of those reviews will be reduced.

### Recommendations:

1. No revision to the peer review charge of \$100 per lot is proposed.
2. Articulate in writing what portion the Town includes in its regular review and what portion of the review will be subject to the peer review charge.
3. Develop a time tracking system for any work by Town staff that is to be charged.

## Site Plan Inspections

The Town charges an inspection fee that is determined by the value of site improvements. Jay Reynolds of Public Works has performed this inspection, including landscaping work, for the past six months. Traditionally landscaping inspections have been done by the peer reviewer. A list of inspection milestones has been prepared and is included as appendix B. On occasion, the site plan peer reviewer has also conducted site inspections. The code enforcement office issues certificates of occupancy. Its role in site inspections needs additional research. Deposited funds not used for Town inspections are being returned to the developer as opposed to those for subdivision inspections (see next section).

<b>Project</b>	<b>Site Construction Cost Estimate</b>	<b>Inspection Fee Collected</b>	<b>Actual Spent <sup>3</sup></b>	<b>Spent - % of collected fee</b>	<b>Status</b>
<i>Rite Aid</i>	747,538	16,950	1,265	7%	99% complete
<i>TV-2</i>	174,000	5,220	399	8%	Building started
<i>Little Hands Day Care</i>	240,860	6,817	220	3%	100% completed
<i>80 Leighton Road/salon/barn</i>	35,000	1,050	158	15%	100% complete/occupied/do billing
<i>TV-1</i>	174,700	5,780 <sup>4</sup>	203	4%	100% complete
<i>360 Route 1/ledge removal</i>	68,500	2,055	0	0%	100% complete
<i>Addison Capital</i>	300,000	9,000 <sup>5</sup>	400	4%	75% complete
<i>75 Leighton Road</i>	249,468	7,484 <sup>6</sup>	248	3%	95% complete
<i>JEP/Black Cherry Provisions</i>	50,000	1,500	165	11%	90% complete
<i>Wal-Mart Garden Center + Hat Trick Drive</i>	436,000 <sup>7</sup>	10,720	0	0%	Not started

Jay Reynolds has kept an Access-based plan review and inspection log since February 2007 <sup>8</sup>. All projects (site plan, subdivision, private way, and Shoreland) have been lumped together. Below, the site plan reviews/inspections have been separated from the other project types. This list needs further review to separate the projects into site plan reviews versus site plan inspections. This report has not addressed that. Tony Hayes has recently begun to update the inspection fee tracking system.

<b>Project Name</b>	<b>Cost Feb-Nov 07 @ \$45/hr</b>
80 Leighton Rd.	157.5
Black Cherry Provisions	90
Falmouth Fire Station	45
Key Bank	450
Leighton Business Park (#75)	247.5
Little Hands Daycare	247.5

<sup>3</sup> The "actual spent" figures may not include all the time that has been spent by various staff members. Some projects have little time spent as they date back to the time when little or no inspections were actually being done by the Town, apparently from communication errors regarding who was responsible for that task. Some projects that did get inspected in the past did not seem to get much time either.

<sup>4</sup> This figure computes to be a little over 3% of site construction estimate.

<sup>5</sup> This figure was based erroneously on 3% of site construction estimate and not sliding scale.

<sup>6</sup> This figure was based erroneously on 3% of site construction estimate and not sliding scale.

<sup>7</sup> This number was determined by using the collected fee amount.

<sup>8</sup> This database tracks: reviewer; project name; location/decription; billing date; review/inspection; hourly rate; billable hours; total bill for this entry; notes.

<b>Project Name</b>	<b>Cost Feb-Nov 07 @ \$45/hr</b>
Meadow Wind	202.5
Morong Falmouth	67.5
Northbrook Drive	202.5
Public Safety Bldg.	45
Rite Aid	225
Site plan	45
TV	607.5
TV #1	202.5
TV #2	90
Winnfield School	292.5

## **Issues**

### Administration:

1. The administration of these accounts seems to run somewhat behind their construction completion.
2. A single accounting system would help to reduce multiple data entries and provide for more up to date information on projects.
3. It is unclear what coordination exists between the Codes Enforcement office and Public Works on site inspections versus building inspections and how that relates to Certificate of Occupancy issuance.

### Fees:

1. It is difficult to say, due to the lack of historical data, but it appears that the Town may be charging more than it needs to for the site plan inspections.
2. There is an inconsistency in the way the Town refunds remaining site inspection fees versus not refunding remaining subdivision inspection fees.
3. The Town has no mechanism for collecting additional money from a developer if the Town spends more money on site plan inspections than it took in. If the Town continues to use an escrow system to return unused site plan inspection money, then the Town may also want to have a mechanism to collect additional money for inspections if needed. (This would be similar to how the peer review accounting system currently works.)

### Performance:

1. The current practice of Public Works doing site inspections seems to work well. This is to be shifted to the Community Development Department with the arrival of Tony Hayes.
2. It is unclear what coordination exists between the Codes Enforcement office and Public Works on site inspections versus building inspections and how that relates to Certificate of Occupancy issuance.
3. The occasional use of outside consultants for site inspections should be clarified.

### Recommendations:

1. Implement a single data tracking system to reduce duplicate data entry.

## Subdivision Inspections

Jay Reynolds has performed these inspections since his arrival with the Town. Former Public Works Director Tony Hayes has also conducted these. Both public as well as private road project are inspected by the Town. Since February 2007, Jay Reynolds has kept an Access-based plan review and inspection log. All projects (site plan, subdivision, private way, and shoreland) have been lumped together. Below, the subdivision plan reviews/inspections have been separated from the other project types. The project list would need further review to separate subdivision plan reviews versus subdivision inspections. This is important as reviews are billed at cost and inspections are based on a percentage of construction cost and remainders are not returned. It has not been addressed as part of this report.

<b>Project</b>	<b>Cost Feb-Nov 07 @ \$45/hr</b>
Blakewoods Subdivision	90
Bodkin Farm Sub.	45
Caprio Subdivision/Caprio	427.5
Caprio Subdivision	22.5
Cavendish Way	45
Foreside Arbor	22.5
Hundred Acre Woods	45
Hurricane Run	225
Ledgewood Sub.	112.5
Madagan Subdivision	45
Maplewood Sub.	67.5
Ridgewood Estates	292.5
Seaside Subdivision	22.5
Smith Farm Sub.	22.5
Stone Ridge Sub.	1080
Tidewater Farm Sub.	67.5
Tolford, 3 lot sub.	157.5
Trolley Farm Sub.	45

Since June 1996, Tony Hayes has kept a tracking spreadsheet for subdivisions and private ways (and some site plans). This spreadsheet, which logs some 68 projects, contains Pinkham and Greer inspection costs, testing costs (by SW Cole and others), and a 15% Town administrative fee for each project. Note: The current version that is circulating does not (yet) include Jay Reynolds' time accounted for in the above chart.

Deposited funds from this account that have not been used by the completion of the project are retained by the Town. Not all projects have resulted in a positive balance for the Town. The following projects cost the Town money:

- Arbutus
- Jameson Drive
- Villas
- Alpine Woods
- Laura Way
- Carriage Hills
- BankNorth



- Stonewall Way
- Adam – PW
- Springbrook
- Sawdust
- Red Oak Ridge
- Cavendish
- Foreside Arbors
- Maplewood
- Deerfield
- Bodkin Farm
- Watt's Farm
- Olde Blackwood Way
- Cleaves Farm
- Hundred Acre
- Trolley Farm

Each of these overruns has their own circumstances. Typically projects that occur over many years or have less competent contractors will exceed the 3%. A deadline for private ways and subdivision work would help in that regard. Generally the 3% amount has been sufficient to cover the Town's costs. Recent DEP laws require a post-construction inspection of stormwater facilities by municipalities for certain projects, which adds to this expense. It does seem that sometimes this account is used to account for time spent by Town staff (or consultants) for a different purpose (e.g. subdivision plan review or site plan inspections). This has provided the Town with some flexibility, but that needs to be balanced with accurate accounting and proper assignment of work tasks.

A list of inspection milestones is included as appendix B.

### **Plant Maintenance Escrow**

In the case of approved site plans only, the Town requires that 10% of the value of all plants to be installed is guaranteed for a period of three years. The escrow may be used by the Town in the case of non-performance by the developer when plants need to be replaced within the three year period. It is not known if the Town ever used this account to make improvements on private property. It is also not known what precipitated the Town's requirement for a three year guarantee.

It is standard for the nursery industry to guarantee installations for 12 months. The Town's escrow extends it with 24 months.

Below is the list that is currently being tracked by the Community Development Department.

<b>Project</b>	<b>Escrow</b>	<b>3 Year Expiration – Attention required</b>	<b>Status</b>
<i>PS &amp; Co</i>	1,000	?	?
<i>Falmouth Ventures</i>	1,200	9/5/2003	Expired
<i>Morong Falmouth</i>	1,450	5/3/2008	
<i>Little Hands Day Care</i>	1,123	8/10/2010	
<i>TV-2</i>	1,000	8/29/2010	
<i>Rite Aid</i>	5,519	9/19/2010	
<i>Marr Associates</i>	6,672		Landscape

Project	Escrow	3 Year Expiration – Attention required	Status
			bond?

## Issues

### Administration:

1. The Town current tracking list seems incomplete and it appears that projects in the past may not have been treated consistently. This has been rectified with the most recent projects.
2. If this fee has not been used, is it needed to provide an incentive for developers to maintain their properties? One argument is that even without such an escrow developers have a responsibility to maintain their properties to stay in compliance with approved site plans. Of course, all plant material has a limited life and this does raise the question as to what the expectation (and corresponding enforcement requirement) of the Town is to maintain landscaping on a site. Obviously it is politically difficult to revoke an occupancy certificate in case of failure to replace failing plant material.

### Fees:

1. The 10% escrow of the total plant value results in a reasonable amount. The real argument is if there should be an escrow for this to begin with. If there is a thorough site inspection, and the nursery industry provides a 12 month guarantee, are additional guarantees needed?

### Performance:

1. Most likely, this escrow would be invoked only upon complaint to the Town. A field inspection would follow. The question is who should do this type of inspection? The CEO or the original site plan inspector.

### Recommendation:

1. If the Town chooses to maintain this escrow, then its enforcement needs to be done in a consistent manner.

## Site Plan Performance Guarantees

Besides the Plant Maintenance Escrow, the Town also requires a performance guarantee for approved site plans. This is stated in section 9.3.b: “Bonds, letters of credit or security acceptable to the Town Planner are posted to insure the installation of improvements or other requirements of the town. (...)” However, this has not been required of any past site plan applicants. The reason for this may be that all site infrastructure remains privately owned. Occupancy certificates may be withheld if a site is not completed according to the approved plans, but it is unclear how much interplay there is between the site inspector and Codes Enforcement Officer.

## Issues

### Administration:

1. The Town needs to decide what it seeks to accomplish with a site plan guarantee and how to implement this provision of the ordinance.
2. The Town does have an inspection responsibility. Besides the site plan guarantee, withholding a Certificate of Occupancy and/or issuing written punch lists are the other possible avenues of recourse.

3. It may not be necessary to require 100% of site expenses to be guaranteed. Would the Town complete all site work in cases of for example a developer default? Or would it seek to take care of those elements that directly affect public health and safety and environmental impacts?
4. In the rare case of issuance of a certificate of occupancy prior to site work completion without a site plan guarantee, the Town may have little enforcement ability. Revoking such a certificate is practically and politically difficult. One way to deal with this is to require an upfront performance guarantee for all site work similarly to what is required with subdivision projects. Alternatively, a partial guarantee may be required for any remaining work at the time of Certificate of Occupancy review.
5. It may be worthwhile to revise the ordinance from “acceptable to the Town Planner” to “acceptable to the Town.”

Fees:

1. A partial site work performance guarantee up front may be appropriate in most cases.

Performance:

1. This work requires close interplay between the site inspector and the codes enforcement officer.

Recommendation:

1. Make a policy decision as to how to enforce this requirement.
2. Link the issuance of any Certificate of Occupancy to satisfactory completion of all site inspections. This requires good coordination between the site inspector and the codes enforcement officer.
3. Have the Town require a partial performance escrow upfront and/or for remaining site work, if, due to seasonal circumstances, portions of the site work (such as landscaping) cannot be completed prior to desired occupancy.

## **Subdivision Performance Guarantees**

The Town requires developers to provide a construction guarantee in the amount of the cost of all improvements intended for public use. This guarantee is typically gradually reduced during the construction process, as key improvements have been made to the satisfaction of the Town’s inspector. As noted in the subdivision inspection fee section above, the Town maintains a list with a specific inspection milestones.

The table below is a compilation of guarantees that appeared on two spreadsheets. Some projects appear on both sheets, others only on one sheet or another. The variances between the spreadsheets from the finance department and those of the planning office is that finance only tracks cash deposits, whereas on a number of projects developers use an irrevocable letter of credit as their performance guarantee. The finance office has no need to track those. Its spreadsheet is more of an audit tool that is used to put together year-end financial reports. Public Works maintains an Access data base which is not incorporated in the chart below.

Some guarantees expire after a certain period and if not caught in time, the Town may that way lose its corrective ability in case a development is left incomplete.

It is not known if the Town ever has had to use a guarantee to finish an incomplete project.

<b>Project</b>	<b>Guarantee Remaining - JM/EC 070-2016 account spreadsheet</b>	<b>Guarantee Remaining - EC spreadsheet</b>	<b>Expiration Requires attention</b>	<b>Notes</b>
<i>Cavendish/Libby</i>	4,000		No expiration – this is in cash escrow	
<i>Red Oak/Huber</i>	37,392		No expiration – this is in cash escrow	
<i>Paddock Way</i>	36,100		No expiration – this is in cash escrow	
<i>Watt's Farm Way/Slager</i>	3,000	3,000	No expiration –this is in cash escrow	
<i>Seaside</i>	4,320	4,310	No expiration – this is in cash escrow	Last reduction 11/19/2007
<i>Foreside Arbors II</i>	48,215	40,792	No expiration – this is in cash escrow	Last reduction on 5/29/07
<i>Foreside Arbors I</i>	10,000	10,000	No expiration – this is in cash escrow	
<i>Sherman Woods/Berube</i>	30,465	30,465	No expiration – this is in cash escrow	
<i>Shops at Falmouth Village</i>		3,700	No expiration – this is in cash escrow	
<i>Smith Farm</i>		51,465	LOC has no expiration date.	Last reduction 6/13/2007
<i>Hurricane Run</i>		147,720	7/3/2009	
<i>Ridgewood Estates</i>		2,767,157	1/4/2009	
<i>Farm Gate/Caprio</i>		20,500	11/15/2008	
<i>Alpine Woods</i>		26,000	10/24/2008	
<i>Stone Ridge Farm</i>		519,579	10/24/2008	
<i>Bodkin Farm</i>		5,104	8/9/2008	
<i>Tidewater Village</i>		230,547	8/1/2008	
<i>Maplewood</i>		70,000	5/10/2008	
<i>St. James Place</i>		207,768	5/2/2008	
<i>Oxford Woods</i>		38,000	4/3/2008	
<i>Trolley Farm</i>		78,750	3/14/2008	
<i>Sherwood Forest</i>		162,654	12/31/2007	
<i>Tidewater Farm Phase I</i>		129,492	12/12/2007	
<i>Johnson Crossing</i>		25,000	7/15/2007	
<i>Quarry Project/Upper Route 1/Chase</i>		80,500?	2/10/2007	

## **Issues**

### Administration:

1. As noted above, a single data tracking system would reduce duplicate entry.
2. A calendar-based tickler system may help to alert the Town *prior to* expiration of a performance guarantee that such may need to be renewed.

### Fees:

1. Guaranteeing the total site construction cost is typical.
2. Some communities require a guarantee that is 10 to 50% greater than the estimated cost to account for inflation and unforeseen circumstances.

### Performance:

1. Public works department seems to have a good handle on the field aspect of these projects. This responsibility is to be shifted to the Community Development Department with the arrival of Tony Hayes.
2. With certain projects, performance guarantees have been renewed and extended a number of times while homes have been occupied in the same project. Completion of the site work has been lagging and the Town has not always pushed for that.
3. Some communities do not amend a performance guarantee until the project is completed.

### Recommendations:

1. Implement a single data tracking system to reduce duplicate and variable entry.
2. Implement a calendar-based tickler system to alert the Town *prior to* expiration of a performance guarantee that such may need to be renewed.

## **Street Defect Bond**

The Town also charges a so-called Street Defect Bond for subdivision projects that have roads that are built to Town standards and that are intended to be public roads. This is for repairing any minor road defects that may occur or reveal themselves within two years of the posting of this bond. The charge is \$5,000 plus \$1 per linear foot of roadway. The bond expires and gets returned after two years. The Town has never needed to use these funds to make improvements to a roadway within the two year timeframe after acceptance.

## **Private Way Inspection Fees**

Currently the Town charges \$300 for a private way that serves a single lot and 3% of improvement costs for private ways that serve multiple lots. There is no return of excess funds to the applicant.

The practice has been that inspection fee expenses sometime exceed revenue, particularly if multiple visits by staff are required.

## **Finance Department Comments**

“The Finance Department’s basic concern, and that of the auditors, is the sheer size of the escrow accounts. The current account balance is \$423,410 with a total of 46 (!) separate projects. In accounting lingo, these are “agency fund liability accounts”, meaning they are a liability to the

Town and that the Town holds the funds only in an “agency” or trust capacity, thus it is required to be reported as a separate accounting fund on the balance sheets.

Recently a good system was developed for administering the 46 accounts.

To the extent that the Town can charge regular, non-refundable general fund fees rather than returnable escrow fees, it would be better for the Town. I think it would make for better budgeting and financial planning as well.”

### **Follow up from Finance**

Q: Is the Town required to pay interest on money it holds in cash escrow accounts (e.g. peer review escrow account, performance guarantees, etc.)?

A: “As far as I know, there is no requirement to pay interest. At the direction of our auditors, if developers do request interest earnings, we require them to open a bank account in the Town's name, with the Town as signatory, in order to avoid having the Town in the middle of interest rate calculations, etc., we currently have 3 such interest-bearing accounts.

As I have noted before, these accounts represent a tremendous administrative and accounting burden for both the Finance and Planning departments. we currently have 34 accounts (not counting those with letters of credit, which Finance doesn't track) totaling over \$290,000, one of which is over 20 years old! These all have to be individually tracked by both departments, reconciled at fiscal year-end, tested by the auditors.

Additionally, from an accounting viewpoint, we have to create a separate "agency" fund in the Town financials to report these accounts. These accounts are all a "liability" to the Town, meaning we are holding someone else's money.

So anything that can be done to reduce these accounts will be greatly appreciated by the auditors and me!”

### **Follow up 2 from Finance**

Theo, I finally had a chance to review your report. As always, the report was very well researched and written. As I read it, aside from the elimination of the plant bond and the change of the site plan inspection fee from refundable to non-refundable, the system will stay basically the same but with larger fee amounts.

Again, from a Finance viewpoint, the whole site plan/subdivision inspection and review program seems like such a large and unwieldy program for the Town to have to administer, requiring a number of employees and Town resources to manage (finances, numerous deadlines, inspections, etc.), as well as requiring a large amount of inter-departmental coordination. From a policy standpoint, as I see it, we are basically acting as a construction clearinghouse service for the real estate development industry, but I guess if that is what is needed to protect the Town from developers who go belly up...

We are currently at 34 projects with a combined total of \$311,000. Fiscal year-to-date we have taken in over \$351,000 in escrow receipts and paid out over \$387,000 in escrow expenses and refunds (we recently had two cases where large sums of money (over \$100,000 each) were intentionally "parked" with the Town for just a few weeks, requiring us to deposit the money and

then turn around in a matter of weeks and cut a refund check for the same amount). With the proposed fee increases, these amounts will only increase.

Again, this is technically all other people's money that we are holding in a trustee capacity (an "agency fund" in accounting language). In short, it is a lot of money and responsibility for an organization with a relatively small staff. I think anything we can do to reduce the amount of money and administration would be good.

Finally, were any other communities surveyed to see how they handle these matters? Does the state of Maine get involved with developer performance guarantees?

### **Other Issues**

As part of the staff discussions, the issue of renewal of approval for expired projects came up. If there is a substantial change requested of a previously-approved, but expired plan, then a new application is required (with commensurate fees). However, there currently is no application fee required to seek re-approval of projects that have lapsed, but which contain no (or only minor) changes to the previously-approved. Staff recommends that the Council establish a fee (and approval mechanism) for those kind of requests.

## Appendix A: Development Review Fees for Site Plans and Subdivisions

<b>At Time of Site Plan Application</b>				
<i>Ordinance reference</i>	<i>Type</i>	<i>Formula</i>	<i>Remaining funds returned?</i>	<i>Town Account</i>
9.2.c. (1)	Publication/notice fee	\$75 for each step	No	
9.2.c. (1)	Pre-application fee	\$250 (who determines if this step needed?)	No	
9.2.c. (1)	Application fee	\$500 + \$50/1,000 gross sf	No	
9.2.c. (2)	Peer Review fee	For buildings over 2,000 sf only: \$50/1,000 sf	Yes	070-2016

<b>Upon Site Plan Approval</b>				
<i>Ordinance reference</i>	<i>Type</i>	<i>Formula</i>	<i>Remaining funds returned?</i>	<i>Town Account</i>
9.2.c. (3)	Negotiated Exactions fee(s)	Requires development impact analysis (See Sub. Ord. Section 12)	No, if expended within 10 years	
9.2.c. (5)	Site Plan Inspection fee	Depends on total estimated cost of all site improvements (1-3% + variable base fee)	Yes	070-2016
9.3.b	Site Plan Security	“Acceptable to the Town Planner (...) to insure the installation of improvements or other requirements of the town.”	Yes	n/a - this security has to date not been invoked.
9.28.d.	Plant Maintenance Bond	10% of value of all plantings for 3 year period	Yes, if not expended within 3 years	070-2016

<b>At Time of Major Subdivision Application</b> (= any lots created requiring new streets or private ways or requiring utility extensions)				
<i>Ordinance reference</i>	<i>Type</i>	<i>Formula</i>	<i>Remaining funds returned?</i>	<i>Town Account</i>
Section 5.A	Publication/notice fee	\$75 for each step	No	
Section 5.A	Pre-application/sketch plan fee	\$250	No	
Section 5.A	Preliminary Plan Application fee	\$600 for first three lots + \$100/each	No	



		additional lot		
Section 5.A	Final Plan Application fee	\$0 (pub. Fee only)	No	
Section 5.B	Peer Review fee	\$100/lot	Yes	070-2016

<b>At Time of Minor Subdivision Application</b> (= 3-5 lots created on already accepted way)				
<i>Ordinance reference</i>	<i>Type</i>	<i>Formula</i>	<i>Remaining funds returned?</i>	<i>Town Account</i>
Section 5.A	Publication/notice fee	\$75 for each step	No	
Section 5.A	Pre-application fee	\$250 – required for RCZO projects only	No	
Section 5.A	Minor Plan Application fee	\$600 for first three lots + \$100/each additional lot	No	
Section 5.B	Peer Review fee	\$100/lot	Yes	070-2016

<b>Upon Subdivision Approval</b>				
<i>Ordinance reference</i>	<i>Type</i>	<i>Formula</i>	<i>Remaining funds returned?</i>	<i>Town Account</i>
Section 5.C + 12	Negotiated Exactions fee(s)	Requires development impact analysis	No, if all is expended within 10 years Yes, if there is remainder (with interest)	
Section 10	Subdivision Inspection fee	3% of total estimated cost of required improvements and utilities	No	020-2526
Section 11	Performance Guarantee	Cost of all improvements for public benefit or use	Yes, if not required to be used within 2 years.	070-2016

## **Appendix B: Basic Construction Inspection Schedule**

The list below includes basic milestone inspection moments for a subdivision or site plan construction project. Periodic monitoring, above and beyond these, is recommended.

1. Prior to construction/pre-construction meeting.
2. Prior to tree clearing/verification of no-cut or shoreland zones, wetland buffers, etc.
3. Installation of erosion control measures.
4. During street openings/excavations.
5. Connection of new utilities to Town's existing utilities.
6. Installation of storm drain improvements (as needed).
7. Installation of stormwater treatment devices, detention ponds, etc.
8. Installation of sanitary sewer (wastewater performs inspections and oversees testing).
9. Placement of sub-base gravel (samples taken on roads, sent to lab for gradation and moisture content).
10. Prior to placement of base gravel (so that compaction tests are taken on the sub-base gravel).
11. Prior to placement of pavement (to check grades, road cross-sections, etc.)
12. During placement of base pavement.
13. Prior to winter (to ensure erosion control measures are in good standing for spring).
14. Installation of curbing.
15. Installation of sidewalk gravel and pavement.
16. Prior to placement of surface pavement.
17. During placement of surface pavement.
18. 'Punch list' inspection. Usually requested by developer to identify remaining items identified by the Town.
19. Prior to final release of performance guarantee / prior to roadway acceptance.