

TOWN OF PARSONSFIELD
APPLICATION FOR A VARIANCE OR APPEAL
TO BOARD OF ZONING APPEALS

Name of Appellant Gerard Clifford

Mailing Address 993 North Road

City or Town Parsonsfeld State Maine

Telephone 207-929-0644 Map/Lot Abutter, Public Record

Name of Owner: Nate Sells Real Estate LLC Application in Parsonsfeld, Maine (De Novo Review)

The undersigned requests that the Board of Appeals Consider one of the following:

1. **An Administrative Appeal.** (Application for an administrative appeal shall be filed at the office of the Town Clerk, who shall notify the Chairman of Board of Appeals and the Code Enforcement Officer. No Fee.) Relief from the decision, or lack of decision, of the **Code Enforcement Officer** or Planning Board in regard to an application for a permit. The undersigned believes that (check one):

- An error was made in the denial of the permit
- The denial of the permit was based on a misinterpretation of the ordinance.
- There has been a failure to approve or deny the permit within a reasonable period of time.

Other (See Attached Below) – *There were a number of questions raised at Planning Board meetings that still have not been answered, partially due to requirements that have not been met by the CEO (De Novo Review).*

Please explain in more details the facts surrounding this appeal (please attach a separate piece of paper.) You should be as specific as possible so that the Board of Appeals can give full consideration to your case. *(See attached)*

2. **A Variance** (Application for a variance shall be made to the Code Enforcement Officer on the form provided for that purpose, accompanied by a **\$25.00 fee and \$150.00** escrow amount.)

A. Nature of Variance: Describe generally the nature of the variance. In addition, a sketch plan of the property must accompany this application showing the dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of the proposed buildings or alterations, and any natural or topographic peculiarities of the lot in question.

B. Justification of Variance: In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals that the strict application of the terms of the zoning ordinance would cause undue hardship. There are four criteria, which must be met before the BOA can find that a hardship exists. Please explain how your situation meets each of these criteria listed:

1. The land in question cannot yield a reasonable return unless the variance is granted. _____
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood. _____
3. This hardship is not the result of action taken by the appellant or a prior owner. _____

4. The granting of a variance will not alter the essential character of the locality. _____

I certify that the information contained in this application and its supplement is true and correct.

Date: 12.18.19 Appellant Signature: 

Note to Appellant: This form should be returned to the Code Enforcement Officer. You will be contacted by the Chairman of the Appeals Board to schedule your hearing.

- 1.) Abutter unable to participate- Constitutional Rights Violations
- 2.) Due Process Rights Violations
- 3.) Conflicts of Interest- Planning Board, Road Commissioner and Zoning Officer
- 4.) The Planning Board did NOT vote on the approval of this subdivision proposal per Article 8.3.B. The map the Planning Board signed on 11.20.19 was created after the Board voted on 10.15.19. Because the applicant submitted new documents, an additional vote for approval of this new document is required.
 - a. Map altered by the applicant, dated 11.6.19, was submitted to the Planning Board on 11.14.19 despite town submission requirements
 - b. Official Planning Board records (Findings of Fact) were altered to conceal the signing of the map at an unnoticed meeting on 11.20.19 dated
 - c. The Planning Board Chairman deliberately misled the public at the 11.20.19 meeting and stated that no actions regarding this applicant would be taken.
 - d. This was followed by the clear undue influence of Chairman Sullivan and Planning Board member Yale instructing members Stacey and Adleman to sign the map without reading what they were signing. Mr. Yale also asked the Administrative Assistant to “turn off” the camera that was recording to conceal the Board’s knowingly wrongful actions. She did not comply with his demand and video is available of all four Members signing this document not reviewed or voted upon on 11.20.19.
 - e. In violation of Article 4, action was taken at an unnoticed Planning Board meeting on 11.20.19
5. As stated on the map that the Planning Board signed on 11.20.19, it does not conform to current standards due to the fact that there is no detailed survey report available. This could be the reason that the applicant does not appear to know actual size of the property he is proposing to develop. See all previous submissions.
6. Leavitt Plantation is in Resource Conservation zoning. This has not been included sketch plan despite requirements.
7. The Wetland of Special Significance at the back of these proposed parcels is not being protected by the mandated minimum 75-foot setback. As a concerned abutter, I hired a professional soil scientist who reviewed and exposed related submissions available to the public were inadequate on 3.19.19. At this meeting, the Planning Board voted to remove this professional opinion from the record and subsequently approved the preliminary plan at the same meeting without issuing findings of fact.
8. Drainage patterns have been significantly altered from its natural condition and the stormwater buffer areas were liquidated of vegetation leaving it unsuitable for stormwater management. When the storm water plan was reviewed by CES (hired by the town) their report showed the stormwater management plan as incomplete after two and a half years of myself complaining that it has never met Town/State standards.
9. After two years before the Planning Board, upon approval at the 3.19.19 meeting, no Findings of Fact were created regarding the Preliminary Approval per Article 7.1.H in the Parsonsfield Subdivision Regulations.

10. All Preliminary Approval documents were withheld from the public by the FOAA Officer (David Bower) so it was not possible to consider an appeal at that time. Due to the Town's actions, an attorney was required to force the Town to release these public documents.
11. Town and State sight distance requirements have not been met per CES's independent review of the Final Plan.
12. Leavitt Plantation Zoning (Resource Conservation) not show on sketch plan per 7.2.B.3
13. The Road Commissioner, who is said to be an employee/friend of the applicant, illegally reduced the speed limit two times in 2017 (45 unposted to 30 posted to 25mph posted) on Hussey Road. Documentation is available to confirm his unlawful actions. These unlawful actions have directly benefitted the applicant.
14. Despite previously issued driveway permits on Hussey Road for the applicant's prior submissions, the Planning Board refuses to enforce the same standards to this application as no driveway permits have been issued to the proposed driveway on Hussey Road.
15. Also, despite requirements, the Road Commissioner has not ensured the health and safety of the Town by issuing permits confirming proposed driveways onto route 160 have met the standards of the Town which are more stringent than Maine DOT.
16. Due to an independent review exposing the lack of adherence to Town and State sight distance requirements, DOT has agreed to accept an appeal on permits issued by Mr. Anthony Fontaine of Maine DOT which is still being reviewed by DOT's Regional Manager, Mr. Robert McFerren, for compliance.

Summary of due process and Civil/Constitutional Rights Violations

From the beginning of this subdivision proposal, known as Watson Woods, as an abutter, I have been outspoken in regards to Planning Board not adhering to the Parsonsfield Land Use and Subdivision Regulations. The former Code Enforcement Officer (David Bower), Selectmen and Planning Board have all been made aware of my concerns.

After the March 19, 2019 Planning Board Meeting, I filed a complaint to the Planning Board regarding the inappropriate treatment of a fellow Member, Ms. Wright, who resigned at that meeting. This incident was removed from the town video with the note "video malfunction" however, original audio is available which also includes inappropriate behavior towards myself by Planning Board Member, Nate Stacey who, per another Planning Board Member stated that "Nate Stacey spent several minutes screaming in Gerard Clifford's face. Totally uncalled for and unprofessional." This display was followed by the former Planning Board Chair, JP Espinosa, making false accusations against myself and another citizen, some of which were retracted by Mr. Espinosa 8.20.19. The Selectmen then violated my right to participate in the Planning Board Proceedings through creating false allegations to prevent my involvement in this process. It seems clear that these actions that have been taken against me are, in part, due to exposing inappropriate behavior by Municipal Officials regarding their lack of adherence to the law. Town Attorney, David Lourie, had advised me in writing prior to this incident, that I had raised "many legal issues" regarding my concerns and he would inform the Selectboard and CEO of the required responsibilities and duties.

The Town has also failed to provide many pertinent documents under FOAA requirements including all documents related to the Preliminary Approval of this Subdivision Proposal. Due to the withholding of public information, an Attorney was hired to retain said public documents which revealed, among other issues, no findings of facts were determined when preliminary approval was granted on the fourth application submitted to this Town over two and a half years of review before the Parsonsfield Planning Board.

Taxpayers funded thousands of dollars of legal advice from David Lourie, Town Attorney, who's advice regarding denying this proposal due to it not meeting the Town standards was disregarded by the Planning Board. The Board then approved the Preliminary Proposal while failing to issue required Findings of Fact at said March 19, 2019 Planning Board Meeting. Despite my rights as stated by the Selectmen, the Town of Parsonsfield has prevented my participation in this development proposal which affects my due process rights under the constitution.

Aside from the above, there are many conflicts of interest/bias issues including the current Planning Board Chair (Richard Sullivan) being a direct abutter to this proposal while myself, also a direct abutter but more greatly impacted due to current locations of the proposed homes, am not allowed to participate in spite of my Constitutional Rights. Despite a Planning Board Member raising this issue of officially bringing the Chairman's conflict to the attention of the Board after approximately 2 years, his conflict of interest was not addressed appropriately under the law. Despite requirements when this type of issue arises, no vote was taken and the perceived conflict of interest was not recorded in the Minutes per the standard.

Also, on 9.17.19 Selectmen's meeting, Mr. Andy Yale, Planning Board Member, expressed his concerns regarding the violation of my Constitutional Rights stating: "I have concerns about abridging the rights to someone's free speech, um, I just wanted to open that up to you guys because it plays right into the perception that the town governance muzzles people" which is available on audio recording.

Planning Board Member Cliff Krolick also attended the 9.17.19 Selectboard meeting also requesting a resolution to my Constitutional right to participate in Planning Board proceedings. Regarding these statements, the Selectboard Chair stated that "there must be a path for reinstatement however, they failed to do so.

I have since been elected and sworn in as a Planning Board Member, however, the Selectboard are still denying my right to participated as a Constitutionally elected official.

The Code Enforcement Officer (CEO), Jesse Winters, who was appointed on 1.1.19, constructed the first home on the Watson Woods proposed Subdivision in 2016, and, once appointed as CEO, failed to participate in any of the Watson Woods Subdivision Proposal proceedings despite the Planning Board's lack of understanding of the Regulations and the CEO's legal obligations. The referenced lack of understanding is evident by the independent review conducted by CES that took place two and a half years into the proposal which showed the applicant was still not meeting the standards of the Town/State. This validates my concerns which are well documented over the two and a half years of the Planning Board's lack of adhering to local and state regulations.

Due overwhelming evidence, the applicant does not meet Town and State standards required due to the significant amount of issues submitted. The approval of this inadequate subdivision proposal should be revoked

Per the MMA Legal Manual - December 2011 revised edition

Maine Civil Rights Act

The Maine Civil Rights Act (5 M.R.S.A. § § 4681-4683) prohibits a person from "intentionally interfer(ing) by threat, intimidation or coercion" with another person's exercise or enjoyment of rights secured by the U.S. Constitution or the laws of the United States or rights secured by the Maine Constitution or laws of the State. Unlike federal law (see discussion below), the State Civil Rights Act does not apply only to actions done "under color of law." This means that a board member could be sued under this law whether or not he or she was acting in an official capacity if

a violation of this law results from the board member's action. The Maine Attorney General is authorized to seek an injunction or other corrective action on behalf of the injured person in order to protect that person in exercising his or her rights. The injured person also may pursue a civil action on his or her own behalf seeking appropriate monetary or corrective relief. The law also authorizes the successful party (other than the State) to recover its reasonable attorney fees and costs. For a case interpreting this law, see Duchaine v. Town of Gorham, CV-99-573 (Me. Super. Ct., Cum. Cty., June 15, 2001).

Conflict of Interest or Bias.

The chairperson should advise the board members that if any of them has a direct or indirect pecuniary interest in the subject matter of the application, that member must make his or her interest known in the minutes of the meeting and must abstain from participating in any discussion and the vote taken in relation

to that application. Otherwise, if someone challenged the board's decision in court, the court could void the decision. 30-A M.R.S.A. § 2605. The same is true regarding bias. (See earlier discussion in this chapter.) If alternate or associate board member positions have been established by the legislative body and have been filled, the chair should designate an alternate or associate to sit in place of a disqualified member

- *Federal Civil Rights Act of 1871*

The Federal Civil Rights Act of 1871 (42 U.S.C.A. § 1983) prohibits any violation of any individual right which is guaranteed by either the United States Constitution or a federal statute.

- *Individual Liability. Individual board members are immune from personal liability under federal law for damages resulting from a board decision if the board acted in "good faith." "Good faith" means that the board did not know and should not have known that its decision would deprive the injured person of a federal or constitutional right. Owen v. City of Independence, 445 U.S. 622 (1980). For example, if the planning board denies an application, the applicant might try to sue the board and ask a court to order the board to approve the application and to pay damages to him as compensation for the loss of use of his property. As long as the board acted in good faith in interpreting the ordinance and denying the application, the court would not award damages against the members even if the court found that the application should have been approved. However, if, for example, the court found that the only reason that the board had for denying the application was that it wanted to prevent a family with a particular ethnic background from moving into the neighborhood, it probably would award damages against the board members personally.*

- *Municipal Liability. Even if the board members are not personally liable for damages, the municipality will be liable if the court finds that the person bringing the suit actually was deprived of a federal or constitutional right by the board's decision and that decision was made pursuant to a municipal "policy, custom, or practice." The municipality cannot rely on the board's good faith in defending a suit against the municipality.*

- *Damages; Attorneys Fees; Defense and Indemnification. A person who wins a case under the Civil Rights Act of 1871, whether against the municipality or the members of the board, can recover attorney fees as well as damages. 42 U.S.C.A. § 1988. If the court finds that the suit was frivolous, however, it will be quick to require the person filing the suit to pay the municipality's*

attorney fees. *Burr v. Town of Rangeley*, 549 A.2d 733 (Me. 1988). There is no statutory limit on damages under the federal law as there is under the Maine Tort Claims Act. Title 14 M.R.S.A. § 8112(2-A) states essentially that if board members are sued for violating someone's rights under a federal law, the municipality must pay their defense costs and may pay any damages awarded against them for a violation of federal law, if they consent. This is not true if they are found criminally liable or if it is proven that they acted in bad faith.

- *Notice of Suit.* If sued under federal law, the board should notify the town or city manager (if any) or the municipal officers immediately, since an insurer may deny coverage and defense if notice is not provided in time.

Maine Freedom of Access Act (Right to Know Law)

The Maine Freedom of Access Act (FOAA) (1 M.R.S.A. § 401 et seq.) (also known as the "Right to Know Law") requires the planning board to allow the general public to attend board meetings and workshops, to open its records for public inspection, and to give prior public notice of its meetings. If the board willfully violates the FOAA, the municipality or the board members could be liable to pay a \$500 fine. 1 M.R.S.A. §§ 409 and 410. Also, the statute states that certain decisions made in violation of the Right to Know Law are void. 1 M.R.S.A. § 409.

Records Retention and Preservation and Public Access

Records in the custody and control of the planning board are public records under Maine's Freedom of Access Act, with rare exceptions. Any member of the general public has a right to inspect public records at a time that is mutually convenient for the custodian and the person wanting to inspect them. Inspection should be done with supervision of the custodian or someone designated by the custodian; a member of the public should never be allowed to remove public records and take them somewhere else to review and copy. If a person wants a copy of a public record, the municipality may charge a reasonable fee for the copy and may charge for research and retrieval time to the extent authorized by 1 M.R.S.A. § 408-A. When a person wants to inspect or obtain a copy of a record which might be confidential, the custodian has five (5) working days to determine whether the record is public and to issue a written denial if it is not. 1 M.R.S.A. §§ 402, 409. Virtually all materials received or made by the board in connection with the transaction of public business are "public records," regardless of the form in which they are prepared and maintained. Application materials, board minutes, email communications, computerized records, audio tapes and personal notes taken by board members at board meetings are all examples of "public records" for the purposes of the FOAA.

The custodian of the records must acknowledge a request to inspect and/or copy public records within a reasonable time of receiving the request. Although a request need not be made in writing, the custodian should acknowledge the request in writing if possible.

Along with the above issues, the Planning Board ailed in issuing this approval to Nathan Wadsworth of Nate Sells Real Estate LLC due to not adhering to the following standards of the Parsonsfield Land Use Ordinance and Subdivision Regulations as noted below.

Town of Parsonsfield Land Use and Development Ordinance

ARTICLE I. GENERAL PROVISIONS

Section 3. Purpose The purpose of this Ordinance, in accordance with the Town's adopted Comprehensive Plan, is to promote the health, safety and general welfare of the residents; to encourage the most appropriate use of land throughout the Town by controlling building sites, placement of structures and land uses; to promote traffic safety; to promote fire safety and prevention of harm from natural hazards; to provide adequate light and air and prevent overcrowding of land areas; to prevent housing development in unsanitary or unsafe areas; to provide an adequate street system and public services; to promote the coordinated development of land; to encourage the formation of community neighborhoods and provide an allotment of land area in new developments sufficient for all requirements of community life; to protect and foster existing village and neighborhood areas; to maintain the rural character of the town; to further the maintenance of safe and healthful conditions; to conserve natural resources; to prevent and control water pollution; to protect fish spawning grounds, fish, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect freshwater wetlands; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

Section 4. Applicability Notwithstanding the provisions of Title 1, M.R.S.A., Section 302, this Ordinance applies to any and all applications and proceedings pending upon the date of adoption of this Ordinance or filed on or after the date of adoption of this Ordinance.

Section 5. Conformity Required Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted. All lots created shall be in conformity with all regulations herein specified for the district in which it is located.

ARTICLE II: LAND USE DISTRICTS AND USES Section 1. Establishment of Districts

C. Rural Residential (R) The purpose of the Rural Residential District is primarily to provide for low-density residential housing in areas of Parsonsfield where a pattern of rural housing exists. The District allows a mixture of residential uses and institutional uses. Limited commercial uses are allowed.

G. Resource Conservation (RC) The purpose of the Resource Conservation District is to conserve natural resources for forestry related activities, outdoor recreational uses, wildlife habitat and agriculture. This District includes areas where development rights may have been purchased or restricted. No development is permitted in this District.

Section 6. General Performance Requirements The following standards apply to all lots created and all land use activities undertaken, where applicable.

F. Clearing of Vegetation for Development See the Shoreland District section for requirements regarding the clearing of vegetation for development in the Shoreland Districts. In any other land use district, the clearing of vegetation must be limited to that area which is necessary for uses expressly authorized in that district.

J. Landscaping The landscape must be preserved in its natural state insofar as practical, by minimizing tree removal and grade changes in keeping with the general appearance of neighboring areas. Landscaping must be designed to soften, screen or enhance the physical design of structures and parking areas to avoid the encroachment of the proposed use on abutting land uses.

Q. Soil and Water Quality Protection

2. Soil Erosion Control

c. All drainage ways, swales, wetlands and surface water must be protected from sedimentation by the installation of silt-fence barriers and/or hay-bale barriers. Such barriers must be installed prior to any digging, soil removal, the stripping of vegetation, scarification, or soil disturbance of any kind. The barriers must be installed at all points immediately down-slope of all soil exposing activities. **In addition, in areas where slopes exceed fifteen percent (15%), all drainage ways, swales, wetlands and surface water must be protected from sedimentation by the maintenance of a one-hundred (100) foot wide vegetative buffer.**

S. Street Access and Driveways 2. Driveways

- a. The number of driveways accessing off-site public streets must be kept to a minimum.
- b. The appropriate use of common driveways is encouraged. Where lots will access an off-site public street, common driveways must be used where appropriate to minimize the number of curb cuts required.
- iv. All lots using common driveways must provide a driveway maintenance agreement to be reviewed and approved by the Town attorney at the expense of the applicant.

Section 4. Administration

B. Officer shall make an initial determination of the completeness of the application, which is then subject to the determination of the Planning Board. If an application is not complete, it will be held by the Code Enforcement Officer and the CEO must inform the applicant in writing what additional information is required.

D. Independent Review and Advice 1. Professional Services The Planning Board may require that a consultant or other appropriate professional advisor review one or more aspects of an application for compliance or noncompliance with this Ordinance and to assist the Board. The consultant or other advisors shall first estimate the cost of the review and the applicant shall deposit, with the Town the full estimated cost, which the Town shall place in an escrow account. The Town shall pay the consultant or advisors from the escrow account and reimburse the applicant if funds remain after payment.

E. Land Use Standards

2. Principal and Accessory Structures a. All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds (classified GPA) and rivers that flow to great ponds (classified as GPA), and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the

upland edge of a wetland. Except that in the General Development District the setback from the normal high-water line must be at least twenty-five (25) feet, horizontal distance. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply

Section 5. Site Plan Review Application

A. General Submission Information

8. The name, registration number and seal of the land surveyor, architect, engineer and/or similar professional who prepared any plan.

C. Proposed Development Activity

1. The location of all building setbacks, yards and buffers, required by this or other Town Ordinances.
2. The location, dimension, and ground floor elevations (AGL) of all proposed buildings.
3. The location and dimensions of proposed driveways, parking and loading areas, and walkways.
4. The location and dimensions of all provisions for water supply and wastewater disposal.
5. The direction and route of proposed surface water drainage.
10. A schedule of construction including anticipated beginning and completion dates.

D. Applications for Major Developments

Applications for major developments must include the following additional information:

2. A storm water drainage and erosion control program showing:
 - a. The existing and proposed method of handling storm-water run-offs.
 - b. The direction of flow of the run-off.
 - c. The location, elevation, and size of all catch basins, drywells, drainage ditches, swales, retention basins, and storm sewers.
 - d. Engineering calculations used to determine drainage requirements based upon the 25-year, 24-hour storm frequency, but only if the project will significantly alter the existing drainage pattern, due to such factors as increased impervious surfaces from paving and building.
 - e. Methods of controlling erosion and sedimentation during and after construction.
4. A utility plan showing the location and nature of electrical, telephone, and any other utility services to be installed on the site.
5. A planting schedule, keyed to the Site Plan, indicating the varieties and sizes of trees, shrubs, and other plants to be planted.
6. Analysis of the solid or hazardous waste to be generated and a plan for its recycling and disposal, along with evidence of disposal arrangements.
13. Cost estimates of the proposed development and evidence of financial capacity to complete it. This evidence should include a letter from a bank or other source of financing indicating the name of the project, amount of financing proposed, and the means of financing the project.

Section 6. Criteria for Review and Approval of Site Plans and Subdivisions

In approving site plans and subdivisions within the Town of Parsonsfield, the Planning Board shall consider the following criteria and before granting approval shall make findings of fact that the provisions of this Ordinance have been met and that the proposed development will meet the guidelines of Title 30-A, M.R.S.A., Section 4404, as amended, which include the following:

A. Aesthetic, Cultural and Natural Values The proposed activity will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.

B. Conformity with Ordinances and Plans The proposed activity conforms with this Ordinance, other duly adopted ordinances, including the Subdivision Regulations of the Town of Parsonsfield, and the Parsonsfield Comprehensive Plan

C. Erosion The proposed activity will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

E. Financial and Technical Ability

1. Financial Capacity The applicant has adequate financial resources to construct the proposed improvements and meet the criteria of the Land Use and Development Ordinance. When the applicant proposes to construct the building as well as any subdivision improvements, the applicant shall have adequate financial resources to construct the total development. In making the above determinations, the Planning Board shall consider the proposed time frame for construction and the effects of inflation.

K. Neighborhood Compatibility

1. The proposed activity will be compatible and sensitive to the character of the site and neighborhood relative to land uses, scale, bulk and building height, neighborhood identity and historical character, and orientation on the lot.
2. The proposed activity maximizes the opportunity for privacy by the residents of the immediate area.
3. The proposed activity ensures safe and healthful conditions within the neighborhood.
4. The proposed activity will minimize any detrimental effects on the value of adjacent properties.

O. Storm Water The proposed activity will provide for adequate storm water management

Section 7. Performance Guarantees

C. Escrow Account A cash contribution to the establishment of an escrow account must be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the owner, the municipality must be named as owner or co-owner, and the consent of the municipality is required for a withdrawal, but the consent of the owner shall not be required for a withdrawal. Any interest earned on the escrow account must be returned to the owner unless the Town has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the owner and the amount withdrawn to complete the required improvements.

Any certified check will be deposited in the name of the Town by the Treasurer in an interest bearing account and will bear the name of the Owner and of the proposed project. Withdrawals will be made after a designated Engineer has certified the work as completed. The Planning Board must be duly notified prior to any withdrawal. Any work which has not been completed may be performed at the

discretion of the Town and such work will be paid from the escrow account. The Planning Board will recommend to the Selectmen such disbursements from the escrow account as will pay for completed work in accordance with an approved disbursement schedule.

D. Letter of Credit An irrevocable letter of credit from a bank or other lending institution will indicate that funds have been set aside for the construction of the project and may not be used for any other project or loan. The Letter of Credit or Performance Bond must contain a provision that the institution providing the LOC or Bond must notify the Selectmen at least sixty (60) days before the LOC or Bond terminates of their termination date.

Section 1. Administering Bodies and Agents

2. Powers and Duties. The CEO has the following powers and duties: a. Enforce the provisions of this Ordinance and others requiring CEO action.

d. Investigate complaints and reported violations.

Parsonsfield Subdivision Regulations

7.1 H Within thirty days from the public hearing or within sixty days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the preliminary plan application. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.

7.1. I. When granting approval to a preliminary plan, the Board shall state the conditions of such approval, if any, with respect to:

1. The specific changes which it will require in the final plan;
2. The character and extent of the required improvements for which waivers may have been requested and which the Board finds may be waived without jeopardy to the public health, safety, and general welfare; and
3. The construction items for which cost estimates and performance guarantees will be required as prerequisite to the approval of the final plan.

7.2.D 3.A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a professional land surveyor. The corners of the parcel shall be located on the ground and marked by monuments.

7.2.D 11. The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, and other essential existing physical features. The location of any trees larger than 24 inches in diameter at breast height shall be shown on the plan.

7.2.D 14. The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision.

7.2.D. 16. The location, names, and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.

7.2.D. 21. The area on each lot where existing forest cover will be permitted to be removed and converted to lawn, structures or other cover and any proposed restrictions to be placed on clearing existing vegetation.

7.2.D. 26. Areas within or adjacent to the proposed subdivision which have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the comprehensive plan. If any portion of the subdivision is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values that qualify the site for such designation.

8.1. I. The Board shall notify the road commissioner, school superintendent, police chief, and fire chief of the proposed subdivision, the number of dwelling units proposed, the length of roadways, and the size and construction characteristics of any multi-family, commercial or industrial buildings. The Board shall request that these officials comment upon the adequacy of their department's existing capital facilities to service the proposed subdivision.

8.2. B. The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, and other essential existing physical features.

8.2. G. The location of any zoning boundaries affecting the subdivision.

8.2.J. The location, names, and present widths of existing and proposed streets, highways, easements, buildings, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established. The location, bearing and length of street lines, lot lines and parcel boundary lines shall be certified by a professional land surveyor. The original reproducible plan shall be embossed with the seal of the professional land surveyor and be signed by that individual.

8.2. L. A storm water management plan, prepared by a registered professional engineer in accordance with the Stormwater Management for Maine: Best Management Practices, published by the Maine Department of Environmental Protection (1995).

8.2 R. A list of construction items, with cost estimates, that will be completed by the applicant prior to the sale of lots, and evidence that the applicant has financial commitments or resources to cover these costs.

8.2 S. A list of construction and maintenance items, with both capital and annual operating cost estimates, that must be financed by the municipality, or quasi-municipal districts. These lists shall include but not be limited to:

- Schools, including busing
- Street maintenance and snow removal
- Police and fire protection
- Solid waste disposal
- Recreation facilities
- Storm water drainage
- Waste water treatment
- Water supply

The applicant shall provide an estimate of the net increase in taxable assessed valuation at the completion of the construction of the subdivision.

8.2 T. The location and method of disposal for land clearing and construction debris

8.3. A. No plan shall be approved by the Board as long as the applicant is in violation of the provisions of a previously approved Plan within the municipality.

8.3. B. Upon findings of fact and determination that all standards in Title 30-A M.R.S.A., §4404, and these regulations have been met, and upon voting to approve the subdivision, the Board shall sign the final plan.

The Board shall specify in writing its findings of facts and reasons for any conditions or denial. The Board shall retain one copy of the signed plan as part of its permanent records. One copy of the signed plan shall be forwarded to the tax assessor. One copy of the signed plan shall be forwarded to the code enforcement officer. Any subdivision not recorded in the Registry of Deeds within ninety days of the date upon which the plan is approved and signed by the Board shall become null and void.

8.3. C. At the time the Board grants final plan approval, it may permit the Plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to ensure the orderly development of the Plan. If any municipal or quasi-municipal department head notified of the proposed subdivision informs the Board that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision. If the superintendent of schools indicates that there is less than 20% excess classroom capacity existing in the school(s) which will serve the subdivision, considering previously approved but not built subdivisions, the Board shall require the plan to be divided into sections to prevent classroom overcrowding. If the expansion, addition or purchase of the needed facilities is included in the municipality's capital improvements program, the time period of the phasing shall be no longer than the time period contained in the capital improvements program for the expansion, addition or purchase.

8.3. D. No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Board and endorsed in writing on the plan, unless the revised final plan is first submitted and the Board approves any modifications, except in accordance with Article 10. The Board shall make findings that the revised plan meets the criteria of Title 30-A M.R.S.A., §4404, and the standards of these regulations. In the event that a Plan is recorded without complying with this requirement, it shall be considered null and void, and the Board shall institute proceedings to have the plan stricken from the records of the Registry of Deeds.

ARTICLE 9 - REVISIONS TO APPROVED PLANS

9.1 Procedure. An applicant for a revision to a previously approved plan shall, at least fifteen days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.

9.2 Submissions. The applicant shall submit a copy of the approved plan as well as three copies of the proposed revisions. The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of these regulations and the criteria of the statute. The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.

9.3 Scope of Review. The Board's scope of review shall be limited to those portions of the plan that are proposed to be changed.

ARTICLE 11 - PERFORMANCE STANDARDS

The performance standards in this article are intended to clarify and expand upon the criteria for approval found within the subdivision statute (Title 30-A M.R.S.A., §4404). In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance standards and make findings that each has been met prior to the approval of a final plan. Compliance with the design guidelines of Article 12 shall be considered to be evidence of meeting the appropriate performance

standards. Proposed subdivisions not in compliance with the design guidelines of Article 12 may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standard(s) and the statutory criteria. In all instances the burden of proof shall be upon the applicant to present adequate information to indicate all performance standards and statutory criteria for approval have been or will be met.

11.2 b. Lot design shall permit placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.

11.4 Soil Erosion. A. The proposed subdivision shall prevent soil erosion from entering water bodies, wetlands, and adjacent properties.

11.5 Traffic Conditions.

A. In general, provision shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to:

1. Safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision;
2. Avoid traffic congestion on any street; and
3. Provide safe and convenient circulation on public streets and within the subdivision.

11.8. Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline.

A. Preservation of Natural Beauty and Aesthetics.

1. The plan shall, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plan.
3. The Board may require the application to include a landscape plan that will show the preservation of any existing trees larger than 24 inches diameter breast height, the replacement of trees and vegetation, and graded contours.

B. Retention of Open Spaces and Natural or Historic Features.

1. If any portion of the subdivision is located within an area designated by the comprehensive plan as open space or greenbelt, that portion shall be reserved for open space preservation.
2. If any portion of the subdivision is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values that qualify the site for such designation.

C. Protection of Significant Wildlife Habitat. If any portion of a proposed subdivision lies within:

1. 250 feet of the following areas identified and mapped by the Department of Inland Fisheries and Wildlife or the comprehensive plan as:
 - a. Habitat for species appearing on the official state or federal lists of endangered or threatened species;

11.8.C. 3. Or other important habitat areas identified in the comprehensive plan including coastal wildlife concentration areas, the applicant shall demonstrate that there shall be no adverse impacts on the habitat and species it supports. A report prepared by a wildlife biologist certified by the Wildlife Society with demonstrated experience with the wildlife resource being impacted shall be submitted. This report shall assess the potential impact of the subdivision on the significant habitat and adjacent areas that are

important to the maintenance of the affected species and shall describe appropriate mitigation measures to ensure that the subdivision will have no adverse impacts on the habitat and the species it supports.

11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances.

All lots shall meet the minimum dimensional requirements of the zoning ordinance for the zoning district in which they are located. The proposed subdivision shall meet all applicable performance standards or design criteria from the zoning ordinance.

11.10 Financial and Technical Capacity.

A. Financial Capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the statute and the standards of these regulations. When the applicant proposes to construct the buildings as well as the subdivision improvements, the applicant shall have adequate financial resources to construct the total development. In making the above determinations the Board shall consider the proposed time frame for construction and the effects of inflation.

11.11. Impact on Water Quality or Shoreline. Cutting or removal of vegetation along water bodies shall not increase water temperature, result in shoreline erosion or sedimentation of water bodies.

11.15. Storm Water Management.

A. Adequate provision shall be made for the management of the quantity and quality of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, under drains, storm drains and best management practices equivalent to those described in the Stormwater Management for Maine: Best Management Practices, published by the Maine Department of Environmental Protection, 1995, in conformance with the policies of the comprehensive plan. The storm water management system shall be designed to meet the following standards:

1. Quantity. Peak discharge rates shall be limited to the predevelopment levels for the 2-year, 10-year, and 25-year frequency, 24-hour duration storm unless storm water from the subdivision will drain directly into a major water body such as a great pond or the ocean.

2. Quality.

- a. Major Subdivisions. Storm water run-off in major subdivisions must be treated by the use of best management practices equivalent to those described in the Stormwater Management for Maine: Best Management Practices, published by the Maine Department of Environmental Protection, 1995, to achieve, by design, 40% reduction in total suspended solids.

11.16 Reservation or Dedication and Maintenance of Open Space and Common Land, Facilities and Services.

B. Further subdivision of the common land or open space and its use for other than noncommercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to noncommercial recreational or conservation uses may be erected on the common land. When open space is to be owned by an entity other than the municipality, there shall be a conservation easement deeded to the municipality prohibiting future development.

C. The common land or open space shall be shown on the final plan with appropriate notations on the plan to indicate:

1. It shall not be used for future building lots

11.16.E.2. The association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.

12.1. Sufficient Water.

2. Wells shall not be constructed within 100 feet of the traveled way of any street, if located downhill from the street, or within 50 feet of the traveled way of any street, if located uphill of the street.

This restriction shall be included as a note on the plan and deed restriction to the effected lots.

12.2. Traffic Conditions.

2. Where a lot has frontage on two or more streets, the access to the lot shall be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. This restriction shall appear as a note on the plan and as a deed restriction to the affected lots.

12.2.3.b. Sight Distances. Accesses shall be located and designed in profile and grading to provide the required sight distance measured in each direction. Sight distances shall be measured from the driver's seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the curb line or edge of shoulder, with the height of the eye 3 ½ feet, to the top of an object 4 ¼ feet above the pavement. The required sight distances are listed by road width and for various posted speed limits.

12.3 Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline.

A. Preservation of Natural Beauty and Aesthetics.

1. Unless located in areas designated as a growth area in the comprehensive plan, a subdivision in which the land cover type at the time of application is forested shall maintain a wooded buffer strip no less than fifty feet in width along all existing public roads. The buffer may be broken only for driveways and streets.
2. Unless located in areas designated as a growth area in the comprehensive plan, building location shall be restricted from open fields, and shall be located within forested portions of the subdivision. When the subdivision contains no forest or insufficient forested portions to include all buildings, the subdivision shall be designed to minimize the appearance of building when viewed from existing public streets.
3. When a proposed subdivision contains a ridgeline identified in the comprehensive plan as a visual resource to be protected, the plan shall restrict tree removal and prohibit building placement within 50 feet vertical distance of the ridge top. These restrictions shall appear as notes on the plan and as covenants in the deed.
4. When a proposed subdivision street traverses open fields, the plan shall include the planting of street trees. Street trees shall include a mix of tall shade trees and medium height flowering species. Trees shall be planted no more than fifty feet apart.

C. Protection of Significant Wildlife Habitat and Important Habitat Areas.

The following guidelines are designed to protect the significant wildlife resources identified in the municipality. The Board recognizes that wildlife management must take into account many site-specific variables. Applicants proposing to subdivide land within identified wildlife resources must consult with the Maine Department of Inland Fisheries and Wildlife or a qualified wildlife biologist and provide their written comments to the Board. The guidelines of this section shall apply to only those subdivisions which include significant wildlife habitat or resources identified in Section 11.8.C.

1. Protection of Habitat of Endangered or Threatened Species.

- a. Habitat or species appearing on the official state or federal lists of endangered or threatened species shall be placed in open space.

2. Protection of Waterfowl, Shorebird, and Wading Bird Habitat, Atlantic Salmon Spawning and Nursery Areas.
 - a. There shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water mark of the following habitat areas:
 3. Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission, or
 4. Other important habitat areas identified in the comprehensive plan.
 - b. This restriction shall appear as a note on the plan and as a deed restriction to the affected lots.
5. If the proposed subdivision includes other important wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the comprehensive plan, the restrictions on activities in and around these areas shall be reviewed by the Department or a qualified wildlife biologist and their comments presented in writing to the Board.

12.9 Monuments.

- B. Stone or precast concrete monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135° or less.
- C. Stone or concrete monuments shall be a minimum of four inches square at the top and four feet in length, and set in the ground at final grade level. After they are set, drill hole ½ inch deep shall locate the point or points described above.

(Ordinance states 2 C's)

- C. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by suitable monuments, as required by the Maine Board of Registration of Land Surveyors.

ARTICLE 13 - PERFORMANCE GUARANTEES

13.1 Types of Guarantees. With submittal of the application for final plan approval, the applicant shall provide one of the following performance guarantees for an amount adequate to cover the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs:

- A. Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account;
- B. A performance bond payable to the municipality issued by a surety company, approved by the municipal officers, or town manager;
- C. An irrevocable letter of credit (see Appendix B for a sample) from a financial institution establishing funding for the construction of the subdivision, from which the Municipality may draw if construction is inadequate, approved by the municipal officers, or town manager; or
- D. An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed.

The Board with the advice of the municipal engineer, road commissioner, municipal officers, and/or municipal attorney shall determine the conditions and amount of the performance guarantee.

13.2 Contents of Guarantee.

The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction.

13.3 Escrow Account.

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the applicant, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the applicant unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the applicant and the amount withdrawn to complete the required improvements.

13.4 Performance Bond.

A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought.

13.5 Letter of Credit.

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan.