

Chapter 7
Enforcement,
Including Guarantees that Improvements
will be Made

This chapter provides for the enforcement of this bylaw. It requires developers to provide adequate guarantees that required improvements will be installed as proposed and requires that a certificate of compliance be issued before most developments or phases of developments may be occupied or used. This chapter also establishes the procedures by which violations of this bylaw may be addressed, including civil penalties.

7.1 Required Improvements

7.1.1 What is a required improvement? A required improvement is any improvement, public or private, required for compliance with this bylaw. Required improvements – not all of which are required in every development - include the following, as shown on the final plans approved by the DRB:

7.1.1.1 ... roads, public or private, including bridges, culverts, curbs, gutters, sidewalks, street lights, signs, signals, street trees, and other associated improvements;

7.1.1.2 ... access driveways, off-street parking and loading areas, and associated improvements;

7.1.1.3 ... paths, trails, urban parks, neighborhood parks and other open spaces, and associated improvements;

7.1.1.4 ... water and sewer mains, community sewerage systems, storage reservoirs, pump stations, and associated improvements;

7.1.1.5 ... runoff, erosion control, and stormwater management measures, including plantings;

7.1.1.6 ... landscaping, including landscaped buffers, landscaping in required setbacks, parking area landscaping, and all other required and/or approved landscaping, screening or buffering; and

7.1.1.7 ... all other improvements required by this bylaw to protect public safety or mitigate the potential impacts of the development.

7.1.2 Who pays for the installation of required improvements? Installation of required improvements shall be at the developer's expense. An exception may be made where it is prudent for the town to participate in the installation of improvements in order to correct existing deficiencies in service to other properties or to anticipate future needs. The town's participation shall be negotiated by the DPW before final plans are reviewed and included in the signed development agreement.

7.1.3 Are there standards for required improvements? Yes. Required improvements shall be installed in compliance with this bylaw and the *Public Works Standards*.

7.1.4 When must required improvements be installed? All required improvements must be in place and accepted before a certificate of compliance - which permits a development, or a phase of a development, to be occupied - can be issued by the town, as provided by WDB 7.3. Certificates of compliance may be issued for all improvements at once or by phase. Either way, the installation, inspection, acceptance, and warranty of required improvement shall proceed as provided by a development agreement.

7.1.5 What is a development agreement? A development agreement is a contract between the applicant and the town, signed by both. A development agreement is required for all developments that include required improvements. It:

7.1.5.1 ... incorporates by reference the approved final plans of the entire development or, where phased development of required improvements has been approved, detailed plans of the initial phase;

7.1.5.2 ... sets a schedule for the completion of the required improvements in the entire project or the initial phase, and, where applicable, provides an anticipated schedule for the submission of final plans, cost estimates, and guarantees of improvements in future phases;

7.1.5.3 ... lists all required improvements, either for the entire project or the initial phase, and their estimated cost;

7.1.5.4 ... guarantees completion of all required improvements using one of the methods listed at WDB 7.1.6;

7.1.5.5 ... establishes a schedule for the inspection of required improvements as work progresses;

7.1.5.6 ... provides a process by which the town may, if necessary, complete required improvements using the guarantees provided;

7.1.5.7 ... provides a process by which either party may request renegotiation of the development agreement,

7.1.5.8 ... provides a process by which the development agreement may be transferred, with notice to the town, to the developer's successors; and

7.1.5.9 ... provides that the development agreement and any vested rights created by approval of the final plan become void if the town is required to use a guarantee to complete required improvements or if the anticipated schedule of improvements required above is not met or renegotiated. The anticipated schedule may be renegotiated without losing vested rights, provided that such negotiations are initiated within 180 days after failure to initiate or complete a phase as scheduled.

7.1.5.10 Maintenance. A development agreement may also include a contract for town plowing of roads or other routine maintenance to be performed by the town during the warranty period required by WDB 7.2.1.

A draft development agreement must be submitted with the preliminary plans, as required by the Discretionary Permit Application Checklist.

Model Development Agreement. Development agreements can be complex. The town provides a model, which is attached as Appendix C. but each agreement will require careful thought and drafting.

7.1.6 How will the installation of required improvements be guaranteed? Completion of the improvements identified in a development agreement must be guaranteed by one of the following methods:

7.1.6.1 For Required Improvements that Will Come Into Public Ownership. This may include arterial and collector roads, and associated improvements; local roads that will become town toads, and associated improvements; water and sewer mains and associated improvements; certain paths and trails and associated improvements; and other required improvements specified as public in the approved final plans and the development agreement. The applicant must place an amount equal to 110% of the estimated cost of installing the required improvements in escrow for the town before an administrative permit for work on the required improvements will be approved. The development agreement will specify the location and terms of the escrow account, including the phased return of portions of the funds taken in escrow as work proceeds, provided that at least one-third (33%) of the funds taken shall be retained until a certificate of compliance has been issued.

7.1.6.2 For Required Improvements that Will Not Come Into Public Ownership. Many required improvements, parking areas and landscaping, for example, will remain in private ownership, maintained by the applicant, the applicant's successors, or an owner's association. These improvements are still necessary for compliance with this bylaw and must be in place before a certificate of compliance is issued. The town will seek to ensure timely completion of these improvements by requiring the applicant to provide an irrevocable letter of credit or place money in escrow, in the amount of 10% of the estimated cost of the required private improvements before any administrative permit for work on the project is approved. The letter of credit will be surrendered or the amount taken in escrow returned when a certificate of compliance has been issued. The development agreement will specify the terms of the letter or credit or escrow account, including the phased return of portions of the funds taken in escrow as work proceeds, provided that at least one-third (33%) of the credit offered shall be retained until a certificate of compliance has been issued.

7.1.6.3 In Case of Default. If any of the required improvements are not completed as provided by the development agreement, the town shall use as much as necessary of the money held in escrow or the credit offered to complete those improvements. Any balance remaining in the escrow account will be returned to the applicant.

7.1.6.4 Disposition of Interest. Interest earned on escrow accounts established to comply with WDB 7.1.6.1 and 7.1.6.2 shall be added to the account to reflect the inflating cost of making the improvements in the event of default.

7.1.7 Will required improvements be inspected? Yes.

7.1.7.1 By the Town. Required improvements must be inspected by the Administrator and/or the DPW or their designees before a certificate of compliance is issued and the guarantees required by WDB 7.1.6 are returned. As provided by WDB 7.1.5.5, a proposed schedule of

inspections must be included in the draft development agreement. A final schedule will be included in the approved development agreement.

7.1.7.2 By the Applicant. Applicants may be required to provide reports of inspections made by their own architects, engineers, landscape architects, or other appropriate professionals during the construction or installation of required improvements. The frequency of these reports may vary with complexity and extent of the work. A schedule will be determined by the Administrator, with the advice of the DPW and included in the development agreement.

7.1.8 *Are there inspection fees?* Yes. Fees for the inspection of required improvements are established in the *Public Works Standards*. Inspection fees must be paid at the pre-construction meeting.

7.1.9 *Are as-built drawings of required improvements required?* Yes. Reproducible as-built drawings of all required improvements must be provided to the town in the format specified by the DPW, at the applicant's expense.

7.2 Maintenance of Required Improvements

7.2.1 *Is continuing maintenance of required improvements required?* Yes. Continuing maintenance of required improvements that will not come into ownership of the town or another public agency is required. Failure to maintain a required improvement is a violation of this bylaw, subject to enforcement as provided by WDB 7.4-7.6.

7.2.2 *Must there be a warranty for required improvements?* Yes. The applicant is responsible for the maintenance of all required improvements that have been dedicated to the town for three years after the certificate of compliance is issued. This includes correcting defects in materials and workmanship, and repairing damage to required improvements caused by construction. This warranty will be secured by keeping 10% of the funds placed in escrow and/or made available via an irrevocable letter of credit to comply with WDB 7.1.6 available to the town. As provided by WDB 7.1.6.3, the town may use those funds where an applicant fails to make good on the warranty required here.

7.2.3 *How will maintenance of required improvements be guaranteed when the developer is gone?* Continuing maintenance of improvements that will not come into ownership of the town or another public agency is the responsibility of the owner. Any development that results, or may reasonably be expected to result, in the creation of multiple ownerships, including subdivisions and condominiums, shall create an owner's association or similar mechanism that is responsible for continuing maintenance of required improvements. Drafts of the declaration of covenants, articles of incorporation, and bylaws for that association shall be submitted with the application for a discretionary permit. The final version of these documents must be approved with the final plan, and recorded before an administrative permit is issued for any work on the project.

7.2.4 *What does maintenance include?* Standards for the maintenance required by WDB 7.2.3 are set in Chapter 16 of this bylaw.

7.3 Certificates of Compliance

7.3.1 *When is a certificate of compliance required?* A certificate of compliance (CC) is required upon the completion, inspection, and acceptance of required improvements and/or when any new

structure is connected to town utilities. CC's are not required for other developments. Failure to obtain a CC where one is required is a violation of this bylaw, subject to enforcement as provided by WDB 7.4-7.6.

7.3.2 How do I get a certificate of compliance? The applicant must file a written request for a CC before the final inspection scheduled in the development agreement or as a condition of approval. If all required improvements have been completed in accord with the approved final plans and the development agreement, a CC will be issued within 15 working days following that final inspection.

7.3.3 Winter is coming! Is it possible to get a temporary certificate of compliance? Yes. The Administrator may, upon written application, and after consulting with the DPW, issue temporary certificates of compliance (TCC) for periods of up to 365 days. TCC's shall expire on a date certain and shall specifically list all work that must be completed before a CC will be issued. Failure to complete work as scheduled when a TCC has been issued is a violation of this bylaw, subject to enforcement as provided by WDB 7.4-7.6.

7.4 Enforcement I. The town has access to two different enforcement procedures. The first is established by the state's planning enabling legislation. It is explained in this section. The second enforcement procedure is the same as for ordinances. It is explained in WDB 7.5. Either procedure may be used to address any violation of this bylaw. Generally the procedure established here, in WDB 7.4, will be used for major violations, while the procedure established in WDB 7.5 will be used for minor violations, like the posting of a temporary sign without a permit.

7.4.1 How is this bylaw enforced? As provided by 24 V.S.A. § 4452, the administrator may, in the name of the town, institute any appropriate action, injunction, or other proceeding to prevent, restrain, correct, or abate a violation of this bylaw.

7.4.2 Must the owner be notified before enforcement? Yes, but only for the first offense. As required by 24 V.S.A § 4451, alleged offenders will be given seven (7) days warning, via certified mail, and an opportunity to correct the violation before the Administrator institutes an action. The seven-day warning and opportunity to correct the violation need not be provided for a second offense that occurs within 12 months of a warning being provided.

7.4.3 What is the penalty for a violation? Any person who violates this bylaw may be fined not more than \$100 for each offense. Each day that a violation continues is a separate offense.

7.5 Enforcement II

7.5.1 Can the administrator issue tickets for violations of this bylaw? Yes. As authorized by 24 V.S.A. § 1974a, the Administrator may issue a Vermont Civil Violation Complaint for any violation of this bylaw.

7.5.2 How do I respond to a civil violation complaint? Violations of this bylaw are civil matters, supervised by the Judicial Bureau. You have 20 days to respond to a complaint issued by the Administrator. You may respond by admitting the violation or pleading "no contest" and paying the waiver fee. You may also deny the violation, in which case a hearing will be scheduled before the Judicial Bureau.

What is the Judicial Bureau? See <http://www.vermontjudiciary.org/courts/JudicialBureau/FAQmunord.htm>

7.5.3 What is the penalty for a civil violation? First, you should understand that each day in which a violation continues is a separate violation, subject to a separate complaint and penalty.

7.5.3.1 First Offense. The penalty for a first offense shall be \$250.00, but the waiver fee for those who admit the violation or plead no contest shall be \$150.00.

7.5.3.2 Subsequent Offenses. The penalty for each subsequent offense shall be \$500.00, but the waiver fee those who admit the violation or plead no contest shall be \$400.00.

7.6 An Additional Means of Enforcement. No permit, administrative or discretionary, may be approved for development on a parcel on which there is an outstanding violation of this bylaw.